

The story so far

The Evidence

UK Children's Commissioners' Midterm Report to the UK State Party on the UN Convention on the Rights of the Child

November 2011

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Please note: In this document, 'children' refers to children and young people

Introduction

The evidence in this report supports the UK Children's Commissioners' 2011 Midterm Report to the UK State Party on the UN Convention on the Rights of the Child.

Guide to using this document:

Each of the five sections includes:

- A statement on the relevant Articles of the United Nations Convention on the Rights of the Child (UNCRC);
- Relevant Concluding Observations from the 2008 report of the United Nations Committee on the Rights of the Child;
- Progress made on realising children's rights in this area since the publication of the UN Committee's Concluding Observations and the recommendations made by the UK Children's Commissioners in 2008;
- A commentary on the situation regarding children's rights; and
- New and emerging concerns.

General Principles

Participation in decision-making

1. The principle UNCRC Articles relating to participation are:

Article 12:

1. 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.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally or in writing or in print, in the form of art, or through any media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For the respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (order public), or of public health or morals.

2. Concluding Observations in this area made by the United Nations Committee on the Rights of the Child in 2008

Paragraph 32 - However, the Committee is concerned that there has been little progress to enshrine Article 12 in education law and policy. Furthermore, the Committee is concerned that insufficient action has been taken to ensure the rights enshrined in Article 12 to disabled children.

Paragraph 33 - The Committee recommends that the State Party:

- a) promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child;
- b) support forums for children's participation, such as the UK Youth Parliament, Funky dragon in Wales and Youth parliament in Scotland;
- c) continue to collaborate with civil society organisations to increase opportunities for children's meaningful participation, including in the media.

Paragraph 66 - Furthermore the Committee is concerned that:

- a) participation of children in all aspects of schooling is inadequate, since children have very few consultation rights, in particular they have no right to appeal their exclusion or to appeal the decisions of a special education needs tribunal;
- b) the right to complain regarding educational provisions is restricted to parents, which represent a problem specially for looked after children for whom local authorities have, though mostly do not use, parental authority.

Paragraph 67 - The Committee recommends that the State Party:

- g) strengthen children's participation in all matters of school, classroom and learning which affect them;
- h) ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to the special educational needs tribunals.

3. What progress, if any, has been made in this area since 2008 against the UN Committee on the Rights of the Child's Concluding Observations and the 2008 recommendations made by the UK Children's Commissioners

Paragraph 33 - The Committee recommends that the State Party:

- a) promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child;

Since 2008, governments across the United Kingdom have put in place a number of practice developments along with other agencies that demonstrate the practice of listening to the view of the child. There have also been a limited number of legislative developments in this area.

In 2009, in a bi-annual survey in Scotland (Youthlink Scotland 2009), 24 per cent of the young people thought that politicians listened to them a great deal or a fair amount, which represents an increase from 18 per cent in the previous survey. However, 30 per cent thought that they did not listen at all.

In response to the 2008 Concluding Observations the Scottish Government has confirmed its commitment to do more to ensure that the voices of children and young people are heard on all matters that affect them. This was reflected in recent guidance which emphasises the importance of embedding the processes of consultation and engagement with children, young people and families in the everyday practices of all agencies and within multi-agency working. (Scottish Government 2010b)

A number of legislative provisions in Northern Ireland help to promote and facilitate the principle of respect for the views of the child. Section 75 of the Northern Ireland Act 1998 requires public authorities to have due regard to promoting equality of opportunity on the basis of nine criteria including age, disability and religion. Public Authorities must produce an equality scheme and assess the equality impact of their policies and must consult those affected by public policy decisions as part of these processes. The Education and Libraries (Northern Ireland) Order 2003 sets out the importance of consultation with pupils and notes that Board of Governors of schools should listen to the opinions of pupils in relation to policies or general principles concerning discipline, including encouraging positive behaviour, respect for others and preventing bullying.

To date, ten of 12 government departments and the Assembly Commission in Northern Ireland have signed up to the Commissioner for Children and Young People's Participation Statement of Intent which signals their public commitment to listen to and respect the views of children. However, while there are examples of good practice, the picture is mixed across Northern Ireland. For instance, the Northern Ireland Commissioner for Children and Young People (NICCY) has welcomed the Department of Education's endorsement of the Statement of Intent but remains concerned that more must be

done to fully embed participative structures, such as school councils, throughout the education system.

In both Northern Ireland and Wales there are Participation Networks funded by Government, both of which have produced standards relating to children and young people's participation (Participation Network Northern Ireland 2010, Welsh Assembly Government 2007). These standards aim to support public authorities as they create effective processes for engaging children and young people in public decision-making. In 2010, a guide was produced to increase understanding of children and young people's participation rights and how they can be realised in local authority and third sector settings (Burk 2010). It suggests ways to effectively listen to children and young people in order to create change with them and for them.

In 2010 in Wales the Children and Families Measure 2010 introduced a statutory basis for participation of children in local authority decision-making. This is a major legislative step forward, however, there are yet to be regulations or statutory guidance produced under the Measure to provide guidance to local authorities as to how to implement their new duties. It is anticipated that revised statutory local guidance for local authorities will be published by the Welsh Government in 2011 on participation under the Children and Families Measure 2010.

In England, there are many examples of good practice of children and young people being consulted at national and local levels of decision-making and increasingly on major areas of Government policy in England. There are some pockets of good practice and evidence but these are inconsistent. A report covering England, Ireland, Scotland and Wales (Ecorys 2011) reviewed children and young people's participation in planning and regeneration suggests that children's involvement has been often overlooked due to the service driven approach to policy making. The report found that there is clear evidence that children and young people can play a significant role in planning and regeneration processes that benefit individuals, peer groups and communities.

It is important to note that while there is much good practice across England there are few examples where public bodies have a statutory duty to consult children and young people. Research funded by the Office of the Children's Commissioner in 2010 (Office of the Children's Commissioner for England 2010) highlighted the progress made in recent years in promoting participation, but also noted that children and young people often have little or no say in key and critical areas of their lives, including the youth justice system, safeguarding services and family law. A notable exception to this is children in care who do receive a legal right to be consulted in relation to their care from the local authority.

"Get it Sorted"¹ provides guidance for local authorities on providing effective advocacy services for children and young people when making a complaint under the Children Act 1989 in England. (Department for Education and Skills 2004) However, there are concerns that no progress has been made on the development of a strategy for children's advocacy services in England. There is risk that cut backs on local authorities may result in reductions to funding adequate advocacy services. In 2011, The Children's Commissioner for England commissioned a scoping study looking at the provision of advocacy, which aims

to support the Advocacy Consortium in developing proposals for national advocacy models. The report found that there is inconsistency for children attempting to access advocacy. This is true in terms of availability, independence and accessibility. Concerns were identified in terms of access for the most vulnerable children including very young children, disabled children, asylum seeking children and children where English is not their first language. The report also outlines proposals for national advocacy models. (Brady, 2011)

A regional advocacy service for young people in care is provided in Northern Ireland and inspections of children's homes are being conducted by teams including care experienced peer inspectors to support young people's engagement in the inspection process. However, there is no legal right to advocacy for children in Northern Ireland and in April 2010 the Children's Commissioner called on Government to address this and develop an advocacy strategy for children and young people.

A national scoping exercise was commissioned in Scotland (Scottish Government 2010a) to identify gaps in the provision of advocacy services and ways of improving provision. The report found that there are "*significant gaps in advocacy support for children and young people. This includes a lack of services for children and young people looked after at home, disabled children and young people, for those attending Children's Hearings, those living in rural areas and black and minority ethnic children and young people.*"

The report highlighted that despite the high level commitment to children's rights by the Scottish Government there are limited rights to advocacy for children in legislation of processes. The report also highlighted a relative lack of information for children who may require such support and that information on how to access advocacy is not easily accessible.

As a result of the report the Scottish Government has committed itself to producing a national plan of action in relation to improved access to, availability and quality of advocacy services. A working group involving stakeholders is currently working on the development of a national advocacy strategy and advocacy standards.

The Children's Hearings (Scotland) Act 2011 allowed for the child in the children's hearing system to have access to advocacy services. While this is a positive development, the Act does not require that all children in the children's hearings system have a right to access such services. All details regarding children's advocacy services have been left to be developed in secondary legislation. Until such secondary legislation is developed, this part of the Act is unlikely to have any effect on any child in the children's hearings system.

The Welsh Government has in recent years developed a model for delivering advocacy services (Welsh Assembly Government 2009) alongside national standards for those who deliver advocacy services (Welsh Assembly Government 2003). Currently in Wales, under the Children Act 1989 and Adoption and Children Act 2002, every local authority has a statutory obligation to provide an independent professional 'voice', also known as an advocate, for every looked after child and young person, care leaver and child in need who wants to take part or comment on decisions about their lives. Advocates should also be provided if the child wants to make a complaint. In 2010 the Welsh Government launched "MEIC" a 24-hour information, advice and support helpline for children and young

¹ DfES (2004) Get it sorted guidance: Providing Effective Advocacy Services for Children and Young People Making a Complaint under the Children Act 1989. Produced by the Department for Education and Skills.

people. This is a telephone and text based service which seeks to resolve issues or signpost children to advocacy services in their local area.

There have been a number of inquiries into the provision of advocacy services in Wales (National Assembly for Wales 2008 & 2009 & 2010b) and in 2011 the Children's Commissioner for Wales announced a review of the provision of advocacy services in Wales. That review has been prompted by a number of instances brought to the Children's Commissioner's attention whereby some professionals within local authorities were unaware of their statutory obligation to provide an advocate for these children and young people. In other cases, vulnerable children were going without an advocate because they were unaware of their statutory entitlement to receive support. The Children's Commissioner is concerned that the speed of progress in relation to the provision of advocacy has been too slow.

Evidence presented to Children's Commissioner in Wales by children who have been in the Welsh care system highlighted that children and young people in care feel that they are not being heard or listened to (Children's Commissioner for Wales 2011). Some good practice has been identified and young people reported that professionals do support and listen to them but there have also been clear messages identified about young people not being involved in their care planning as they plan to move to independent living. There are further concerns about consistency of advocacy provision and whether children and young people know about their right to access advocacy. There are critical issues identified in relation to professional training and development about the ability and skill of adults in engaging directly with children and young people and being able to listen and hear their views.

Proposed restrictions on access to legal aid in England and Wales may prevent children from having a voice in administrative and judicial proceedings. The Equality and Diversity Forum have stated that the Ministry of Justice's proposals regarding legal aid do not meet the current equality duty, The Equality and Diversity Forum will consider what further action to take and in particular whether to seek leave for a judicial review.

An overview of participation in selected specific settings other than education

Youth Justice

The findings of a 2011 report by the Youth Justice Board for England and Wales (YJB) in 2011² found that the vast majority of children and young people in the youth justice system know how to complain but very rarely did so. They had little or no faith that it would be effective for them. The system was felt to be selective with complaints that were inconvenient to staff often being ignored. Procedures were considered slow and impersonal. Some feared reprisals if they complained. The findings of this research echoed previous research (Howard League for Penal Reform 2010).

Her Majesty's Inspectorate of Prisons (HMIP) regularly surveys the perspectives of children and young people in custody. In 2010 the Inspectorate found that access to and experiences of complaint systems were different for young people from black and ethnic minority backgrounds. Only 75 per cent of black and ethnic

minority young women, compared with 97 per cent of white young women, know how to make a complaint. Only 29 per cent of black and ethnic minority men, compared with 45 per cent of young white men thought that their complaint would be taken seriously. (HMIP 2010)

In Wales the YJB has been working to increase the participation of young people in the youth justice system and the Children's Commissioner for Wales is working with the YJB and Participation Unit to increase participation in youth justice. A critical issue that has been identified through visits to secure settings in Wales by the Children's Commissioner and his team is the lack of appropriate information for young people. This therefore creates a considerable barrier to informed decision-making and children and young people can feel that they are unable to understand what is happening.

Child Protection

In England, the Munro review of the Child Protection System (Department for Education 2011) took a much welcomed children's rights perspective. The review's recommendations talk about the need to hear children's voice and promote children's rights. The Office of the Children's Commissioner for England facilitated and collated the views of young people on their experiences and potential wishes for changes to the child protection system (Office of the Children's Commissioner for England 2011b). Children voiced the importance of being heard separately from their parents and being listened to. They made a plea for better information, honesty, and emotional support throughout the process. Elements of the frontline practice that children and young people particularly valued were: access to consistent help from the same worker; respectful treatment; and services which do not get withdrawn as soon as the crisis has passed. They also spoke highly of the support provided by voluntary sector advocacy services which they describe as critical in helping them to disclose abuse and harm.

However, recent analyses of Serious Case Reviews demonstrate that children have not always had their voices heard (Ofsted 2008). Other research identifies speak of 'the invisible child' and this includes children and young people who were not talked with, not seen or unable to speak due to disability, fear or the impact of the abuse (Brandon et al 2009).

The Northern Ireland Safeguarding Board is due to be established this year and will hold key responsibility for ensuring that agencies work collaboratively and effectively to safeguard and protect children and young people. The legislation for this new statutory body was strengthened considerably following the intervention of the Children's Commissioner and others who argued that a robust duty to communicate with children must be placed on the Board. This should ensure its work will be informed by the views and experiences of children in contact with the child protection system. The Children's Commissioner for Northern Ireland will continue to closely monitor the implementation of this duty.

Care system

Specific new local authority consultation duties in relation to children in care in England came into force in April 2011; these require that the child's wishes and feelings be included in their placement plan, health plan, personal education plan and care plan.

² User Voice (2011) Young Peoples Views on Safeguarding in the Secure Estate. London Office of the Children's Commissioner and Youth Justice Board

Family Justice

There is an increasing body of research; including reports from the NSPCC, (NSPCC 2007)³ which provide a consistent message that children and young people wish for greater engagement in the court process. A common theme from interviews with children is that they feel that proceedings are 'happening' to them and they are powerless to contribute their voice.

The Family Justice Council's business plan for 2010-2011 promotes the strategic objective 'to identify changes in policy, practice and procedure that will enable the family justice system to listen more effectively to the 'Voice of the Child.' A number of activities are being undertaken to support this objective.

The Family Justice Review which is ongoing aims to reduce delays in decision-making in public family law and reduce number of children entering court and reduce the length of time for children and families involved in private law proceedings. Recommendations made in the interim report relate to ensuring a child centered family justice processes and the importance of the voice of the child in the justice system. Evidence from the review demonstrates that the voice of the child is still missing.

The Office of the Children's Commissioner for England was asked by the Family Justice Council to listen to the views and interests of children and young people involved in the family justice system. The report found the following key messages from children and young people (Office of the Children's Commissioner for England 2011c). These messages are that children want adults to listen, hear them and act on that understanding so that children can have a say in decisions. Children asked for clear information in different formats so that they can better understand the process. The children said that every child needs their own plan as to how they will be supported to be heard. There was a difference in experiences of being heard between children who had experience of private law proceedings and those who had experienced public law proceedings. Children whose parents are separating may get less support than other children. The Office of the Children's Commissioner has previously suggested that children should be given the opportunity to express their views directly but this does not happen frequently because judges and barristers were not trained to listen to them appropriately.

Legislation in other areas in the UK

Section 10(4)(c) of the Child Poverty Act (2010) requires the Secretary of State when developing a UK child poverty strategy to "consult such children, and organisations working with or representing children, as the Secretary of State thinks fit". A parallel duty applies to local authorities and their partners when developing local child poverty strategies (Section 23(6)(a)). Similar duties apply to the The Child Poverty Strategy (Wales) Regulations 2011 (National Assembly for Wales 2011) which are made under the Children and Families Measure 2010 (National Assembly for Wales 2010a).

The draft Health and Social Care Bill 2011 sets out to establish Local and National HealthWatch bodies ('HealthWatch England') to represent the views of the public in relation to the NHS Commissioning Board and GP commissioning consortia. Further,

local authorities, rather than the Secretary of State, must make provision for independent advocacy services in relation to complaints (clause 170). These may be commissioned from Local HealthWatch or another provider.

Research carried out in 2011 has found that many Local Involvement Networks (LINKs) soon to be replaced by local HealthWatch are struggling to properly take into account the views of children and young people. Across the LINKs surveyed in the research, involvement of children and young people was irregular; with a few engaging well with young people, whilst others thought that they weren't even allowed to involve children and young people in their work. (Graham, 2011)

b) *support forums for children's participation, such as the UK Youth Parliament, Funky dragon in Wales and Youth parliament in Scotland;*

The Northern Ireland Assembly is currently developing a Youth Assembly. A working group of 30 young people, aged 16 to 18, assisted the Assembly in looking at other models of such assemblies and presented a paper to the Assembly Commission. The Commission has approved the establishment of a Youth Assembly and a consultation is currently underway with a view to establishing the Youth Assembly by the end of 2011. The working group identified three key reasons why young people would support a Youth Assembly (Northern Ireland Assembly 2011) to:

- get young people involved in the political process;
- provide representation for young people and to involve young people in decision-making;
- give young people a voice.

The UK Youth Parliament (UKYP) has a role in enabling young people's views and interests to be heard. UKYP works with the UK Parliament to give democratically elected Members of the Youth Parliament (MYP) the opportunity to annually debate in the House of Commons Chamber. Following the success of the UK Youth Parliament debate in the chamber in 2010, MPs voted by a majority of 499 to 21, to allow the event to happen annually for the life of this Parliament

"*Making Ourselves Heard*" is a national project being delivered in England by the Council for Disabled Children. The project aims to ensure disabled children's right to be heard becomes a reality by giving disabled children direct access to Government and policy makers; and ensuring the voices of disabled children and their success stories are heard. The project aims to achieve the active participation of disabled children and young people in decisions directly affecting them as well as strategic planning of services and influencing national policy.

The Office of the Children's Commissioner for England established the South East Participation Pilot Project in 2010. The project focused on improving the inclusion of minority, marginalised and potentially vulnerable groups of young people and also of children (age 5-11 years) to test ways to improve participation practices across England and the findings continue to be shared and disseminated to various stakeholders through participation conferences, meetings and networks.

Funding to support young people's participation was announced by Tim Loughton MP during an Education Select Committee

³ Timms, J. E., Bailey, S. and Thoburn, J. (2007) Your shout too!: a survey of the views of children and young people involved in court proceedings when their parents divorce or separate. London: NSPCC.

hearing on services for young people on 4 May 2011.

The Department for Education (DfE) is currently assessing bids for an organisation to promote and support youth participation, including the UK Youth Parliament, at national level and to support local areas in finding the right mechanisms to do so at local level.

The Government is working with key stakeholders and young people to develop a new vision for youth services. As part of this, an advisory group of young people made up of nominees from a range of youth organisations has been convened to discuss the impact of Government policy on young people. The group is also influencing the development of a new statement of Government policy on young people and services for young people to be published later this year. A suite of discussion papers on key issues, including young people's involvement in decision-making, has been published on the DfE website⁴. Feedback from this process will inform a youth policy statement, to be published in the autumn of 2011, which will set out a vision for young people and the support and opportunities they and their families need to make successful life choices.

The Scottish Government continues to support the Scottish Youth Parliament, the Children's Parliament and Young Scot organisations which actively involve children in participation work and active citizenship. The Scottish Youth Parliament worked in close partnership with Scotland's Commissioner for Children and Young People on "A Right Blether" - a major consultation exercise, which involved over 74,000 children and young people in voting about the important things in their lives.

The top concerns that Scotland's children and young people want to see action taken on are:

- "to be safe and secure in our home"
- "have the same chances, no matter how much money our families have"
"feel safe and respected" and
"everyone to include each other, no matter how different we all are"

These top concerns will be used to inform the Scottish Children's Commissioner's four year strategy and annual operational plans.

In Wales the National Children and Young People's Assembly for Wales is Funky Dragon. Funky Dragon reported directly to the UN Committee on the Rights of the Child in 2008 and plan to report again in 2014 when the Committee is due to next take evidence on the progress made on children's rights in the UK. Funky Dragon has a Grand Council which is made up of elected members aged between 11 and 25 from across the 22 local authorities in Wales. Each local authority draws 4 representatives. These can be elected from members of local youth forums, the voluntary youth organisations and school council representatives. The Grand Council meets quarterly and hosts an annual general meeting with Welsh Ministers. The organisation receives part of its funding from the Welsh Government with a further part of their funding sourced from the European Social Fund. This means that specific projects have to be undertaken in targeted geographical areas and thus are unable to work with children and young people in all parts of Wales.

There are youth forums in 21 of the 22 local authorities across Wales and national mechanisms for looked after and disabled children. Other national forums which have been mooted previously such as a national Black and Minority Ethnic forum have not as yet materialised and work is ongoing to establish a national forum for Gypsy and Traveller children in Wales. That work is being undertaken by a voluntary sector organisation but is funded by the Welsh Government.

- c) *continue to collaborate with civil society organisations to increase opportunities for children's meaningful participation, including in the media.*

Young Scot continues to receive funding from the Scottish Government to work to counter the negative portrayal of young people in the media. In Wales the Children's Commissioner for Wales is currently engaged with a school of journalism to produce a draft editorial guide in relation to children and young people. This has been developed throughout with the full participation of children and young people. The promoting of positive images of children and young people is a key objective of the Children's Commissioner for Wales in the coming years.

Whilst in their 2009 Action Plan the Governments across the United Kingdom prioritised this as a key area to work on together especially in relation to the negative stereotype, it is unclear what their strategies and actions have been to address this recommendation to date.

- Paragraph 67 - The Committee recommends that the State Party:*
 - g) *strengthen children's participation in all matters of school, classroom and learning which affect them;*

Although there is no legislative requirement to have school councils in Northern Ireland, the Department of Education for Northern Ireland states that it is keen to support the development of school councils in Northern Ireland. On its website, the Department outlines the benefits of school councils for pupils and the wider school community. It references guidance developed by the Northern Ireland Commissioner for Children and Young People (NICCY) entitled Democra-School. This is a programme designed to support and encourage the development of meaningful school councils and the practice of democracy in schools. NICCY is engaged in ongoing discussions with the Department of Education to support the development of school councils' policy guidance for teachers.

In England Section 218 of the Apprenticeships, Skills, Children and Learning Act 2009 places a duty on the Local Government Ombudsman to publish information about the procedures for making complaints about schools, including the assistance available to students who are or have been in care; disabled children and their parents; and children with special educational needs. The new duties are being phased in across four local authorities from April 2010 and then a further eight from September 2010. National rollout is planned for September 2011.

However, participation of children in aspects of school decision-making remains variable. Research suggests that children are not always routinely given an opportunity to speak for themselves in this area. This is especially in relation to exclusions and alternative provision being made for them leaving them no opportunity to appeal these decisions on their own behalf. (Davey 2010) Research carried out for the Office of the Children's Commissioner for England found that school councils were only considered effective by children and young people in listening to

⁴ <http://dfe.gov.uk/childrenandyoungpeople/youngpeople/Positive%20for%20Youth0>

ideas about school in about two in five cases. This evidence therefore suggests that schools may require additional support or advice to develop further effectiveness of their school councils (Office of the Children's Commissioner for England 2011a). Children's views are not regularly sought as part of the accountability framework for schools, or in discussions of teacher effectiveness.

In Scotland a review produced by Her Majesty's Inspectorate of Education noted that increasingly, schools, colleges and education authorities are taking a more proactive approach towards the involvement of children and young people in school decision-making. (Her Majesty's Inspectorate of Education 2009) Pupil councils play a key role in efforts to increase learner participation in planning and decision-making. The review found that the participation of children and families in policy development, in planning and developing child protection services at local authority level is in need of improvement. A three year study by Children in Scotland and the University of Edinburgh (2010) found that although 90 per cent of Scottish schools have a pupil council, a minority of these councils had been involved in making important decision regarding the curriculum, staffing or governance of the school (Children in Scotland and the University of Edinburgh 2010).

Within the Education (additional support for learning) Scotland Act 2009 there is a new duty for education authorities to "seek and take account of the views of the child" when providing information "on occurrence of certain events". Unfortunately, this duty is qualified in a way that would exclude a significant group of children from having their views sought and taken into account. Section 17 states "the education authority must seek and take account of the views of the child (unless the authority are satisfied that the child lacks capacity to express a view)."

The Schools (consultation) Scotland Act 2010 sets out the consultation processes that must take place before school closures, school establishment, relocation, admissions and other important changes to local provision of education with relevant consultees and defines pupils as relevant consultees. Scotland's Commissioner for children and young people considers that all children who attend a school, which is subject to a consultation under the Schools (consultation) Scotland Act 2010, should be considered to be of a suitable age and maturity and that it is the duty of the education authority to consult them in an age-appropriate manner, to take their views into consideration in making the final decision and to explicitly refer to how pupil's views have informed the decision.

In Wales, school councils have been a legal requirement of schools since 2006 and are one way of involving children and young people in school settings. The Welsh Government's Pupil participation project has produced a website showcasing good practice in participation in school settings for children, young people and people working in education. The website (Welsh Government 2010a) also provides training materials for school staff and pupil participation is one of the standards referred to in the revised standards for all educational practitioners in Wales.

An as yet unpublished survey of children's views on pupil participation conducted by the Welsh Government (Welsh Government unpublished) has found that 85 per cent of those surveyed felt that it was important for children to be involved in decision-making processes but that just under a half have a chance to have their opinions heard. Around 70 per cent of the children felt that things change as a result of them being involved

of them voicing their opinions.

Children have the right to make complaints in schools but in some cases brought to the attention of the Children's Commissioner for Wales those complaints processes are not child friendly, are not promoted and children's experiences of using such systems has been very negative. The Welsh Government has consulted on revised guidance for school governing bodies on dealing with all school complaints from either children or adults in 2011.

The School Effectiveness Framework in Wales (Welsh Assembly Government 2008), which is the overall school improvement strategy document, talks about placing pupil voice at the centre of the reforms that are being sought. The revised Common Inspection Framework for education and training in Wales introduced in September 2010 by Her Majesty's Inspectorate for Education and training in Wales (Estyn) places greater emphasis on the learners' perspectives than the previous framework.

The Welsh Government (2009) recognised that children and young people are interested parties in school organisation proposals in their revised guidance to local authorities. However, the participation of children and young people in such processes is variable and children and young people have contacted the Children's Commissioner to say they feel that they have not been listened to. The Welsh Assembly Government consulted in late 2010 on proposals for changes to the system of school organisation proposals and within that consultation highlighted that they are considering introducing a statutory code of practice on this issue (Welsh Assembly Government 2010b). One of the criteria being considered within such a code is an assessment of how children and young people have been consulted during what is an emotive process. The Welsh Government also indicated that it would be requiring those who are making such proposals to demonstrate how the proposals would impact on children's rights as defined by the UNCRC.

- h) ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to the special educational needs tribunals.*

In 2009-10 in Northern Ireland, the Department of Education held a consultation called 'The Way Forward for Special Educational Needs and Inclusion' policy which proposed retaining the current informal appeal, dispute avoidance and resolution and formal appeal arrangements for children with special education needs (Department of Education for Northern Ireland 2009a). There was no reference to the recommendation made by the United Nations Committee on the Rights of the Child.

The issue of unofficial exclusions from school or pre-cautionary suspensions has been highlighted by the Children's Commissioners in both Wales and Northern Ireland. In 2010, NICCY intervened in a legal case regarding 'pre-cautionary suspensions' from education which ruled they were not permissible. There are Procedures for the Suspension and Expulsion of Pupils in Controlled Schools' made by the Department of Education Northern Ireland under statutory powers which lay out how and when a school can suspend or permanently exclude a pupil. Suspending a pupil on a precautionary basis is not permitted and there is work ongoing with the Department of Education developing guidance for schools on precautionary suspensions.

In Wales the Office of the Children's Commissioner reviewed the issue of unofficial exclusions from school and found that there is a considerable use of such exclusions (Children's Commissioner

for Wales 2007). However, the Welsh Government has stated that such exclusions are against guidance and has made this clear to schools. Evidence from the Children's Commissioner's advice and support service and other research suggests that schools continue to use this practice of excluding pupils unofficially which denies them the right to challenge this (Welsh Government 2011). In Wales the right to appeal against exclusion from secondary school has been provided for a number of years, however data shows that only in 2008-9 only two appeals were made by children and young people to the independent appeals panel and in 2009-2010 only five such appeals were made by children. No national dataset is available about the number of appeals made at the first stage to the governing bodies of individual schools.

The Education (Wales) Measure 2009 introduced the legislative provision for children to be able to make their own appeals to the Special Educational Needs Tribunal in Wales. Pilots have been ongoing in relation to this provision and the ability for children to make appeals in their own right will be operational from September 2011 in two of the 22 local authorities.

The Scottish Government committed to making arrangements that would allow for the implementation of the new provisions for access to advocacy services for parents and young people in Additional Support Needs Tribunal proceedings. This new right to advocacy services was introduced within the *Education (additional support for learning) Scotland act 2009*. Since the end of 2010 two NGOs in Scotland have been contracted by the Scottish Government to provide advocacy services under this act. While this new right to advocacy services is a welcome development, it is regrettable that the Act does not provide an opportunity for younger children to get access to advocacy services without the involvement of their parent due to their assumed insufficient capacity to do so.

In England, Children still have no right to appeal their exclusion or the decisions of a Special Educational Needs Tribunal (although the Government has recently published a green paper which proposes the introduction of such a right for SEN tribunals in England).

In relation to education, parents have the legal right to appeal school admissions or exclusions but children do not. Legislation currently the Education Bill 2011 would further reduce individuals' rights to appeal against exclusions or against unfair systems for admissions to schools.

In July, Dr Maggie Atkinson, the Children's Commissioner for England, launched the first Inquiry under the Children Act 2004 powers into school exclusions. The School Exclusions Inquiry will examine a number of areas including the decision-making process up to the point of exclusion and whether the system is consistent with children's rights under the United Nations Convention on the Rights of the Child.

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Recommendations in the United Kingdom Children's Commissioners' report to the United Nations Committee on the Rights of the Child in 2008:

R29. Each administration in the UK should implement a rights-based framework for participation and the involvement of children and young people in decision-making.

