

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

**UK Children's
Commissioners' Report
to the UN Committee
on the Rights of the Child**

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The UK Children's Commissioners



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Publication date: June 2008

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Introduction

The Children's Commissioners from the four nations of the United Kingdom have pleasure in submitting their report to the Committee. The fact that we exist is evidence of some progress since the UN's second periodic report was considered in 2002, when only Wales had a Children's Commissioner. However, unfortunately, we have to report that, not only do some of the Committee's Concluding Observations of 2002 still lack any effective implementation, but some things have actually got worse. We would cite developments in juvenile justice and public attitudes towards children and young people as examples of this. We believe that our ability to identify and pursue these issues confirms the need for independent offices such as ours. While much remains to be done, we believe we have been particularly effective in safeguarding the rights of children and young people involved in asylum processes and in challenging discriminatory practices such as the introduction of the 'Mosquito' device referred to in our report. We have also continued to pursue the need for a ban on the physical punishment of children, challenging our Governments' claims that recent legislative changes have dealt with the matter.

The fact that the four Children's Commissioners are submitting a joint report is evidence of our commitment to work together to make life better for all children in the UK through promoting implementation of the Convention on the Rights of the Child (UNCRC). There are many issues of common concern, but their significance varies across the four nations. They are played out against a background of different histories, laws and cultures. We would not wish to over-emphasise the differences, but they are important and the variation is increasing as devolved legislative and governmental bodies grow in strength and confidence within the UK. Where there are variations in law, policy and practice, this can be interpreted negatively where children in some nations seem to be faring worse than those in others. But there is also strength in diversity where it is a consequence of a choice by one of our communities to make an extra investment in its child population or an extra effort to promote the rights of children. When that happens in one nation, it provides a spur to action in the others and the frequent communication between the Commissioners allows us to exchange information and to benefit from the experience of those who have taken a different approach to problems that are often similar. We value the possibility of local discretion where it manifests in different ways of respecting the Convention, allowing critical comparison, and we would not wish that richness to be diluted for the sake of an empty ideal of consistency. Where our report cites examples of particular concerns, these will often focus on one of the nations. This does not mean that there are not similar problems in the others, but merely that we had to choose one for the purpose of illustration.

In shaping the report, we kept in mind the Committee's reporting guidelines, but have also been selective. For example, Article 3 is not addressed separately because a lack of consideration of the best interests of the child is a feature of so many of the issues we have addressed. Given the fact that we are preparing one report for four nations, it would have been impossible to have covered all aspects of the lives of children in any meaningful and concise way. Instead, we identified issues of particular concern, through negotiation amongst our offices, including consultation with the children and young people who advise us. In exploring these issues, we have drawn on our extensive experience of contact with children and young people through our policy development work and the complaints and enquiries received by our offices. We have also had contact with NGO groups across the UK and have liaised with Government in order to make the process as smooth as possible without diluting our distinctive voice. We welcome the open and consultative approach taken by the UK Government and devolved administrations to the reporting process, and indeed the Government report itself. It has faced some of the same challenges that we have in attempting to address issues arising in the four nations within a common framework. We are also of the opinion that the Government's report would benefit from greater analysis of the issues narrated within it.

This is the first time that the Committee will be able to make its Concluding Observations in the knowledge that there are independent institutions in the UK committed to promoting and monitoring implementation. It will assist us in our task if the Committee can hold the Government accountable through clear recommendations about specific actions and the mechanisms needed to monitor implementation.

Context

England

England is under the full jurisdiction of the UK Parliament in Westminster, with no separate devolved administration. The UK Parliament continues to legislate on matters which affect the UK as a whole and these matters, which are reserved to Westminster, include immigration and nationality.

There are currently 12.4 million children aged 0-19 in England (around 20% of the population of England) and almost one in five are from an ethnic minority.

Good things about being a child in England

- Increasing political importance is given to children by the Government, reflected in increased investment, for example, the Every Child Matters strategy and the Children's Plan.
- The majority of children say they are happy.¹
- The majority of children aged up to 15 say that their general health is either good or very good.²
- Most children say they feel safe from being hurt by other people.³
- Children are increasingly well educated with significant improvements in attainment for primary⁴ and secondary school pupils⁵ and a rise in the numbers staying on at school post-16.⁶
- The majority of children are ambitious: they want to learn and succeed.⁷
- Most children and young people are engaged, motivated and making a positive contribution, for example, volunteering, helping in the community and peer mentoring.⁸

Bad things about being a child in England

- There is a very punitive approach to misbehaviour by children and young people and the criminal justice system is used too readily. Compared to other European countries, England has a very low age of criminal responsibility and high numbers of children are locked up.
- Children seeking asylum are treated very differently from citizen children and experience serious breaches of their rights.
- Inequality persists in income, health and education and impacts severely on children's rights and life chances.
- Child poverty is high with around 3.1 million children living in poverty (29% of children) in England⁹ and more than 1 million children living in poor housing.¹⁰
- Child mental health has deteriorated over the last thirty years.¹¹
- Large numbers of children are affected by domestic violence, parental substance misuse and parental mental health problems.
- Children in care and leaving care face very poor outcomes¹².
- Children feel increasingly unsafe in their local area, with one in four concerned about violence, crime and weapons.¹³
- Children do not have equal protection from violence in the home.
- Compared to other European countries, children in England drink a lot more alcohol, engage in early sex and are more likely to use cannabis.¹⁴
- Obesity in children has risen by almost 50% in the last ten years.¹⁵
- Children feel increasingly pressurised, in particular, by school,¹⁶ exams¹⁷ and commercial marketing.
- The UNCRC has not been fully brought into legislative and policy processes in England.

Wales

The legislative base in Wales has been closely linked with that of England for a long period through the law making powers of Westminster. Many acts of Parliament still apply equally to Wales and England, for example, the Children Act 1989.

This situation has changed in the past decade and following the successful referendum in 1997, the National Assembly for Wales was established in 1999.

Between 1999 and 2007, there was no clear division between the legislative body, the National Assembly for Wales, and the executive body, the Welsh Assembly Government. This situation was resolved by the Government of Wales Act 2006 which created a legal separation between the Welsh Assembly Government and the National Assembly for Wales. This means that the Welsh Assembly Government governs Wales while the National Assembly for Wales makes laws.

The Welsh Assembly Government now has devolved law making powers in a number of key areas of children's lives, including education and training, social welfare, and health and health services. However some areas, such as defence, police, youth justice, the courts, asylum and immigration and the benefits system, are retained by Westminster.

Wales's population of 2.94 million in 2004 includes 651,800 children and young people under 18 years of age. Children are a declining proportion of the population in Wales.

Although there is much to be proud of in Wales's treatment of its children and young people, there are also some particular problems.

Good things about being a child in Wales

- No school league tables or statutory assessment tests at ages 7, 11 and 14.
- The adoption of the UNCRC by the Welsh Assembly Government as the guiding principle for policy development for children and young people.
- The Welsh language and culture has status and recognition.
- The environment.
- The participation of children and young people at both a local and national level, for example, through Funky Dragon and through school councils which are a statutory requirement in schools.
- Advocacy for children in need has been placed on a statutory footing and a new strategic direction for advocacy services has been announced.
- School-based counselling services are to be provided to pupils over the age of 11.

Context

Bad things about being a child in Wales

- Many policies are not implemented fully and consistently across Wales.
- Child poverty is still very high in Wales.
- Imprisoned children are often held in secure settings in England.
- Child and adolescent mental health services are struggling to cope with demand for their services.
- Children's health services are not as well funded as adult services.
- Children are still not offered equal protection from violence despite commitment to change from the Welsh Assembly Government and National Assembly for Wales.
- Outcomes for children looked after away from home are still poor.
- Only 8% of children know about their rights as defined by the UNCRC.¹⁸
- Disabled children's experiences are worse than those of their peers.