The Scottish Government under its Getting It Right for Every Child framework places the child at the centre and expects that all agencies will listen to the views of the child. In 2010, the Scottish Alliance for Children's Rights, reported that the view among Non Governmental Organisations in Scotland was that "across the voluntary and public sector there is improved understanding amongst professionals of the need to involve children in decisions that affect them." (Together 2010) Even though there have been significant improvements in some areas with regard to listening to the voices, views and interests of young people, a rights based framework for participation and the involvement of children and young people in decision-making consistently across all areas of children's lives has yet to be implemented.

Evidence suggests that some groups of children and young people are less likely to have their voices heard. Research commissioned by the Office of the Children's Commissioner for England shows that younger children and those from minority groups are less likely to be consulted or involved in decision-making (Davey et al, 2010).

In Wales the passing of the Rights of Children and Young People's (Wales) Measure 2011 is a clear commitment by the Welsh Government to a rights based approach in Wales. The children's scheme will measure compliance with the duty for Welsh Ministers to pay due regard to the provision of the UNCRC when making all decisions from 2014 and in relation to all policy and legislation from 2012 to 2014 will determine to what extent this includes involving children in decision-making. Ministers, having to give due regard to the Convention, will include Article 12. A potential challenge could come from Ministers not taking account of the views of children and young people as "not giving due regard". The duties on the Ministers will commence in May 2012 but this is a positive sign of commitment and purpose.

R30. The UK Government and devolved administrations should ensure that children are informed of their participation rights.

In Scotland there is no evidence of any work focusing on participation rights in particular. In England, the National Curriculum for Citizenship includes sections on rights generally, but not on participation rights or the UNCRC in particular. However, the current review of the curriculum may mean that these are removed, or that citizenship is removed from the curriculum altogether. In 2010, the Government's independent review of the Office of the Children's Commissioner recommended that the Office should be given responsibility to promote and protect children's rights, and that the Government should promote Unicef's Rights Respecting Schools. However, this will still only realise part of the State Party's responsibility to promote awareness of the CRC.

The Welsh Government's own Participation Project and its funding for the Participation Unit and the Participation Workers Network for Wales have as part of their aims to raise awareness with professionals and children and young people about their right to participation. The UNCRC is part of the non statutory Personal and Social Education curriculum in Wales, however, evidence

from children and young people shows that the teaching of the UNCRC is variable. The Welsh Government has commissioned resources to help support the teaching of the UNCRC in schools which will be launched in autumn 2011.

In Wales the UNCRC Monitoring Group has a sub group which is attended by the Welsh Government which is looking at the issue of the promotion of the UNCRC across different professions. Evidence provided in relation to education found that there are some schools which promote the UNCRC very effectively but that teachers would like more materials to increase their knowledge and understanding of the convention.

Section 5 of the Children and Young Persons Rights (Wales) Measure 2011 places a duty on the Welsh Government to promote awareness and understanding of the UNCRC to children and adults alike. This duty came into force in Mid May 2011 and the Welsh Government is developing programmes and strategies to address that duty. There needs to be an assessment into how knowledge increases in the years to come, as the strategies take effect with adults and children alike. However, current evidence would suggest that in Wales not all children are aware of their right to participate in decisions that affect their lives. This could be because of a lack of awareness and a lack of processes and support does not allow them to use their rights, for example in the cases of advocacy and child friendly complaints procedures.

R32. The UK Government and devolved administrations should ensure children in need of communication support aids have access to such equipment so they may fully enjoy their Article 12 rights.

Addressed in the children with disabilities section of this report.

R33. Each administration in the UK must develop and fund a comprehensive national advocacy strategy.

R34. The UK Government and devolved administrations should provide independent advocacy to children across the UK. Priority should be given to providing an independent advocate to all disabled children living away from home and to all looked after children.

R45. The UK Government and devolved administrations should ensure children and young people are involved in care planning, provided with appropriate information and receive advocacy support.

It is clear that comprehensive national advocacy strategies have yet to be developed across the four countries and the Children's Commissioners in England and Wales are both engaged at the time of writing this report in projects looking at advocacy services for children and young people.

R57. The UK Government and devolved administrations should establish advocacy arrangements for disabled children to enable the voice of the child to be heard in all matters affecting him or her in accordance with Article 12.

Discrete and specific arrangements for disabled children have not been established in all four countries and disabled children may be eligible to access advocacy if they meet the eligibility criteria for all children. There are clearly additional requirements for advocates working with disabled children in terms of their methods to ensure that information shared with the child effectively and that the voice of the child is captured.

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However, given the wider concerns about the variable levels of access to advocacy there are concerns that disabled children are not being enabled to have their voice heard in all matters that affect them.

R74. The UK Government and devolved administrations must provide independent advocacy for all under-18s receiving in-patient mental health care.

No Evidence submitted.

R81. The UK Government and devolved administrations should take further steps to ensure that children fully participate in education and that their right to express their views is respected and given due weight in all matters concerning their education, including school discipline.

R90. The UK Government and devolved administrations should address the reduction in play spaces for children and ensure that the views of children are listened to in planning decisions. There should be a statutory duty on local authorities to make adequate free provision for children's play up to the age of 18.

A report covering England, Ireland, Scotland and Wales (Ecorys 2011)⁵ reviewed children and young people's participation in planning and regeneration suggests that children's involvement has been often overlooked due to the service driven approach to policy making. The report found that there is clear evidence that children and young people can play a significant role in planning and regeneration processes that benefit individuals, peers groups and community levels.

A national play strategy has been published but there are concerns about implementation and continued commitment with reductions in Government funding for Play Wales. Children at the Urdd Eisteddfod in 2011 gave their views to the Children's Commissioner about play and identified that many enjoy playing in diverse settings. For children in more urban areas there were critical issues about access to play areas although many positives in discussion with children in rural areas as play areas were not an issue because they could play outside. A number of the young people at the Eisteddfod mentioned that play planning concentrates on younger children rather than opportunities and facilities for young people's play.

Section 11 of the Children and Families (Wales) Measure 2010 introduces a duty on local authorities to assess the sufficiency of play opportunities for children of all ages and to secure sufficient play opportunities in its area for children, so far as reasonably practicable, having regard to its assessment under subsection. In making that provision the local authority must pay regard to the needs of disabled children and children of all ages. No statutory duties have yet been put in place to make adequate free play provisions for under 18s.

4. From the analysis, what are the outstanding concerns since the UN Committee's 2008 Concluding Observations and the UK Children's Commissioners report to the Committee

Progress made to date by UK Government and the Devolved Administrations

Having reviewed the progress made to date across the UK on meeting the above recommendations, we recognise that some progress has been made. There are examples across the UK of effective and good practice and some positive legislative provisions being put in place for example children in Wales now have the right to appeal to the Special Educational Needs Tribunal for Wales. However, participation is not as yet fully embedded across children's lives effectively and consistently and this clearly impacts on children's experiences of participating in all matters that affect their lives. The mainstreaming of children's participation has yet to happen and children report that their views are not sought, listened to or acted upon consistently. There is a need for both legislative change and clear leadership from national and local governments and other organisations so that participation is not dependent on individuals but becomes one of the underpinning principles of how all adults work with children and young people.

The Committee also called on the UK Government to ensure training and understanding of the UNCRC for professionals working with children and we would highlight that within such training the importance of children's participation as one of the key principles of the UNCRC is emphasised. Participation needs to be embedded within the pre-qualification training programmes for all adults who work with children along with materials to support participation in practice.

The UK Children's Commissioners' recommendations up to 2014 With a view to seeing the 2008 Concluding Observations achieved (by 2014) the UK Children's Commissioners call on each of the Governments across the UK to:

R1. embed the right to participation in children's lives, and for such a commitment to be supported by participation training for all professionals who work with or for children.

Since 2008, some positive legislative changes have been made around children's participation, for example in Wales, the Children and Families Measure 2010 provides a statutory basis for participation of children in local authority decision-making. However, despite research⁶ highlighting the progress made in recent years promoting participation, children and young people often have little or no say in key and critical areas of their lives, including the aspects of the youth justice system, safeguarding services and family law. This gap in experience needs to be addressed through a combination of national strategies and structures in each of the countries to ensure children's participation alongside legislation which underpins the right to participate. There is a clear need for professionals who work with or for children to have comprehensive training in children's participation.

⁵ Day L, Sutton L and Jenkins S (2011) Children and Young People's Participation in Planning and Regeneration. Ecorys and Centre for Research in Social Policy

⁶ Dr Ciara Davey, Tom Burke and Catherine Shaw *Children's participation in decision-making A Children's Views Report*

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R2. Address the inconsistent provision of advocacy both within and across the four countries. This may require new legislation or a demonstrable action to implement and realise provisions already made in law.

The UK Children's Commissioners are concerned that advocacy for children is inconsistently delivered across the four countries despite the existence of national standards and legislation in England and Wales. Where no legal right to advocacy in health or social care settings exists there is a need to address this. Where the right exists there is a need to ensure that advocacy is accessible to all eligible children. Evidence from children highlights the considerable impact this has on them, when they are unable to have their voices heard. Within the development of comprehensive strategies there needs to be a focus on ensuring advocacy for the most marginalised and vulnerable children, including disabled children.

R3. Continue to develop the effective participation of children in education. Every child in the UK should have a right to appeal against exclusion from school or a decision concerning their Special Educational Needs.

Whilst there has been some progress in developing children's participation in education, the UK Children's Commissioners believe that further progress could be made. Whilst structures such as school councils have been established there is a need to embed children's participation in all aspects of learning and school. Children in Wales now have the right to make appeals to the Special Needs Tribunal for Wales but this development is yet to be replicated across the other nations and the right to appeal against exclusion from school is limited to secondary school pupils in Wales and Scotland.

R4. Effectively implement the right of children to participate in legal and court proceedings.

Evidence from the Family Justice Review highlights that in both public and private law proceedings children feel that their voices are not heard by adults who are making important decisions about their lives. This evidence clearly demonstrates that children are not having their rights upheld fully and as a result, some feel anger and frustration that their views are not sought. They also feel disempowered and disappointed. Children report not receiving adequate or clear information from adults that could help them to participate in such processes. The UK Children's Commissioners believe that the child's right to be heard must be consistently and effectively implemented at all stages in the process and call on Governments and other agencies to act on the voice of the child.

5. Any new and emerging concerns since 2008 related to this area

Funding for participation

Notwithstanding the need to ensure that children's participation is mainstreamed within the work of all agencies, there is still a continuing need for funding for children and young people's participation. There is a cost related to this activity and this should not be overlooked. There is emerging evidence from Wales of reductions in funding for organisations who are leading on participation work and the reduced budgets which are being allocated to participation work.

Young people in Wales have reported that youth participation workers' posts are being removed from local authority structures and that this impacts negatively on the effectiveness of the youth forums.

Participation in family life

Children and young people's participation in family life, which is the United Nations Committee comment on in their general comment on Article 12, has not generally been addressed comprehensively across the United Kingdom. There is a need for there to be research into children's participation in family life in addition to the areas of administrative processes and service delivery.

Consent to treatment in health

A further issue that has been highlighted in a recent case in Wales is children and young people's right to consent in medical settings and their right to have their view listened to and be taken into account.

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Children with disabilities

1. The principle UNCRC Articles relating to disability are:

Article 2:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4:

1. States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 6:

1. States Parties recognise that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 12:

1. 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.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 23:

1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognising the special needs of a disabled child, assistance extended in accordance with Paragraph 2 of the present Article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Article 24:

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such healthcare services.

Article 28:

1. States Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a) Make primary education compulsory and available free to all;
 - b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - d) Make educational and vocational information and guidance available and accessible to all children;
 - e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29:

1. States Parties agree that the education of the child shall be directed to:
 - a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
 - d) The preparation of the child 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;
 - e) The development of respect for the natural environment.

Article 31:

1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

2. Concluding Observations in this area made by the United Nations Committee on the Rights of the Child in 2008

Paragraph 52 - The Committee welcomes the State Party's initiatives undertaken at national as well as at local level in terms of analysing and improving the situation of disabled children. The Committee, however, is concerned that:

- a) There is no comprehensive national strategy for the inclusion of disabled children into society;
- b) Disabled children continue to face barriers in the enjoyment of their rights guaranteed by the Convention, including in the right to access to health services, leisure and play.

Paragraph 53 - In the light of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's general comment No. 9 (2006) on the rights of disabled children, the Committee recommends that the State Party:

- a) Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for disabled children, are effectively implemented;
- b) Develop early identification programmes;
- c) Provide training for professional staff working with disabled children, such as medical, paramedical and related personnel, teachers and social workers;
- d) Develop a comprehensive national strategy for the inclusion of disabled children in the society;

- e) Undertake awareness-raising campaigns on the rights and special needs of disabled children encourage their inclusion in society and prevent discrimination and institutionalisation;
- f) Consider ratifying the International Convention on the Rights of Persons with Disabilities and its Optional Protocol.

Paragraph 44 - The Committee is concerned at:

- d) The increased numbers of children in alternative care and in particular the high percentage of... disabled children.

Paragraph 45 - The Committee recommends that the State Party:

- f) Assess why so many disabled children are in long-term institutional care and review their care and treatment in these settings.

Paragraph 68 - The Committee, while appreciating that the England Children's Plan provides for the largest-ever central Government investment in children's play, is concerned that, with the sole exception of Wales, the right to play and leisure is not fully enjoyed by all children in the State Party, especially due to poor play infrastructures, notably for disabled children.

Paragraph 69 - The Committee recommends that the State Party strengthen its efforts to guarantee the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. The State Party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.

3. What progress, if any, has been made in this area since 2008 against the UN Committee on the Rights of the Child's Concluding Observations and the 2008 recommendations made by the UK Children's Commissioners

Paragraph 53 - The Committee recommends that the State Party:

- a) *Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for disabled children, are effectively implemented;*

The devolved administrations in the UK have taken legislative measures and adopted programmes aimed at improved protection and services for disabled children and training for staff working with disabled children, although progress has been varied. Even where steps have been taken in response to these Concluding Observations, their effectiveness remains to be established.

The Children's Commissioners in England, Scotland and Wales welcomed the Equality Act 2010, which replaces the Disability Discrimination Acts. Northern Ireland has separate equality legislation. Additional provisions which may impact positively on disabled children and young people include:

- Protection from discrimination on the basis of association and separate protection from harassment
- Extension of the reasonable adjustment duty to require schools to provide auxiliary aids and services to disabled students

- A public sector equality duty (PSED) replacing the existing disability equality duty. This extends reasonable adjustment requirements to include making information available in accessible formats.

In England, disabled children are explicitly mentioned in both the 2008-09 and 2009-10 NHS Operating Frameworks⁷ and an indicator on disabled children is included in the Vital Signs indicator set. 'Better Care: Better Lives' (Department of Health 2008) sets out expectations for Primary Care Trusts (PCTs) to improve the service needed by children with life-threatening and life-limiting conditions and their families. Significantly, 'Healthy lives, brighter futures' clarified that PCTs have been allocated £340 million from 2008-2011 to improve disabled children's services, with £30 million of the total for children's palliative care (Department of Health 2008).

These health developments in England are bolstered by the Government's three year transformation programme 'Aiming High for Disabled Children' which focuses on local authority support for disabled children and their families (HM Treasury and Department for Education and Skills 2007).

The 2011 special educational needs Green Paper aims to support better life outcomes for young people. The paper outlines amongst other things:

- a new approach to identifying special educational needs through a single Early Years setting-based category and school-based category of special educational needs;
- a new single assessment process and Education, Health and Care Plan by 2014;
- to allow children and young people to appeal to the first tier tribunal on their own behalf

The Office of the Children's Commissioner in England is encouraged that the intended legislation allows children and young people to appeal to the first tier tribunal on their own behalf. We would like this to be the first step in a broader move to give children and young people more of a say in education decisions which affect them.

However, we need to ensure that the commitment to early intervention and the introduction of an assessment of children at the age goes beyond the Early Years Foundation. Special Educational Needs, such as dyslexia or Aspergers Syndrome, often do not manifest until later in a child's life. Equally, a substantial proportion of pre-school age children are not currently enrolled in any regulated childcare – being looked after by family or by nannies in their own home. A system of assessment that is based in childcare settings will therefore miss these children. The Office of the Children's Commissioner in England also supports the move to a single assessment of need across education, health and other care for children and young people. This will make the system less stressful and

confusing for young people and their parents. In administering this system, it will be necessary to ensure that local mechanisms are in place to pull together professionals from different fields and enable them to work collaboratively in making these assessments and could be achieved by the creation of a standing forum of such professionals.

The Health and Social Care Bill has the potential to improve health outcomes, including realising children's right to participate in decisions affecting them through Local HealthWatch & HealthWatch England. However, the English Children's Commissioner shares concerns expressed by a number of the Royal Colleges, including the Royal College of Paediatrics and Child Health (RCPCH) that:

- the increased fragmentation of the NHS and the introduction of full price competition may both tend to undermine children's right to health.
- the reforms risk undermining partnership working across children's services and may fracture continuity of care, particularly for children with long term conditions or specialist or complex healthcare needs.

Councils are also being encouraged to sign up to a disabled children's charter to ensure budget cuts do not derail specialist services for children and their families. The first major reworking of the Every Disabled Child Matters (EDCM) charter, which 99 councils have signed up to since its launch in 2006 takes into account new statutory duties, changes to funding and the tougher economic climate (EDCM 2011). (See also section on cuts to services at the end of this chapter) Within one year of signing, local authorities need to ensure that they:

- Know how many disabled children live locally and use this to plan services
- Identify a lead for services for disabled children
- Provide clear information for parents on service provision, and make universal services accessible
- Give parents and carers access to decisions made about their child, and facilitate feedback
- Involve disabled children and families in planning, commissioning and monitoring services
- Include disabled children in decisions made about them
- Provide impartial advice to parents of disabled children
- Provide staff with disability equality training
- Produce short break service statements drawn up in partnership with disabled children and their parents
- Have regard to childcare sufficiency for disabled children
- Work with disabled young people and adult service providers to ensure smooth transition

The Scottish Government funded liaison project of the umbrella charity For Scotland's Disabled Children (FSDC) launched a similar charter committing local authorities (Scottish Government 2011) and health boards to meeting their statutory duties towards disabled children and their families. It is being implemented on a pilot basis by 3 local authorities in Scotland. Some initial work had been done but firm commitments had not been given by local authorities and we have subsequently heard that two local authorities have since backed out.

⁷ 'PCTs will also want to begin preparing for action on those issues that will need addressing to secure future improvements in services.... Specifically this includes:... disabled children: identifying actions and setting local targets on improving the experience of, and ranges of services for, children with disabilities and complex health needs and their families. This includes significantly increasing the range of short breaks, improving the quality and experience of palliative care services, improving access to therapies and supporting effective transition to adult services.' (NHS Operating Framework for 2008-09, p.22). 'PCTs will want to review the transparency of their service offer in line with the Child Health Strategy, to be published shortly, and local priorities. These may include:...improving the experience of services for children with a disability and their families, including palliative care' (NHS Operating Framework for 2009-10, p. 17).

Organisations from Northern Ireland's children's sector and disability sector (brought together through the Children with Disabilities Strategic Alliance) argue that disabled children continue to face barriers in accessing public services. These can be physical or sensory, but can also relate to other factors such as a lack of understanding or awareness of professionals to the specific needs of disabled children, limited training and poor co-ordination of service delivery. Disabled children and their families require services that fall under the responsibility of more than one department or agency but policies are not often sufficiently joined-up. In terms of special educational needs, there have been serious concerns relating to the draft special educational needs policy (The Way Forward for Special Educational Needs and inclusion), consulted upon during the latter half of 2009. This proposes moving away from the current statutory assessment process. While there are many difficulties with this process, there is concern that the proposals could dilute legally enforceable rights. The consultation closed in January 2010, but a final policy has not been published to date (Department of Education for Northern Ireland 2009).

In Scotland, a key piece of legislation – The Education (Additional Support for Learning) (Scotland) Act 2004 was amended in 2009. This Act addressed a number of anomalies, which had allowed the Court of Session to interpret the Act in a way which the Scottish Government had not intended. For example, with regard to placing requests and the nature of support that education authorities may be required to provide. The latter meant that children and parents of children with ASN did not have the same rights as other parents and children. However, the amendment legislation did not change the fact that children under 16 have no 'active' rights in their own name under the legislation, such as a right to appeal to the Additional Support Needs Tribunal for Scotland. Only parents and young people aged 16 and over do.

In November 2010, HMIE reviewed the Act in "Review of the Additional Support for Learning Act: Adding Benefits for Learners" and made recommendations for improvement e.g. collating information at a national and authority level. It identified issues related to the difficulty of identifying and offering support to children and young people from certain groups, e.g. children and young people with mental health issues or young carers and the sensitivity of making help available without labelling. The review however noted that the Act along with Curriculum for Excellence and the Getting it Right for Every Child framework (GIRFEC) is contributing to an 'increased sense of shared responsibility for identifying learning needs and that where GIRFEC is a well established approach, it has a positive impact on joint working."

The Social Work Inspection Agency (SWIA) March 2010 report called for improvements at a strategic level including empowerment in decision-making and accessing resources; responsive services and timely support and improving the quality of services (SWIA 2010).

The recent update of the National Child Protection Guidance (Scottish Government 2010) took account of disabled children including a special section recognising their particular risks and vulnerabilities. SWIA had been particularly critical of assessment quality and a failure to take into account the views of young disabled children and young people (SWIA 2010). Specific child protection guidance for disabled children is planned in the near future.

In 2010 the Scottish Government launched an independent strategic review of learning provision for children and young people with additional support needs – 'the Doran Review.' It is considering whether the current system is achieving the best possible outcomes for children and young people and will make recommendations as to improvements.

Following the publication of the Scottish Government National Strategic Review of Services for Disabled Children (SG 2011) and young people and their families, the charter has been further endorsed and the pilots are now integral to the 15-point action plan adopted by the Scottish Government.

The Scottish Government, supported by SCCYP, set up a working group comprising professionals, parents and young people to draft Guidance on Moving & Handling. It will follow up on the recommendations of the Children's Commissioner's report 'Handle with Care.'

In Wales, much is done to safeguard children in the care of a local authority including regular visits from social workers and access to advocacy and a complaints officer. Until recently, however, less effective safeguards were in place in Wales to safeguard children living far from home and family in an educational placement. The only visit they could expect from the local authority was an annual visit to review their statement of special educational needs. Similarly, despite regulations stating that local authority social services be notified if a child was likely to be in hospital for three (3) months or more⁸, evidence from medical practitioners suggests that this rarely happens. However, new guidance in 2011 has reinforced and strengthened these duties to ensure that local authorities visit children in residential settings and support their contact with their family (Welsh Assembly Government 2011).

In December 2009, the Education (Wales) Measure 2009 was approved to extend children's entitlement by providing them with the right to make special educational needs appeals and claims of disability discrimination to the Special Educational Needs Tribunal for Wales. This amends the law giving only parents the right to make appeals and claims to the Tribunal. This is currently operating as a pilot, but is welcomed as a significant advance in ensuring a disabled young person's right to have their voice heard (as their wishes may differ from their parents.) It is significant that there will be no test of the child's competence: if an appeal is raised with or without support, it will be heard.

Specialist wheelchair provision for disabled children has been a concern for in Wales with in some cases children being measured and assessed for equipment but the delay in delivering the equipment being as long as 18 months. This is despite The National Service Framework (NSF) for Children, Young People & Maternity Services standard that specified '*Provision of a wheelchair or equipment within 8 weeks of assessment*'. By that time children had often grown, other circumstances had changed and the equipment often needed adjustment or replacement, leading to further delays. A positive development was the 'All Wales Posture and Mobility Review Phase 2' and the announcement of a further £2.2 million to be spent on reducing waiting times for wheelchair services for disabled children and adults in Wales. However, details of how this funding will be allocated across children and adults have yet to be announced.

⁸ The Children Act 1989 sections 85 & 86

A continuing concern since the establishment of the Children's Commissioner for Wales (2001) has been the relative under resourcing of the Child and Adolescent Mental Health Service (CAMHS). Of particular concern was that neither children nor young people with a primary diagnosis of a learning disability, nor those aged 16-17 not in full time education, were eligible to receive the CAMHS service. This was addressed by the Welsh Government in 'Breaking the Barriers: Meeting the Challenges: Better Support for Children and Young People with Emotional Well-being and Mental Health Needs - An Action Plan for Wales' (May 2010). In March 2010 the Welsh Assembly Government announced that £1.7million had been agreed to fund CAMHS learning disability activity for three years. The Welsh Government has also set out its expectation that by March 2012, all 16 and 17 year olds requiring specialist mental health services will receive them from the local health board responsible for commissioning CAMHS. Funding has been made available to resource this (Welsh Assembly Government 2010). Transition from children's services to adult services is problematic for disabled young people across the 4 nations. An effective transition relies on close liaison both between different agencies and between children's and adult services in social services/ work. Having a key worker to perform the liaison role has been shown to be effective. In 2007 initial funding of £500,000 per year for three years (in five pilot areas) was provided for additional key transition workers in Wales for young people with a disability. A successful bid to secure match funding as part of the 'Reaching the Heights' EU Social Fund grant scheme has increased the funding available for transition key working to over £3m.

c) Develop early identification programmes;

Some progress has been made in England but there is limited progress elsewhere. In Scotland, the SNP manifesto committed to legislation early during the current Parliamentary term to ensure investment in early years is not an 'optional extra' and to explore legislative options to ensure the Getting it right for every child framework is embedded in the whole of the public sector. The details have yet to be fleshed out.

The special educational needs green paper in England signals a new approach to identifying special educational needs in early years settings and schools to challenge a culture of low expectations for children with special educational needs and give them effective support to succeed. This signals that early identification is a priority for the coalition Government. In Northern Ireland early identification continues to be a problem. Draft strategies have recently been consulted upon in relation to special educational needs and early years, but these have been heavily criticised. The draft special educational needs policy lacks any detail in relation to time-bound mechanisms, accountability arrangements. The draft Early Years Strategy (consulted upon in the latter half of 2010) did not adequately address the needs of children with special educational needs, and did not include sufficient actions for the 0-3 age group – which would hinder the detection of developmental delays and particular needs as early in a child's life as possible. Delays in diagnosis and assessment in Northern Ireland makes it increasingly difficult to choose appropriate pre-school provision (Children with Disabilities Strategic Alliance 2009).

The Welsh Government funded the Early Support Programme (Welsh Assembly Government 2008) with a £2.2m investment. Early Support is designed to give young disabled children child-centred, multi-agency and integrated services with a single point of contact through a key worker, where appropriate. This

empowers parents and professionals to ensure that services are better co-ordinated. The stated aim is "to put parents at the centre of the planning process". In essence, this places the onus on parents to co-ordinate services so it is questionable as to whether this is really an exercise in providing or improving early identification programmes. There are concerns about whether all families will be successful in co-ordinating services for the child as the onus now falls on them.

Many disabled children will have special educational needs or additional learning needs. The system for assessing and meeting those needs - virtually unchanged for 30 years -, is under reform in Wales as part of the Education (Wales) Measure 2009. There is greater expertise available in schools to enable them to meet children's needs e.g. in the area of specific learning difficulties. Three pilot schemes from 2009 – 2012 are exploring a new system which may result in the abolition of the Statement of Special Educational Needs. This should mean that schools will be able to meet a child's needs more quickly and effectively by avoiding the delays in the current system. Previously some parents, however, had expressed concerns that this may mean that an assessment by school staff may be less comprehensive than the current system of multi-agency assessment (Welsh Assembly Government 2007). It will be important that, in formulating the final guidance, full consideration is given to these concerns.

d) Provide training for professional staff working with disabled children, such as medical, paramedical and related personnel, teachers and social workers;

The special educational needs green paper in England recognises that better training is needed for school staff to recognise children's needs and outlines training for teachers. The Education Bill 2011 sets out plans to give a stronger focus of support for children with additional needs, including those with special educational needs, in the standards for qualified teacher status. The Government is also providing additional funding for initial teacher training providers to secure a greater number of placements for trainee teachers in special school settings. In response to the review of Child and Adolescent Mental Health Services the previous UK Government committed to provided workforce support which included workforce training in relation to children with learning disabilities and children at risk of self harm (DCSF and DoH 2010).

The previous UK Government also issued a response to Lord Bradley's review of the treatment of people with mental health problems and learning disabilities in the criminal justice system and his plans to improve workforce training (DoH 2009).

Training covers a wide range of areas relating to both children with special educational needs and children with a physical disability in Northern Ireland. It remains an issue in a number of other areas: in the context of disabled children leaving long stays in hospital, the Children with Disabilities Strategic Alliance have called for training in specific procedures to be made available regionally for nurses and healthcare assistants. In the context of education, the CDSA has called for a major training programme for teachers in mainstream schools on legislation and duties in relation to special educational needs and disability. The practicalities of facilitating and encouraging training for existing teachers may be a challenge for teachers who already face increasingly demanding workloads.

Little progress has been recorded in Scotland in terms of addressing the training needs of those working with disabled children, although this is continually raised across the children's sector. There is evidence of good practice at a local level, for example in-health care trusts, and the EACH⁹ Charter, but there is no co-ordinated plan. One of the leading disability charities (ENABLE) has started a petition calling for all teachers and support staff to be fully trained to provide the right additional support for children and young people with learning disabilities and/or autistic spectrum disorders in Scottish schools. The petition which has now gone to the Scottish Parliament's Petitions Committee reads:

"I want to see compulsory training for student teachers, qualified teachers and support staff on: general topics of additional support needs, inclusion and equalities, specific topics of behaviour management strategies, communication strategies and learning disability/autistic spectrum disorder awareness."

The Scoping Study "Child Protection and the Needs and Rights of Disabled Children and Young People" by the University of Strathclyde (2010) found that "professionals often lack training, skills and experience in communicating with disabled children". The study identified a need for a comprehensive training programme, involving disabled people in the delivery, aimed at staff at all levels within all agencies working with children. It recommended that training should be co-ordinated by a single body and funded by government. Joint training for child protection and children's disability teams and the involvement of disabled adults/ survivors in delivering training were amongst the study's recommendations.

Another finding of the study was that "the police generally lacked training and expertise in interviewing disabled children and that this was an area ripe for improvement." According to one interviewee the police sometimes had to rely on a child's relatives to facilitate communication, which could be hugely problematic in cases of child abuse investigations.

There have been some encouraging developments with training provided for professionals working with adults and children with Autistic Spectrum Disorder (ASD) as a result of the ASD Strategic Action Plan for Wales. In 2008-09 an "ASD lead" was appointed within each local authority in Wales - tasked with undertaking a local mapping exercise to identify gaps in service provision and to produce their own action plan to address these shortfalls. Further funding of £1.8m was provided in order to assist in the implementation of agreed local action plans and to fund 22 regional projects. Many of the initiatives to support children with ASD could be duplicated for other forms of disability:

- The ASD Emergency Card Scheme raises awareness amongst police forces/Ambulance Services/Fire Services across Wales and assists them in recognising the communication difficulties individuals with ASD face when coming into contact with emergency services. The individual with ASD carries the card which gives contact numbers, explains about the nature of ASD and how a person with ASD should be treated in this situation.
- The Inclusive Schools and ASD whole-school training project is an innovative scheme which will inform children and teachers of the difficulties school children with ASD face.

- The Triple A project to increase access to leisure / sports facilities by providing training to individuals within significant areas of influence in leisure services which will highlight the difficulty people with ASD encounter when trying to access these facilities.
- A social networking website for children and young people with ASD is being developed and a similar one is also being developed for parents of children with ASD.
- "SocialEyes" is a training scheme which explores the social world with people with autism. This learning resource has been developed with people with autism and Aspergers syndrome.
- "TEACCH" is a two day training programme which helps to prepare people with autism to live and work more effectively at home, school and in the community .

This comprehensive training has not, as yet, been duplicated around other areas of disability.

- e) *Develop a comprehensive national strategy for the inclusion of children with disability in the society;*

Strategies continue to be missing across the four jurisdictions. In England, the current special educational needs Green paper and policy and legislation affecting disabled children and young people does not represent a comprehensive strategy for the inclusion of disabled children in society. It looks at empowering children with special educational needs and disabilities (or their parents) to make choices for themselves rather than regarding specialist provision, rather than explicitly on inclusion within society. Similarly, there is no Northern Ireland strategy.

In NICCY's policy briefing on 'Children with Disabilities' released in July 2010 as part of the 'Make it Right' campaign, the first of NICCY's three calls to Government was that: "The Northern Ireland Executive must develop and implement a comprehensive national strategy for the full and effective inclusion of disabled children into society".

Organisations in Northern Ireland's children's sector and disability sector have noted that where there are services and policies developed for disabled people, they often do not reflect the particular needs of children and young people. Another difficulty in meeting the needs of disabled children or those with special educational needs is that responsibility often lies across both Health and Education. In practice, however, a fully joined-up and co-ordinated approach is not always present in strategies or action plans, with documents usually being drafted by one lead Department.

Developments in Scotland have been in the right direction, but Scotland still does not have the strategy recommended in the Concluding Observations. A national review of services for disabled children was undertaken jointly by the Scottish Government, COSLA and the For Scotland's Disabled Children (fSDC) Liaison Project to provide a strategic assessment of the children's disability landscape. This report and plan for action marks the first stage in a longer process; the next stage being implementation by all relevant partners of actions from the report. This work originates in the commitment given in the Scottish Parliament debate on the Public Services Reform Bill in March 2010 to undertake a broad strategic review of all aspects of services for disabled children. (There has been no recent

⁹ European Association of Children in Hospitals

comparable attempt in Scotland at a review across services for disabled children.)

The review's actions "support the delivery of key elements in the Scottish Government's performance framework, and disabled children and young people's statutory rights to equal treatment and equality of services under equality legislation and public authorities' equality duties." This review draws on the performance framework which sets out the national outcomes and 'shared ambitions' as well as the GIRFEC well being indicators (SHANARRI¹⁰)

Actions from the report include:

- Investment in short breaks
- Publishing new guidance on moving and handling of disabled children
- Developing and disseminating a base of good practice which promotes SHANARRI outcomes for disabled children
- In line with GIRFEC, exploring the consistency of deployment and training of staff across disciplines relevant to services for disabled children
- Exploring the potential of integrated services to focus on disabled children
- Making child protection systems more accessible and sensitive to disabled children
- Making sure Child Poverty Strategy takes account of children's disability issues
- Strengthening children's disability aspects of self directed support agenda
- Developing an ongoing communications strategy which engages disabled children, young people and their families
- In line with GIRFEC, ensuring that children's needs remain at the centre of housing support

In December 2008 the Welsh Assembly Government published their policy agenda for disabled children "We are on the Way" which included views of young disabled service users (Welsh Assembly Government 2008). It was designed to improve service delivery for disabled children and young people from across Ministerial Portfolios. The document re-emphasised that the seven core aims which reflect the UNCRC apply equally to disabled children and acknowledged that there are additional barriers to overcome if they are to have the same opportunities to access activities as their peers. The principle behind this document is well intentioned but remains aspirational as there are no accompanying resources or action plan to make this policy agenda a reality.

One of the most significant barriers to the inclusion of disabled children in society is poverty. Families with disabled children often have higher living costs and often one parent is unable to work because of a high level of caring responsibilities. In 2009 the Welsh Assembly Government announced a new pilot project to help families with disabled children claim the benefits they are entitled to. A two year pilot scheme was announced in May 2009 provided £500,000 to increase the household incomes of families with disabled children this scheme will be independently evaluated in 2011 to establish its success and to inform plans for any future take-up work.

- f) *Undertake awareness-raising campaigns on the rights and special needs of disabled children, encourage their inclusion in society and prevent discrimination and institutionalisation;*

With the exception of Northern Ireland, where children and young people joined NICCY in lobbying Government to meet the rights of disabled children through NICCY's 'Make it Right' campaign, there is no evidence of awareness-raising campaigns on the rights and needs of disabled children. The Equality and Human Rights Commission (EHRC) has undertaken an Inquiry¹¹ into disability-related harassment and how well this is currently being addressed by public authorities. Their report recommends that the Department for Education and devolved administrations in Scotland and Wales should "commission primary research on the extent to which segregated education, or inadequately supported integrated education, affects not just the learning outcomes of both disabled and nondisabled children, but also the ability of disabled children to subsequently re-integrate into wider society, and the extent to which segregation adversely impacts on non-disabled children's views of disability and disabled people."

- g) *Consider ratifying the International Convention on the Rights of Persons with Disabilities and its Optional Protocol.*

The UK ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol (UN CRPD) on 8 June 2009. However, the Government has entered four reservations. The UK Government entered interpretative declarations and reservations across a few of the Articles. Significant in terms of children is the interpretative declaration and reservation in respect of Article 24(2)(a) and (b) (education). Article 24(2)(a) and (b) require State parties to ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that people with disabilities can access education in their own community. The UK's interpretative declaration highlights the existence of both mainstream and special schools within the UK education systems. The UK's reservation states that disabled children can be educated outside their local community where more appropriate provision is available elsewhere. The UK Children's Commissioners believe that the Convention should be fully implemented and the education reservation to be unnecessary.

The Welsh Government is committed to developing an inclusive education system – one which allows for each local authority to continue developing a range of provision, including mainstream and special schools. It is also recognised that there are some disabled children whose complex needs cannot be met by local schools and parents either choose or have to accept specialist provision which is outside of their local area and some distance

¹⁰ Abbreviated from Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included.

¹¹ Equality and Human Rights Commission (2011). Hidden in plain sight Inquiry into disability-related harassment. London: ECHR.

from home. To lessen this range of provision would mean that children are not able to fulfil their potential and that both their choice and parental choice would be reduced.

Paragraph 45 - The Committee recommends that the State Party:

- f) *Assess why so many disabled children are in long-term institutional care and review their care and treatment in these settings.*

Children and young people often find themselves living away from their family because their parents are unable to meet their needs unassisted. In theory there are support services available such as a Family Aide, which will come into the family home or take the child out so that family members are able to have some time to do things other than looking after their disabled child. Also available is the Short Breaks service which is designed to provide a break (respite) for carers in a variety of ways. However, resources for these services are limited and many families, although eligible for a service, may not be able to receive them as there are long waiting lists. However, extra funding was allocated to local authorities by the Welsh Assembly Government in 2010 to promote and improve provision of short breaks for carers.

Children with complex needs who require long term care have, until recently, had their needs assessed according to criteria in the guidance *NHS Responsibilities for Meeting Continuing NHS Health Care Needs*. This guidance was developed particularly for older people but in the absence of specific guidance for children the guidance was also used to assess children's needs. Children's health practitioners have repeatedly told the Children's Commissioner that the criteria developed for adults were not appropriate for children and we raised this in our annual report of 2004. However, nothing changed until August 2010 when new guidance was issued by the Welsh Assembly Government which specifically said it could not be used for children. There was, however, no specific guidance for assessing children's needs until March 2011 – a hiatus which caused many problems for both families and practitioners. In an unusual step, the guidance was issued for consultation but practitioners were asked to follow the draft guidance for assessing needs.

The Children's Commissioner for Wales' Advice and Support service has received calls from parents who feel that they do not have sufficient support to enable them to meet their disabled child's needs within the family home. This lack of support could mean that they are unable to cope because of lack of respite or physically unable to meet their child's needs because of the physical environment of the family home. If the options of a Family Aide and the Short Breaks service are not available, parents will sometimes make the difficult decision to voluntarily place their child in state care¹² or may seek a residential educational placement. This issue affects a small number of children, a recent statistical release stated 64 looked after children are in residential schools (Welsh Assembly Government 2010). However, the profound impact of being removed from the family home cannot be understated. As noted this scenario is not common as within Wales generally, inclusion of children in main stream educational institutions or attendance at local special educational settings are preferred - as is helping to maintain their care in the family home. The majority of disabled children receive their education and support in a facility within a short enough distance from of their family homes to allow daily travel - normally by taxi with an escort. For some of the most specialised

educational settings, such as those for children who may be visually or hearing impaired, it may not be possible to find an educational placement near the family home and a residential educational setting is sometimes the only option.

Paragraph 69 - The Committee recommends that the State Party strengthen its efforts to guarantee the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. The State Party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.

In October 2008, as part of the draft budget settlement for 2009/2010, Welsh Government announced £250,000 per year for three years for play opportunities for disabled children. Local authorities were expected to set aside an additional £250,000 per year from resources already allocated to create a fund of £500,000 per year. However, both children and young people and professional play workers regularly report lack of facilities and opportunities.

In Scotland, for Scotland's Disabled Children (fSDC) and the Long Term Conditions Alliance Scotland (LTCAS) commissioned a survey of children and young people who are disabled or have long-term conditions (Long Term Conditions Alliance Scotland & fSDC 2011). The study looked at the young people's lives, attitudes and experiences, for example about schools, health and well-being, friendships, being listened to (or not) and their future aspirations. It found that "Many young people would like to have more friends and be more included in social and sporting activities. Just under a third had never or seldom spent time with friends in the past week, and a quarter said they seldom or never had fun with friends" (fSDC 2011).

4. What are the outstanding concerns including outstanding recommendations of the UK Children's Commissioners in 2008

R32. The UK Government and devolved administrations should ensure children in need of communication support aids have access to such equipment so they may fully enjoy their Article 12 rights.

The Scottish Government has appointed a secondee to review communication aids. Significant disparities in the access to speech and language therapy have been noted in Scotland - children in the "best" health board area enjoy 14 times more speech and language therapy provision than those in the worst area. Although evidence shows 80 per cent of mental health service users have significant communication support needs there is only the equivalent of five full-time speech and language therapists (SLTs) working in these fields in the whole of Scotland.

In December 2010 the Welsh Government started research to investigate the feasibility of establishing an all Wales service for complex equipment to support these local services.

¹² 24 per cent of looked after children at March 2010 were there because of their family being "in acute stress or dysfunction" (Welsh Assembly Government 2010, p. 3).

R54. Data should be gathered on the number of children affected by disability and the nature of the disability. This will enable the UK Government and the devolved administrations, local authorities and health boards to plan services for disabled children and their families more effectively.

Data gathering continues to be a major obstacle in the planning and provision of services for disabled children in Scotland. With regard to additional support for learning implementation (i.e. education), the HM Inspectorate of Education 2010 report as noted above recommended that “Scottish Government and education authorities should ensure that relevant data and information are collected and managed effectively to help children receive, and benefit from, appropriate support. Education authorities, partner agencies and establishments should ensure that staff have appropriate training to help them meet the needs of children and young people with additional support needs.”

The Report of the National Review of Services for Disabled Children highlights the fact that there are several definitions of disability: the DDA definition, ASL definitions / statistical categories (those in receipt of DLA), Scottish Households Survey; Scottish Health Survey (also discrepancies found in pupil census figures and education authorities’ own reports – as noted by HMIR Review of the ASL Act).

Some disabled children are not captured by education or health systems – there is no single collation of data about the number of disabled children and young people in Scotland. The Report of the National Review of Services for Disabled Children also highlights the fact that conditions associated with disability such as FAS / FASD will need to be incorporated into future planning.

R58. The UK Government and devolved administrations should address the major gaps in service provision and outcomes for disabled children.

Disabled children in England routinely face considerable problems in accessing public services. Organisations from both the children’s sector and disability sector argue that children continue to face a range of barriers in accessing services. A report by the Every Disabled Child Matters Campaign shows that disabled children use NHS services significantly more than other children, yet they and their families consistently report poor experiences of both universal and specialist health services (EDCM and The Children’s Trust Tadworth 2009).

Lack of affordable and accessible childcare is a key issue for disabled children and their families. The Childcare Act (2006) imposes a duty on local authorities to secure provision for childcare sufficient to meet the requirements of all parents in their area who wish to take it up and section six specifically requires local authorities to secure childcare provision for disabled children up to the age of 18. However, despite this duty there is evidence that in 2009 almost half of local authorities reported insufficient childcare for disabled children (49 per cent) (Daycare Trust 2010).

The Care Quality Commission is undertaking a review of ‘Support for families with disabled children’ 2009/10 – its findings will be published in autumn 2011. In Wales there has been progress but there are not sufficient resources to develop and provide robust and consistent services. Support for the transition to adulthood and employment is particularly poor.

R59. The UK Government and devolved administrations must prioritise the safeguarding of disabled children and improve child protection systems to ensure they better meet the needs of these children.

There is a widespread lack of local and national data on disabled children who are subject to safeguarding children procedures in England. Part of the reason for lack of data is the way services are structured and delivered to disabled children. Working with disabled children is seen as a specialism and therefore delivered separately from child protection teams.

Cooke and Standen surveyed local authorities across the UK and found that only a third of authorities had specific guidelines for safeguarding disabled children and only 50 per cent recorded whether an abused child had a disability (Cook & Standen 2002). Despite 50 per cent of authorities reportedly collecting this data only 10 were able to provide figures on the number of reported cases of abuse of disabled children.

The National Child Protection Guidance (2010) in Scotland finally took account of disabled children and a special section was introduced which recognises their particular risks and vulnerabilities (Scottish Government 2011). SWIA had been particularly critical of assessment quality and a failure to take into account the views of young disabled children and young people (Scottish Government 2010). Separate and complementary child protection guidance for disabled children has been promised, but no date given as to when this will commence.

There has been much work done in Wales on safeguarding and child protection including the establishment of a Welsh Children’s Safeguarding Forum. Following the publication of the three reviews into safeguarding carried out in 2009, the Deputy Minister announced the establishment of a Welsh Children’s Safeguarding Forum to ensure that safeguarding is achieved at a national, regional, and local level. The Forum is chaired by the Director of Social Services Wales. There has however not been a specific focus on the safeguarding of disabled children. However, the statutory guidance issued in 2011 should ensure that further safeguards are put in place for children in educational and health placements, although there remain questions as to whether there are sufficient resources to fully implement the guidance (Welsh Assembly Government 2011).

R60. The UK Government and devolved administrations must significantly improve educational support for children with special educational needs or additional support needs. The high numbers of disabled children who are excluded from school must also be addressed.

Children with special educational needs (both with and without statements) are over eight times more likely to be excluded from school. The Children’s Commissioner for England supported the Government’s recent proposals to pilot children and young people’s chance to make appeals in the case of Special Educational Needs tribunal. In Wales reform of the Special Educational Needs/ Additional Learning Needs (SEN/ALN) system promises improvements in the way provision is made for the majority of children and young people.

Careful thought must be given when formulating the final details of the system to ensure that the concerns of parents are addressed. Thought also needs to be given to ensuring that parents can be confident that assessed needs will be met when the legal protection afforded by a statement is removed.

A major setback in 2009 was the 15 per cent reduction in Welsh Government funding for provision of post 16 special schools and out of county placements. Post 16 education is non-statutory. Many young people in Wales benefit from the opportunities offered by the policy of the Welsh Assembly Government, 14- 19 Learning Pathways. This policy offers greater access to vocational training including work placements. However, such opportunities are not always suitable for young people with a disability. Young people report difficulties in finding appropriate colleges and being allowed to be as independent as they want to be. Additionally, having succeeded in attending college, some young people find that they are de-skilled by the lack of opportunities available to them after college and find that they are returning to being dependent in the family home. Evidence from Wales includes the fact that children and young people are not given support to use their skills during their transition into employment. Young disabled people may attend college and learn skills and then become de-skilled and lose independence as they return home and are unable to access paid employment.

Young people who have a disability have often commented that they do not get appropriate careers advice. One young person with Down's syndrome commented: *"You maintain our statements until we are 19 and we continue learning but when we leave school we get little encouragement in gaining employment to use what we have learned"*.

Transition is still an issue across the jurisdictions and despite significant attention, the process and outcome of transitions is frequently difficult for young people and their families. The Long Term Conditions Alliance in Scotland point to the emotional impact transitions can have on young disabled people and point out that more needs to be done with employers to share good practice and with school based careers advice services (LTCAS 2010). There is lots of information available and there is a feeling that this also needs to be rationalised into core sector guidance.

R61. The UK Government and devolved administrations should measure attainment levels of disabled pupils, not just in terms of grades achieved but whether they are making progress towards reaching their potential as set out in Article 29.

The special educational needs green paper in England (to become a bill) signals a new approach to identifying special educational needs in early years settings and schools to challenge a culture of low expectations for children with special educational needs and give them effective support to succeed. The outcomes are of course not clear, but this signals that early identification is a priority for the collation Government. In Wales, information is not collected specifically on the educational outcomes for disabled children and young people.

R62. The UK Government should simplify the process of applying for disability benefits and improve awareness and the take up of these benefits.

The Children's Commissioner for England's office welcome plans laid out in the Welfare Reform Bill to simplify the benefit system for claimants. We are particularly pleased by the attempts to improve take-up in the system through simplification and integration of benefits, as well adjusting the taper to acknowledge the value of part-time work. However, we support the concern made by Scope during the publication of a parliamentary briefing that the reforms may not accurately measure extra costs of living for disabled people. We are particular concerned about the

ending of current 'special arrangements' which allow some young people to qualify for contributory Employment Support Allowance (ESA) under the ESA 'youth' provision, without having to satisfy the National Insurance contribution conditions which apply to all other claimants.

5. New and emerging concerns since 2008

Lack of educational provision for children in hospital settings

In Scotland, lack of educational provision for children in hospital settings has been flagged up by various sources. Provision is generally poor and patchy and there is currently no guidance to ensure that children have that entitlement when in hospital and fit and able enough to receive it. This differs from the situation in England and Wales where statutory guidance issued in April 2001 is referred to. Guidance in Scotland is imminent. (S14 of the Standards in Scotland's Schools etc Act 2000 is currently relied on). A number of organisations in Scotland are campaigning for equitable and appropriate access to education for children and young people absent from school due to ill health. The Scottish Children's Commissioner has heard of many instances where local authorities are not meeting their legislative duties and children and young people are missing out on education. The issue of education for children at time of illness is one of the current child health gaps that was included in the manifesto of Action for Sick Children (Action for Sick Children 2011) and featured in their recent EACH Child and Young Person's Health Matters Campaign.

Health and education in schools

The administration of medicines and medical interventions in schools is an issue in Scotland and has been raised by parents in Scotland's Children's Commissioner's Enquiries Service and with professionals. There appears to be real confusion around managing health care in school settings. The approach to support varies across Scotland and parents report being asked to administer medicines to their child when they are at school. Other pupils with certain conditions are being unsupported in schools. There is guidance in Wales but calls to the Advice and Support Service highlight that there is confusion in schools for staff and pupils alike (Welsh Government 2010).

Cuts to services

There are major concerns around cuts to services in local authorities, schools and in health boards. Focus groups of support workers in one Scottish local authority identified serious concerns. For example:

- Services being refused, reduced or withdrawn because of lack of funding / staff redundancies efficiencies;
- Poor housing (damp, crowded etc) for disabled children including those with life limiting conditions.

The Every Disabled Child Matters Campaign has also investigated the impact of spending cuts on services for disabled children's. They reported that a range of services including education, transport play and leisure health and short breaks are affected (Every Disabled Child Matters 2010). Councils are also being encouraged to sign up to a disabled children's charter to ensure budget cuts do not derail specialist services for children and their families. The first major reworking of the Every Disabled Child Matters Charter (EDCM 2011), which 99 councils have

signed up to since its launch in 2006, takes into account new statutory duties, changes to funding and the tougher economic climate.

In Wales there is growing evidence that, in response to reduced budgets, local authorities are cutting back on non-statutory services such as the Homestart scheme which offers support for families with vulnerable children (Get Hampshire 2010). The service is unavailable in parts of Wales. Other areas experiencing cuts or reduced funding include some befriending schemes working with disabled children. Many of these services could be viewed as preventative services. If we fail to prevent difficulties arising, the necessary remedial measures will mount up for years to come.

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Child poverty

1. The principle UNCRC Articles relating to child poverty are:

Article 27:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 4:

1. States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 2:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

The following Articles outline some of the key rights in relation to which children in poverty often experience discrimination in that they do not enjoy these rights to the same extent as non-poor children:

Article 6:

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 24:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - a. To diminish infant and child mortality;
 - b. To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - c. To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - d. To ensure appropriate pre-natal and post-natal health care for mothers;
 - e. To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - f. To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present Article. In this regard, particular account shall be taken of the needs of developing countries.

Article 28:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a. Make primary education compulsory and available free to all;
 - b. Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - c. Make higher education accessible to all on the basis of capacity by every appropriate means;
 - d. Make educational and vocational information and guidance available and accessible to all children;

- e. Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 31:

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

2. Concluding Observations in this area made by the United Nations Committee on the Rights of the Child in 2008

In relation to Article 27, and the right to an adequate standard of living, the Committee said the following:

Paragraph 64 - The Committee welcomes the Government's commitment to end child poverty by 2020 as well as the Childcare Act 2006 requirement on local authorities to reduce inequalities among young children. It also notes with appreciation the information given by the delegation that this target will be reflected and enforced through legislative measures. However, the Committee – while noting that child poverty has been reduced in the last years - is concerned that poverty is a very serious problem affecting all part of the United Kingdom, including the Overseas Territories, and that it is a particular concern in Northern Ireland, where over 20 per cent of children reportedly live in persistent poverty. Furthermore, the Committee is concerned that the Government's strategy is not sufficiently targeted at those groups of children in most severe poverty and that the standard of living of Traveller children is particularly poor.

Paragraph 65 - The Committee would like to highlight that an adequate standard of living is essential for a child's physical, mental, spiritual, moral and social health and education as well as everyday quality of life of children. In accordance with Article 27 of the Convention, the Committee recommends that the State Party:

- a) Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement;
- b) Give priority in this legislation and in the follow-up actions to those children and their families in most need of support;

- c) When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing.

In relation to the duty on states, in Article 4, to allocate resources to the maximum extent possible, the Committee stated concern that inadequate resources were being allocated to the eradication of child poverty:

Paragraph 18 - The Committee notes with appreciation the increase in expenditures on children in recent years. Nevertheless, the Committee is concerned that the increases are not sufficient to eradicate poverty and tackle inequalities and that the lack of consistent budgetary analysis and child rights impact assessment makes it difficult to identify how much expenditure is allocated to children across the State Party and whether this serves to effectively implement policies and legislation affecting them.

Paragraph 19 - The Committee recommends that the State Party, in accordance with Article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating poverty and that it reduce inequalities across all jurisdictions. In this endeavour, the State Party should take into account the Committee's recommendations issued after the day of general discussion of 21 September 2007 devoted to "Resources for the rights of the child - responsibility of States". Child rights impact assessment should be regularly conducted to evaluate how the allocation of budget is proportionate to the realisation of policy developments and the implementation of legislation.

The Committee noted a gap in relation to the realisation of children's rights for children in poverty, compared to other children. In a number of cases they directly connected this to inadequate provision of services for poor children and their families:

Paragraph 44 - The Committee is concerned that many families lack appropriate assistance in the performance of their child-rearing responsibilities, and notably those families in a crisis situation due to poverty.

Paragraph 54 - The Committee is concerned that, despite the State Party's efforts to tackle inequalities in access to health services through, inter alia, substantial investments, inequalities remain a problem, as demonstrated by the widening gap in infant mortality between the most and the least well-off groups.

Paragraph 55 - The Committee recommends that inequalities in access to health services be addressed through a coordinated approach across all Government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty.

Paragraph 56 - The Committee – despite the considerable financial investment, especially in England - is concerned that, while 1 in 10 children in the State Party have a diagnosable mental health problem, only around 25 per cent of them have access to the required treatment and care and that children may still be treated in adult psychiatric wards. The Committee is also concerned that in Northern Ireland - due to the legacy of the conflict - the situation of children in this respect is particularly delicate.

Basic Health and Welfare

Paragraph 57 - The Committee recommends that additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.

Paragraph 66 - The Committee notes with appreciation the numerous efforts of the State Party in the sphere of education, in order to guarantee the objectives set out in the Convention. However, it is concerned that significant inequalities persist with regard to school achievement of children living with their parents in economic hardship. Several groups of children have problems being enrolled in school or continuing or re-entering education, either in regular schools or alternative educational facilities, and cannot fully enjoy their right to education, notably children with disabilities, children of Travellers, Roma children, asylum-seeking children, dropouts and non-attendees for different reasons (sickness, family obligations etc.), and teenage mothers.

Furthermore, the Committee is concerned that:

- Participation of children in all aspects of schooling is inadequate, since children have very few consultation rights, in particular they have no right to appeal their exclusion or to appeal the decisions of a special educational needs tribunal;
- The right to complain regarding educational provisions is restricted to parents, which represent a problem especially for looked after children for whom local authorities have, though mostly do not use, parental authority;
- Bullying is a serious and widespread problem, which may hinder children's attendance at school and successful learning;
- The number of permanent and temporary school exclusions is still high and affects in particular children from groups which in general are low on school achievement;
- The problem of segregation of education is still present in Northern Ireland;
- Despite the Committee's previous Concluding Observations, academic selection at the age of 11 continues in Northern Ireland.

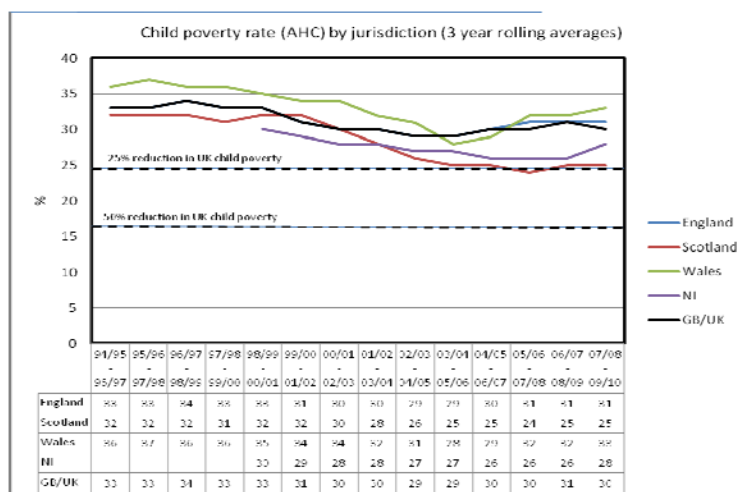
Paragraph 67 - The Committee recommends that the State Party:

- Continue and strengthen its efforts to reduce the effects of the social background of children on their achievement in school;
- Invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to children from all disadvantaged, marginalized and school-distant groups.

3. What progress, if any, has been made in this area since 2008 against the UN Committee on the Rights of the Child's Concluding Observations and the 2008 recommendations made by the UK Children's Commissioners

Child poverty remains a major issue across all four countries of the UK, with the following proportions of children living in poverty: 33 per cent in Wales, 31 per cent in England, 28 per cent in Northern Ireland, and 25 per cent in Scotland, After Housing Costs.¹³

¹³ This uses three year rolling averages, (After Housing Costs), drawn from DWP, (2011), Households Below Average Income report: An analysis of the income

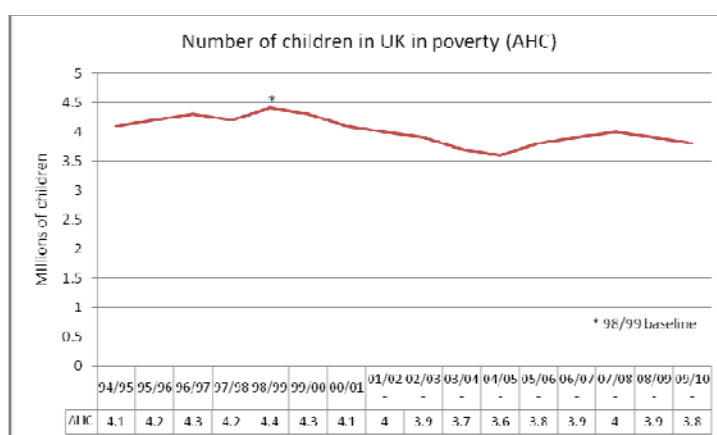


Source: DWP, (2011), HBAI table 4.16ts. After Housing Costs measure.

As the figure above shows, between 1998/99 and 2005/06 there had been considerable progress in reducing the proportion of children in the UK experiencing poverty. However, since then, particularly for England and Wales, the trend has started to reverse.

In 1999 the UK Government committed to eradicate child poverty by 2020, reducing it in the interim by 25 per cent by 2005, and by 50 per cent by 2010, using 1998/9 data as a baseline. The following figure shows that, despite initial progress, little headway has been made over recent years in achieving these targets.