Northern Ireland

Northern Ireland has a population of 500,000 children and young people, one third of the total population. Since 1968 it was a country in conflict, and was governed by the UK from Westminster until devolution in 2007. As yet, not all powers are devolved to locally elected politicians. Some matters, most notably policing, criminal justice and immigration, continue to be reserved to non-Northern Ireland elected politicians and are outwith the powers of the Children's Commissioner.

The conflict and its consequent impacts, sometimes referred to as the "Troubles", have had significant influence over the realisation of children's rights under the UNCRC. Detailed below are contextual factors which in the opinion of the Children's Commissioner continue to act as barriers to the full realisation of rights and must be overcome through strategic approaches by the State Party.

Legislative processes

While there is a requirement under section 75 of the Northern Ireland Act 1998 to consult and carry out equality impact assessments on policy and legislation, there is no requirement to act upon the findings. There is an added lack of democracy when legislative processes are allowed to go through without amendments and be enacted through a process of royal assent, rather than proper engagement and debate locally.

Constitutional rights

Currently, there is no protection in constitutional terms for children's rights in Northern Ireland. The UNCRC is not enshrined in domestic legislation. There is an opportunity for this to change, with the introduction of a Bill of Rights for Northern Ireland. The Commissioner wishes to see as a minimum, the full principles and provisions of the UNCRC incorporated into law through the Bill of Rights in Northern Ireland.

Discrimination

Presently in Northern Ireland, equality and protection against discrimination is contained in a fragmented legislative framework. We wish to see the development and implementation of a Single Equality Act for Northern Ireland which harmonises current anti-discrimination legislation and aims to make future legislative improvements which ensures equality protection for all children.

Poverty

Official figures show that the number of children in Northern Ireland falling below 60% of median income threshold before housing costs is approximately 108,400.¹⁹ The current anti-poverty strategy 'lifetime opportunities' will not deliver on its targets to halve child poverty by 2010 and eradicate it by 2020, nor does the current program for government contain sufficient policy initiatives to address child poverty. We wish to see a comprehensive action plan to address child poverty, which has time bound, measurable outcomes to tackle child poverty.

Conflict

While many of today's children have not lived through the Troubles, their parents and relatives have, and this has resulted in residual 'after effects' for many children and young people. Sectarianism, paramilitary control, loss and bereavement result in an inability to cope or to access opportunities which all children should enjoy as their right. For example, access to play and leisure, access to adequate health care, access to education etc, are often more difficult to achieve for those living with the trauma of the conflict.

Multi-culturalism

Northern Ireland is becoming a diverse society. Unfortunately for many new families, as is the case for children from Irish Travelling families, racism and discrimination is a common experience. Much needs to be done by the State Party to prevent hate crimes and to promote access to rights of children from Travelling and ethnic minority communities.

Scotland

There are just over a million children and young people aged under 18 in Scotland, representing 20% of the population.

The UK Government's report acknowledges that Scotland and Northern Ireland have separate legal systems but asserts that "similar statute and common law principles are applied throughout the UK." This statement significantly underestimates the differences between Scottish child law and that of the rest of the UK. Scotland had its own distinctive legal system, even during the period from 1707 to 1999 when its laws were enacted by Westminster. The language and philosophy of Scottish law is based on Roman Law and has more in common with European countries than with the "common law" of the rest of the UK. Even in modern times, Scottish child law has taken a different direction in matters such as its welfare-based approach to juvenile justice through the children's hearing system. Scotland also has a different education system.

Context

Devolution and the re-establishment of a Scottish Parliament have made it likely that Scotland will continue to deviate from the English model in significant aspects of children's lives. We are proud of some of our traditional standards and achievements, but we also recognise that we can learn from other parts of the UK and we are committed to exploring alternative approaches where these are more likely to advance the rights of children and young people.

Good things about being a child in Scotland

- Scotland has a strong sense of national identity. We pride ourselves on our openness to immigrants and our tolerance of difference, even if that is not always borne out in practice.
- The historical approach to childhood in Scotland was built upon the Roman Law model that adopted a staged approach with significant rights being available at the age of puberty (12 for girls and 14 for boys). This has been much eroded in recent years, but it has left a legacy in terms of a cultural expectation of greater autonomy.
- Until the age of 16, juvenile justice is focused on the child's best interests and children are much less likely to be punished or locked up than in England. The Scottish Government is committed to keeping young people out of prison establishments.
- Scottish communities have embraced the asylum seeking families in their midst and campaigned against the removal of families who have lived in Scotland for a significant number of years. Scottish school staff have given magnificent support to asylum seeking pupils. Care staff, health teams, children's rights officers and voluntary agencies have been exceptional in their support for unaccompanied asylum seeking children. The Scottish media has also been supportive. The Scottish Government has spoken out against unacceptable methods of forced removal of children and now allows failed asylum seekers access to further or higher education.
- The Scottish Government has started work on a dissemination strategy for the UNCRC which includes aspects such as awareness raising and training, and targets children and young people, parents and professionals.

Bad things about being a child in Scotland

- The downside of our earlier autonomy is a cultural expectation that focuses now on the age of 16. After that age, young people are largely classed as adults for the purpose of criminal justice. Scotland locks up too many young people aged 16 and 17.
- Scotland shares with the rest of the UK a public attitude towards children and young people that tends to demonise them and often seems to wish to exclude them from public spaces.
- At the same time, there is evidence of an over-protective attitude towards children that reduces their opportunities for play, leisure, recreation and healthy development. This may be fuelled by parental fears or by institutional avoidance of any risk that might lead to liability. In Scotland, research has shown that adults fear contact with children in case they are accused of harming a child. This very wide-spread and significant fear has created an unhealthy climate that limits opportunities and hampers child development.

- Scotland's health record is appalling, especially in the post-industrial parts of the West of Scotland. We have the highest levels of mortality of any Western European country. There are some strategies to address this but much remains to be done.
- Alcohol and drug misuse have a serious impact on young consumers and the children of adult consumers. Our family support and child protection systems are finding it difficult to cope.

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6. Office for National Statistics. Social Trends 37 (2007).
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18. Funky Dragon. Our Rights, Our Story (2007).
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General Measures of Implementation

Article 4 (national human rights institutions)

Role and mandate of the Children's Commissioners

1. We welcome the establishment of a Children's Commissioner within each of the four nations in the UK, as recommended by the Committee in 2002. However, the mandates, independence and funding arrangements of each Commissioner vary considerably. We are concerned that no Commissioner's office fully complies with the characteristics of national human rights institutions set out by the Committee or with the Paris Principles.

Independence and funding

2. Each Commissioner in the UK has been accorded varying degrees of independence in their establishing legislation. There are concerns over whether some Commissioners are sufficiently independent from government to allow full autonomy and for example, to set priorities for their work. In England, the Commissioner may be directed by the Government to undertake a specific inquiry. It is then the Government's decision whether any subsequent inquiry report will be published. While the Commissioner may also initiate his own inquiry, he must consult the Government before doing so. It is unclear what the Commissioner's course of redress would be if the Government was to object.

3. The Commissioners in England, Wales and Northern Ireland each report to a government department instead of directly to Parliament, as is the case in Scotland. Moreover, in England, Wales and Northern Ireland, the respective Governments control the appointment, reappointment and removal of the Commissioner.