In the UK Children's Commissioners' report to the UN Committee on the Rights of the Child in 2008, we stated that we considered it unacceptable that a country as wealthy as the UK had 3.8 million children (one in three) living in relative poverty. As the following figure illustrates, the most recent figures indicate that the number has not changed; 3.8 million children remain in poverty (AHC).¹⁴



Source: DWP, Households Below Average Income report

distribution 1994/95 – 2009/10. It is necessary to use 3 year rolling averages in order to get statistically reliable figures for some of the areas with lower sample sizes. The Commissioners have consistently argued for the use of the After Housing Costs measure. Using the Before Housing Costs measure, the UK child poverty rate for 2009/10 had fallen to 20 per cent.

¹⁴ The 2008 report quoted 2005/6 data, as this was the most recent data available prior to publication.

A recent report has found that, in 2008-9, 1.6 million children are living in severe poverty in the UK (13 per cent).¹⁵ Highest levels were found in Wales (14 per cent), followed by England (13 per cent) and then Scotland and Northern Ireland (both at 9 per cent). Some regions in England had particularly high proportions of children in severe child poverty, with the highest rates in London (18 per cent), followed by the West Midlands (16 per cent) and the North West (15 per cent).

The 2008-9 figures represented a slight drop in the number of children experiencing severe child poverty from the previous year, but an overall increase on the figure of 11 per cent in 2004-5.

Government responsibilities in relation to child poverty

Many of the key drivers to tackle income poverty, most notably tax and benefits, are the responsibility of the UK Government. Policy changes at this level can have very significant and fairly immediate impacts on child poverty rates, particularly for those living in households just below the poverty threshold. It is important, however, to recognise that, for those living in Scotland, Wales and Northern Ireland, the devolved administrations have responsibility for a number of policy areas that are also important in relation to income poverty, including economic development, childcare, employment and training support to parents and young people, the regulation of energy costs (in NI), and aspects of transport infrastructure.

As the 2008 Concluding Observations recognise, income poverty is strongly associated with a range of other disadvantages. Children in poverty are more likely to have poor educational and health outcomes than other children, for example. They are more likely to live in areas where they have limited access to services and to play and leisure opportunities. Their parents are more likely to be experiencing poor mental health, poor physical health, to be disabled or caring for a disabled relative, and to be out of work or in poorly paid work. These issues are both causes and outcomes of poverty, and impact both on children's lives in a very immediate way, as well as on the future life chances of children experiencing persistent poverty.

For children in Scotland, Wales and Northern Ireland, it is the devolved administrations which hold responsibility for addressing these, arguably particularly complex, aspects of child poverty.

Addressing the 2008 Concluding Observations

Paragraph 65 - The Committee would like to highlight that an adequate standard of living is essential for a child's physical, mental, spiritual, moral and social health and education as well as everyday quality of life of children. In accordance with Article 27 of the Convention, the Committee recommends that the State Party:

- a) *Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement;*

The Child Poverty Act 2010

Given the predicted failure to meet the 2005 and 2010 targets to reduce child poverty by 25 per cent and 50 per cent respectively, the UK Government reiterated its commitment to take action to tackle child poverty by enshrining in legislation previous commitments to tackle child poverty. On 28 March 2010 the Child

Poverty Act 2010 received Royal Assent, and in doing so established four legal targets for the UK Government and devolved administrations:

The relative low income target – that less than ten per cent of children live in households that have a household income of less than 60 per cent of median household income.

The combined low income and material deprivation target – that less than five per cent of children live in households that have a household income of less than 70 per cent of median household income *and* experience material deprivation.

The absolute low income target – that less than five per cent of children live in households that have a household income of less than 60 per cent of the median household income for the financial year starting on 1 April 2010.

The persistent poverty target – to reduce the proportion of children that experience long periods of relative poverty (that is to reduce the percentage of children who live in households that have a household income of less than 60 per cent of the median household income for three years out of a four-year period) with the specific target percentage to be set at a later date.

In each case the targets are for children 0-15, as the 2010 Act only addresses children up to the age of 16. As a result, regrettably, the subsequent Strategies are not intended to address the particularly problematic experiences of poverty among 16 and 17 year-olds.

The Act also required the UK Government to publish regular UK child poverty strategies and the Scottish and Northern Ireland Ministers to publish child poverty strategies for their administrations within a year of the Act receiving Royal Assent. It also enshrined a requirement for each administration to publish annual progress reports and placed new duties on local authorities and other 'delivery partners' in England to work together to tackle child poverty.

The legislation also established a Child Poverty Commission to provide Governments with advice on the development and implementation of the Child Poverty Strategies, and provided a potential mechanism for legally challenging Government if it did not meet its duties under the legislation. However, as the Joint Committee on Human Rights noted in its report on the Bill, although in principle it would be possible to judicially review the adequacy of measures taken by Governments to meet the child poverty targets, in practice this would be the case only in very limited circumstances.

The implementation of the 2010 Act

In keeping with the legislation, in March 2011 three child poverty strategies were launched: the UK-wide strategy, and devolved Scottish and Northern Irish strategies. While these have been generally welcomed, there is concern at the lack of detail as to the actions that will be taken to directly deliver on the child poverty targets, and robust mechanisms for monitoring progress.

¹⁵ NPI (2011), Severe Child Poverty: Nationally and Locally, (Save the Children, London).

UK / England

The UK Government's first UK-wide *Child Poverty Strategy, A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Lives*¹⁶ was informed by Frank Field MPs review of child poverty and life chances and Graham Allen MPs review of Early intervention. The Office of the Children's Commissioner is concerned *The Child Poverty Strategy* does not set out how poverty numbers will fall, and by when. Child Poverty Action Group states via a press release that the 'strategy' is unlawful because it has not kept to the requirements laid down in law by Parliament. For example, an expert Child Poverty Commission should have been set up and consulted in the strategy's preparation.

Scotland

The Scottish Government published its first response to tackling poverty and inequality *Achieving Our Potential* in November 2008, which was one of three main policy documents. The other two, also published in 2008, were targeted on developing early years, *The Early Years Framework*, and reducing health inequalities, *Equally Well*. The ambition, vision and long term nature of the frameworks designed to tackle underlying causes and support families experiencing poverty are to be welcomed. However, the detail of delivery is lacking and it is difficult to assess the level of progress made in implementation and the impact this has had on families at local and national level.

The Scottish Government has stated that progress will be monitored through Single Outcome Agreements (SOAs) between Scottish Government and local Government. However, the End Child Poverty analysis of SOAs found, despite this each mentions poverty and deprivation, but in reality they generally demonstrated a lack of priority for tackling child poverty, and a lack of clarity in how they would go about reducing child poverty.¹⁷

The Child Poverty Strategy for Scotland set out the Scottish Government approach to child poverty, which will be:

- Maximising household resources – assistance to parents to access employment, supporting parents with child care costs, and promoting financial inclusion
- Improving children's well-being and life chances – the development of early years services, additional support services and measures targeted on assisting young people into employment

As a result of the delivery mechanism for the strategy between Scottish Government and local authorities, there is scope for a wide variation at a local level. This is already reflected in the profile of child poverty in the SOAs, which will result in patchy implementation, compromising the overall impact on children living in poverty.

Northern Ireland

Northern Ireland has had an Anti Poverty Strategy: *Lifetime Opportunities* since 2006, developed under Direct Rule and subsequently adopted by the NI Executive. This strategy took a lifecycle approach, with two out of the four objectives focussing on children. However, no action plans were developed to implement the Strategy, and, five years on, there is no indication of this strategy having led to any change in policy or any reductions in child poverty.

The Northern Irish Child Poverty Strategy: 'Improving Children's Life Chances', launched in March 2011, adopts a similar approach to that of Scotland, outlining two key strands of work:

1. Reducing poorly paid, work and unemployment amongst adults with children
2. Improving longer term prospects through child based interventions which are designed to tackle the cyclical nature of child poverty.

However, beyond general statements, it does not clearly address how it will reduce child poverty rates over time, nor has there been any commitment to the allocation of resources to implement the Strategy. A delivery plan is to be released later in 2011.

Wales

As the Child Poverty Act was in development, another piece of legislation was being made in Wales, introducing similar duties on the Welsh Government. The Children and Families Measure 2010 introduced legal duties on Welsh Ministers, Local Authorities and other bodies including the Local Health Boards, the Sports Council for Wales to prepare and publish a strategy for contributing to the eradication of child poverty. The subsequent Child Poverty Strategy (Wales) Regulations 2011¹⁸ regulations came into force on 6th April 2011. They state that the first child poverty strategy must be developed by 31st March 2012 and that all subsequent child poverty strategies must be developed to cover a three year period. Child Poverty Strategies must be reviewed every 3 years.

The Welsh Assembly Government published the Child Poverty Strategy for Wales in February 2011. The Delivery Plan is due to be published shortly. It is intended to be an online, living document. It is regrettable that the publication of the accompanying Delivery Plan has been delayed.

The Child Poverty Strategy for Wales has been revised to focus on how the Welsh Assembly Government's policies collectively contribute to the three strategic objectives

- (i) To reduce the number of families living in workless households.
- (ii) To improve the skills of parents/carers and young people living in low-income households so they can secure well-paid employment.
- (iii) To reduce inequalities that exist in health, education and economic outcomes of children and families by improving the outcomes of the poorest.¹⁹

Despite the 2010 Act requiring Governments to report on how they are reducing the numbers of children in poverty, none of the four strategies have mapped out their projections for decreases in

¹⁶ DWP (2011) Child Poverty Strategy, A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Lives.

¹⁷ Campaign to End Child Poverty (2009). Single Outcome Agreements: an analysis by members of the Campaign to End Child Poverty in Scotland

¹⁸ The Child Poverty Strategy (Wales) Regulations 2011, <http://www.legislation.gov.uk/wsi/2011/675/contents/made>

¹⁹ Child Poverty Strategy for Wales, Welsh Assembly Government, 2011, <http://wales.gov.uk/docs/dsjlq/policy/110203newchildpovstrategy2en.pdf>

child poverty rates, or clear actions for achieving these. Indeed, they seem to provide little change from previous approaches. Moreover, there is an issue with monitoring and assessing how these strategies will be implemented at a local level. The arrangements between central and local Government are such that local authorities are not required to report against specific targets in relation to child poverty so will be difficult to assess progress.

The lessons from earlier initiatives to address child poverty are clear: ambitious, high level strategies in themselves will not deliver change. To significantly reduce child poverty will require strong political commitment, as well as innovative programmes, clear monitoring mechanisms and significant, sustained resourcing. Moreover, the Children's Commissioners advise the UK Government against changing aspects of the legislation before it has been implemented, including the powers and responsibilities of the Child Poverty Commission and reporting responsibilities of administrations.

- b) *Give priority in this legislation and in the follow-up actions to those children and their families in most need of support;*

One of the four targets established by the Child Poverty Act is a measure for persistent poverty, providing a focus on children who have experienced poverty for at least three out of four years. In general, the longer a child experiences poverty, the more significant the impact, and so the persistent poverty target is to be welcomed. Further to this, the UK child poverty strategy commits to introducing a supplementary measure of severe child poverty, and although the exact definition is still being worked out but this is also a positive step. For these commitments to translate into change for children in deepest poverty, they need to be followed by resourced actions targeted at these groups, and clear monitoring mechanisms.

Indeed, each of the four strategies provided analysis of the children most likely to experience child poverty, and in some cases those most significantly impacted by poverty. However, the Children's Commissioners are concerned that this has not translated into actions to support those children and young people that are most in need.

Instead, in some cases the strategies have outlined policies that will most harm those children in deepest poverty. The UK child poverty strategy for example outlines cuts to housing benefit, support for sick and disabled families and a reduction in childcare costs. It also notes benefit cuts, wage stagnation and rising prices for basics like food, fuel and clothes mean there is an immediate crisis for families. Urgently addressing the financial crisis for families should have been the foundation for each child poverty strategy.

While the evidence report that went alongside the Scottish strategy highlighted key risk factors and groups most in need e.g. single parent families, this didn't translate into clear actions. Despite making numerous references to families in severe or persistent poverty, linking them to the early years and health inequality strategies, the Strategy does not clearly identify which groups the Scottish Government thinks are most in need of support.

- c) *When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing.*

At the time of writing the Concluding Observations in 2008, the global recession was just emerging. Since then, the magnitude of the recession has become clearer, and Government has responded by introducing severe austerity measures, with few budget lines escaping cuts.

In this climate of cuts, the Children's Commissioners are deeply concerned that the poorest appear to be being particularly affected. Research published this year by Institute for Fiscal Studies (IFS) shows that poorer households have experienced higher inflation on average than richer households over the past decade. This difference has been especially marked since 2008 when the poorest fifth of households faced an average annual inflation rate of 4.3 per cent whilst the richest fifth experienced a rate of just 2.7 per cent.²⁰ Moreover, further reports by IFS, modeling the impact of the UK Government policies on poverty rates found that the result was likely to be a net increase in the number of children experiencing poverty between 2010-11 and 2013-14.²¹

Of particular concern are the ongoing changes to the Welfare system across the UK. The coalition UK Government has targeted welfare expenditure with cuts totalling £18 billion over the next three years. The changes, announced in the 2010 Emergency Budget and Spending Review, were confirmed in the budget in March 2011.

For millions of people living in poverty, the way benefits system interacts with their lives is vitally important. Benefits must help to ensure that work is a tenable escape from the poverty trap, while at the same time providing decent standards of living for families where parents can't work. However, there are dangers that some of the intended changes to the complex benefits system will have a detrimental effect on families and children.

We have major concerns around the changes that may be introduced via the Welfare Reform Bill and their impact on children's rights. Of particular concern are:

- the reduction in support for childcare
- the impact of switching benefit uprating to the Consumer Price Index measure of inflation and particularly to uprate Local Housing Allowance (LHA) by CPI
- the impact of the current intention to pay Universal Credit in a single payment to one member of a household, with a potential cap on benefit levels.
- the introduction of conditionality in benefit payments.

Much of the detail of the changes has not yet been announced, however, as the IFS has modelled, it seems likely that the changes being implemented and further changes proposed will have a detrimental impact on children and families experiencing poverty, and will counteract positive steps taken in relation to the

²⁰ Levell, P., and Oldfield, Z., (2011), The spending patterns and inflation experience of low-income households over the past decade, (IFS: London).

²¹ Joyce, R., (2011), Poverty projections between 2010-11 and 2013-14: a post-Budget 2011 update, (IFS: London) and Brewer et al (2010) Child and Working-Age Poverty from 2010 to 2013. London: Institute of Fiscal Studies <http://www.ifs.org.uk/bns/bn115>

Child Poverty Act 2010. The Children's Commissioners strongly advise the UK Government to carefully consider the impact of the 'reforms' to the Welfare system on children experiencing poverty.

The UK Government has also recently abolished the Education Maintenance Allowance in England, a payment to young people who stay on in education past 16. The Department for Education has announced that it is to set up bursaries totalling £180m a year to replace the EMA, which was worth £500m a year. The fund is more targeted on young people who face financial difficulties stay on in education.

However, the Governments own Equality Impact Assessment says the process is open to unintended discrimination on the basis of disability, gender or ethnicity.

The Children's Commissioners recognise that a number of positive measures have been taken to target material assistance to children and families experiencing poverty. Some examples include widening the eligibility to free school meals in Scotland, winter fuel payments (2009) and primary school uniform grants in Northern Ireland, free prescriptions in Scotland, Northern Ireland and Wales and a Fuel Poverty Strategy in Wales.

However these positive developments will be more than more than cancelled out by the cuts in family incomes resulting from the cuts to the Welfare system.

Paragraph 19 - The Committee recommends that the State Party, in accordance with Article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating poverty and that it reduce inequalities across all jurisdictions. In this endeavour, the State Party should take into account the Committee's recommendations issued after the day of general discussion of 21 September 2007 devoted to "Resources for the rights of the child - responsibility of States". Child rights impact assessment should be regularly conducted to evaluate how the allocation of budget is proportionate to the realisation of policy developments and the implementation of legislation.

There has been little progress in relation to the production of budgets identifying the level of expenditure on children in general, and this is also the case for in relation to child poverty.

As the UN Committee on the Rights of the Child stated in 'Resources for the rights of the child – recommendations to states':

"No state can tell whether it is fulfilling children's economic, social and cultural rights 'to the maximum extent of available resources', as required under Article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly..."

At the time of reporting to the Committee, the UK Government stated that it could not provide an accurate figure for expenditure on children, and there has been little progress in making children visible in budgets. The exception is the Welsh Government, which has produced some basic analyses of the proportion of the budget allocated to children, and is carrying out projects to strengthen children's engagement in budget decision-making.

Annual analyses of public expenditure across the UK are published by HM Treasury, and this allows a degree of comparative analysis of budgets between regions and over time. However, only very few of the budget lines are specific to children or broken down by age.

Given the lack of detail in budgets, there is no evidence that Governments are allocating resources 'to the maximum extent' to eradicate child poverty. In terms of reviewing budgets, it is only possible to highlight particular budget lines for programmes intended to contribute to lifting children out of poverty, and where budget cuts are being made. This does not allow a comprehensive picture, nor an indication of whether expenditure is to the 'maximum extent possible' or even if it had increased or decreased over time. However, given the current and planned austerity measures, most notably the 'Welfare Reform' programme, it seems clear that resources are being cut to the poorest families.

In each jurisdiction there are some funds directed to programmes to tackle child poverty:

England

New funding arrangements between Government and local authorities removed almost all previously 'ring-fenced' funding. The intention is to free up local authorities to allocate resources in line with local priorities and need.

However, lack of ring-fencing has made it very difficult to assess local spend on specific areas of activity. This includes child poverty where there is no requirement to report on this spend at a local level, so there is no agreed figure on this at a national level.

Scotland

In Scotland the funding arrangement between the Scottish Government and local authorities removed almost all previously 'ring-fenced' funding. The intention was to free up local authorities to allocate resources in line with local priorities. As a consequence, it has made it very difficult to assess local authorities spend on specific areas of activity. This includes child poverty where there is no requirement to report on this spend at a local level, so there is no agreed figure on this at a national level.

Wales

Cymorth is a Welsh Government fund that currently provides a network of targeted support for children and young people from disadvantaged families. The Welsh Government has announced that funding to Cymorth will cease from April 2012 and will be transferred to the Families First Fund. Families First forms a major part of the Welsh Government's commitment to supporting families and tackling child poverty in the most efficient and effective way possible. However there is little evidence in Wales of an overarching targeted programme to eliminate child poverty with a number of different approaches being adopted up to 2010.

Northern Ireland

While there is not a 'ring-fenced' fund specifically to tackle child poverty, some funds have been allocated to programmes intended to help lift families out of poverty. Twelve million pounds have been allocated over four years to childcare and £1.5 million to an Earnings Disregard Pilot Study over two years. A further £20 million a year has been allocated to a Social Investment Fund to tackle disadvantage, and a further £20 in 2011-12. While these funds are to be welcomed, there is currently little information as to how they will be spent. Moreover, on their own they will be insufficient to tackle poverty; there is a need for further budget allocations to children and families experiencing poverty.

The Committee noted a gap in relation to the realisation of children's rights for children in poverty, compared to other children. In a number of cases they directly connected this to inadequate provision of services for poor children and their families.

There were a number of Concluding Observations that drew attention to the way that poverty impacted on children's enjoyment of a range of rights, and recommended that services be provided to address this. In particular the Concluding Observations focussed on education outcomes, health outcomes and mental health.

Educational attainment

Official statistics suggest that substantial progress has been made in relation to improving children's literacy and numeracy, including those in schools with high levels of deprivation.

Primary school children

- England – numbers not achieving level 2 in English and Maths at KS4 have fallen since 2000, including those in schools with high levels of FSM. However, children eligible for FSMs were around twice as likely to fail to achieve this.²²
- Scotland – The proportion of P5 (9-year-old) pupils in deprived schools failing to achieve level B in reading, writing and maths has fallen considerably, but is still much higher than P5 pupils on average.²³
- Wales - The proportion of 11-year-olds in deprived schools failing to achieve level 4 at Key Stage 2 has fallen considerably, but is still much higher than for 11-year-olds on average.²⁴
- Northern Ireland - Although improving, 11-year-olds in schools with a high proportion receiving free school meals are still one-and-a-half times as likely not to reach level 4 at Key Stage 2 as 11-year-olds on average.²⁵

Children at 16

- England – considerable improvements have been made in relation to the proportion of children achieving at least 5 GCSE grades C or above. While this was less than 50 per cent in 2000, now the figure is more than 75 per cent.²⁶ However, young people eligible for free school meals (FSMs) are still around three times as likely to not achieve 5 GCSE passes as those not eligible for FSMs.²⁷
- Scotland – average standard grade attainment for pupils at 16 has improved somewhat over the past 10 years, including for those in deprived schools. While the latter is less than that for pupils on average, the difference is not as marked as in some other areas.²⁸

- Wales - Around one in ten 16-year-olds do not obtain 5 or more GCSEs or vocational equivalent. This is around a third less than that of a decade ago. Moreover, while GCSE results remain strongly linked with deprivation, the gap has narrowed over this period.²⁹
- Northern Ireland - Among pupils entitled to free schools meals, the proportion of school leavers who have fewer than five GCSEs has fallen sharply since 2004/5. It is, however, still more than twice that for school leavers on average.³⁰

The Children's Commissioners commend the progress in improving the educational outcomes for children in poverty, and in narrowing the gap in educational outcomes between poor and non-poor children. However, the gap remains, bringing with it significant inequalities in outcomes for young people as they move into further education, employment and training. Governments must continue to make progress in addressing the inequalities in educational outcomes for poor children.

Health outcomes

Poverty impacts on children's health from before birth, with higher levels of infant mortality and low infant birth weight in disadvantaged areas. They are more likely to have health problems as children, and to grow up to be less healthy as adults. They are likely to live shorter lives, and spend more of their lives in ill-health, than non-poor children.

Due to the time lag in the collection and publication of health data, it has been difficult to determine if there has been a notable change in indicators of health inequalities for children. Indeed, any changes in outcomes are likely to be very gradual.

England

Despite improvements in people's incomes, the inequality in health outcomes between those at the top and bottom ends of the social scale remains large and in some areas continues to widen. The Fabian Society has reported on inequalities in the health of babies between ethnic groups. They found that pregnant women on lower incomes are likely to have greater difficulty in accessing maternity services, and this is particularly acute for women from black and minority ethnic communities.³¹ Inequalities in life expectancy also persists across England. Data from 2006–08 showed a similar pattern to previous years, with more than 10 years difference in life expectancy between a male or female living in Kensington and Chelsea compared with a male or female living in Blackpool.³²

Scotland

While in 2008 children born to families in the most deprived areas of Scotland were around twice as likely (7.6 per cent) to have a low birthweight as those in areas of low deprivation (3.9 per cent), the gap had narrowed over the previous decade. Between 1999/2000 and 2007/2008, increases in Healthy Life Expectancy have been observed across the population, with an increase of 3 years for males and 2.3 years for females.

²² National Pupil Database, DfE, England.

²³ Unpublished Scottish Government figures, quoted on www.poverty.org.uk/s25/index.shtml?2

²⁴ Welsh Education Statistics (2011), quoted on <http://www.poverty.org.uk/w25/index.shtml?2>

²⁵ School-level data, DENI; updated Feb 2011, quoted on www.poverty.org.uk/i25/a.pdf

²⁶ Statistical Releases from DfE; England, quoted on www.poverty.org.uk/26/a.pdf

²⁷ Statistical Releases from DfE; England, quoted on www.poverty.org.uk/26/index.shtml?2

²⁸ Scottish Executive data. on www.poverty.org.uk/s26/index.shtml?2

²⁹ Statistical releases, National Assembly for Wales, quoted on www.poverty.org.uk/w26/index.shtml?2

³⁰ Northern Ireland School Leavers Survey, DENI, quoted on www.poverty.org.uk/i26/index.shtml?2

³¹ Fabian Society (2006) Narrowing the gap: the Fabian commission on life chances and child poverty.

³² Fabian Society (2006) Narrowing the gap: the Fabian commission on life chances and child poverty.

However, in 2007/2008, HLE of those living in the most deprived decile was 18.8 years lower for males and 17.1 years lower for females than HLE of those living in the least deprived decile. The inequalities in HLE linked to deprivation have not been narrowed over the eight years.³³

Wales

There is a strong association between LBW and deprivation. For the period 2005-07, the proportion of LBW babies was 8.9 per cent in the most deprived fifth of the population and 7.2 per cent in the middle fifth. There is a correlation between socioeconomic deprivation and infant mortality. In 2004-08, the infant mortality rate in the most deprived fifth of areas in Wales was 5.65 per 1,000 live births. This compares with a rate of 3.53 in the least deprived fifth of areas. The ratio between the most and least deprived fifths was 1.6 during 2004-08. The decayed, missing or filled teeth (dmft/DMFT) score is the standard measurement of tooth decay. The average dmft score for five-year-olds in Wales in 2007/08 was 1.98. There is a significant difference in dmft scores between children living in the most deprived areas of Wales (2.65) and those in the least deprived areas (1.16).

Northern Ireland

While life expectancy has increased in general across Northern Ireland between 1999/2001 and 2006/8, there has been little change in the gap between the average expectancy and those living in the most deprived areas. There has, however, been a significant change in the gap in infant mortality rates in each Trust area. In Belfast, for example, the infant mortality rate in 1997-2001 was 54 per cent higher in the most deprived wards than the trust average. This had fallen by 2004-8 to an 8% difference.³⁴

While health inequalities persist, the available data does not enable a thorough assessment of whether the gaps in health outcomes associated with child poverty have narrowed since 2008. It will be important for Governments to ensure that they have data to compare with that from 2008 when they come to report in 2013.

Recommendations in the United Kingdom Children's Commissioners' report to the United Nations Committee on the Rights of the Child in 2008:

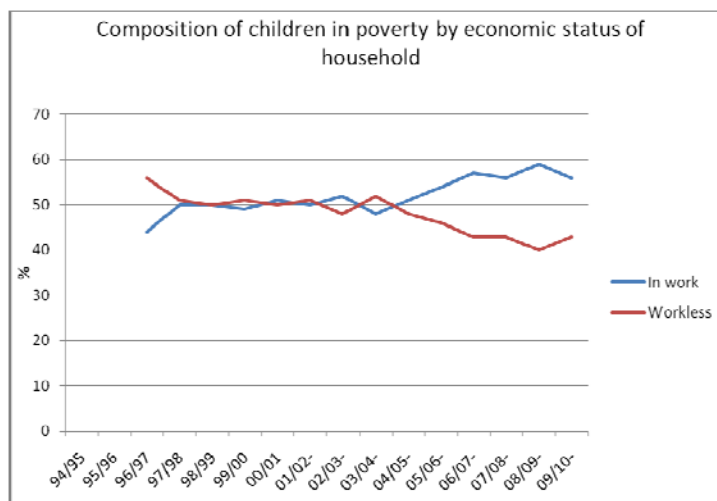
R75. The UK Government and devolved administrations should use the maximum extent of available resources to eliminate child poverty. Within the block grants given to the devolved administrations, funding should be allocated to eliminating child poverty.

As outlined on pages 18-20, it is not possible to determine what resources have been allocated to eliminate child poverty. Moreover, there has not been funding allocated to eliminating child poverty within the block grants of the devolved administrations.

R76. The UK Government and devolved administrations should review their approach to ending child poverty and ensure they tackle the issues of in-work poverty and rural poverty. They must provide sufficient safeguards for those unable to work and ensure those children at greatest risk of poverty and those in severest poverty are prioritised and targeted.

The child poverty strategies all work from a basic premise that work is the best way out of poverty. This also drives the 'Welfare Reform' agenda. It is important to note that, over recent years there has been a downward trend for child poverty in workless households, but an upward trend for in-work poverty, which is now the larger problem.

DWP statistics from show that more need to be done to address in work poverty. 53 per cent of children in poverty have one or both parents working.³⁵



Source DWP (May 2010) Households Below Average Income: an analysis of the income distribution 1994/95 – 2008/09. Table 4.12ts

Each of the Child Poverty Strategies has some recognition of the problem of low paid employment, for example, in the Welsh Child Poverty Strategy one of the three strategic objectives is: "To improve the skills of parents/carers and young people living in low-income households so they can secure well-paid employment."³⁶

Indeed, the Scottish Government, through the Child Poverty Strategy has committed to paying a living wage to all of those covered by the Government's 2011-2012 public pay sector policy.

Accessing affordable childcare is one of the main barriers to parents finding work. The Children's Commissioners are concerned about the rising cost of childcare. Childcare now accounts for 28 per cent of the average income for a two-earner household in the UK, putting it among the highest in the world, according to new research by the Organisation for Economic Co-operation and Development (OECD).

³³ Long-term Monitoring of Health Inequalities – Headline indicators - October 2010, quoted on www.scotland.gov.uk/Publications/2010/10/25144246/2

³⁴ DHSSPS (2010), NI Health & Social Care Inequalities Monitoring System: Sub-regional Inequalities - HSC Trusts 2010.

³⁵ Department for work and Pensions (May 2010) Households Below Average Income: an analysis of the income distribution 1994/95 – 2008/09. Table 4.12ts

³⁶ Child Poverty Strategy for Wales, Welsh Assembly Government, 2011, <http://wales.gov.uk/docs/dsjlq/policy/110203newchildpovstrategy2en.pdf>

It costs an average of £177 per week for a full-time nursery position for a child under two in the UK. For families living in severe poverty, with an annual income below £12,000 (£230 a week), it can be impossible to find a job that brings in enough money to cover the childcare bill, as well as their living costs.

Working Tax Credits have been effective in helping families pay for childcare, although they have only paid a maximum of 80 per cent of childcare cost. However, a recent reduction in the amount of childcare costs covered by Working Tax Credits, from a maximum of 80 per cent to 70 per cent, leaves many families on low incomes with an extra £546 a year added to their childcare bill.³⁷

R77. The UK Government and devolved administrations should address the structural causes of poverty, including the high levels of inequality (for example, income, health, educational inequalities) in the UK.

Again, each of the Strategies addresses to a greater or lesser degree, the need to tackle a range of inequalities. For example, one of the three strategic objectives in the Child Poverty Strategy for Wales is:

“To reduce inequalities that exist in health, education and economic outcomes of children and families by improving the outcomes of the poorest.”

The inequalities experienced by poor children were commented on a number of times by the Committee in the 2008 Concluding Observations, and the Children’s Commissioners believe that this must be a key focus of the child poverty strategy Delivery Plans.

R78. The UK Government and devolved administrations should ensure that the child poverty measures include after housing costs poverty rates.

While England, Northern Ireland and Scotland appear to be using Before Housing Costs measures, Wales appears to be using the After Housing costs measures. The Children’s Commissioners continue to press for the use of the AHC measure, as this best reflects the impact of regional variations in housing costs.

R79. The UK Government and devolved administrations should ensure that policies and legislation do not further discriminate against poor families and do not push them deeper into poverty. To do this, all legislation and policies should be poverty proofed.

The Children’s Commissioners are not aware of child poverty proofing having been conducted by the UK Government or by devolved administrations, but continue to press governments to do so in order to identify where policies may negatively impact on poor families. In particular, all changes to the Welfare system must be proofed to identify their impact on children and families in poverty.

R80. A review of infrastructural investment is required within each jurisdiction to ensure economic regeneration supports areas affected by poverty.

The Children’s Commissioners are not aware of this having been carried out in any of the jurisdictions.

4. What are the outstanding concerns, including outstanding recommendations of the UK Children’s Commissioners in 2008

The UK Government and Devolved Administrations should fully implement the Child Poverty Act 2010.

The Children’s Commissioners note that, since their 2008 report to UN Committee on the Rights of the child, child poverty levels (using a 60 per cent of the median income AHC) have not fallen. Indeed, in some parts of the UK there has been an increase in child poverty.

The Child Poverty Act 2010 has been a very welcome development. However, the implementation of the Act has not been as positive, as each of the four strategies have significant weaknesses, commonly around the translation of the policy intent of the legislation into delivery against the targets. Moreover, the Children’s Commissioners are concerned at the apparent intention of weakening of key aspects of the Act, notably the establishment and role of the Child Poverty Commission and the reporting requirements on UK and devolved administrations.

It is critical that the strategies are fully implemented and that the Act is not diluted. They should particularly address those children who are most significantly impacted by poverty – those in severe poverty and/or in persistent poverty. Data must be collected across the UK to ensure that levels of severe child poverty and persistent child poverty can be monitored.

Sufficient financial resources should be allocated to tackling child poverty across the UK, funding services targeted at the most disadvantaged, and increasing the household income of poor families.

It is evident from the lack of progress in meeting the targets to reduce child poverty that additional insufficient resources have been dedicated to this goal. Both the UK Government and the devolved administrations must direct additional financial resources to tackling child poverty, and must clearly identify this spending within government budgets. This should allow budget expenditure on poor children to be monitored and an assessment done as to whether this is ‘to the maximum extent of available resources’.

Central to the implementation and monitoring of the strategies must be the impact assessment of new policies and programmes on children in poverty – not only those intended to address child poverty, but other policies being implemented. The Children’s Commissioners are particularly concerned at developments in relation to ‘reform’ of the welfare system including the Welfare Reform Bill 2011. Despite benefit levels having been consistently below poverty thresholds and ‘Minimum Income Standards’ (JRF, 2011), benefit levels are being frozen or reduced, and additional conditionality is being introduced. A child rights impact assessment of each of these changes would demonstrate that the outcome will be increased levels of child poverty. These changes in the welfare system will impact on children both in workless households and among ‘working poor’ households, and must be reconsidered in the light of the commitments outlined in the Child Poverty Act 2010.

³⁷ Save the Children (2011) UK childcare is among the most expensive in the world <http://www.savethechildren.org.uk/en/uk-childcare-among-the-most-expensive-in-world.htm>

Basic Health and Welfare

Governments must prioritise services for poor children to address the wide range of inequalities in health and educational outcomes they experience.

The UN Committee expressed concern at a range of ways that poor children were discriminated against in terms of service provision and the fulfilment of their rights. In particular they raised concern around three areas: family support, health and education. The poorer outcomes experienced by children experiencing poverty in these areas reflects both the more significant problems they face, as well as often to more significant challenges in accessing services.

At a time of cuts in public services, governments must prioritise the provision of services to the most disadvantaged children, notably those experiencing poverty. Furthermore, a close scrutiny of the accessibility of services for children should be maintained to ensure that any barriers for children experiencing poverty are identified and overcome. There should be a particular focus on costs associated with accessing services, which should be waived for children in poverty.

Special Protection Measures

Children seeking asylum

1. The principle UNCRC Articles relating to asylum, immigration and trafficking are:

Article 22:

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Article 35:

1. States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

2. Concluding Observations in this area made by the United Nations Committee on the Rights of the Child in 2008

Paragraph 70 - The Committee welcomes the State Party's commitment to withdraw its reservation to Article 22, as well as the introduction of a new asylum procedure in March 2007 whereby all asylum applications from children are considered by specially trained "case owners", who are especially trained to interview children. It also welcomes the fact that the United Kingdom Border Agency (UKBA) has engaged in a wide process of reform concerning unaccompanied asylum-seeking children in the State Party as well as the plan to legislate a specific statutory child safeguarding duty on the UK Border Agency. However, the Committee is concerned that:

- a) As also acknowledged recently by the Human Rights Committee, asylum-seeking children continue to be detained, including those undergoing an age assessment, who may be kept in detention for weeks until the assessment is completed;
- b) There is a lack of data on the number of children seeking asylum;
- c) There is no independent oversight mechanism, such a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned;
- d) Section 2 of the 2004 Asylum and Immigration Act permits the prosecution of children over the age of 10 if they do not possess valid documentation upon entry to the United Kingdom.

Paragraph 71 - The Committee recommends that the State Party:

- a) Intensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with Article 37 (b) of the Convention;³⁸

³⁸ There is a corresponding recommendation from 2002 Concluding Observations: R50a (2002): "Refrain, as a matter of policy, from detaining unaccompanied minors

- b) Ensure that the United Kingdom Border Agency (UKBA) appoints specially-trained staff to conduct screening interviews of children;
- c) Consider the appointment of guardians for unaccompanied asylum seekers and migrant children;³⁹
- d) Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed;
- e) Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts' guidance on how to determine age;
- f) Ensure that when the return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment;
- g) Consider amending section 2 of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act to allow for a guaranteed defence for unaccompanied children who enter the United Kingdom without valid immigration documents.

Paragraph 75 - The Committee notes with appreciation the information that the State Party intends to ratify the Council of Europe Convention on Action against Trafficking in Human Beings. While welcoming the adoption of the United Kingdom Anti-trafficking Action Plan, it is concerned that the necessary resources to implement it are not being provided, including those needed to ensure the provision of high quality services and safe accommodation for trafficked children.

Paragraph 76 - The Committee recommends that the State Party provide the necessary resources for an effective implementation of the Anti-trafficking Action Plan. It also recommends that the State Party ratify the Council of Europe Convention on Action against Trafficking in Human Beings and implement its obligations by ensuring that child protection standards for trafficked children meet international standards.

The Committee made a number of observations and recommendations in respect of the CRC's general principles that are relevant to asylum, immigration and trafficking:

Paragraph 24 - ...the Committee is concerned that in practice certain groups of children such as...migrant, asylum-seeking and refugee children...continue to experience discrimination and social stigmatization.

Paragraph 25 - The Committee recommends that the State Party ensure the full protection against discrimination on any grounds by:

- b) strengthening its awareness-raising and other preventative activities against discrimination and, if necessary, take affirmative action for the benefit of vulnerable groups of children such as migrant, asylum-seeking and refugee children;
- c) taking all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions.

and ensure the right to speedily challenge the legality of detention, in compliance with Article 37 of the Convention. In any case, detention must always be a measure of last resort and for the shortest appropriate period of time".

³⁹ There is a corresponding recommendation from 2002 Concluding Observations: R50c (2002): "Consider the appointment of guardians for unaccompanied asylum-seeking and refugee children".

Special Protection Measures

Paragraph 26 - The Committee regrets that the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children, especially in the area of...immigration...

Paragraph 27 - The Committee recommends that the State Party take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with Article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children including in the area of...immigration.

3. What progress, if any, has been made in this area since 2008 against the UN Committee on the Rights of the Child's Concluding Observations and the 2008 recommendations made by the UK Children's Commissioners

Paragraph 25 - The Committee recommends that the State Party ensure the full protection against discrimination on any grounds by:

- b) *strengthening its awareness-raising and other preventative activities against discrimination and, if necessary, take affirmative action for the benefit of vulnerable groups of children such as migrant, asylum-seeking and refugee children;*
- c) *taking all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions.*

Refugee and Asylum seeking children continue to face social stigmatization. Despite this, there has been no awareness raising campaigns to challenge the negative perceptions of asylum seekers and refugees amongst the general public. In addition, there continues to be widespread confusion between terms such as 'refugee', and 'illegal immigrant'. Surveys indicate that the public have a vastly inflated idea of the number of asylum seekers entering the UK. The general economic situation has hardened public attitudes to immigration with public concern and resentment often expressed in areas such as jobs, housing and public services and the alleged favouritism given to immigrants in accessing services.

The true picture is very different. Asylum seekers in the UK are generally prohibited from working, which means that many children in asylum-seeking families spend years awaiting the outcome of their application while living on an income less than income support levels given to unemployed citizen job seekers. In these circumstances asylum seeking children are unable to fully participate in the social activities of their citizen peers and live in severe poverty.⁴⁰

Access to education remains difficult for newly arrived asylum seeking children and many spend significant amounts of time out of school before they are placed.⁴¹

Unaccompanied asylum seeking children in the care system face less favourable treatment than their resident counterparts in part because of different and insufficient funding streams for their care and also because of the impact of immigration legislation on provisions of the Children Act 1989 relating to leaving care entitlement.⁴²

Paragraph 27 - The Committee recommends that the State Party take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with Article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children including in the area of...immigration.

In 2008 the Government lifted its general reservation relating to immigration on the UNCRC. Following this, Section 55 of the Borders, Citizenship and Immigration Act 2009 came into force in November 2009 placing a duty on the UK Border Agency (UKBA) and its contractors to carry out their functions having regard to the need to safeguard children and promote their welfare. The duty mirrors Section 11 of the Children Act 2004 which had placed the same duty on specified public bodies and key individuals.

Section 55 (3) of the Act requires a person exercising any UKBA functions to have regard to any guidance given to the person by the Secretary of State. UKBA and the Department for Children, Schools and Families (now the Department for Education), issued the statutory guidance at the same time as s.55 came into force.

The extent to which the duty has informed the practice of UKBA remains contentious with UKBA decision-making in respect of the duty and statutory guidance being the subject of a substantial amount of litigation. This was recently drawn to the attention of the current Chief Executive of the Agency in a letter from the Immigration Law Practitioners Association to which the UK Children's Commissioners were copied in.⁴³

The UK Supreme Court delivered a judgment in the case of *ZH (Tanzania) –v- SSHD*⁴⁴ which has provided authoritative guidance on the scope of the s.55 duty and the manner in which the duty must be taken into account by decision makers. The judgment, which is very positive for children, has already begun to have a significant impact on the decisions of the courts, including the Upper and Lower Tier of the Immigration Tribunal and will in due course have a significant impact of UKBA decision-making in cases involving children.

Paragraph 71 - The Committee recommends that the State Party:
a) *Intensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with Article 37 (b) of the Convention;*

The Coalition Government announced in May 2010 that it would be 'ending the detention of children for immigration purposes'. The UK Children's Commissioners welcomed the announcement and provided a joint response to the subsequent Government review.⁴⁵

⁴⁰ See for example: Equality & Human Rights Commission (2010) "Refugees and Asylum Seekers- A review from an equality and human rights perspective"; Children's Society (2008) "Living on the edge of despair – destitution amongst refugee and asylum seeking children"

⁴¹ British Refugee Council (2011) *Evaluation of the SMILE project.*

⁴² S.54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002

⁴³ ILPA (18.03.11), Letter to Jonathan Sedgwick, Re: *The Welfare and Best Interests of Children*

⁴⁴ [2011] UKSC 4

⁴⁵ UK Children's Commissioners (2010) *Alternatives to the detention of children for immigration purposes: A contribution to the review from the UK Children's Commissioners*

In March 2011, UKBA wrote to its corporate partners providing details of the new 'end to end' process for family removals.

Where families have not departed voluntarily, the Government retains the power to ensure that they comply with removal directions. The 'ensured returns' process will be mediated by a new Independent Family Returns Panel⁴⁶ which will provide expert advice to the UK Border Agency. According to the terms of reference for the panel their advice will 'help to ensure that individual return plans take full account of the welfare of the children involved and that the UK Border Agency fulfils its responsibilities under Section 55 of the Borders, Citizenship and Immigration Act of 2009.' The panel will have a number of options open to it but the option that has received most attention to date is to recommend placing a family in secure 'pre-departure accommodation' for the last 72 hours before removal (extendable to a week in exceptional circumstances).

However, the accommodation is secure and it is likely to be governed by the 'short term holding facility' rules (yet to be published) and will be within the inspection remit of HM Inspectorate of Prisons (as are immigration removal centers (IRC)). Furthermore families will remain there under the detention powers of the Immigration Act 1971.

The principal detention centre in the UK housing families, Yarl's Wood Immigration Removal Centre (IRC) in Bedfordshire, closed its family unit in December 2010 following an announcement by the Deputy Prime Minister in which he also said that "the practice (of detaining children) will end completely by May 2011." Tinsley House IRC, near Gatwick airport, continues to have capacity to hold a small number of families and has accommodated families in small numbers since the closure of Yarl's Wood family unit. It looks like it will continue to do so after the May deadline following the Minister's answer to a recent parliamentary question and considerable financial investment in refurbishing and extending family accommodation at the IRC.⁴⁷

Scotland has one IRC within its jurisdiction. The Scottish Government secured the ending of detention of families with children in Dungavel in May 2010. However, until the policy of detaining families across the UK ends, there continues to be a risk of families from Scotland being detained in Tinsley House or in the new 'pre-departure accommodation'. This raises concerns about the impact on children of an 11.5-hour car journey to Gatwick or its vicinity. Consequent separation from legal advice and support networks therefore remain a concern to SCCYP.

Neither Northern Ireland nor Wales currently have an IRC within their jurisdiction but a 'short term holding centre' for adults opened in Northern Ireland this year. Families in Wales facing detention have in the past been transported to Yarl's Wood. Families in Northern Ireland facing detention have in the past been taken to Dungavel in Scotland although this is now no longer an option. Given the policy of ending the detention of children there may need to be arrangements for families entering

the ensured return phase to be transported to England prior to final removal. NICCY will be meeting with UKBA in the near future to discuss the proposed arrangements. Both NICCY and the Children's Commissioner for Wales share Scotland's Commissioner for Children and Young People's (SCCYP) concerns regarding the severing of families from legal advice and their community support networks prior to removal. These concerns are unlikely to be resolved for families subject to an ensured return where the Family Removals Panel recommends the use of the pre-departure accommodation near Gatwick.

The Government's proposals as outlined above may well fall short of an end to the detention of children but it has yet to be seen whether the new process meets the requirements of Article 37(b) or fulfils the recommendation of the Committee from the 2008 reporting round. There will be an ongoing need to monitor and evaluate each stage of the new process including obtaining the views of children and young people subject to removal in line with Article 12 of the UNCRC. The Government has committed itself to monitoring and evaluation and the existence of the Family Removals Panel (FRP) will be a 'live' check on the process. However information about the limitation on the FRP's powers suggests that it does not appear to be able to send cases back to UKBA where they feel that either procedural matters have not been complied with (including matters concerning the health or welfare of a child) or, more fundamentally, that the decision to remove is wrong or has not taken into account a particular factor (for example applying the duty under 55). The Children's Commissioners therefore consider that independent monitoring and evaluation of the Family Removals Process will be an essential part of fulfilling the Committee's recommendation.

b) Ensure that the United Kingdom Border Agency (UKBA) appoints specially-trained staff to conduct screening interviews of children;

Since the publication of the Children's Commissioner for England report 'Claiming Asylum at a Screening Unit as an Unaccompanied Child' in March 2008 there have been some significant changes to the screening process and to the environment in which children undergo screening at Croydon Asylum Screening Unit (ASU)⁴⁸. There is also now a national requirement that all staff dealing with children must undergo training at a level appropriate to their contact with children. Some evidence suggests that this is happening with UKBA staff reporting that the training has been 'useful and informative.'⁴⁹

All 'in-country' adult asylum applicants and their children are now screened in Croydon. Unaccompanied children detected entering unlawfully at a port may be screened on location if the port is 'enabled' to conduct screening. The 'regionalisation' of screening of unaccompanied children, while positive in respect of the avoidance of unnecessary travel, has created a number of potential issues considered below.

The Children's Commissioner for England re-visited Croydon ASU at short notice in November 2009 and noted improvements to the screening form and to the conduct of interviews.

⁴⁶ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/296503/independent-family-returns-panel>

⁴⁷ The family unit at Tinsley House Immigration Removal Centre near Gatwick Airport is currently undergoing a £1 million refurbishment in order to accommodate 38 beds and up to eight families. The immigration minister, Damian Green, in a written answer to a parliamentary question on 8th March 2011 confirmed that there "may also be the occasional need to use Tinsley for criminal or other high-risk families who could not be accommodated safely in the pre-departure accommodation but this would be rare." It is not clear how "criminal" or "high-risk" families are to be defined.

⁴⁸ *Processing an Asylum Application from a Child* (UKBA guidance) describes the screening process for child applicants as "designed to obtain details about: the child's identity, country of origin and family, the history of how they arrived in the UK and their documentation; any previous claims for asylum; their health and any special needs; security-related information; and, the identity of anyone accompanying the child or acting as their Responsible Adult. Additionally, the applicant's photograph and fingerprints are taken."

⁴⁹ Independent Chief Inspector of the UK Border Agency (2010) *Inspection of UK Border Agency Operations in Wales and the South West*.

We are pleased to note that staff at ports, the ASU and in Local Immigration Teams encountering a child for the first time must offer refreshments, access to toilet facilities and rest if necessary and must complete a 'welfare form' establishing whether the child is fit to be interviewed prior to commencing any immigration interview. We are not aware of any formal monitoring or evaluation of whether this has been effective in ensuring children are fit to be interviewed but the Children's Commissioner for England's own enquiries of children has provided a mostly positive experience of such issues on initial contact.⁵⁰

Research undertaken in 2010⁵¹ with Unaccompanied Asylum Seeking Children in Wales by the Welsh Strategic Migration Partnership and Welsh Refugee Council in the development of a Protocol for Safeguarding and Promoting the Welfare of Unaccompanied Asylum Seeking and Refugee Children highlighted the levels of anxiety felt by those children whilst undergoing the *substantive* interview process with UKBA and some of these concerns may also be relevant to screening. Children expressed concerns around availability and access to interpretation services and also whether UKBA staff would believe their accounts. The findings are supported by a forthcoming report from the Welsh Refugee Council on the issue of age assessments in Wales. Children speak of having to repeat their accounts and of interviews being conducted by UKBA staff in police cells where children felt intimidated by the surroundings. Some reported being interviewed almost immediately upon arrival after sometimes long and arduous journeys to the UK. NICCY reports that UKBA opened an office in Northern Ireland in July 2009 in which interviews of children take place. There is, however, no 'child friendly' interview room in the Belfast office. They are unaware of whether staff conducting screening interviews have been specially trained to do so. NICCY would welcome clarification regarding the issue of training for both Border Force staff, which operate at the airport and often screen children, and Immigration Officers operating at Drumkeen House. The Law Centre (Northern Ireland) has informed NICCY of concern regarding Border Force operations – citing examples of children being screened very soon after arriving off a plane, and very late at night. NICCY is currently working among a group of organisations to establish current practice by key actors in addressing the legal and welfare needs of separated children in Northern Ireland.

We remain concerned that "*there is no requirement for a Responsible Adult to be present when the child is being interviewed initially (for example at first contact) or at their screening interview*"⁵² and that a child's stated preference to have a legal representative attend screening must be 'balanced' against operational needs and delays caused by the need to re-book the interview. Furthermore, the guidance on obtaining information about the child's reasons for claiming asylum in such interviews (without the benefit of the presence of a legal representative or responsible adult) remains convoluted. While staff must establish that the child wishes to claim international protection, they should not elaborate on 'why' that is the case. However, it remains acceptable to record information on 'why' the child is claiming asylum if the information is 'volunteered' by the child. There is some compelling evidence that information

obtained in such circumstances is used further on in the asylum determination process to undermine the 'credibility' of the child's account.⁵³ The Children's Commissioner for England is intending to pursue enquiries into how children are processed on first contact in the near future due to these outstanding concerns.

c) Consider the appointment of guardians for unaccompanied asylum seekers and migrant children;

The UK Government's position remains that there is no need for a formal guardian on account of the existence of the 'corporate parent'. This is despite the Committee's observation in 2008 of the shortcomings of such an approach. There has been some progress on this issue by the Scottish Government which we report on below. Organisations in Northern Ireland are also now considering the issue.

The European Union published an Action Plan on Unaccompanied Minors⁵⁴ covering 2010 to 2014 in which it states that "*Guardianship and legal representation of the child are of crucial importance*". The Minister for Immigration, Damian Green, responded to the EU Action Plan at the European Scrutiny Committee in 2010⁵⁵

The Action Plan has no policy implications for the UK

In its detailed response to the UN Committee on the Rights of the Child's Concluding Observations, the Scottish Government committed to working with partners to '*develop a pilot scheme to provide independent advocacy support to separated children*' (Scottish Government 2009, p. 62). It has acted on its commitment and is currently involved in piloting a guardianship service for the first time in the UK.

The pilot is aiming to achieve two main outcomes - to significantly improve the experience of the immigration and child welfare processes of the children covered by the pilot and to develop a child-centred model of practice.

The UK Children's Commissioners recommend that the UK Government should give cognisance to the evaluation of the Scottish guardianship project, with a view to rolling out the scheme on a permanent basis if it proves to be a success.

Despite the small numbers of unaccompanied children arriving in Northern Ireland there are concerns about the systems of support for these children. Currently, separated children in Northern Ireland may come into contact with a wide range of professionals as part of the immigration and welfare processes, and there is recognition that a more joined-up approach is required. NICCY is part of a working group of organisations that is exploring how the system may be improved, including the possibility of a guardianship scheme.

d) Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed;

The Home Office has published asylum data on a quarterly basis since 2001. This is said to provide a better indication of trends

⁵⁰ Children's Commissioner for England (Feb 2011) "*Landing in Kent – The experience of unaccompanied children arriving in the UK*"

⁵¹ All Wales Child Protection Procedures Review Group (2010) *Consultation on an All Wales Protocol Safeguarding and Promoting the Welfare of Unaccompanied Asylum Seeking and Refugee Children*

⁵² UKBA (2010), Op Cit.

⁵³ Refugee & Migrant Justice (2010) *Safe at Last? – Children on the front line of UK Border control.*

⁵⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0213:EN:NOT>

⁵⁵ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/428/428i80.htm>

than monthly data. The quarterly statistics provide information on applications and initial decisions of unaccompanied asylum seeking children by county of nationality. In the quarterly statistical summary for Q3 of 2010, the Home Office introduced for the first time data on UASC broken down by age and sex and initial decisions going back to Q1 2006. Age disputed applications are also provided in a table both by country of nationality and by location of application.

Data on dependant children is less evident. Asylum applications are mostly recorded 'excluding dependants' and where dependants are included there is no breakdown between spouses and dependant children. The same issue applies to data on applicants accessing asylum support. There doesn't appear to be data relating to child applicants or dependants broken down by region which would prove useful for planning service delivery.

Data on 'enforcement and compliance' does not disaggregate children entering detention under immigration powers as well as children leaving detention and whether they were removed or were given temporary admission/release.

NICCY reports that there are continued difficulties in accessing accurate data in relation to children subject to immigration control in Northern Ireland. The Home Office does not publish data specific to Northern Ireland. NICCY has called for accurate, disaggregated data to be recorded and published regarding newcomer children to Northern Ireland.⁵⁶ UKBA indicated to NICCY that it would take up the issue about providing separate information in relation to children arriving in Northern Ireland. There is also a role for the Department of Health, Social Services and Public Safety in Northern Ireland in relation to the collation of data on separated children.

The Government in Wales has developed a 'Children in Need Census'⁵⁷ which includes collecting high level data on the number of asylum seeking Children in Wales. The data reported that there were 125 Unaccompanied Asylum seeking children who were classified as children in Need and had a case open between January and March 2010 across the 22 local authorities in Wales. There were also 70 children who were accompanied in the same timeframe. However, this only collates information in relation to those children who were defined as children in need by local authorities and had an open case file at the end of March 2010 which had been open for the 3 months prior to that.

Local authorities make financial returns to the UK Border Agency on a monthly basis to inform them of how many UASC's are in the care of children's Services however this data is not collated and published by the UK Border Agency. It was noted that not all local authorities make returns to the UK Border Agency so an all Wales picture of the data may not be accessible.

The UK Children's Commissioners welcome the improvements in disaggregated data relating to children subject to immigration control since the last reporting round but concur that the data is still hard to access or find in one place and to date has not proved particularly useful in providing information that might assist with service delivery to children at the local and regional levels.

- e) *Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts' guidance on how to determine age;*

This recommendation applies to the all authorities charged with the task of determining the age of a person claiming to be an unaccompanied child. Principally these bodies are the UK Border Agency, Local Authorities and, in England and Wales following the judgement of the Supreme Court in 'A' and 'M'.⁵⁸

UKBA has updated its guidance to staff since the Committee last reported. The current process guidance⁵⁹ sets out the policy and procedure to be followed where an applicant claims to be a child but has no definitive documentary evidence to prove this. The policy and procedure to be following when an applicant is first encountered is as follows:

"Where there is little or no evidence to support the person's claimed age, (often the case at screening stage), the following policy should be applied:

1) The claimant should be treated as an adult if their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age. These applicants fall within the adult process.

2) All other cases should be processed in the first instance as though the applicant were a child, in accordance with the Asylum Instruction 'Processing Asylum Claims from Children'. This policy is designed to safeguard the welfare of children. It does not indicate final acceptance of the claimed age, which will be considered in the round when all the evidence is collected, including the view of the local authority to whom unaccompanied children, or claimants who are to be temporarily treated as unaccompanied children, should be referred."

Providing a discretion to immigration officers to treat an applicant as an adult if their appearance/demeanour 'very strongly suggests' they are 'significantly' over 18 (the 'rule of thumb' used by UKBA staff is 'over 25') is highly problematic. When such a decision is made there is no requirement to refer the applicant onto the local authority for an assessment and since they 'fall within the adult process' may be liable for detention in an adult removal centre.

The Children's Commissioner for England asked UKBA for their management information on how many applicants fell within this class when visiting Croydon ASU in November 2009. The Children's Commissioner was informed that for the 11 months from January – November 2009 inclusive, 110 applicants had been so assessed at the ASU alone and therefore routed to the adult asylum process (we have no data on how many entrants claiming to be children at port were also assessed in this way). Although we have no data for this period on how many applicants falling within this class were subsequently detained, it is clear from the Independent Monitoring Boards (IMB), the British Refugee Council and more recently from UKBA's own data collection that some do.

⁵⁸ UKSC 8 [2009] R (on the application of 'A')(FC) (Appellant) –v- London Borough of Croydon (Respondents) and R (on the application of 'M') (FC)(Appellant) – v- London Borough of Lambeth

⁵⁹ UKBA (2010) Assessing Age
<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/assessing-age?view=Binary>

⁵⁶ NICCY (May 2010), Policy Briefing on Newcomer Children

⁵⁷ <http://wales.gov.uk/topics/statistics/headlines/health2011/110224/?lang=en>

In Harmondsworth IRC alone in 2010, IMB recorded 45 detainees claiming to be children⁶⁰. The Refugee Council (which has one dedicated worker assisting with age disputed cases across the detention estate) took up 37 detained age disputed cases in 2010 of which 26 were released as children, six were considered to be adult with the remaining cases outstanding as of April 2011.⁶¹

Where UKBA 'has doubts' about the age of an applicant but does not regard their demeanour/appearance as *very strongly* indicating that they are *significantly* over 18, they will defer a final decision and refer them to the local authority for an age assessment. They will then treat them as a child until the local authority reports back to them or other evidence comes to light. UKBA policy requires staff to accept the age determination of the local authority unless there is strong countervailing evidence. While it is preferable that child care professionals make the assessment on age, this brings with it a number of problems. The UK Children's Commissioners have held a consistent position that there is a potential conflict of interest where a local authority has the dual role of making the decision on the age of the young person and then accommodating them if found to be a child. The potential conflict is exacerbated by the insufficient 'per capita' grant that UKBA provides for the care of each person found to be a child and the subsequent financial consequences for the authority. Because a majority of age disputed young people will first come to the attention of UKBA in a 'gateway' authority there is a disproportionate impact on those particular Local Authority budgets and therefore a greater incentive to reduce their costs by finding the young person either not to be a child or to be older than the person is claiming (as it is more expensive to accommodate a young person below the age of 16). The Children's Commissioners have therefore taken the position that there should be a greater involvement in the age determination process by other professionals who are in contact with the young person. Of particular importance is establishing the view of a paediatrician before coming to a final decision.

Currently there is no statutory guidance for local authorities to refer to in determining age in any UK jurisdiction and the lack of statutory guidance has meant that the quality of decision-making has been variable both between and within local authorities.

The evidence from around the UK is that Local Authorities do not consistently give the 'benefit of the doubt' to a young person claiming to be a child. Where a child is incorrectly assessed as an adult or as older than they actually are, this has profound effects on the child's enjoyment of their rights under the UNCRC. Such effects include being detained with adults, being housed with adults, missing out on education, missing out on the protective support of the corporate parent, loss of identity leading to self harm and depression in addition to then being treated as an adult within the asylum determination procedure with the loss of the safeguards provided to children.