4. The issue of independence is closely related to that of funding arrangements for each Commissioner. In Wales, for example, the independence of the Commissioner could be enhanced by its funding being granted directly, instead of being drawn from the budget of a government department. The English Commissioner's funding is also determined by a government department which may grant the funding "on such conditions (if any) [the Government] considers appropriate".²⁰ Funding for the Northern Ireland Commissioner is also allocated by a government department and is subject to efficiency savings as advised by that department. The Management Statement and Financial Memorandum place significant and unjustifiable constraints upon the freedom of action of the Northern Ireland Commissioner. While we acknowledge the need for public accountability, it is inappropriate – and in breach of the Paris Principles – for a government department to dictate the manner in which a Commissioner's budget should be spent.

Mandate

5. The mandates of the four UK Commissioners vary considerably. While the Commissioners in Wales and Northern Ireland may deal with individual cases, the Commissioners in England and Scotland may not. While the English Commissioner has a right of entry to premises where a child is accommodated or cared for, the Commissioner for Scotland does not. Similarly, the Scottish Commissioner has no power to require a response (for example, to a recommendation) in a specific timeframe.

6. While the mandates of the Commissioners for Wales, Northern Ireland and Scotland are rights-based and use the UNCRC as their framework, the English Commissioner is required to use five aspects of child well-being that correspond to the five outcomes for children in the Government's 'Every Child Matters' agenda as the basis for his work.²¹ Linking the Commissioner's mandate so directly to these outcomes ties the office directly to government policy in a way that can be seen as restricting his independence.

Non-devolved matters

7. Currently, the English Commissioner has a UK-wide remit regarding non-devolved issues, enabling him to exercise his functions in relation to children in Wales, Northern Ireland and Scotland. This situation could lead to confusion, particularly among children and young people who would have recourse to a different Commissioner depending on whether the issue they are concerned about is devolved or non-devolved. For example, the Welsh Commissioner would not be able to investigate the case of an asylum seeking child living in Wales because immigration and asylum are non-devolved. However, given the limitations of his mandate and his inability to pursue individual cases, the English Commissioner could not take up a case on the child's behalf.

8. The current arrangements could also lead to tensions between the four Commissioners in the UK although we have so far worked well together to try to ensure such tensions do not arise.²² Nonetheless, there is a need to address this anomaly. It is more appropriate, particularly from the point of view of the child, that each of the Commissioners in the UK is able to promote and protect all the rights of children in their own country, regardless of the subject matter.

General Measures of Implementation

Recommendations

- **R1** The UK Government and devolved administrations should ensure that each Commissioner in the UK is compliant with the Paris Principles.
- **R2** The UK Government and devolved administrations should ensure that, as national human rights institutions, the Commissioners are accountable to their respective Parliament or Assembly rather than a government department.
- **R3** While we acknowledge the need for limits on overall funding, the UK Government and devolved administrations must permit the Commissioners to set their own staffing levels and structure their own budgets in terms of the substantive work to be carried out without interference or conditions imposed by government.
- **R4** The UK Government and devolved administrations should allow each of the Commissioners in the UK to exercise their functions with respect to the children in their own country, regardless of the subject matter. In this regard, the mandates of the Welsh and Northern Ireland Commissioner should be extended to cover all public authorities, including UK-wide public authorities.
- **R5** In England, Wales and Northern Ireland, the appointment, reappointment and removal of the Commissioner should result from a non-governmental appointment process.
- **R6** In England, the UNCRC must be adopted as the legal framework for the work of the Commissioner.
- **R7** In Northern Ireland, the policy-focused aspects of the Management Statement should be removed as they are incompatible with the Paris Principles.
- **R8** In Scotland, the Commissioner's remit should be extended to allow her to require a response within a specific time frame and to require the production of documents outwith the scope of a formal investigation.

Article 4 (bringing domestic legislation into conformity with the UNCRC) and Article 42 (dissemination of the UNCRC)

Incorporation of the UNCRC into domestic law

9. Although the UK has ratified the UNCRC, the Convention is not part of domestic law and remains unenforceable. Moreover, while a substantial amount of legislation seeking to promote the welfare of children has been introduced since the UK's last periodic report, reference to the rights of children in such legislation is often limited. Indeed, we believe some recent legislative and policy developments are in clear breach of the UNCRC.²³ While there have been other more welcome developments, such as the incorporation of the European Convention on Human Rights into domestic law and the increasing reference to the UNCRC by the judiciary, for children in the UK to fully realise and enjoy their rights, the UNCRC must be incorporated into domestic law.

10. In 1998, a Bill of Rights was promised to the people of Northern Ireland under the terms of the Good Friday Agreement. The development of a Bill of Rights is still underway and offers a real opportunity to incorporate the UNCRC as part of domestic law in Northern Ireland. Similarly, the proposed British Bill of Rights and Duties will offer an opportunity to incorporate the UNCRC into domestic law.

Children's rights impact assessments

11. Scotland's Commissioner for Children and Young People has developed a tool for assessing the impact of law and policy on children's rights.²⁴ As well as using the impact assessment tool ourselves, we have encouraged its use by policy and decision makers to ensure that they take children's rights into account. Children's rights impact assessments are necessary because while there have been some attempts to introduce equality impact assessments which would cover 'age' as an equality strand, the focus tends to be on equality of opportunity for older people. Children and young people are often excluded from considerations of age equality.

12. We welcome the Scottish Government's interest in children's rights impact assessments²⁵ and recommend that it, along with the UK Government and other devolved administrations, carries out impact assessments on all proposed legislation and policy that may affect children. Governments must ensure that impact assessments do not become a tick-box exercise. Impact assessments should also be carried out at a local level by those public bodies providing services directly to children and young people.

Dissemination of the UNCRC

13. Awareness and knowledge of the UNCRC in the UK is low among children and young people, parents, professionals and the public generally. This is despite the Committee's recommendation in 2002 that the UK "substantially expand dissemination of information on the Convention". Since 2002, little has been done with regard to either dissemination of the UNCRC or the concluding observations, or the targeting of information at vulnerable groups, as also recommended by the Committee.

14. A survey in Scotland in 2007 found that 44% of children had heard of the UNCRC (ranging from some who knew a great deal about the Convention to some who had heard of it but who knew hardly anything about it).²⁶ In England in 2006, a poll found that 13% of children had heard of the UNCRC.²⁷ Even more startling, a recent survey found only 8% of Welsh children had heard of the Convention.²⁸

15. The national curriculum in England and the corresponding guidelines in Scotland do not explicitly include information about the UNCRC.²⁹

General Measures of Implementation

16. In Scotland, the Government has begun drafting a dissemination strategy for the UNCRC which includes aspects such as awareness raising and training, and targets children and young people, parents and professionals. This strategy would represent a welcome step towards the realisation of children's rights and should be fully implemented.

Training

17. While some progress has been made, training for professionals is not yet comprehensive. Training on children's rights should be given to all professionals working with children and young people, including teachers, social workers, health professionals, care workers, the police, judges, staff in the secure estate and others. In addition, children's rights should form part of training for civil servants. Training should promote awareness and understanding of the UNCRC and help them take a rights-based approach to their work. Children's rights should form an integral part of their initial professional training as well as their continuing professional development.

Recommendations

- **R9** The UK Government and devolved administrations should incorporate the UNCRC into the domestic law of all four nations in the UK.
- **R10** The UK Government should enshrine the UNCRC in the proposed British Bill of Rights and Duties and the Bill of Rights for Northern Ireland.
- **R11** The UK Government, devolved administrations and local authorities should carry out children's rights impact assessments of all legislative and policy developments that affect children at national and local levels.
- **R12** While we acknowledge that the Children's Commissioners have a role to play in disseminating the UNCRC, the responsibility for doing so lies primarily with the State Party. The UK Government and devolved administrations must take steps to raise awareness of the Convention and produce accessible information about children's rights.
- **R13** The UK Government and devolved administrations should ensure that the UNCRC forms part of the school curriculum across the UK.
- **R14** The UK Government and devolved administrations should ensure that all those working with children and young people, including civil servants involved in policy development, receive training in children's rights.

Article 4 (maximum extent of available resources)

Allocation of resources

18. In 2002, the Committee recommended that to ensure compliance with Article 4, budget analysis be conducted across the UK Government and devolved administrations to show spending on children, identify priorities and allocate resources to the maximum extent available. This recommendation has been inconsistently acted upon and where analysis has been carried out, it has not always been at the instigation of Government (with the exception of Wales).

19. The general consensus of the four Commissioners is that allocation of resources is not dependent on assessed need, is not transparent, is often of a short term nature, and its impact on outcomes for children is not always evaluated. That said, all Commissioners welcome the substantial investment across the administrations in the UK on aspects of children's well-being and are particularly pleased at the commitments given by the UK Government and each of the devolved administrations that children and young people should be a priority.

20. To make this commitment a reality, however, there are some barriers that must be overcome at the UK level and within each devolved administration.

21. Recently, research was conducted for the Northern Ireland Commissioner to analyse the amount of Government financial support for children in Northern Ireland and how that compares to support for children in the rest of the UK.³⁰ The research found clear differences across the four countries in the UK with regard to spending on social care, health and education. However, in conducting this research, one of the key difficulties lay in identifying comparable expenditure figures. For example, the Government was unable to provide information on education expenditure in England. This, added to the fact that each country calculates education expenditure using different categories, means it is impossible to make meaningful comparisons. In addition, within Northern Ireland, the combined health and social care trusts make it difficult to differentiate health from social care spending and, therefore, to compare spending with that in the rest of the UK.

22. Expenditure on children should be based on a range of variables including need, demography, rurality and economies of scale. The overall aims should be to spend sufficient public money to ensure the best outcomes and to maximise the overall well-being of children and young people. The recent UNICEF report on child well-being in rich countries identifies the strong links between government expenditure on children and overall well-being.³¹ The UK has a lower rate of child well-being than might be expected given its social expenditure. However, as noted above, the Government is unable to identify exactly how much of this social expenditure is devoted to children.

General Measures of Implementation

Scotland

23. Following the change in Government in Scotland in 2007, there has been a fundamental shift in the way in which funding is allocated by central government to local authorities (which are primarily responsible for delivering a range of services to children and families such as education and social care). From April 2008, local authorities will receive block grants and ring-fencing will be removed. Whereas funding for many children's services was previously protected, each local authority will now be free to allocate resources to local priorities, but will be guided by a series of nationally agreed outcomes. These outcomes have already been agreed by the Scottish Government and local authorities, but with little involvement from external stakeholders. The Commissioner in Scotland is concerned that under these new arrangements, budgetary analysis and transparency may be threatened. As a result, assessing compliance with Article 4 of the UNCRC in Scotland could prove even more difficult.

Recommendations

- **R15** The UK Government and devolved administrations should be required to identify their spending on children.
- **R16** The UK Government and devolved administrations should evaluate the impact of their spending on children.
- **R17** The UK Government and devolved administrations should end the use of short term funding for children's services.
- **R18** The UK Government and devolved administrations should ensure there is transparent analysis of the way in which resources are allocated.
- **R19** In Northern Ireland, the Ministers whose responsibility is to enable Government to work collectively in the interests of children must ensure appropriate resources based on need are allocated to guarantee their well-being, particularly those whose rights are being breached.
- **R20** In Scotland, the new local government funding arrangements must be monitored and should take into account the Government's obligations under the UNCRC and, in particular, Article 4.

20. Children Act 2004, Schedule 1(7).
21. These are physical and mental health and emotional well-being; protection from harm and neglect; education, training and recreation; the contribution made by children to society; and social and economic well-being.
22. The Commissioners in the UK, as well as the Ombudsman for Children in Ireland, have formed the British and Irish Network of Ombudsman and Children's Commissioners (BINOCC). This network meets regularly with the purpose of sharing information and carrying out joint work.
23. For example, the 'naming and shaming' of children subject to anti-social behaviour orders (see Crime and Disorder Act 1998, Local Government Act 2000 and Home Office, A guide to anti-social behaviour orders). See para 179 for further information.
24. SCCYP. Children's Rights Impact Assessment: The SCCYP Model (2006).
25. Scottish Executive. Report on the Implementation of the UN Convention on the Rights of the Child in Scotland 1999-2007 (2007), para 66.
26. YouthLink Scotland. Being Young in Scotland Survey 2007 (2007).
27. Ipsos Mori. School Omnibus Survey 2006 (2006). Children's Commissioner Topline Results.
28. Funky Dragon. Our Rights, Our Story (2007), p.77.
29. From 2008, the Welsh national curriculum will include information about the UNCRC.
30. ERINI and IFS. An Analysis of Public Expenditure on Children in Northern Ireland (2007).
31. UNICEF Innocenti Research Centre. An overview of child well-being in rich countries (2007).

General Principles

Article 2 (non-discrimination)

Discrimination

24. The UK Government and devolved administrations have made little or no progress in fulfilling the Committee's 2002 recommendation to monitor the situation of children who are exposed to discrimination (in particular children with disabilities, children from poor families, Gypsy and Traveller children, asylum seeker and refugee children, children belonging to minority groups, children in care, detained children and children aged between 16 and 18).

25. There are particular concerns for lesbian, gay, bisexual and transgender young people (LGBT) who still experience homophobia, bullying, discrimination and isolation on a regular basis at home, school, college, work and in other settings. Half of teachers do not intervene when they hear homophobic language and 30% of lesbian and gay pupils say that adults – teachers or support staff – are responsible for homophobic incidents in their school.³²

26. The profound inequality experienced by Gypsy and Traveller children has been highlighted in inquiries carried out by the Northern Ireland Commissioner for Children and Young People, the Commission for Racial Equality and the Scottish Parliament's Equal Opportunities Committee.³³ There is much evidence across all UK countries that Gypsy and Travellers fare worst of any ethnic group in terms of health and education. In England, for example, life expectancy for men and women is ten years lower than the national average; Gypsy and Traveller mothers are 20 times more likely than mothers in the rest of the population to have experienced the death of a child; and in 2003 less than a quarter of Gypsy children obtained five GCSEs at A*-C grades, compared to the national average of just over half.³⁴ In Northern Ireland, Traveller children are required to attend school for 100 days per year, compared to 185-190 days for settled children. Accommodation for Gypsies and Travellers also remains a concern across the UK. In Northern Ireland, for example, different guidelines for different types of site, such as emergency halting, transit and permanent sites, lead to barriers in the provision of amenities such as electricity.

27. Since the enlargement of the European Union, there has been a large number of migrant families who have come to the UK to live and there is emerging anecdotal evidence of:

- Increases in racist attacks on migrant families;
- Worrying racist attitudes among children and young people;
- A lack of affordable childcare for migrant workers' children; and
- Inappropriate education provision for children whose first language is not English.

28. Young people in the UK face discrimination in benefit rates and the minimum wage. Sixteen and 17-year-olds receive the lowest benefit rates and the lowest minimum wage rate. There is no evidence to support the view that young people have lower living costs.

29. Despite the Committee's previous concluding observations, the UK Government has not monitored the comparative enjoyment by children of their rights in England, Scotland, Northern Ireland and Wales. Nor has it used this monitoring to develop comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination.