A good deal of evidence has been collected in Wales through the Children's Asylum Policy Group, the Children's Commissioner's Advice and Support Service and by the Welsh Refugee Council (WRC). WRC estimate that in 2009 around 75 per cent of applicant's claiming to be unaccompanied children had their age disputed by Welsh local authorities. In 2010, the WRC child advocate dealt with 51 age disputed young people of whom 19 went on to be accepted as children and a further 10 cases remain

outstanding. It is often only through advocacy or legal action that children are able to regain their right to be treated as a child. WRC will be calling on the Welsh Government to lead on developing a toolkit for use by professionals in their forthcoming report on age assessment.

The Scottish Government is currently involved in the work undertaken by the Scottish Refugee Council towards the development of an age assessment tool and guidance for use by local authorities, which is integrated within a wider assessment of the needs of young persons who may need to be supported by local authorities. However, at the time of writing this report it remains unclear what commitment the Scottish Government is prepared to make to promoting the tool and guidance and ensuring its compliance with it. The tool will be compliant with the general principles of the Scottish Government's *Getting it Right for Every Child* strategy. The guidance will also provide advice on how to inform young people about the purpose of the age assessment, its possible outcomes and the implications of these outcomes, as well as on obtaining informed consent for sharing information with the UKBA.

In Northern Ireland, there are now a number of social services staff trained to carry out Merton-compliant age assessments. The Department of Health, Social Services and Public Safety in Northern Ireland (DHSSPS) and the Police Service for Northern Ireland have recently produced Guidance on the 'Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking', which provides some information regarding age disputed young people. While the Guidance is to be welcomed, its scope is limited to trafficked children, and there are calls for DHSSPS (NI) to consider issuing specific guidance for all separated children.

In a positive development in England, the Royal College of Paediatrics and Child Health (RCPCH) is looking to revise its 1999 guidance and has developed a proposal to make age assessment a more widely practised skill across the profession.

- f) *Ensure that when the return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment;*

The UK Children's Commissioners are aware of a range of concerns related to the return of children from the UK:

- Returns of children to Europe under the 'Dublin II' arrangements
- Plans to return 16 and 17 year old Afghan children to Kabul irrespective of family tracing efforts.

And in respect of children in families:

- Separation of children from parents as a means of enforcing removal of the family
- Inadequate attention to ensuring children have received travel vaccinations, up to date childhood immunisations and prophylaxis.
- A lack of monitoring of returned families who may face destitution, arrest on or shortly after arrival or separation of children from parents.

⁶⁰ IMB Harmondsworth (April 2011) Paper delivered to the Refugee Children's Consortium Detention sub-group 08.04.11

⁶¹ Refugee Council (April 2011) Presentation delivered to the Refugee Children's Consortium Detention sub-group 08.04.11

Returns of Children to Europe under the 'Dublin II' arrangements

The Children's Commissioner for England has a standing recommendation to Government that they opt to deal substantively with the asylum claim of such children in the UK unless a guarantee can be secured that any returned young person will be received and accepted as such.

A wider concern is the assessment of 'best interests' by the Third Country Unit in the decision-making process. In *R (TS) v SSHD [2010] EWHC 2614 (Admin)*, October 2010, the Administrative Court held a decision taken in December 2009 to return a child to Belgium under Dublin II arrangements to be unlawful by reason, in part, of a failure to comply with the statutory duty to have regard to the child's welfare. For example plans to return 16 and 17 year old Afghan children to Kabul irrespective of family tracing efforts.

UKBA maintains a 'policy commitment' to unaccompanied children under the 'Discretionary Leave' policy in respect of returning them to their country of origin while they remain under the age of 18.

"Where an unaccompanied child applies for asylum, caseworkers should, as with any other applicant, first consider whether they qualify for asylum and if they do not, whether they qualify for Humanitarian Protection. If they do, leave should be granted accordingly. If they do not, they will qualify for Discretionary Leave if there are inadequate reception arrangements available in their own country."

While most unaccompanied children whose asylum claims fail are given temporary leave to remain until age 17.5 in line with the Discretionary Leave policy, UKBA is currently considering a proposal to return 16- and 17-year-olds to Kabul. This raises considerable concerns and may be hard to reconcile with the s.55 duty in the selected cases. For example, the UN Committee on the Rights of the Child recently completed its reporting cycle in respect of Afghanistan, and found the following:

"The Committee notes with concern that in spite of recent legislative developments in the field of child rights, the State Party does not consider the Convention as a legally binding instrument in the internal order and has therefore not incorporated it systematically into domestic legal system in order to make it applicable. The Committee is also concerned that child rights continue to be negatively affected by the application of different sources of law, namely codified, customary and Sharia laws and that legislation contradictory to the Convention remains in force... And,

"...the Committee expresses deep concern over the death of hundreds of children as a result of attacks and airstrikes by insurgent groups, international military forces and the Afghan National Army (ANA). The Committee expresses serious concern that armed forces responsible for the killing of children have not been held accountable and that the grievances of families have not redressed.

Separation of children from parents as a means of enforcing removal of the family

The statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children⁶² However, the Children's Commissioners' attention has been drawn to cases where, in attempting to get children and their parents onto a plane, restraint has been used either on children or on their parents in sight of the children. In other cases children have been 'split' from parents in order to try and ensure the family travels. Such actions may, in our view, conflict with or breach the section 55 duty. However, once on the flight, the duty ceases although as a matter of policy there is still a requirement to have regard to the duty. We do not have any information on the guidance or instructions given to overseas escorting contractors in respect of their section 55 duty, or the associated policy in respect of the journey.

Inadequate attention to ensuring children have received travel vaccinations, up to date childhood immunisations and prophylaxis

The requirement to promote the child's welfare and safeguard them must cover the medical needs of the child. We have argued that all families being removed to malarial areas must be provided with insecticide-treated bed nets as a minimum. Prophylaxis should also be arranged for all children – not just the under-five's as has been UKBA policy.

The Children's Commissioner for England's visits to Yarl's Wood IRC showed that detention interrupted the routine immunisation of children and, in some cases resulted in crucial immunisations being missed before removal to high-risk countries, particularly with regards to meningitis and measles. Continuity of any regular medication given to children in the UK must be ensured. We know of several cases where children being treated for HIV infection or having full blown AIDS were returned without first checking whether the particular anti-viral regime they were receiving in the UK was available, and with no supplies to take with them. This exposed these children to significant risks, and UKBA must ensure that the new family removal arrangements do not do so.

A lack of monitoring of returned families who may face destitution, arrest on or shortly after arrival or separation of children from parents is an issue.

There is currently no system of monitoring initial reception at airports or longer term reintegration unless the family departs voluntarily and receives assistance from the International Organisation for Migration (IOM). The position of failed asylum seeker returnees was recognised by the Independent Asylum Commission in its final report:

*"... there is no monitoring of what happens to those returned once they have left the UK."*⁶³

Provision of mobile phones to families by support organisations in the UK prior to return has enabled more information about what happens to returnees to circulate, and often raises awareness of foreseeable risks which should be addressed as part of the consideration of the child's welfare and best interests. The most frequent of these is destitution. Often families will arrive with no

⁶² UKBA and DCSF (November 2009) *Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children*

⁶³ Independent Asylum Commission (2008) *'Safe Return'*, at Paragraph 4.4.

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means of even getting from the airport to their home area, with children being left to sleep on the streets until this can be resolved.

In even more serious cases (specific to a number of countries), children have been separated from their parent and held in detention immediately at the airport or shortly after in the receiving country. If, as a matter of policy (rather than as required by the duty), UKBA requires its contractors to have regard to safeguarding and welfare issues at every stage of the journey, it must be recognised that the 'journey' doesn't end with the plane touching down in the home country.

Paragraph 76 - The Committee recommends that the State Party provide the necessary resources for an effective implementation of the Anti-trafficking Action Plan. It also recommends that the State Party ratify the Council of Europe Convention on Action against Trafficking in Human Beings and implement its obligations by ensuring that child protection standards for trafficked children meet international standards.

The UK Government ratified the Council of Europe Convention on Action against Trafficking in Human Beings in December 2008 and The Convention came into force in the UK in April 2009 but without an accompanying formal monitoring mechanism. The UK Government has set up the National Referral Mechanism under which there are 'first responders' and 'competent authorities' established to respond to and process suspected cases of human trafficking.

Authorised agencies, such as the Police, UKBA, Social Services and certain NGOs (the 'first responders'), who encounter a suspected victim of human trafficking, can refer them to a Competent Authority (CA). The role of the Competent Authority is to then decide on whether a referred individual has indeed been trafficked in which case the protections afforded by the Convention are implemented. In the UK, there are two CA's, the UK Human Trafficking Centre (UKHTC) and the UKBA. The UKHTC takes any referral but will only make decisions on cases that are not subject to immigration control. Those who are subject to immigration control will be passed on to UKBA for a decision on their trafficked status.

The Anti Trafficking Monitoring Group, a coalition of NGOs working on trafficking in the UK, extensively researched how the NRM was working after its first year of operation and published a comprehensive report in 2010. The report, entitled '*The Wrong Kind of Victim*' highlighted serious concerns about whether the NRM was working adequately to protect children. In summary the report argues that the UK is not yet meeting its obligations under the Convention. The key reasons identified for this are that the Government has:

- misunderstood key provisions of the Convention;
- not addressed the entirety of the Convention;
- delegated considerable authority on identification to a flawed mechanism staffed by substantially unaccountable officials; and
- overlooked the necessary safeguards for child victims of trafficking

The research examines in detail the impact of the implementation of the Convention on child victims of trafficking. A strong and mature framework to safeguard children exists in the UK. While the Government has clearly stated that it views child trafficking as a form of child abuse, in setting up the NRM it has decided to bypass this existing system and has not tasked local authority

children's services with acting as competent authorities in suspected cases of child trafficking despite their expertise in child protection and their statutory duty to safeguard children. Instead, local authority children's services are required to refer cases for decision to the designated competent authorities in the NRM. There is little confidence amongst organisations that come across child victims (and amongst the research respondents) that UKBA and UKHTC have sufficient expertise to make the decision on whether a child has been trafficked. Research respondents largely expressed the view to the Monitoring Group that it was inappropriate for the Home Office to be the Government department with lead responsibility concerning trafficked children and that they should be replaced by relevant Government departments for children (including in the devolved administrations).

Whilst training and other developments around awareness raising are helping professionals who are meeting trafficked children for the first time (see below), there remain concerns around whether child victims are adequately safeguarded due to the structural issues around how the NRM has been established. In addition, the UK Government has not met the requirement under the Convention to appoint a legal guardian to potential child victims. This should happen as soon as a potential victim has been identified to guarantee that their best interests are the primary consideration in all aspects of how their case is handled.

The Coalition Government disregarded the previous Government's National Action Plan following their election and to date there has been no review leaving a policy vacuum for the last year. There is no adequate plan for consultation in the lead up to the new strategy and currently indications are that there will be no separate children's section in the strategy. Home Office officials have refused to share drafts of the proposed strategy with NGO stakeholders. The Government nevertheless intends to review the Action Plan and to publish its strategy in Spring 2011.

In 2009, the Children's Commissioner for Wales published *Bordering on Concern*⁶⁴ which looked to establish the extent of Child Trafficking in Wales. The report found that there was a lack of awareness and disbelief amongst professionals that trafficking was taking place and that responses to possible cases of trafficking were very variable.

Recommendations were made to the Welsh Government including a review of training and the establishment of an All Wales Child Trafficking group to ensure a clear and coherent approach to the issue. A further recommendation was that all Local Safeguarding Children's Boards in Wales (LSCBs) should implement the Welsh Government's guidance on child trafficking within a year of the publication of the report. The report had highlighted a low level of awareness and implementation of the guidance across the LSCBs in Wales.

Since publication a number of steps have been taken to address the issue including a review of training, the development and dissemination of an online initial training package and the development of an All Wales Child Trafficking Protocol which is intended to be adopted by all LSCBs in late 2011.

Additionally the Welsh Government is currently recruiting an All Wales Human Trafficking Coordinator whose task will be to coordinate approaches to Human Trafficking, including child trafficking, in Wales.

⁶⁴ Children's Commissioner for Wales (2009) *Bordering on Concern* <http://www.childcomwales.org.uk/uploads/publications/130.pdf>

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Despite these positive developments, the Children's Commissioner remains concerned that children who may have been trafficked are not yet effectively safeguarded if and when they are identified by the relevant Welsh authorities.

In responding to the Committee following the 2008 Concluding Observations in the area of child trafficking, the Scottish Government made the following commitments:

- "Work with partners to better understand the scope and causes of child trafficking and sexual exploitation in Scotland"
- "Consider how we can better support trafficked children as part of work around improving support/services for separated children."
- "Work with key local partners, through the Action Plan and the guidance, to put in place effective measures to offer appropriate support to this vulnerable group."

The Scottish Government has since published its guidance⁶⁵. It puts the commitments in the joint UK Government/Scottish Executive Action Plan of 2007 into the Scottish context in recognition of the fact that the structures and legislative framework in child protection and other matters are different in Scotland.

In March 2011 Scotland's Commissioner for Children and Young People and the Centre for Rural Childhood at UHI Perth College published *Scotland: A safe place for child traffickers? A scoping study into the nature and extent of child trafficking in Scotland*.

Based on a survey of over 800 frontline professionals in social work, education, health, police and the UKBA, and semi-structured interviews based on survey findings, the study found that over 200 children may have been trafficked to Scotland in the past two years. Only 14 children had been referred to the UKBA under the NRM in the same period. This discrepancy may have led to a significant number of children falling through the net.

The findings suggest a lack of awareness of child trafficking and a need for the Scottish Government to be seen as leading and coordinating the work on child trafficking. A need for more targeted training for professionals who are most likely to come into contact with children who may have been trafficked was identified, too. The report also found a reluctance to investigate child trafficking allegations unless the victim specifically requests an investigation, a finding which is related to the fact that there have been no convictions on child trafficking offences in Scotland (as of March 2011).

The working of National Referral Mechanism (NRM) drew a variety of comments, which led the Children's Commissioner to agree that it needs to protect better all child victims of trafficking. One of the main criticisms was the understanding that it does not offer additional protection to victims of child trafficking from outside the European Union, compared to the protection they receive as asylum seeking children. The interviews and the literature review revealed other weaknesses of the NRM - it does not allow appeals of decisions on whether a person is a victim of trafficking, it is too closely aligned to the asylum process and uses a narrow definition of the term 'referral'.

The report made a number of recommendations, including:

- an urgent review of the National Referral Mechanism in order to improve the process and put children's rights centre stage (UK Govt);
- appointment of an independent Human Trafficking Rapporteur, not least to improve knowledge about trafficking and data collection (UK Govt);
- opting in to the EC Directive on Preventing and Combating Trafficking in Human Beings (UK Govt);
- subject to a successful pilot, roll out the Scottish guardianship scheme (SG);
- improved leadership and implementation of national policy and guidance on a local level, including through multi-agency protocols to guide action on trafficking locally (SG);
- encourage designation of a lead manager on child trafficking in each local authority, and fund and drive implementation of training for all relevant professionals (SG/Local authorities);
- ensure that the investigation of child trafficking cases and related work is resourced sufficiently (SG/LAs/police); monitor effectiveness of current legislation criminalising trafficking; (SG)
- consider ways of engaging children and young people in awareness raising about trafficking and exploitation (SG);
- make investigations of child trafficking a high priority and investigate all cases of suspected child trafficking without delay (police forces).

The scale of child trafficking in Northern Ireland is not clear. As stated previously, the Department of Health, Social Services and Public Safety (NI) and the Police Service for Northern Ireland have recently published Guidance for dealing with child victims of trafficking in Northern Ireland. In addition, Barnardo's NI and NSPCC NI are shortly launching a joint Policy and Practice Briefing on separated children and child trafficking in Northern Ireland.

The risk of suspected child victims of trafficking going missing from care shortly after arrival in Northern Ireland has been noted within the Departmental Guidance, and has been identified as a concern by relevant organisations in Northern Ireland.

NICCY is part of a group of organisations in Northern Ireland exploring how the welfare and legal needs of separated children are being addressed and may be improved.

The particular issue of unaccompanied children going missing from care shortly after their arrival in the UK appears to be a consistent theme across all jurisdictions. It is strongly suspected that in many cases of children going missing in these circumstances, traffickers are to blame. This underscores the need for the recommendations that the UK Children's Commissioners have made in respect of guardianship and better awareness and training for local authority childcare practitioners. However, the UK Government and the devolved administrations must take a lead and ensure that local authorities are aware of their obligations under the CoE Trafficking convention. In the absence of an implementation plan there appears to be widespread confusion over whether measures are 'statutory' or not, and the relationship between the CoE provisions and existing policy and procedure for asylum seeking children.

Specialist support for child victims remains patchy with access to mental health care and to safe accommodation remaining poor. The benefit of doubt on age decisions of possible child victims is

⁶⁵ Scottish Government (2009) *Safeguarding Children in Scotland who may have been Trafficked*

not being widely implemented. There are continued problems with criminalization of some victims for example those brought to the UK to act as 'gardeners' in Cannabis factories. There is also an issue with removals of age disputed potential victims living in adult accommodation and confusion within UKBA as to whether the CoE Convention applies if the victim is removable under the Dublin II arrangements.

In March 2011 the UK Government announced its plans to opt in to the EU Directive on preventing and combating trafficking in human beings and protecting its victims. The Children's Commissioners welcomed the decision but were consequently disappointed by statements made in the UK Parliament that the UK is already compliant with the Directive's provisions regarding the assistance and support for child victims of trafficking (House of Commons 2011). Of equal concern is the lack of ambition to improve the identification and protection of child victims and the capacity to investigate and successfully prosecute child trafficking offences demonstrated in the UK Government's Human Trafficking Strategy (UK Government 2011). The Children's Commissioners note that this is the first UK Government anti-trafficking strategy that only covers England and Wales and, given the cross-border nature of this form of criminality, this could only be seen as detrimental to the successful combating of human and child trafficking across the whole of the UK.

4. What are the outstanding concerns, including outstanding recommendations of the UK Children's Commissioners in 2008

Outstanding concerns have largely been highlighted in Part 3 (above). The UK Children's Commissioners' recommendations from 2008 are reported here along with a brief note on outstanding concerns where these have not been covered in the text of Part 3.

R91. The UK Government should remove their reservation to Article 22 of the UNCRC.

The reservation was a general reservation against the application of the whole Convention to children subject to immigration control not simply to Article 22. The reservation has now been removed.

R92. Detention should only be used as a last resort. The UK Government must explore meaningful alternatives to detention including other forms of supervision.

The process for removing families with no further legal entitlement to remain has been significantly revised. It is too early to say whether the new arrangements will meet the requirements of Article 37(b). See text of Part 3 for further details.

R93. The UK Government should undertake a thorough review of the current arrangements for determining age with a view to ensuring that unaccompanied children seeking asylum are treated as such and afforded their rights as children.

The only review (the Age Assessment Working Group) in 2008 has never published its findings. While guidance has been changed the practice has improved only a little due to case law rather than Government efforts. See text of Part 3 for further details.

R94. The UK Government should ensure that children whose claims fail are only ever removed if it is in their best interests as ascertained by a UK appointed legal guardian.

The policy commitment that no unaccompanied child should be removed unless the Secretary of State is satisfied that safe and adequate reception arrangements are in place is not being fully honoured. This is particularly true of 'Dublin' removals where the courts have been very critical of UKBA practice⁶⁶. We have yet to see the arrangements for the proposed return programme of 16 and 17 year olds to Afghanistan. No legal guardian is to be put in place as part of the processes envisaged for forced returns or assisted voluntary returns. See text of Part 3 for further details.

R95. The Government should carry out an independent review of the children's segment of the new asylum process and no further changes to the leave policy should be implemented until this review has taken place.

The UNHCR carried out an audit of the quality of decisions in children's claims in 2009.⁶⁷ As a result of their observations of interviews with children and auditing of files and decisions UNHCR made a number of recommendations. These included (in summary) that:

In all elements of the decision-making process, primary consideration should be given the best interests of the child. The assessment and consideration of best interests should be systematic for all actions that affect the child.

UKBA should support the development of a guardianship system, independent of UKBA. A guardian should be appointed upon identification of any unaccompanied or separated child. Training of case owners should focus more on specific skills and knowledge required for interviewing and making decisions on children's claims.

Significant improvements to the asylum policy instruction on 'processing applications from a child' Earlier assignment of files to case-owners and greater efforts to ensure an appropriate interview environment that facilitates the child's disclosure of evidence. Specific training for interpreters used in children's cases.

UNHCR did not make any recommendation in relation to 'leave policy'. This may be because it was outside of the remit of their audit which is agreed beforehand with UKBA. UKBA had changed the Discretionary Leave policy for unaccompanied children in respect of the period of grant of Discretionary Leave reducing it from 'up to age 18 years' to 'up to 17.5 years'.

UKBA responded to the recommendation on guardianship as follows:

"The UKBA question the added value of introducing a new scheme which has the potential to undermine the expertise of the current social working system, as well as having potentially significant cost implications. Nonetheless, the UKBA are awaiting a business case from Refugee and Migrant Justice which will collate the views within the NGO sector. UNHCR will also be providing its views on the benefits and proposed mechanisms of a 'guardianship' scheme. The UKBA will reach a decision on this recommendation in the light of the business case."

⁶⁶ See e.g. *R (T & M) [2010] EWHC 435 (Admin)*

⁶⁷ UNHCR (April 2009) Quality Initiative Project – Sixth Report to the Minister.

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The outcomes of these developments are not known to the UK Children's Commissioners.

R96. In England and Wales, all local authorities should provide unaccompanied asylum seeking children support under s.20 of the Children Act until they are 18.

This recommendation arose in part from information provided to the Children's Commissioner for England that some local authorities were 'de-accommodating' children after 13 weeks of support under s.20 and then placing them on 'leaving care' support. This denied them certain statutory protections.

We believe that the majority of local authorities in England are now providing support under s.20 and the Children's Commissioner for England has no recent evidence to the contrary. The use of section 20 rather than other provisions of the Children Act 1989 is assisted by the grant requirements UKBA has imposed in order for local authorities to access the per capita support grant. The instruction requires use of s.20 support in order to obtain the grant. The Wales draft unaccompanied asylum seeking children. Protocol highlights this as an issue and it is understood that some local authorities in Wales are sometimes using s.17. This is supported by evidence from the Welsh Refugee Council.

It should be noted that in some circumstances a higher level of protection might be appropriate for some unaccompanied children and may require formal care proceedings to be initiated. Issues of lack of parental responsibility /legal guardianship arise from the lack of powers vested in s.20 and also failure to initiate family tracing under the Reception Directive as part of these duties.

R97. The UK Government should issue statutory guidance to the effect that all unaccompanied asylum seeking children should remain in the formal care system until 18.

This is outstanding. No reference was made to this in the UN Committee's Concluding Observations in 2008.

R98. The UK Government should provide adequate levels of funding to enable local authorities to meet their legal obligations to asylum seeking children.

The Children's Commissioners understand that the 'per capita' grant has been reduced and standardised too (so would not reflect differential housing costs in different parts of the UK). The overall grant should be sufficient – including from other Government sources as well as UKBA – to meet the identified needs of the child – not a per capita allowance. The per capita system drives down the standard of care and encourages the block contracting of accommodation which may be unsuitable.

Government funding should also include access to higher education grants which are now to be excluded under new regulations for those without refugee status of humanitarian protection. Since the majority of children receive Discretionary Leave, the new regulation will prevent longer term educational and developmental planning for the child.

Local authorities in England and Wales have both reported that they struggle to obtain the current grant from UKBA frequently leaving them in serious financial difficulties. It is not clear to the Children's Commissioners why, despite our reservations about the current arrangements, that an efficient system to reimburse local authorities for their care costs can not be introduced.

R99. The UK Government should develop a more flexible approach to allow unaccompanied young people to complete education and training courses to avoid discriminatory treatment and to allow them to fulfil their potential.

The evidence of the policy changes and changes to guidance made by successive UK Governments is that the approach to allowing unaccompanied children to complete education or vocational courses has significantly tightened.

The primary purpose of reducing Discretionary Leave entitlement from 18 to 17.5 was to ensure that the appeal triggered by a refusal to extend the leave was heard as close as possible to the child's 18th Birthday. If the appeal was dismissed the child/young person would be rendered 'unlawfully in the UK' and would not be entitled to continued 'leaving care' support from their local authority⁶⁸ at the point that they became 'appeal rights exhausted'. Leaving Care support is vital to enable children to continue in further and higher education.

In addition the new regulations for England describing who is entitled to higher education grants will disenfranchise most unaccompanied children (see above).

However, there has been progress in Wales. Changes have been made to EMA and Higher Education support schemes to allow unaccompanied young people to complete education.

Unaccompanied asylum seeking young people in Scotland continue to be ineligible for EMA.

R100. The UK Government should repeal section 9 of the Asylum and Immigration (treatment of Claimants etc.) Act 2004.

Section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 came into force on 1st December 2004. It extended the provisions in Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to provide for the withdrawal of basic support from families with dependant children who had not been able to demonstrate that they had taken steps to leave the UK voluntarily once they had become appeal rights exhausted. The Government piloted the scheme in three local authority areas until March 2005. The Government then reviewed the process and then after considerable delay decided not to 'roll out' the process nationally.

The UK Children's Commissioners are not aware that the power, which remains on the statute book, has subsequently been used on families with dependant children.

There is an intention under the 'ensured returns' limb of the new family removals process to withdraw support and accommodation to those families who will not move to the 'pre-departure accommodation' facility. It is not known whether the withdrawal of support and accommodation will be using the powers under section 9.

⁶⁸ See Schedule 3 and s.54 of the Nationality, Immigration and Asylum Act 2002

5. New or emerging concerns since 2008

That the UK Government, in partnership with devolved administrations, implement and evaluate the new arrangements for family removals and safeguarding against the UNCRC and international standards.

The UK Government should undertake a thorough review of the current arrangements for determining age with a view to ensuring that unaccompanied children seeking asylum are treated as such and afforded their rights as children.

Sufficient funding should be given to local government and other authorities to ensure that children and young people have access to appropriate services, including guardians and independent legal advice.

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Juvenile Justice

1. The principal UNCRC Articles relating to youth justice are:

Article 37:

1. No child shall be tortured or suffer other cruel treatment or punishment. A child shall only ever be arrested or put in prison as a last resort and for the shortest possible time. Children must not be put in a prison with adults and they must be able to keep in contact with their family.

Article 39:

1. Children neglected, abused, exploited, tortured or who are victims of war must receive special help to help them recover their health, dignity and self-respect.

Article 40:

1. A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to help from a lawyer and a fair trial that takes account of their age or situation. The child's privacy must be respected at all times.

2. Concluding Observations in this area made by the United Nations Committee on the Rights of the Child in 2008

Paragraph 25 - The Committee recommends that the State Party ensure full protection against discrimination on any grounds, including by:

- a) Taking urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including in the media;
- b) Strengthening its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative actions for the benefit of vulnerable groups of children, such as Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay and transgender children (LGBT); and of children belonging to minority groups;
- c) Taking all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions.

Paragraph 27 - The Committee recommends that the State Party take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with Article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice and immigration.

Paragraph 29 - The Committee recommends that the State Party use all available resources to protect children's rights to life, including by reviewing the effectiveness of preventive measures. The State Party should also introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or in custody.

Paragraph 31 - The State Party should treat Taser guns and AEPs as weapons subject to the applicable rules and restrictions and put an end to the use of all harmful devices on children.

Paragraph 33 - The Committee recommends that the State Party, in accordance with Article 12 of the Convention, and taking into account the recommendations adopted by the Committee after the day of general discussion on the right of the child to be heard in 2006:

- a) Promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child;
- b) Support forums for children's participation, such as the United Kingdom Youth Parliament, Funky Dragon in Wales and Youth Parliament in Scotland;
- c) Continue to collaborate with civil society organizations to increase opportunities for children's meaningful participation, including in the media.

Paragraph 35 - The Committee recommends that the State Party reconsider the ASBOs as well as other measures such as the mosquito devices insofar as they may violate the rights of children to freedom of movement and peaceful assembly, the enjoyment of which is essential for the children's development and may only subject to very limited restrictions as enshrined in Article 15 of the Convention.

Paragraph 37 - The Committee recommends that the State Party:

- a) Ensure, both in legislation and in practice, that children are protected against unlawful or arbitrary interference with their privacy, including by introducing stronger regulations for data protection;
- b) Intensify its efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child;
- c) Regulate children's participation in TV programmes, notably reality shows, as to ensure that they do not violate their rights.

Paragraph 39 - The Committee urges the State Party to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.

Paragraph 42 - The Committee, reiterating its previous recommendations, in the light of its general comment No. 8 on "the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", as well as noting similar recommendations made by the Human Rights Committee; the Committee on the Elimination of Discrimination Against Women; and the Committee on Economic, Social and Cultural Rights, recommends that the State Party:

- a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland, and in all Overseas Territories and Crown Dependencies;
- b) Ensure that corporal punishment is explicitly prohibited in schools and all other institutions and forms of alternative care throughout the United Kingdom and in the overseas territories and crown dependencies;

- c) Actively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;
- d) Provide parental education and professional training in positive child-rearing.

Paragraph 43 - With reference to the United Nations Secretary-General's study on violence against children, the Committee recommends that the State Party take all necessary measures for the implementation of the recommendations contained in the report of the independent expert of the United Nations study on violence against children, while taking into account the outcome and recommendations of the Regional Consultation for Europe and Central Asia, held in Ljubljana from 5-7 July 2005. The State Party should use these recommendations as a tool for action in partnership with civil society and in particular with the involvement of children, to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse.

Paragraph 57 - The Committee recommends that additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.

Paragraph 77 - The Committee is concerned that:

- a) The age of criminal responsibility is set at 8 years of age in Scotland and at 10 years for England, Wales and Northern Ireland;
- b) There are still cases where children, notably those aged between 16 and 18, can be tried in an adult court, including in the Overseas Territories of Antigua, Montserrat, Bermuda as well as on the Crown Dependency of the Isle of Man;
- c) The number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort;
- d) The number of children on remand is high;
- e) Children in custody do not have a statutory right to education;
- f) There is the practice, in the Overseas Territories, of holding persons below 18 in conflict with the law in the same places of deprivation of liberty for adults;
- g) The recently published Youth Crime Action Plan (July 2008) includes a proposal to remove reporting restrictions for 16 and 17 year-olds facing criminal proceedings "to improve the transparency of the youth justice system";
- h) The provisions of the Counter-Terrorism Bill also apply to children suspected or charged with terrorism offences; in particular the Committee is concerned at the provisions for extended pre-charge detention and notification requirements;
- i) Children deprived of liberty in Turks and Caicos, may end up in detention in Jamaica, due to the lack of detention facilities for children.