30. Indeed, we believe there has been an increase in discrimination against children as a whole. This is exemplified by the growing use of the 'Mosquito' device, a privately marketed product that issues a high frequency noise generally only heard by those under the age of 25. The device is used to repel teenagers from public places and indiscriminately impacts on children's use and enjoyment of these spaces and highlights the intolerance of children in the UK. While the UK Government and devolved administrations have not endorsed their use, they have not taken any steps to ban them.

31. The Commissioners welcome the establishment of the Equality and Human Rights Commission in England, Wales and Scotland and, in principle, the Single Equality Bill and single Equality Act in Northern Ireland. However, we hope that this legislation will not dilute or reduce existing equalities protection and will ensure maximum protection for children and young people against all forms of discrimination. We are very concerned that the UK Government, as at March 2008, is proposing to exclude children under 18 from the proposals to extend age discrimination legislation to cover goods, facilities and services and the single public sector equality duty. Excluding a significant part of the population from these provisions is discriminatory and inequitable. In their daily lives, in accessing shops, transport and other services, children face many barriers and obstacles. The signs in shop doors of "no school children" or "only two children at a time" are now common and largely go unnoticed by adults but impact on children's lives. They reinforce the negative stereotypes that are held about children in our society. Unfair treatment based on prejudice and negative stereotyping should be no more acceptable for children than any other members of society.

Recommendations

- **R21** The UK Government and devolved administrations should monitor the situation of children vulnerable to discrimination, in particular, children with disabilities, children from poor families, Gypsy and Traveller children, asylum seeker and refugee children, children belonging to minority groups, children in care, detained children and children aged between 16 and 18 years old.
- **R22** The UK Government and devolved administrations must monitor the comparative enjoyment by children of their rights.
- **R23** The UK Government and devolved administrations should develop, on the basis of such monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination.

General Principles

- **R24** The UK Government and devolved administrations should investigate the barriers to adequate education for Traveller children and take corrective action as a matter of urgency.
- **R25** The UK Government and devolved administrations must ensure a high standard of accommodation provision and amenities at Traveller sites.
- **R26** The UK Government should address discrimination against 16 and 17-year-olds in the benefits system and with regard to the minimum wage.
- **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.
- **R28** The UK Government should include children under the provisions of the Single Equality Bill, specifically the provisions for age discrimination in goods, facilities and services and the single public sector equality duty.

36. Despite some limited progress in children's participation in education, such as the ability of Welsh pupils to become associate school governors and the strengthening of the child's voice in the exclusion process, there remains resistance to allowing children to exercise their right to participate in decisions that affect them at school.

37. There is variation in the extent to which children's voices are heard and taken into account in both public and private law proceedings. There is also inconsistency in the granting of separate legal representation to children where this is needed.

38. At present, there is no national strategy for children's advocacy services in any of the four UK countries. Within each country, particular issues exist in terms of access to, funding for and the independence of advocacy services. Children with mental health problems and children with a disability are among those who have particular problems accessing an advocacy service. We welcome the Welsh Assembly Government's recently announced plans to develop a framework for the future provision of advocacy services in Wales.

Article 12 (respect for the views of the child)

Participation in decision making

32. Since 2002, there has been a general improvement in the recognition, level and quality of children's participation in decision making across the UK. Nonetheless, there remains significant variation in legislation and practice. While we are encouraged by pockets of good practice, a considerable amount of progress is yet to be made to fully achieve children's participation rights in all aspects of their lives, regardless of the setting or the subject matter.

33. There are a number of barriers that limit children's participation in decision making. Some of those barriers are strategic (such as complaints policies that are unsuitable for use by children or that specifically exclude children from making a complaint), while others are attitudinal. These barriers are unlikely to be removed until children are perceived as rights-holders and there are increased training opportunities for professionals on children's rights generally and on Articles 12 and 13 in particular.³⁵

34. Particular groups of children and young people may experience additional barriers to enjoying their participation rights. For example, there continues to be resistance to seeking the views of younger children at a strategic level and a failure to implement law and policy when it comes to involving disabled children or looked after children in decisions about their care. Children with non-verbal means of communication and those with other communication difficulties experience particular problems with regard to participation and often do not have the necessary communication aids that would facilitate their right to a voice.

35. Although some progress has been made with regard to the participation of children in both collective and individual decision making, and the principle of participation is being progressively embedded in law and policy, this has not yet consistently filtered through into practice.

Recommendations

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

32. Stonewall. The school report (2007).

33. NICCY. Adequacy and effectiveness of education provision for Traveller children in Northern Ireland (2007); Commission for Racial Equality. Common ground: equality, good race relations and sites for Gypsies and Irish Travellers (2006); and Scottish Parliament Equal Opportunities Committee. Inquiry into Gypsy Travellers and Public Sector Policies (2001).

34. Commission for Racial Equality. Common ground (2006).

35. As noted at para 17.

Civil Rights and Freedoms

Article 16 (protection of privacy)

DNA retention

39. Children in England, Wales and Northern Ireland who have been investigated by the police routinely have their DNA records retained indefinitely on the National DNA Database (even where they are found not guilty of any crime). While the police must use modern technology to tackle crime, this should be balanced with the rights of the children concerned. In Scotland, DNA can only be retained for three years and only in cases of violent and sexual offences. An application must be made to the court to hold it for longer. The Scottish approach should be adopted across the UK.

Recommendation

- **R35** The Scottish approach to DNA retention should be applied by the UK Government and other devolved administrations in the UK.

Article 37(a) (protection from torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment)

Physical punishment

40. Since 2002, physical punishment within the family has been the subject of regular debate resulting in a change in the law in each nation in the UK. Nevertheless, all legislative changes have fallen short of the standard required by the Committee. Throughout the UK, the physical punishment of children is still permissible within the family. Where a parent hits a child, they are able to claim a justifying defence where such a defence would not be available were the victim over the age of 16. Children are thus denied the equal protection of the law.

41. Furthermore, the extent to which the governments in each nation have promoted non-violent forms of discipline through support for parents and public education has been varied and often limited. In amending the law and in policy making in this area, insufficient regard has been had to children and young people's views on physical punishment.

England and Wales

42. In England and Wales, section 58 of the Children Act 2004 removed the defence of 'reasonable chastisement' for those with parental responsibility but replaced it with one of 'reasonable punishment'. While section 58 prevents the use of the defence in relation to serious assaults, it may be used in relation to charges of common assault. The Children Act 2004 therefore fails to prohibit all physical punishment in the family. During the passage of the 2004 Act, the UK Government resisted calls for equal protection for children, emphasising a parent's right to discipline and highlighting the risk of parents being criminalised and brought before the courts. The Commissioners are disappointed that a recent review of section 58 did not result in it being repealed.³⁶

Children in England and Wales have less protection under the law on common assault than adults and the Government has not taken "all the necessary steps to prohibit the use of physical punishment however light, including in the home".³⁷ Moreover, the Government's review appeared to disregard the views of children and young people, as well as professionals, who supported an end to physical punishment.³⁸

43. It is important to note that the Welsh Assembly Government agrees with the Committee that all physical punishment should be prohibited but, due to the constitutional settlement for Wales, is unable to change the law. The legislative power to affect the desired change lies with the UK Parliament. In passing the Children Act 2004, the UK Parliament disregarded the views of the Welsh Assembly Government and the fact that the National Assembly of Wales had recently passed a motion regretting the UK Government's failure to prohibit the physical punishment of children in the family.

Northern Ireland

44. In Northern Ireland, a consultation by the Office of Law Reform concluded that there was no consensus on the issue of physical punishment. Nevertheless, in 2006, the Secretary of State for Northern Ireland decided to extend section 58 of the Children Act 2004 to Northern Ireland via the Law Reform (Miscellaneous Provisions) (NI) Order 2006. Article 2 of the Order provides for the physical punishment of children and brings the law in Northern Ireland into line with that in England and Wales. In 2007, a court rejected the Northern Ireland Commissioner for Children and Young People's application for judicial review of this decision. The Commissioner is appealing the court's ruling and continues to believe that the current law is in breach of children's rights under Articles 19 and 37(a) of the UNCRC, and Articles 3, 8 and 14 of the European Convention on Human Rights.

Scotland

45. By virtue of section 51 of the Criminal Justice (Scotland) Act 2003, the Scottish Parliament replaced the defence of reasonable chastisement with one of 'justifiable assault'. Section 51 allows those with parental responsibility to physically punish a child and sets out a non-exhaustive list of factors that a court should take into account when considering whether such punishment is reasonable. These factors include the duration and frequency of the punishment, its purpose, the child's age and its effect, among others. Section 51 also sets out certain types of assault that are unjustifiable. These include blows to the head, shaking and the use of implements. In 2006, the Scottish Parliament rejected attempts to prohibit all forms of physical punishment.

46. Following the 2003 Act, the Scottish Government committed itself to supporting parents and educating and informing them about physical punishment and positive parenting approaches. While the Government has since published a booklet providing information on the 2003 Act, this falls short of the public education campaign recommended by the Committee in 2002 and the consistent promotion of non-violence as required by General Comment No 8.

Civil Rights and Freedoms

Conclusion

47. The Commissioners consider that the steps taken across the UK fall far short of the recommendations made by the Committee in 2002 and in its General Comment on Corporal Punishment. Each jurisdiction has continued to permit the physical punishment of children where it is deemed 'reasonable' or 'justifiable', thus failing to prohibit all forms of violence against children. Recent legislative changes offer little protection to children and can often be confusing to parents and those working with children. Furthermore, little effort has been made to monitor and evaluate the impact of these changes in the law.

48. While various initiatives have been undertaken to promote positive parenting in each country, there are no strategic plans in any country in the UK to raise awareness of and to promote non-violent methods of discipline.

Recommendations

- **R36** The UK Government and devolved administrations must provide children with equal protection from assault and ensure that children are not subjected to physical punishment. The recent legislative changes in the UK do not achieve this.
- **R37** The UK Government and devolved administrations must promote positive parenting strategies and develop ongoing and adequately resourced public education and awareness raising campaigns around the negative impact of physical punishment.
- **R38** The UK Government and devolved administrations must listen to and take into account the views of children, parents and professionals on physical punishment.

Physical restraint

49. It is well documented that there are high levels of restraint used against children in secure training centres (STCs) and young offender institutions (YOIs) in England and Wales. Between January 2004 and September 2005, restraint was used 7,020 times on young people in STCs, 5,133 times in YOIs and 3,359 times in eight secure children's homes.³⁹ In YOIs, there is little distinction between adults and children in the use of force and child protection concerns are not taken into account.⁴⁰

50. The infliction of pain is sanctioned through the use of nose, rib and thumb 'distraction' techniques. On many occasions these techniques have caused injury to children. We welcome the Government's decision to suspend the use of painful nose distraction and hope they will reconsider the use of other pain distraction techniques. The use of violence and force as control or punishment on vulnerable children is unacceptable. Despite the Government's assertion in their report to the Committee, restraint is not being used only as a last resort and there is evidence that restraint and pain are being routinely used in STCs and YOIs as a response to non-compliant behaviour.⁴¹ In 2004, two children died in STCs and restraint was an issue in both cases.

51. In 2007, the Government introduced a regulation to extend the circumstances in which physical restraint – including painful distraction techniques – can be used on children in STCs.⁴² The regulation allows restraint to be used to ensure "good order and discipline". It was introduced without consultation and despite extensive opposition. Although the Government has agreed to carry out a review of restraint in the juvenile secure estate, we fear this new rule will encourage wider use of restraint and believe it should be withdrawn.

52. There is also evidence of the continued inappropriate use of strip-searching and segregation for children in custody.⁴³

Recommendations

- **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.

Post-conflict issues and police practice in Northern Ireland

53. Northern Ireland is a society emerging from conflict and, as such, there are particular issues that affect the civil rights and freedoms of children and young people, some of which may even engage Article 6 (right to life). The Commissioner in Northern Ireland has unsuccessfully raised a number of concerns about police tactics and technologies with the Police Service for Northern Ireland (PSNI) and its monitoring body. These include:

- The use of Attenuating Energy Projectile (AEP, a type of plastic bullet) as a means of riot control. The Commissioner is very worried about the continued use of these weapons in the absence of medical evidence confirming that they are "less lethal" and the absence of data on injuries sustained by children and young people as a result of their use;
- The introduction of Tasers (electric stun guns) in the absence of an equality impact assessment as required by section 75 of the Northern Ireland Human Rights Act and despite advice to PSNI that they are "potentially lethal" to children and young people;
- The use of children as informants. The Chief Constable has advised that there are strict operational guidelines governing the use of children as informants. The PSNI draws the distinction between the use of children as information-gatherers primarily for political ends and as part of the routine policing of crime. Given the recent history of conflict, it is likely that the two issues are inter-connected, at least in communities wary of any police intervention. This has serious implications regarding the meeting of international children's rights standards including the right to life and raises questions about payments to young people encouraging drug addiction or fuelling more crime;

Civil Rights and Freedoms

- 'Community justice' or punishment beatings remain a cause for concern for many children and young people in Northern Ireland. This has not been traditionally dealt with as child abuse by the relevant authorities. More action should be taken by the police, social services and other relevant agencies to protect children and young people from abuse by adults within their own community; and
- Inter and intra-community conflict. Community feuds have a major impact on children and young people. Recent evidence in Belfast shows whole communities of children under threat from physical and emotional violence. While there is evidence of some collective action on the part of the authorities, it is felt this may be inadequate.

Recommendations

- **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.

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36. Department for Children, Schools and Families. Review of Section 58 of the Children Act 2004 (2007).
 37. UN Committee on the Rights of the Child. General Comment No 8: The right to protection from corporal punishment and other cruel and degrading forms of punishment (2006).
 38. DCSF. Review of Section 58 of the Children Act 2004 (2007).
 39. Evidence supplied by the Youth Justice Board to the Lord Carlile Inquiry (2006) Howard League for Penal Reform
 40. HM Chief Inspector of Prisons for England and Wales. Annual Report 2006/2007 (2008).
 41. The Carlile Inquiry (2006).
 42. SI 2007 No 1709.
 43. HM Chief Inspector of Prisons for England and Wales. Annual Report 2006/2007 (2008).

Family Environment and Alternative Care

Article 20 (children deprived of a family environment)

Looked after children

54. The UK Government's report to the Committee acknowledges that looked after children face particular difficulties and that outcomes for them remain poor compared with other children. While we welcome various new initiatives from each administration in the UK, for these to be implemented effectively requires substantial investment and resources, including a skilled workforce. Current difficulties in recruiting and retaining child and family social workers must be addressed, as must low morale amongst the workforce. Investment is also needed in preventative, early intervention and family support services.

55. Local authorities in the UK should provide the same levels of support, care and protection that any good parent would provide for their child. Nonetheless, authorities often fall short in their 'corporate parenting' role and do not fulfil their statutory duties. For example, the care plans of many children are not implemented and many young people approach leaving care without the pathway plan that is required by statute.

56. Although progress has been made with regard to involving looked after children in planning their own care, there is still much scope for improvement. Young people still report failures to involve them in decision making (particularly with regard to placements) and a lack of information about their care. For example, they are often unaware of the support to which they are entitled on leaving care and are thus unable to question its absence. Access to advocates is limited and complaints procedures are often non-existent or inaccessible.