Paragraph 78 - The Committee recommends that the State Party fully implement international standards of juvenile justice, in particular Articles 37, 39 and 40 of the Convention, as well as general comment No. 10 on "Children's rights in juvenile justice" the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ("the Havana Rules"). It also recommends that the State Party:

- a) Raise the minimum age of criminal responsibility in accordance with the Committee's general comment No. 10, and notably its paragraphs 32 and 33;
- b) Develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle;
- c) Children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with;
- d) Following the welcome withdrawal of its reservation to Article 37 (c) of the Convention, ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty;
- e) Provide for a statutory right to education for all children deprived of their liberty;
- f) Review the application of the Counter Terrorism Bill to children;
- g) Ensure that, when children in the Overseas Territories are subject to deprivation of liberty in another country, all the guarantees enshrined in Article 40 of the Convention are respected and that this respect is duly monitored; the State Party should also ensure that those children have the right, unless it is considered in the child's best interest not to do so, to maintain contact with their family through regular visits;
- h) Adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process.

Paragraph 79 - The Committee is concerned at the application to children of the Anti-Social Behaviour Orders (ASBOs), which are civil orders posing restrictions on children's gathering, which may convert into criminal offences in case of their breach. The Committee is further concerned:

- a) At the ease of issuing such orders, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences;
- b) That ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system;
- c) That most children subject to them are from disadvantaged backgrounds.

Paragraph 80 - The Committee recommends that the State Party conduct an independent review of ASBOs, with a view to abolishing their application to children.

Special Protection Measures

Recommendations in the United Kingdom Children's Commissioners' report to the United Nations Committee on the Rights of the Child in 2008:

R27. The UK Government and devolved administrations should put in place strategies to tackle the discriminatory treatment and predominantly negative views of children and young people.

R31. The UK Government and devolved administrations should recognise and fully implement children's rights to participation in education settings, in legal proceedings, in health care and in the care system.

R39. The UK Government and devolved administrations should ensure that restraint against children is used only as a last resort and only to prevent harm to the child or others. Pain distraction techniques should not be used on children. The UK Government should withdraw SI2007/1709 widening the use of restraint in STCs.

R40. The UK Government and devolved administrations should ensure that inappropriate strip-searching and segregation are not used in secure establishments holding children.

R41. The Northern Ireland Executive should ensure that weapons such as Tasers, AEP and baton rounds are not used against children.

R42. The Northern Ireland Executive should ensure that children are not used as informants, or as sources of entrapment.

R43. Relevant authorities in Northern Ireland must finally recognise and deal with 'community justice' on children and young people as child abuse.

R84. The UK Government and devolved administrations should ensure that children in detention have an equal statutory right to education and should improve education for children in care.

R101. There is an urgent need to transform the juvenile justice system in the UK, especially England and Wales, to ensure that it complies with the UNCRC.

R102. The UK Government and devolved administrations should ensure that the best interests and welfare of the child is a primary consideration in dealing with children in trouble with the law. Consideration should be given to improving and adopting the welfare-based children's hearing system across the UK.

R103. The UK Government and devolved administrations should increase the age of criminal responsibility.

R104. The UK Government and devolved administrations should reconsider the use of ASBOs for children. ASBOs should not be available as a disposal for children. Custody should not be available for breach of an ASBO by a child. The privacy of children subject to ASBO proceedings should be respected.

R105. The UK Government and devolved administrations should ensure that no child is tried in an adult court or held in adult institutions.

R106. There is an urgent need to reduce the numbers of children in custody in England and Wales and to establish a public inquiry on children in custody. This inquiry must consider the deaths of children in custody.

R107. The UK Government and devolved administrations should remove children from prison service custody. For the small number in need of detention for their own or public safety, detention should be for the shortest time possible in small, child-centred settings with the clear aims of meeting the child's needs and rehabilitation. There should be clear statutory thresholds to ensure that custody is used as a last resort.

R108. The UK Government and devolved administrations should invest more in alternatives to custody and should provide appropriate services to meet the needs of children in the youth justice system with mental health problems and/or learning difficulties.

R109. The UK Government and devolved administrations should make sure that children in custody retain their right to education and provide education across all secure settings.

R110. The UK Government should withdraw its reservation to Article 37(c). The UK Government and devolved administrations should ensure that children are detained separately from adults.

3. What progress, if any, has been made in this area since 2008 against the UN Committee on the Rights of the Child's Concluding Observations and the 2008 recommendations made by the UK Children's Commissioners.

Context

Youth justice in England and Wales is about to undergo significant change that will impact considerably on the delivery of youth justice. A Review of the Youth Justice system in Northern Ireland has just been completed. Exact details about the proposed changes in these jurisdictions are unclear and the analysis contained within this paper is based upon the systems that are currently in place.

Policing and Justice powers were devolved to the Northern Ireland Executive and Assembly on 12 April 2010. Policing and Justice in Northern Ireland should be understood in the context of the conflict, the use of force and police powers under emergency legislation and tensions between community and paramilitary policing (McAlister et al 2009). The Minister for Justice formally announced a Review of Youth Justice on 1st November 2010 with the final report of the review due in July 2011. At the time of writing, this has still to be published.

In England and Wales the outcomes of a Government consultation on the future of the criminal justice system "Breaking the cycle" are awaited.⁶⁹ Whilst this analysis will refer to proposed changes to the delivery of youth justice in England and Wales in terms of direction of travel it is not possible at this stage to assess the impacts of these changes.

⁶⁹ Breaking the Cycle: Government Response (June 2011) <http://www.justice.gov.uk/downloads/consultations/breaking-the-cycle-government-response.pdf>

Special Protection Measures

Paragraph 78 - The Committee recommends that the State Party fully implement international standards of juvenile justice, in particular Articles 37, 39 and 40 of the Convention, as well as general comment No. 10 on "Children's rights in juvenile justice" the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ("the Havana Rules"). It also recommends that the State Party:

- a) *Raise the minimum age of criminal responsibility in accordance with the Committee's general comment No. 10, and notably its paragraphs 32 and 33;*

R103. The UK Government and devolved administrations should increase the age of criminal responsibility.

The minimum age of criminal responsibility (MACR) in England and Wales was set at 10 by the Children and Young Persons Act 1963. Attempts to further raise this age to 12 or 14 were made in the 1969 Children and Young Persons Act, but the measures put in primary legislation were never implemented.

While the MACR has not changed from the age of 10 since 1963 there were significant safeguards in place to restrict the number of 10-14 year olds placed in custody to those responsible for 'grave crimes'. However in 1994 the Criminal Justice and Public Order Act allowed youth court magistrates to lock up 12 to 14 year olds for a much wider range of offences. The criteria were further relaxed in 2000 under the powers of the Criminal Courts Sentencing Act with some clarification regarding sentencing published in 2009.

The provisions for 10-14 year olds were also altered by the 1998 Crime and Disorder Act, which abolished the principle of *doli incapax*. Prior to this abolition the prosecution had to prove that a child aged under 14, appearing in the criminal court, knew and fully understood what he or she was doing was seriously wrong. This provision remains in place despite widespread criticism from many quarters including the UNCRC and voluntary sector groups.

The age of criminal responsibility in England, Wales, and Northern Ireland – 10 years old – is considerably younger than in most other jurisdictions. It compares to, for example, 12 years in Canada and the Netherlands, 13 years in France, 14 years in Germany and New Zealand and 15 years in Japan, Sweden, Norway and Italy.

The Children's Commissioners in England and Wales believe the age of criminal responsibility should be reassessed and that the custody threshold should be raised. Specifically we recommend that the principle of *doli incapax* should be reintroduced.

In the consultation document *Breaking the Cycle* published in relation to the justice system in England and Wales in 2010 which contained a discrete section on youth justice there was no reference to raising the minimum age of criminal responsibility.

The position of children aged 10 to 13 years has become more, rather than less vulnerable in recent years within the Northern Ireland juvenile justice system. Article 3 of the Criminal Justice (Northern Ireland) Order 1998 removed the safeguard of *doli incapax* from children of this age, thereby ending the prosecutorial duty to prove beyond reasonable doubt that the child understood the significance of what s/he was doing and was therefore capable of criminal intent. The same Order also

removed the right to silence, meaning that there could be negative consequences for children from the age of 10 who do not give evidence or participate in cross examination. Discussions around raising the minimum age of criminal responsibility took place in Northern Ireland within the context of the proposed Bill of Rights for Northern Ireland but as yet no legislative provisions have been put in place to change it. This is an issue that is being discussed as part of the Review of Youth Justice.

Section 41 of the Criminal Procedure (Scotland) Act 1995 states that 'it shall be conclusively presumed that no child under the age of eight years can be guilty of any offence', setting the age of criminal responsibility at eight. The Criminal Justice and Licensing (Scotland) Act 2010 introduced a minimum age for prosecution at 12.

Section 42 of the 1995 Act further provides that no child under 16 shall be prosecuted, except on the instruction of the Lord Advocate, which is set out in guidelines to police forces and specifies certain types of offences. The vast majority of children under the age of 16 who offend are dealt with in the children's hearings system. Young people aged 16 and 17 who are not subject to an order made by a children's hearing are routinely prosecuted in the adult courts including in the lower (lay) Justice of the Peace Courts.

The recent ban of prosecutions of any child under 12 effectively enshrined the current position in statute; according to figures from the Scottish Government, as few as three children aged 8-11 had been prosecuted in Scotland in the last 5 years. However, the current law and practice in effect 'masks' the fact that Scotland routinely criminalises children, including those under 12, through our children's hearings system.

A child over the age of criminal responsibility but under the minimum age for prosecution (i.e. 8-11) who is alleged to have committed an offence may be referred to the Children's Reporter; there were 1,378 children referred in this age group in 2008-09. If the child accepts the ground of referral (i.e. formally admits to the offence at a hearing), or the ground is proven before the Sheriff, this will result in a criminal record, which under the '40/20 rule' operated by Scottish police forces may be disclosed as a conviction or 'soft' information in a disclosure certificate up until age 40, when it will be 'weeded'. This applies regardless of the gravity of the offence or any consideration of assessed future risk of harm posed by the child.

With regard to the requirement in art 24(1) ICCPR and art 40 (3)(2) UNCRC, the children's hearings system may be regarded as a compliant juvenile justice system; however, the facts that there are exceptions in terms of its application to children, such as the possibility and reality of prosecutions of 12-15 year-olds (188 in 2007-08), and that most 16-17 year-olds are dealt with in the adult courts, will blemish Scotland's record in that regard.

In terms of the age of criminal responsibility, the Scottish position is clearly out of line with the international requirements under art 40 (3) UNCRC, which requires the setting of 'a minimum age below which children shall be presumed not to have the capacity to infringe the penal law', read in conjunction with General Comment 10, which requires that minimum age to be at least 12.

On passing the Criminal Justice and Licensing (Scotland) Act 2010, the Scottish Government maintained that introducing a minimum age for prosecution at 12 while retaining the age of

criminal responsibility at 8, marked a significant move towards meeting the requirements. Given the wording of art 40 (3), which seems to require an absolute, capacity-based lower age qualification, and the now well-rehearsed arguments that juxtapose responsabilisation and criminalisation, the Government's recent minor change to the institutional route by which children are criminalised cannot represent significant progress.

New initiatives are underway to address the routine criminalisation of children as young as eight through Scotland's welfare-based system in the Children's Hearings (Scotland) Bill.

There has been no real progress on increasing the minimum age of criminal responsibility across the four countries.

- b) *Develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle;*

R106. There is an urgent need to reduce the numbers of children in custody in England and Wales and to establish a public inquiry on children in custody. This inquiry must consider the deaths of children in custody.

R107. The UK Government and devolved administrations should remove children from prison service custody. For the small number in need of detention for their own or public safety, detention should be for the shortest time possible in small, child-centred settings with the clear aims of meeting the child's needs and rehabilitation. There should be clear statutory thresholds to ensure that custody is used as a last resort.

R108. The UK Government and devolved administrations should invest more in alternatives to custody and should provide appropriate services to meet the needs of children in the youth justice system with mental health problems and/or learning difficulties.

The Youth Justice Board in England and Wales has developed and funded a range of early intervention and diversionary schemes that seek to tackle the underlying 'risk factors' that may lead a young person to commit a crime or anti-social behaviour.

Diversion may include Youth Inclusion and Support Panels (which are multi-agency) which support Youth Offending Teams (YOT) at a local level seeking to ensure that statutory services are as effective as possible and in developing projects like Youth Inclusion Programmes (YISPs) that work with 8 to 17 year olds.

Further pre-court preventative local approaches such as restorative justice programmes have been encouraged by YOTs and there is evidence that these schemes can be effective for some groups. Similarly prevention of re-offending is being pursued through alternatives to custody such as intensive fostering and multi-dimensional treatment foster care.

A more recent high profile example of emerging diversion work is the Triage scheme which has been developed in a number of areas across England and Wales including, Lewisham and Greenwich, Swansea and Newport. Triage, aims to bring a youth offending team worker's expertise into police stations to make early and rapid assessments of young people, and offers an opportunity for parents and carers to get support earlier.

While there has been a proliferation of new policy to encourage / require early intervention and significant investment into prevention programmes over the past 10 years, nevertheless "England and Wales have one of the highest rates of child imprisonment in Western Europe. The number of children sentenced to custody more than tripled between 1991 and 2006 and the child custody population in England and Wales increased by 795 per cent from 1989 – 2009. Since 2000 the number of children locked up on remand has increased by 41per cent.

The Office of the Children's Commissioner for England welcomes the Government plans to devolve the cost of custody to local authorities which could lead to further falls in custody that would free up resources, allowing for improved training for those working with young people in custody. These plans were outlined in the "Breaking the Cycle" consultation document.

However, we are concerned about the high numbers of children with mental health problems or learning disabilities that are caught up in the criminal justice system and strongly urge that the recommendations contained in Lord Bradley's report are implemented through the Government's vision for the future of the NHS.

One of the ways in which the system is being questioned in England and Wales concerns the participation of the youth justice sector in prevention and diversion. While much of this work is labelled as 'prevention' it is still recognised as being part of the youth justice system. However, a growing body of evidence in England demonstrates that diverting children altogether from formal criminal justice processes is a protective factor against serious and prolonged re-offending. This is based on the understanding that a large majority of children and young people will 'offend' at some stage; most of these offences will be undetected; and most children will 'grow out of crime' without formal intervention. Contrastingly coming into the formal system and acquiring a criminal record can significantly impact on a child's life and is ineffective in terms of re offending.

Dr Tim Bateman from the University of Bedford says: "*Outcomes, in terms of recidivism, for those processed by the system are not especially auspicious: the one year detected reoffending rate during 2008 was 38 per cent for all children; 45 per cent for those in receipt of a first tier penalty; 68 per cent for those subject to a community order; and 74 per cent for those sentenced to custody*".

Detailed longitudinal research involving 4,100 children and young people concluded that the further enmeshed into the formal criminal justice system that children become, the more harm is done and the less likely they are to desist from offending. Evidence such as this begins to challenge current provision outlined above and may lead to a different approach in the future.

Current youth crime development in Wales is driven by the Youth Crime Action Plan 2008, the YJB Youth Crime Prevention in Wales strategic guidance document 2009, the All Wales Youth Offending Strategy Delivery (AWYOS) plan 2009 -11, and YJB planning guidance that requires each youth offending team to have a preventative strategy.

The YJB performance target that testifies to the effectiveness of prevention activity in a YOT area is a five per cent reduction in the number of people entering the criminal justice system.

Welsh Governments "Getting it right 2009" action plan in response to the 2008 Concluding Observations committed Welsh Government to continuing to provide financial support under the Safer Communities fund (£4.5 million) for local projects and initiatives aimed at keeping children out of the youth justice system

The joint inspection findings of YOTs in Wales 2003-2008 noted that throughout the four phases of the YOT Inspection programme there was an increase in the quality and range of interventions offered by the YOTs and their partners to children and young people who offend. It did note that as the work was not seen by some YOTs as statutory or a priority for them it was later in its development than other YOTs.

Pre-prosecution Diversionary Responses to Offending In Northern Ireland

Children and young people who come to the attention of the Police Service of Northern Ireland (PSNI) for offending behaviour or who are at risk of offending come under the Youth Diversion Scheme (YDS). This seeks to draw on the principles of restorative justice and commentators have observed a progressive trend whereby young people are diverted away from formal criminal processing.

A recent report by the Criminal Justice Inspectorate in Northern Ireland noted that during the last three years, around 1 per cent of crimes committed by young people that were brought to justice, resulted in a custodial sentence. This is comparatively lower than England and Wales where the percentage of young people detained was between three per cent and five per cent⁷⁰. The average daily population of the Juvenile Justice Centre in Northern Ireland remains fairly stable at approximately 26-27 young people per year. Of the daily population, 65 per cent were held on remand and 31 per cent were held on sentence. New admissions to the Juvenile Justice Centre totalled 411 in 2010/11 and of the total admissions, two thirds were 16 years or over. Hydebank Young Offenders' Centre situated close to Belfast can also accommodate up to 19 young males aged under 18 years.

However, as both offending and 'non-offence' behaviour can be referred to the Youth Diversion Scheme, this could be seen to criminalise the latter, in direct conflict with a rights-based approach to preventing offending. Non-offence referrals can include children under the age of 10 who are engaged in offending behaviour but are below the age of criminal responsibility.

Following assessment, either an informed warning, restorative caution (both diversionary disposals) or prosecution will be recommended with final approval given by the Public Prosecution Service (PPS). Informed warnings are delivered by trained police facilitators and restorative cautions by trained facilitators via a conferencing process. While neither disposal is a conviction, both are recorded on a young person's criminal record for a period of time, can be cited in court and in some cases can be made available to employers. This sits in contradiction with the Committee's recommendation that "although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as 'criminal records'".

The Youth Justice Agency (YJA) directorate of Community Services also delivers a range of diversionary programmes in

partnership with statutory and voluntary bodies. It receives both statutory referrals for young people who have offended and been given a disposal and voluntary referrals for those assessed as being at risk of offending. Individual programmes based on restorative principles make use of services such as counselling and education support. A 2004 evaluation found programmes to be "making a very substantial contribution to dealing with the many real problems faced by young people". However, like the YDS, the referral of both offending and non-offending behaviour to Community Services could be seen as criminalising young people and thus bringing them into the justice system.

Public Prosecution Service (PPS)

The PPS can also pursue diversionary options through referral back to the PSNI for an informed warning or restorative caution, or referral to the YJA for youth conferencing. The latter aims to engage young offenders, victims, the PSNI, family members and the community in the restorative process and the outcomes of these must be approved by the PPS. During 2008, there were 874 diversionary conferences and in 2009, 978 conferences. These alternatives to prosecution are only available to prosecutors if the defendant admits that they committed the offence and gives informed consent to participate. Again, although these diversionary options do not result in a conviction they are recorded on a young person's criminal record for between 12 and 30 months.

While clear criteria are established for diversionary disposals, concerns have been raised that young people who agree to participate may not always be doing so with informed consent.

Community Based Restorative Justice (CBRJ)

A unique element of the Northern Ireland system is the existence of CBRJ schemes which were developed from projects in loyalist and republican areas seeking to reduce anti-social crime and provide a peaceful alternative to paramilitary punishment violence. These schemes recently became subject to regulation based on compliance with the rule of law, cooperation with statutory agencies and recognition of the Human Rights Act 1998, the UN Convention of the Rights of the Child and equality legislation.

The development of CBRJ schemes has not been without difficulty. There have been concerns that they facilitate ongoing community control by non-state actors and deny clients due process. The schemes must be closely monitored to ensure their appropriateness for use with children and young people and this must be explicitly addressed in detail in accreditation and review processes completed by the Criminal Justice Inspectorate Northern Ireland.

Current detention statistics and patterns

Child custody figures in England and Wales have in the past three years shown a consistent downward trend since mid-2008. However, such figures only show a return to the custody rates in the late 1990s. The custody threshold should be raised to ensure that it is only used for those children who commit the most serious offences: 45 per cent of children in prison are accused of or have committed non-violent offences; 13 per cent will be in prison for breach of a community order (Youth Justice Board 2011), one report claiming that 26 per cent of all detention and training orders given to children in 2007/08 were for breach (National Children's Bureau 2010). We note in Northern Ireland

⁷⁰ <http://www.cjini.org/CJNI/files/2c/2c445c8e-510f-420a-bff4-a9072157e4e4.pdf>

Special Protection Measures

that figures for October – December 2009 show that almost 40 per cent of youth defendants before Magistrates Courts had charges withdrawn or were acquitted; raising concerns that alternatives to prosecution are not being used widely enough.

The Westminster Government's consultation "Breaking the Cycle" made commitments to a youth justice system based on preventing more children and young people from offending with a greater focus on diversion and simplification of the system. The outcome of the consultation is unknown at the time of writing. However, the Children's Commissioners would want to see any changes to the youth justice system in England and Wales being made with reference to international youth justice standards system in a coordinated way.

There have been concerns expressed around the number of children and young people held on remand. We therefore welcome the UK Government's proposal to amend the Bail Act in England and Wales to include a condition prohibiting remands into custody unless there is a significant chance that the young people will receive a custodial sentence.

Also, children are too often remanded in custody because of a lack of appropriate accommodation and support. This is unacceptable and courts should be able to order local authorities to find suitable placements. Remand to local authority accommodation (RLAA) remains a crucial option for the court and should be retained.

One aspect of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) allows for children and young people to be placed in custody overnight or on short term remand pending court if bail or a safe place to stay cannot be secured. Concerns are most likely to occur where young people are accommodated in residential care and a 2008 inspection report by the Criminal Justice Inspectorate noted that almost half of all admissions to the Juvenile Justice Centre over a 21 month period were PACE placements. This raises significant concerns that custody is not used as a last resort and that it is used disproportionately where children are care experienced.

The approach in Scotland is markedly different to that in England, Northern Ireland and Wales

Evidence from the Edinburgh Study of Youth Transitions and Crime, a longitudinal research project mapping the journeys of around 4,300 young adults who entered the children's hearings system because of their offending around age 12, supports the principle of 'maximum diversion' from both the criminal justice system and the children's hearings system. The data suggests that in relation to persistent offending, the deeper the young person's penetration into youth justice system, the less likely they are to desist from offending (McAra & McVie 2010).

The vast majority of children under 16 who offend are dealt with by the children's hearings system, rather than facing prosecution in the courts. Children requiring care and protection because of abuse and neglect (including those who offend), or whose behaviour is of concern because of truancy, alcohol or drug abuse, or gang-related activity can also be referred to the Children's Reporter; children referred on the latter class of grounds now make up nearly 90 per cent of all children in the system. The system can be regarded as a preventative mechanism as children's needs, which – if unmet – may contribute to offending in the future, can be addressed.

There is now greater awareness of the need for preventative and diversionary mechanisms, including diversion away from the children's hearings system. The Scottish Government's *Preventing Offending by Young People – A Framework for Action* emphasises the need for universal services, and for joint working between key agencies under the Getting It Right For Every Child (GIRFEC) approach. This ties in with a number of largely local initiatives to keep children and young people out of the courts and the children's hearings system by assessing their needs and behaviours on a multi-agency basis and putting services in place to address any unmet needs or concerning behaviours of the child /family; most local authorities now have some pre-referral schemes in place. Referral to the Children's Reporter remains available as an option if compulsion is required.

Evaluations of such approaches at local authority level carried out by the Scottish Children's Reporter Administration (SCRA) and independent consultants demonstrate that such approaches have led to significant reductions in the number of children referred to the Reporter for offending, and a hugely increased rate of referrals that go forward to a children's hearing, which indicates that the 'right' children (those who require compulsory measures of supervision) come to hearings and suggests that diversion away from the system works. This also limits the potential for criminalisation and takes account of the evidence that suggests that system contact can lead to further offending in the cases of some children and young people. There is, however, not currently a consistent national approach to prevention and diversion in place and the key approaches such as GIRFEC are not applied consistently across Scotland's 32 local authority areas.

Scotland's compliance with international standards in respect of prevention and diversion would be looked at favourably (art 40 (1) & (3)(b) UNCRC), but for the fact that it too criminalises children and young people (upwards of 671 per year, 2008-09 figure). It does consider children and young people's 'needs and deeds' in the round, and where possible in the context of their family and community. More recent prevention and diversion initiatives try to ensure proportionality and the avoidance of unintended consequences of intervention, albeit there are huge local variations in terms of the availability of such schemes. Antisocial Behaviour laws remain a cause for concern, but their application to children and young people in Scotland has been more moderate than elsewhere.

Considerable investment has taken place in relation to preventative programmes in recent years across the UK. Rates of custody are reducing in England and Wales although whether this can be linked solely to preventative programmes is open for discussion. It is also acknowledged that detention is not always a last resort (Breaking the Cycle) which reports that a significant number of those remanded in custody do not then go on to receive a custodial sentence.

c) Children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with;

Children can still be tried in an adult court if they have been charged with a serious offence like homicide (manslaughter, murder) and rape cases. In certain circumstances under 18s may be dealt with in a magistrates court if they are co-accused with an adult.

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New sentencing guidelines which came into force on 30 November 2009 in England and Wales make it clear that 'it is the general policy of Parliament that those under the age of 18 should be tried in the youth court wherever possible'. However, this falls short of the 2008 UN recommendation.

In Scotland with regard to the requirement in art 24(1) ICCPR and art 40 (3)(2) UNCRC, the children's hearings system may be regarded as a compliant juvenile justice system; however, there are exceptions in terms of its application to children, such as the possibility and reality of prosecutions of 12-15 year-olds (188 in 2007-08), and that most 16-17 year-olds are dealt with in the adult courts.

In Northern Ireland, although a child or young person will generally appear in a youth court, if they are convicted along with an adult, they can be referred to an adult court. This is in contrast with the principle of specialisation of the Court.

- d) *Following the welcome withdrawal of its reservation to Article 37 (c) of the Convention, ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty;*

Despite the Government's withdrawal of its reservation to Article 37(c) of the UNCRC, the Howard League for penal reform continue to report breaches of this. In 2009, the Joint Committee Human Rights noted that:

"Specific issues were raised with us by the Law Society of Scotland who commends the Scottish Government for stating that no child is to be held in adult prison accommodation, it suggests that this should be extended to cover the transportation of children and young people."

In 2009, the Joint Committee on Human Rights in the UK Parliament raised concerns that despite the removal of the reservation (to Article 37), there remained ongoing problems and continuing breaches. The Joint Committee concluded that:

"We are disappointed to hear of these continuing breaches of Article 37, despite the Government's purported intention fully to comply with the Convention, and urge the Government to do all that is required ... to meet the UK's international obligations."

Information on the numbers of children and young people under the age of 18 years-old who have been required to share accommodation with adults has not been collected centrally. There is a public recognition that there may be occasions where the behaviour of a child under the age of 18 is so challenging that they cannot be managed in the youth custody estate and they are therefore transferred to young adult/adult accommodation.

In Northern Ireland although most young people held on remand or sentence are accommodated within the Juvenile Justice Centre at Woodlands, many 17 year-olds, and some 15 and 16 year-olds, are placed within Hydebank Wood, operated and governed by the Northern Ireland Prison Service. Although males are held on a separate 'juvenile landing' they are being detained in the same institution as adults. This situation represents a clear breach of the UNCRC. A range of inspection and research reports have repeatedly documented concerns about the experiences of under-18s placed in Hydebank Wood including unsuitable and unsafe accommodation with inconsistent and severe punishment regimes. In 2010, the Criminal Justice

Inspectorate for Northern Ireland again stated its concern about the poor regime offered to juveniles at Hydebank Wood and its view that courts should not commit children to Hydebank without compelling reasons.

Current Scottish Law allows for children aged 14 plus to be remanded or committed to Young Offender Institutions (YOIs) or prison where they have been 'certified by the court to be unruly or depraved'. Section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 will repeal this provision and end the detention of children under 16 in YOIs and prisons. In 2008-09 11 children under 18 (10 of whom were under 16) were detained under 'unruly certificates' at YOI/HMPs for an average of 10 days, albeit the longest period of detention was up to 90 days. As in Northern Ireland female offenders are held without any meaningful separation from adult offenders, although recent developments have seen separate provision for young male offenders and better attempts to provide them with an appropriate service.

The Council of Europe Commissioner for Human Rights' observation that there are particular issues relating to young women in custody as they are 'too often detained with adult women due to a lack of specific facilities', very much applies to Scotland. There is a clear gender split in terms of compliance with the international standards regarding separation of children from adults in places of detention. While the vast majority of male under-18s who are imprisoned are held in the YOI (and now in a new block that houses under-18s only) or in specific young offenders' units, young women under 18 are routinely compelled to mix with adult women offenders in all aspects of their life in the establishment.

Overall, there is a lack of information available to enable us to reliably state whether under-18s are separated as required by international law. There are, however, a relatively low but stubborn number of under-18s held in adult institutions across the country. The impact of Scotland's geography on family contact and proximity to relevant courts, etc is often cited in this context often argued as being in the child's best interest. While this may be plausible in some cases it is less so in others. This would have to be weighed up against the effects on the young person of the risks of non-separation, as well as the inappropriate regime and the lack of young person-specific services.

In conclusion despite the withdrawal of the reservation to Article 37 (c) across the United Kingdom there remain a number of children who are still held in custody with adults. Greater progress has been made in reducing the numbers in England and Wales although is there a concern around safeguarding for children whose behaviour is defined as so challenging that they have to be held in Adult prisons?

- e) *Provide for a statutory right to education for all children deprived of their liberty;*

The correlations between education, offending and re-offending are well documented. A Mori youth survey suggests that excluded young people are committing twice as many crimes as their peers in mainstream education. Indeed low academic achievement, aggressive behaviour in school and lack of engagement in education or training are widely recognised by the YJB as some of the key risk factors to offending. It is therefore unsurprising that the educational needs of those in custody are significant.