57. We are concerned that disabled children in 52-week residential placements do not have the same statutory rights and protection afforded to children in the care system.⁴⁴ These children should be granted looked after status to ensure they are provided with legal safeguards including more rigorous care planning, provision and review.

58. In England and Wales, in particular, we are concerned about the unequal treatment of separated asylum seeking children who do not have access to the same level of provision, entitlements and support as resident children in care.⁴⁵

Thresholds for intervention

59. Across the UK, concern has been expressed about the huge demands being placed on social services, particularly by the increasing number of children living in drug and alcohol misusing families. This demand on finite resources has led to thresholds for intervention rising and complaints – including from children themselves – that some children have remained living in their families when it is no longer safe. Although social services might prefer to be involved in preventative work, family support and early intervention, in reality, financial pressures, demands on staff and an emphasis on the right of the child to be looked after by their parents mean that they often focus on children whose situations have reached crisis point.

Placements: suitability and instability

60. Placements for looked after children are often made as a result of availability rather than what is in the child's best interests and what is agreed in the care plan. Thus, while foster care may often be the preferred and planned placement, a shortage of carers means children may be placed in inappropriate residential units. A lack of local placements can result in children being placed far from family, friends and support services, causing upset and anxiety and threatening family, cultural and peer group links. Moreover, siblings may be separated on being admitted to care for no other reason than a lack of available foster or residential placements.

61. Many children experience multiple placements. In Scotland, for example, at 31st March 2007, 597 children had experienced six or more placements during their current episode of being looked after.⁴⁶ Multiple placements result in continual upheaval for children and difficulties in engaging with education, health and other support services as well as developing social relationships.

Leaving care

62. Although legislation provides that children in need of alternative care should be looked after until the age of 18 if their welfare requires it (and should subsequently receive further support), young people across the UK report feeling under pressure to leave care at the age of 16.⁴⁷ Regardless of the age at which young people leave care, there can be a lack of forward planning: often, they move to unsuitable housing and receive inadequate after care support. The Scottish Commissioner has come across worrying examples of care leavers being housed in bed and breakfast accommodation or in hostels alongside serious offenders. Some care leavers later become homeless – in Northern Ireland, for example, 60 care leavers presented as homeless in 2005-06.⁴⁸ In the absence of an adequate leaving care plan, leaving care could also have a detrimental impact on a young person's education, training or employment.

Outcomes

63. Outcomes for looked after children are poor compared with those for other children. For example:

- Looked after children are over-represented in secure care and custody. In England, around 27% of the adult prison population has spent time in care;⁴⁹
- The educational attainment of looked after children is poor when compared to that of other children.⁵⁰ A significant number of looked after children are not assessed and do not take examinations for which they are eligible. In Wales, it has been reported that some schools resist enrolling looked after children because of the pressure on the school to raise overall school attainment; and
- Mental health disorders are far more common among looked after children than among other children but there can be a lack of access to therapy and appropriate health care.⁵¹ In Scotland, the roll out of specialist nurses working with looked after children has been helpful, but such nurses are only available in some areas.

Family Environment and Alternative Care

Recommendations

- **R44** The UK Government and devolved administrations should ensure that care plans are implemented and the service promised to each child is delivered. This should include early intervention and family support services to enable children to remain with their families where possible.
- **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.
- **R46** The UK Government and devolved administrations should grant 'looked after' status to disabled children in 52-week residential placements.
- **R47** The UK Government and devolved administrations should ensure that the thresholds for intervention are informed by children's best interests.
- **R48** The UK Government and devolved administrations should ensure that the number of placements children experience is reduced.
- **R49** The UK Government and devolved administrations should ensure that no child leaves care before the age of 18 unless their welfare requires it. Decisions regarding leaving care should be explicit and transparent.
- **R50** The UK Government and devolved administrations should ensure that care leavers receive adequate support. Accommodation for care leavers, particularly those aged under 18, should be of an appropriate standard.
- **R51** The UK Government and devolved administrations should ensure that plans for leaving care are prepared well in advance with the young person's input and that they are implemented.
- **R52** To ensure the corporate parenting role is properly fulfilled, local authorities across the UK should designate elected members with responsibility for overseeing services for looked after children, as already happens in Wales.
- **R53** In Scotland, the Government should roll out provision of specialist nurses working with looked after and accommodated children across the country.

44. These placements can include schools, social care or hospital settings.

45. See para 158 for further detail.

46. Scottish Government. Children looked after statistics 2006-07 (2007).

47. SCCYP. Sweet 16? The age of leaving care in Scotland (2008).

48. Department of Health, Social Services and Public Safety. Care Matters in Northern Ireland (2007).

49. Department for Education and Skills. Care matters: transforming the lives of children and young people in care (2006).

50. Ibid.

51. Department for Education and Skills. Care matters: time for change (2007).

Basic Health and Welfare

Article 23 (children with disabilities)

Children with disabilities

64. We welcome the various measures taken to better meet the needs of children with disabilities in recent years. Nonetheless, disabled children continue to experience significant barriers to the full enjoyment of their rights and are often disproportionately affected by rights issues relevant to all children in the UK, such as poverty or play.⁵²

Service planning and provision

65. It is estimated that there are 700,000 disabled children in the UK. This statistic is most likely an under-representation due to the absence of a coherent method of data collation in each nation. In view of the lack of accurate information, the Commissioners are concerned that the effective planning of services for disabled children (including health, education and play opportunities) cannot take place and that services are not based on need.

66. The population of disabled children is changing, with an increasing number of children diagnosed with autistic spectrum disorders and a greater number with complex health needs.⁵³ Funding levels and service provision have not kept up with the rising levels of need. There are major gaps in service provision and inequalities in services and outcomes for families. Each country in the UK is able to refer to reviews that highlight the deficits in the provision of services.

67. In England, we welcome the Government's recent investment in and strategy for improving the lives of disabled children and their families and the proposed review of services for families with disabled children.⁵⁴ Nevertheless, services struggle to meet the needs of families from black and minority ethnic communities, some of whom have high support needs. For example, the prevalence of learning disability in South Asians aged five to 32 is three times higher than other communities.⁵⁵

68. The Children's National Service Frameworks in England and Wales set out a range of key actions for disabled children and young people. However, in Wales, the 2007 progress report found that of all services, those for disabled children had made the least progress.

69. The Northern Ireland Commissioner has investigated complaints and carried out three reviews relating to children with disabilities which have highlighted lack of access to services, including special education, therapies and wheelchairs. Geographical variation in service provision has also been identified along with a lack of commitment to meeting the needs of children with disabilities at policy and practice levels within health, social care and education services.

Transition

70. There are significant problems in the transition from child to adult services for disabled young people including a lack of continuity in service provision, the potential loss or reduction of services and support, and children's views not being taken

into account in transition planning.⁵⁶ Structural and funding demarcations, as well as the short term nature of funding for some projects, create barriers between child and adult services that make transition more difficult.

Right to a voice

71. Disabled children and young people are much less likely than those without disabilities to participate at any level, particularly those with complex needs or with only non-verbal communication. Research has shown only a small number of disabled children are involved in decisions about their care. Many professionals lack understanding, hold assumptions and/or underestimate disabled children's competence and ability to participate.⁵⁷ Other research found that it is common for professionals to record that a child's level of impairment prohibited their wishes from being ascertained.⁵⁸ Despite new statutory duties on public authorities to promote positive attitudes towards disabled persons and to encourage participation by disabled persons in public life, there is limited evidence of the impact of these duties on the lives of disabled people. Moreover, the duties have yet to be implemented by a number of authorities.⁵⁹

72. Access to speech and language therapy services is not necessarily dependent on need, but on geographical variations in service availability, particularly for assessment and intervention. Greater investment in specialist therapy services is needed as part of the overall early intervention strategy and should be delivered in early years settings wherever possible. There is no national strategy in any UK country to support the development of communication skills for all children.