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A total of 88 per cent of young men and 89 per cent of young women in custody had been excluded from school, while 40 per cent of young men and 38 per cent of young women were under 14 when they last attended school. It has been estimated that 23 per cent of young offenders have learning difficulties (IQ below 70) and 36 per cent borderline learning difficulties (IQ 70-80 per cent). In addition 15 per cent of the juvenile secure estate has a statement of special educational needs, compared to three per cent of the general population.

The responsibility for providing children in custody with education moved to local authorities in England and Wales from 1 April 2011 under the Apprenticeship, Skills, Children's and Learning Act 2009. The impact of this change is too early to estimate however the shifting of responsibility onto local authorities should ensure continuity of education for children in custody both during custody and on resettlement. There are however ongoing concerns as to the quality and breadth of the education which is available to children and young people in custody.

HMIP (2009-10) Children and young people in custody report found 73 per cent of young men and 86 per cent of young women reported that they were in education. The same reported showed that 57 per cent of sentenced young men and 76 per cent of sentenced young women said they had training plan. Children and young people in custody report that they want a more demanding education system where they are motivated and pushed to achieve their full potential.

From the most recent HMIP survey (2009/10) only 69 per cent of young men felt the education or training they received in custody was of help or use to them and this dropped to under 50 per cent in some institutions. Furthermore "52 per cent of young men said they were learning a skill while in custody, and 28 per cent said they were employed – a drop since the last report (32 per cent)".

A report published by Ofsted in May 2010 noted many positive features of current education provision in custody. However, it also noted several areas of concern in the system.

"Those who transferred between establishments were often disadvantaged by poor arrangements for sending on information about their earlier study and achievements.... the various secure establishments offered different choices of subjects and had selected different examination boards...lack of continuity and consistency was a barrier to young people reintegrating successfully into mainstream provision...information about children and young people entering and leaving secure establishments and those serving community orders was generally not good enough to allow the organisations supporting young people to meet their needs for education, training and employment. secure establishments visited relied heavily on the young offender assessment profile (Asset) for planning, however, the information that arrived with young people varied in accuracy and usefulness, and information was often late, inaccurate and out of date."

The report also noted concerns about planning for release and the continuity of education or training opportunities in the community which can play a vital role in preventing re-offending.

Currently, in Northern Ireland responsibility for education of young people in custody does not lie with the Department of Education for Northern Ireland and young people do not have a statutory right to access the Northern Ireland Curriculum. The Review of Woodlands Juvenile Justice Centre in 2008 indicated that

significant improvements had been made to education provision for example misbehaviour is no longer linked to exclusion, and an extended vocational curriculum is now offered.

While these positive developments are to be welcomed, education should be established as a core provision for young people in custody. It is of concern that young people do not have a statutory right to education and that the responsibility for their education is not held by the Department for Education. This raises questions about the discriminatory treatment experienced by young people deprived of their liberty.

In Scotland children and young people under-16 who are detained are largely held in secure accommodation. Some 16-17 year-olds are sent there as well, but the majority of young offenders in this age group are detained in YOIs and prisons.

In secure units, teachers provide school education to young people held there; provision is subject to joint inspection by Care Commission and HM Inspectorate of Education (HMIE). Inspection reports suggest the following picture:

- Units provide a good, in some cases very good, curriculum with an adequate breadth of choices, and a high quality of teaching;
- An adequate choice of qualifications is available in most units, although there are weaknesses in some establishments, and there was no reference to Highers or Advanced Highers being available for older young people at the units; attainment and achievement are relatively high across units;
- Existence and effectiveness of links with schools in the community and education departments in placing authorities vary significantly – some have close links, others have no meaningful links with education authorities, and reports suggest that these relationships significantly impact on the quality of transitions; and,
- While many units provide highly individualised support and learning programmes, there are very few children with Coordinated Support Plans under the Education (Additional Support for Learning) (Scotland) Act 2004 and integration of support for learning with care plans is frequently lacking.

The Scottish Prison Service (SPS) contracts two colleges to provide education, and alongside SPS 'instructors' they also provide employability and employment opportunities at YOIs and prisons;. In the YOI holding female prisoners, education provision has been assessed to be 'limited', 'narrow in range' and 'poor', with little support available for those with additional support needs and 'very few' opportunities for vocational qualifications. In contrast, there is reportedly a wide range of vocational and education programmes available at the YOI holding male prisoners, provided by well-qualified staff in high-quality facilities. The focus seems to be on trades, and the choices appear to reflect 'traditional' understandings of gender roles. Provision in the young offenders units in 2 (male) prisons has been described by inspectors as adequate.

With regard to school education, the YOI for young men reportedly provides a minimum of 15 hours per week of education to under-16s. The duty to provide education in Rule 86 of the Prisons and Young Offenders Institutions (Scotland) Rules 2006 is not a strong driver to provide anything akin to mainstream

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school education and recent information from the Scottish Government described the task of education for children and young people in prisons and YOIs as largely one of managing transitions towards other, more 'adult' opportunities. A lack of suitable educational provision for young people is a concern in respect of those who are held in prisons without dedicated units for young offenders.

In terms of international standards, it would appear that educational provision in secure units comply with many of the international standards, albeit there are variations in terms of transitions etc and concerns regarding children with additional support needs. We could not establish whether any qualifications were obtained while in detention.

Across the UK not all devolved administrations have put in place a statutory right to education in custody. Educational provision is variable and means that there can be issues if a child is transferred. Resettlement into education outside can be challenging because of the educational provision in custody. We need to ensure that there is statutory right to education in all four countries and evaluate the educational provision made in light of the educational experiences of children in custody prior to custody. We need a consistent approach in terms of curriculum and examinations pursued and greater integration in terms of education post custodial period.

f) *Review the application of the Counter Terrorism Bill to children;*

In January 2010, the European Court of Human Rights ruled that the UK's blanket stop and search powers under counter-terrorism laws violate Article 8 European Convention on Human Rights. The coalition Government has committed to considering the judgement and has introduced interim police guidance applying a stricter test in relation to stop and search powers under preventing terrorism. However, notwithstanding this commitment a complete review of the counter terrorism bill and its impact upon children, taking a children's rights based approach has not been undertaken.

g) *Ensure that, when children in the Overseas Territories are subject to deprivation of liberty in another country, all the guarantees enshrined in Article 40 of the Convention are respected and that this respect is duly monitored; the State Party should also ensure that those children have the right, unless it is considered in the child's best interest not to do so, to maintain contact with their family through regular visits;*

No evidence submitted.

Paragraph 80 - The Committee recommends that the State Party conduct an independent review of ASBOs, with a view to abolishing their application to children.

At the time of writing a review was being conducted by the Home Office and Ministry of Justice on Anti-social Behaviour tools and powers in England and Wales. In 2009-10, 13 per cent of those children in custody were there because of a breach of an ASBO. We recognise that where children do commit anti-social acts it is necessary and desirable to help them to acknowledge and accept responsibility for their actions and support them in changing their behaviour. However, it is essential that the underlying causes driving their anti-social behaviour are addressed.

The review proposes the abolition of the ASBO, together with 17 other existing tools. The Government propose to replace these with five new powers and also introduce a 'Community Trigger' to ensure that repeat victims of anti-social behaviour are identified quickly and action taken.

It is concerning that civil orders such as those proposed, the breach of which can result in severe sanctions including custody, can act as a 'fast-track' into the criminal justice system for many individuals; they can also potentially increase the reach of the criminal justice system, with greater numbers of people being drawn in having committed very minor criminal offences or no offence at all. We welcome the Ministry of Justice's recognition, set out in the recent green paper 'Breaking the Cycle', that prison should be reserved for serious and dangerous offenders, but believe that using civil orders to tackle anti-social behaviour will militate against a more sparing use of custody. We therefore call on Government to review its approach to the changes to ASBOs in light of its statements in Breaking the Cycle. There is a danger that the two documents are at odds with one another and could potentially disproportionately impact on children and young people.

The Office of the Children's Commissioner for England believes that custody should not be available as a response to breach of any civil orders or powers set out in the consultation. Additionally we would recommend that clear guidelines are set out for the use of such orders and powers, and in particular for the use of the Criminal Behaviour Order and the Crime Prevention Injunction, so that these are used with restraint, and only in the most extreme circumstances. Formal measures such as civil orders do not provide the 'answer' to anti-social behaviour, and should only ever be used as a last resort, when all alternative options have been tried and exhausted.

There is a need to focus on early intervention, both in terms of providing support for vulnerable families when children are very young, as well as intervening quickly and appropriately when children begin to demonstrate challenging behaviour. We believe that restorative approaches coupled with other measures such as family therapy should be used wherever possible.

This current review of anti-social behaviour tools and powers is not independent as recommended by the UN committee and it does not look as though it will introduce non-punitive measures. No systematic work has been done to research the characteristics of children who breach ASBOs and community orders and anti-social behaviour units in local authorities in England sit outside the normal monitoring and inspection arrangements for other children's services.

"ASBOs were introduced under the Anti-social Behaviour (Northern Ireland) Order 2004 allowing district councils, the Northern Ireland Housing Executive and the Chief Constable to apply for an Order for any person aged 10 or over. An ASBO may contain spatial exclusions or other prohibitions and carries a minimum duration of two years, while no maximum duration is given. Interim orders can also be made prior to the determination of an application under the Criminal Justice (NI) Order 2008. These can now be obtained without notice to the individual concerned.

"Northern Ireland has imposed restrictions on publicly 'naming and shaming' children in receipt of ASBOs, which is an important safeguard when considering the role which paramilitaries have had in responding to anti-social behaviour within communities.

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We remain concerned however that these reporting restrictions can be challenged.”

The introduction of ASBOs to Northern Ireland was judicially challenged, unsuccessfully, by NICCY in 2004. With the support of other children’s NGOs, NICCY argued that on the grounds that they were incompatible with international children’s rights standards highlighting the infringement of a range of UNCRC Articles. NICCY also noted that Article 12 was infringed as young people were not consulted about their introduction. However, the Judge ruled that the NI Executive was not under any obligation to enforce international provisions which had not been introduced into domestic legislation.

While the relatively low use of ASBOs in Northern Ireland is to be welcomed, a number of issues remain of concern, including the low behavioural thresholds applied to the issuing of an order and the potential for criminalisation of children in the case of breached orders. Further to this, ASBOs do not address the underlying problems that contribute to anti-social behaviour, nor do they engage the young person in restorative practices.

Scotland’s anti-social behaviour legislation is similar to that in force in other parts of the UK, with the notable exceptions in respect of under-16s that (a) the Sheriff is under a duty to obtain the advice of a children’s hearing before granting an ASBO, and (b) detention is not available as a disposal for breach of conditions made under an ASBO. Generally, the Scottish approach to ASBOs has been markedly different from that elsewhere in the UK; until 2006-07, only 11 orders granted against under-16s, out of a total of around 1,400 (figures of 16-17 year-olds are unavailable, but breach figures suggest relatively low numbers, compared to elsewhere in the UK.

The review of ASBOs in England and Wales is not independent and there is a concern that the review has not incorporated the views of children and young people affected by the use of ASBOs.

Paragraph 39 - The Committee urges the State Party to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.

R39. The UK Government and devolved administrations should ensure that restraint against children is used only as a last resort and only to prevent harm to the child or others. Pain distraction techniques should not be used on children. The UK Government should withdraw SI2007/1709 widening the use of restraint in STCs.

In a joint review of the experiences of children in custody, Her Majesty’s Inspectorate of Prisons and the Youth Justice Board found that a third of boys and a quarter of girls in prisons had been physically restrained. The report also found that black boys were disproportionately more likely to be restrained by staff than white boys.

According to the Youth Justice Board (2011) there were 6,904 incidents of (reported) restraint in 2009/2010, of which 257 resulted in injury. The average proportion of young people in custody who were restrained increased from 11 per cent in 08/09 to 12 per cent in 09/10. 11 per cent of boys were restrained and 18 per cent of girls.

Restraint statistics are likely to be an underestimate as it is unclear whether all restraints are recorded. Young people have frequently told our legal team that they have been restrained where subsequent inquiries fail to show any record of a restraint.

The figures also fail to show whether restraints were used on particular children on more than one occasion. Some young people who have contacted the offices in England and Wales have stated that they have been restrained repeatedly.

Following the deaths of two children in the secure estate following restraint incidents, the Government commissioned an independent review of restraint which was published in 2008. The report’s authors found that: “... *we found widespread acceptance that it is sometimes necessary to use force to restrain children where their behaviour poses a high degree of risk to themselves or others. Beyond this, however, the circumstances in which it is appropriate to use restraint are less clear cut.*”

The review concluded that pain compliant techniques could be used as a matter of last resort. The report’s authors acknowledged that this statement may be in contradiction to the views of the Children’s Commissioners and the provisions of the UNCRC. In total the review made 58 recommendations to bring greater clarity and consistency across all three secure settings and to build in safeguards for young people who experience restraint including that the Government should *re-examine the legislation and guidance on restraint*. Most of the recommendations in the report have been accepted by the Government and these are currently being implemented. The report sought the views of children in the secure estate on the use of restraint and summarised their key messages as being:

- *Young people accept that restraint may be justified on occasion but believe that it should be fair, proportionate and safe.*
- *Restraint is chaotic, traumatic and stressful and can have significant impact on both young people and staff.*
- *For some young people, restraint can trigger complex responses that make them actively seek it.*

In response to the report the YJB published *Developing a restraint minimization strategy in 2009* as a means of providing further guidance to the Physical Control in Care manual, which had, until recently remained unavailable to the public. Publicity surrounding the publication of this document led to the coalition Government announcing in July 2010 that there would be a new review of the use of restraint in young offender secure institutions, jointly carried out by the Ministry of Justice and the Department for Education.

In 2009, the Joint Committee on Human Rights in their report on children’s rights voiced:

“... strong concerns that pain compliance is still used as a tactic against young people in detention, and used disproportionately against vulnerable girls ... The Minister failed to persuade us that such techniques are necessary or consistent with the Convention. We reiterate our previous conclusions that techniques which rely on the use of pain are incompatible with the UNCRC.”

Recent data has shown that the use of restraint is continuing to rise in young offender institutions despite a decrease in the number of children held in such institutions. The latest data show

restraint was used 1,197 times in YOIs in England and Wales in the first three months of 2010. That figure represents a 38 per cent increase on the same period in 2008 when the practice was used 870 times, and a 27 per cent increase on 2009.

In their own report on the experiences of children and young people in custody in 2008-09 the Youth Justice Board and HM Inspectorate of Prisons reported that:

“Overall, 29 per cent of young men said that they had been physically restrained in their current establishment ... Use of physical restraint in young women’s units also varied considerably...”

And that

“Worryingly, responses showed a return to a higher level of reported physical restraint for black and minority ethnic young men compared with white young men (34 per cent against 25 per cent).” The Council of Europe Commissioner for Human Rights, reporting on the UK urged *“... the immediate discontinuation of all methods of restraint that aim to inflict deliberate pain on children (including physical restraints, forcible strip-searching and solitary confinement).”*

Further evidence from the work of the Office of the Children’s Commissioner for England (OCC)

In 2010 the OCC funded a joint project by the YJB and User Voice that sought the views of young people who were, or had been in custody. The work focused on a number of areas, but importantly, when asked about the use of separation techniques across the secure estate comments quickly evolved into a discussion concerning restraint. Powerful testimonies were recorded concerning the use and impact of restraint across the estate in England and the report concluded:

“The use of restraint generated strong emotional responses from most of the participants, but the way girls experienced restraint varied dramatically from the boys. Many of the girls felt that the procedure impacted on them negatively in terms of their mental health and well being and they disliked it intensely. Boys in contrast reported feelings of anger, indifference or they accepted that it was a necessary element of the custodial regime.

“The participants reported restraint being used in a range of areas within establishments. The most cited reason why they disliked it was because they thought too much force was being used and a reduction in force and attempts to talk through the issues would be an improvement, moving from a culture of coercion to one of cooperation.”

In Northern Ireland recent reports on the Woodlands Juvenile Justice Centre note positive developments through significant reduction in restraints and improved recording and monitoring of incidents. The training of staff in non-pain compliant methods of restraint is regarded as indicative of a shift in the management of young people in custody.

An Inspection of Hydebank Wood (2010) highlighted concerns regarding the management of young people’s behaviour and particularly the balance between care and control. Areas highlighted included the use of control and restraint and routine strip searching on arrival.

In Scotland corporal punishment in residential settings, including secure accommodation is explicitly prohibited and care regulations require providers of care services to “ensure that no service user is subject to restraint unless it is the only practicable means of securing the welfare of that or any other service user, and there are exceptional circumstances”.

In practice, the five providers of secure accommodation in Scotland employ three different restraint methods (CALM, TCI and SCM). There is currently work underway to draft an appendix to the *National Care Standards for Young People in Care* to aid improved inspection on issues around restraint, and to provide better information to children and young people, and to care staff.

But *A Who Cares? Scotland* publication on young people’s experiences of secure care (2008) reports a great majority of young people as having experienced restraint at least once, and there was a perception of inconsistencies in the use of restraint in different units, and by different members of staff; there was a suggestion that different thresholds are being applied across the secure estate, and some examples given suggested restraint used to uphold ‘good order’, rather than being used as a measure of last resort to avoid significant harm. Worryingly, there were suggestions from young people that restraints are being carried out badly, with injuries and trauma experienced by some.

The Prisons and Young Offenders Institutions (Scotland) Rules 2006 set out the applicable rules relating to restraint in those establishments. However, the Rules are not clear or detailed in terms of the position on restraint.

In terms of applicable international standards, the Scottish position on corporal punishment and restraint presents a mixed picture. It is notable that, given the magnitude and sensitivity of restraint as a human rights issue, there is a dearth of robust regulation in this area in Scotland at present.

Corporal punishment in secure care is prohibited, and the law in respect of restraint appears to be compliant with international law. However, doubts remain as to whether practice in Scotland’s secure units is always compliant. There are weaknesses in terms of recording and monitoring, complaints and advocacy. There is no single approach to restraint across the secure sector, despite the relatively small number of establishments, and there is no accreditation for suitable methods of restraint that tests compliance with international children’s rights standards.

With regard to restraint in YOIs and prisons, the law could be clearer and stronger, and there is currently little information. The final draft of the Scottish Prison Service’s recent *Strategy Framework for the Management of Young People in Custody* includes a commitment to ‘training staff in de-escalation techniques so that restraint is used only as a last resort, and where it represents the safest possible option for the young person and others. This would help move Scotland towards better compliance with international standards, but such change is yet to be demonstrated in practice. Reviews have taken place in England and Wales but outcomes not improved for children and young people. Concerns remain as to the level of restraint being used across the secure estate.

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Paragraph 27 - The Committee recommends that the State Party take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with Article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice and immigration.

R102. The UK Government and devolved administrations should ensure that the best interests and welfare of the child is a primary consideration in dealing with children in trouble with the law. Consideration should be given to improving and adopting the welfare-based children's hearing system across the UK.

Across the UK there has been recognition that the best interests of children should be a fundamental concern of the criminal justice system. Whilst the primary aim of the youth justice system in Northern Ireland is to prevent offending it also states a commitment to protecting children's rights and encourages restorative justice approaches. In Scotland changes introduced under the CJL Act 2010 have changed the role of the Children's Reporter whose main role should be to look at the need and deeds of the child and base their decision to bring the child to a hearing on welfare considerations, not on a public interest test. In Wales the approach to youth justice defined in the All Wales Youth Offending Strategy is that offenders should be seen as children first and offenders second.

However there is a concern that children and young people are often seen as offenders first and children and young people second. The protection of children within custody remains a fundamental concern. There are high incidences of mental health problems, self harm and bullying with significant numbers of young people feeling unsafe. There are also high levels of intimidation, violence and abuse from other prisoners and on occasion staff. Children in custody have limited access to advocacy, with only limited numbers of those in young offender institutions having spoken to an advocate. These concerns exist across the four nations.

In Northern Ireland post conflict issues continue to affect children and young people in certain areas. There is also a concern that a lack of appropriate provision and dedicated secure care facilities for them may lead to circumstances where custody is used as quasi care for those who have committed trivial offences. Rates of custody in England and Wales still remain high. Despite a recent drop in the number of first time entrants and prison population, England and Wales still has one of the highest rates of child imprisonment in Western Europe and despite this reoffending rates have not improved.

The Ministry of Justice reports reoffending rates as 75 per cent for children released from custody (Ministry of Justice, 2010a). It is clear that a system focused upon criminalisation and punishment fails children, victims and communities at an extraordinary cost to society and the public purse.

The most important change should be one of values: children are children first and offenders second, which is the underpinning approach in relation to youth justice in Wales. Addressing the underlying reasons why children commit crime should be the priority rather than how to punish them when these needs have not been addressed.

Of all the interventions for children who offend, custody is the most damaging and least effective.

Paragraph 29 - The Committee recommends that the State Party use all available resources to protect children's rights to life, including by reviewing the effectiveness of preventive measures. The State Party should also introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or in custody.

R106. There is an urgent need to reduce the numbers of children in custody in England and Wales and to establish a public inquiry on children in custody. This inquiry must consider the deaths of children in custody.

So far there has been no public inquiry of the numbers of children in custody in England or the deaths of children in custody. Since 2005 there have been five deaths of young offenders in Youth Offending Institutions in England and Wales. At present there is no presumption of a public enquiry into the death of a young person in custody and families often struggle to get an inquest into deaths in custody. Given that the death of a child in custody could be seen to be the greatest sign of the issues within the system should such an event automatically trigger a public enquiry?

In January 2011, an investigation by CYP Now revealed that nearly one in three prison officers working with vulnerable young offenders in custody had not completed training on safeguarding and assessing vulnerability.

The effectiveness of the assessment tool Asset - which is used to gauge a young person's vulnerability prior to sentencing - is also currently being examined as part of a review being carried out by the Youth Justice Board (YJB).

There are ongoing concerns about conditions and treatment of children and young people in custody being held far away from home with few family visits, limited time out of cells, lack of meaningful education and training, health needs inadequately met, overuse of physical control and restraint, strip searching and segregation.

Paragraph 31 - The State Party should treat Taser guns and AEPs as weapons subject to the applicable rules and restrictions and put an end to the use of all harmful devices on children.

R41. The Northern Ireland Executive should ensure that weapons such as Tasers, AEP and baton rounds are not used against children.

R42. The Northern Ireland Executive should ensure that children are not used as informants, or as sources of entrapment.

R43. Relevant authorities in Northern Ireland must finally recognise and deal with 'community justice' on children and young people as child abuse.

In 2009 The Northern Ireland Commissioner for Children and Young People intervened in a case brought by a child against the use of Tasers. Through the child's mother, NICCY lodged a judicial review of the use of Tasers in Northern Ireland, with reference to equality legislation and human rights law. However, the Judge held that procurement and deployment of the weapons did not breach the child's right to life under the European Convention on Human Rights.

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Paragraph 57 - The Committee recommends that additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.

Access to Child and Adolescent Mental Health Services (CAMHS) is an issue of concern for Scotland's wider child population. An inquiry by the Scottish Parliament's Health & Sport Committee found that provision is patchy, the specialist workforce too small, waiting times can be unacceptably long early identification made difficult by changes to health visiting arrangements, and that CAMHS as a critical area of health policy and service delivery is 'in need of champions'. This is very concerning in light of the mental health problems in Scotland, and suicide rates nearly double than those in England.

Research published by the Scottish Children's Reporter Administration (SCRA), found that there is a higher proportion of children with mental health issues in the children's hearings system than in the overall child population. Among those classified as persistent young offenders (more than five offence referrals in six months), 22 per cent had identified mental health problems, mostly relating to depression and self-harm, rising to 25 per cent of those subject to a Movement Restriction Condition ('tag'). 41 per cent of children and young people in the system 'who had caused serious harm to another person or were considered at risk of doing so' had identified mental health issues recorded in their case files.

There is a particular concern about mental health assessments requested by children's hearings. SCRA reports that these frequently cause delays of up to five months. The system deals with the most vulnerable children and young people and upwards of a third of children referred to the Reporter have been exposed to physical, emotional and sexual abuse and/or witnessed or experienced domestic abuse; some are involved in escalating offending. The delays were said to be 'totally unacceptable' in the Health Committee's inquiry report.

The admission of children and young people to adult mental health wards is still a cause for concern. Moreover, there is no secure mental health.

In Northern Ireland there remain significant concerns about the mental health of young people in custody. An inspection of the Juvenile Justice Centre (2008) noted that of the 30 young people resident on a given day in 2007, 20 had a diagnosed mental health disorder. A report published by the Criminal Justice Inspectorate of Northern Ireland in 2010 highlighted more striking statistics, referencing a survey conducted in 2006 which indicated that 59 per cent of the sample of young people who were clients of the Youth Justice Agency (YJA), showed signs of mental health illness. This report stressed the need for significant investment in mental health services for those in prisons or detention in Northern Ireland.

The same CJ report called for a specialist child and adolescent psychiatrist to be appointed, based in Northern Ireland, to advise the criminal justice agencies on the health and welfare needs of young people with mental health problems. Similarly recommendations from a report by the Independent Monitoring Board into Hydebank Wood Prison and Young Offenders Centre strongly recommended improving the child and adolescent mental health provision.

The Report also noted the absence of clinical psychological services as a distinct gap in provision.

The Office of the Children's Commissioner for England is still concerned about the high numbers of children with mental health problems or learning disabilities that are caught up in the criminal justice system and strongly urge that the recommendations contained in Lord Bradley's report are implemented through the Government's vision for the future of the NHS.

4. What are the outstanding concerns, including outstanding recommendations of the UK Children's Commissioners in 2008

Youth justice systems in Northern Ireland, England and Wales are about to undergo changes that may impact considerably on the delivery of justice in these jurisdictions. At the present time exact details about the proposed changes are unknown. The commentary and recommendations in relation to youth justice are based upon the systems that are currently in place in these jurisdictions.

Ensure the non criminalisation of children and young people through a focus on prevention and diversion

The YJB in England and Wales has developed and funded a range of early intervention and diversionary schemes that seek to tackle the underlying risk factors that may lead a young person to commit crime or anti-social behaviour. Despite the considerable investment of time and resources into prevention programmes England and Wales has one of the highest rates of child imprisonment in Western Europe. There is a growing body of evidence to suggest that diverting children altogether from formal criminal justice processes is a protection against serious and prolonged re-offending. Contrastingly coming into the formal criminal justice system and acquiring a criminal record can have a significant impact on a child's life and is ineffective in terms of re-offending.

A number of initiatives exist in Northern Ireland to divert children and young people away from formal criminal processing, including the Youth Diversion scheme, Youth Conferencing and the option for the public prosecution service to consider a diversionary option (i.e. informed warning, caution or diversionary conference). While diversionary approaches are broadly welcomed, there are concerns that minor and non-persistent offending behaviour is being dealt with through the formal system of incremental disposals. While they do not constitute a criminal conviction, they remain on a child or young person's record, thus bringing them closer to the criminal justice system. Concern has also been expressed that young people may agree to participate in such schemes without informed consent or without a full understanding of what is required of them.

Recent, limited legislative progress in Scotland means that prosecution of children under-12 is no longer competent, and fewer children aged 8-17 will be criminalised through the children's hearings system once recent reforms come into force, and this is welcome. The Scottish children's hearings system deals with the great majority of children who offend, including around 99 per cent of 12-15 year-olds, although 16-17 year-olds continue to routinely face prosecution in the adult courts. However, there is compelling research evidence from Scotland which suggests that 'maximum diversion' away from formal systems - both the courts and children's hearings - is most effective in promoting desistance from offending. Multi-agency

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pre-referral schemes, which seek to put services in place to address any unmet needs and/or concerning behaviours displayed by the child are now in operation in most local authority areas, and evaluation suggests that these can be effective in reducing the number of children entering the children's hearings system. However, there is no consistent, national approach to prevention and diversion at present.

Ensure that there is a consistency and continuity of services for children and young people in the youth justice system and the wider community e.g. mental health, education

Many children with mental health problems or learning disabilities are caught up in the criminal justice system. The correlations between education, offending and re-offending are well documented. Across all four nations it is clear that there are concerns about the consistency and provision of education to young people in custody and transferring from and to the community. Recent changes in England and Wales through the Apprenticeship, Skills, Children's and Learning Act 2009 which shifted the responsibility for ensuring continuity of education for children in custody both during custody and on resettlement are yet to impact. In Northern Ireland young people in custody do not have a statutory right to access the Northern Ireland Curriculum, whilst in Scotland the duty to provide education under the prisons and Young Offenders Institutions (Scotland) Rules 2006 is not strong.

There are ongoing concerns as to the quality and breadth of the education which is available to children and young people in custody. Educational provision needs to motivate and push children and young people to achieve their full potential. Information exchange between custodial settings and between custodial settings and the community needs to improve as does the dovetailing of educational courses to allow young people to continue with qualifications such as GCSEs.

The number of children and young people exhibiting mental health problems or concerns is far higher within the juvenile secure estate than the general population. Across all four jurisdictions concerns are expressed about the inadequacy of the child and adolescent mental health service provision both within custodial institutions and within the wider community. The Office of the Children's Commissioner report "I think I must have been born bad" (June 2011) found a lack of consistency and wide variation in the type, level and quality of measures put in place to support the emotional wellbeing and good mental health of children in the youth justice system and specifically in the children and young peoples secure estate. Such concerns echo across the four nations.

Ensure the humane treatment of children in custody including restraint and strip searching. Ensure that there are effective complaints procedures for young people to use and that deaths in custody are independently reviewed.

Whilst there is evidence to suggest that the humane treatment of children in custody is something that exercises all four jurisdictions, and that in each country there have been attempts to improve the experience of children and young people in custody, the experiences of those in custody would suggest that far more needs to be done. Concerns have been documented in reports detailing the experiences of children and young people in custodial settings across all four jurisdictions including the overuse of physical control and restraint, inconsistencies in the application of guidance in relation to restraint, strip searching,

segregation, and having limited access to an advocate.

5. New or emerging concerns since 2008 related to this area

Impact of the UK Government's consultation.

Breaking the Cycle and the proposals within that for local authorities to be responsible for costs of custody.

Payment by results.

Northern Ireland and the impact of the devolution of policing and judicial powers.

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