73. Assistance for disabled children to realise their right to express their views is not always available. Children with communication difficulties, including those with non-verbal communication, should have a statutory right to communication support and be provided with appropriate communication aids to ensure they can participate. In addition, there is a need to invest in communication aids and in training and support for families and health and social care staff to enable them to competently use high and low tech communication aids. There is also a need for disability equality training for professionals.

74. Despite the Government stating that it is good practice to do so,⁶⁰ there has been a failure to produce consultation documents systematically across the UK in accessible formats. There should be greater commitment to producing information in accessible formats for children who do not use written or verbal communication.

Autonomy

75. Disabled children are often subject to high levels of adult surveillance on a daily basis. While some of this may be necessary, it can reflect a preoccupation with risk on the part of parents and professionals. Young people often find constant adult presence a barrier to their inclusion as well as their ability to form friendships and take part in age-appropriate behaviour.⁶¹

Basic Health and Welfare

Protection

76. It is estimated that disabled children are around three times more likely to be abused than other children.⁶² However, in many areas, child protection systems are not addressing their particular needs. Welfare and safeguarding concerns sometimes go unnoticed because of the difficulties in identifying the signs of abuse or in communicating with some children, or because of the reluctance by practitioners to suspect abuse.⁶³

77. In the UK, 82% of children with learning disabilities are bullied.⁶⁴ Research suggests that most of these children are afraid to venture out to the park or go out in the street while a third said that telling an adult about the bullying made no difference. There is a need for more teacher awareness of bullying related to disabled children and how to deal with it. In England, the Government intends to publish guidance for schools on tackling the bullying of children with disabilities and special educational needs.⁶⁵ The devolved administrations should consider producing similar guidance. The Commissioner in Northern Ireland has produced bullying guidance based on her research involving disabled children, which the Government has been reluctant to endorse.

Education

78. Access to educational support for children with special educational or additional support needs has undergone legislative reform across the UK in recent years. In general, the process is for the child to undergo an assessment and services to be allocated as a result. There are serious failings with regard to standards and consistency of provision, the assessment process, fair access to schools and outcomes.⁶⁶ Assessments and the subsequent services are often delayed due to lack of resources. There are concerns that only those children whose parents demand services receive them.

79. Children with special educational or additional support needs are more likely to be excluded from school than other pupils.⁶⁷ In Scotland, this is more common in mainstream schools than in special schools although pupils in special classes within mainstream schools have the lowest exclusion rate. This suggests that with appropriate support, exclusions could be reduced for those in mainstream settings.

80. There is limited information available about the performance of disabled children in mainstream settings. In Scotland, the 2005 pupil census included information on disabled students for the first time however the Scottish Survey of Achievement still does not record achievement levels for disabled pupils and excludes special schools entirely.

81. While we welcome moves towards inclusion of disabled children, we are concerned about how 'inclusion' can be interpreted by some mainstream schools. Often, inclusion is seen as a stand-alone policy rather than an integral part of all school policies and practice (for example, how school trips or after school clubs should be designed to include disabled children).

Health

82. As with all issues detailed above, access to specialist health care and support is often based on where the child lives or on the ability of the parent or carer to shout the loudest, rather than on the needs of the child. There is evidence of poor co-ordination and problems in funding high quality services.

83. There is a need to give children and young people, commensurate with age and ability, a degree of choice about treatment options. In one study, teenagers with complex health needs wanted to be consulted in this way and to have their views taken into account in decisions, not ignored, as some felt had happened.⁶⁸ Many disabled children do not have the opportunity to talk to other young people about their experiences of having a certain condition or indeed of their experiences of disability.⁶⁹

84. There is evidence of institutional discrimination in the NHS against people with a learning disability, leading to neglect and unequal healthcare.⁷⁰ The NHS is not doing enough to ensure they receive a reasonable standard of treatment.

85. In Northern Ireland in 2007, evidence emerged that highlighted the inappropriate placement on a long term basis (some as long as seven years) of children in hospital wards when their needs were social and behavioural, not medical. The circumstances that have led to the continued placement of these children require urgent action: there should be a resourced strategy and action plan to ensure that in future, children are not inappropriately placed in long stay hospital care.

86. There is enormous overlap between children with disabilities and complex health needs and those requiring palliative care. It is critical that services for these children should be planned together. Palliative care services for children have developed in an unplanned way, with ad hoc short term funding and limited accessibility. Families of children with life-limiting or life-threatening conditions often have to fight for help and support.⁷¹

Poverty

87. Children affected by disability are at greater risk of living in poverty, with a quarter of all children living in poverty having a disabled parent and over half of families with disabled children living in or at the margins of poverty.⁷² A survey in 2004 found that 6% of families with disabled children reported that they were "comfortably off" with 93% reporting some kind of financial difficulty.⁷³

88. Access to disability benefits – triggered by an award of Disability Living Allowance (DLA) – improves life chances for disabled children. However, the lack of information about DLA, the onerous nature of claiming and reassessments, and the stigma associated with claiming benefits all have a negative impact on take-up. The Government should simplify the process of applying for benefits and should run a national take-up campaign that addresses lower rates of take-up among, for example, disabled families from minority ethnic groups. The reliability of DLA and associated benefits as a financial 'safety net' must be improved.

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Families who choose to care for their disabled children should be adequately supported in financial terms and benefit rates for families with disabled children need to be reviewed for their adequacy.

89. Despite a national childcare strategy, a major barrier to parents engaging in work remains accessibility and affordability of appropriate childcare for disabled children. It can cost up to five times as much to fund childcare for a disabled child as a non-disabled child.⁷⁴ While the Childcare Act 2006 requires local authorities in England and Wales to have particular regard to families with disabled children in ensuring there is a sufficient level of childcare in their area for working parents, the Government has not yet produced guidance on how this duty should be implemented.

90. The priority given to this issue is welcome, however, measures to address child poverty must consider the specific needs of disabled children. A different measure of child poverty (other than standard income measure), which takes account of the additional costs of bringing up disabled children, would show much higher rates of severe poverty among these families. Childhood disability is frequently a 'trigger event' for poverty, as a result of additional costs, family break-up and unemployment that can follow the birth or diagnosis of a disabled child.

91. Child poverty is often seen in terms of 'financial poverty', but poverty of aspiration is equally important. This is particularly relevant to disabled children who should be supported to achieve their potential and assured that they will have equal access to education, training, employment, and civil and social life.

Recommendations

- **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.
- **R55** The UK Government and devolved administrations should ensure that plans are put in place to prepare disabled young people for the transition to adult life (and adult services).
- **R56** The UK Government and devolved administrations should research the experiences of disabled children in a range of settings to assess the extent to which institutions are adopting inclusive policies and practice. Research is also needed on the interaction of a range of social factors (such as social class, gender, race, age, geographic location) which may influence a child's experience of education and other services.
- **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.

- **R58** The UK Government and devolved administrations should address the major gaps in service provision and outcomes for children with disabilities.
- **R59** The UK Government and devolved administrations must prioritise the safeguarding of children with disabilities and improve child protection systems to ensure they better meet the needs of these children.
- **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 children with disabilities who are excluded from school must also be addressed.
- **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.
- **R62** The UK Government should simplify the process of applying for disability benefits and improve awareness and the take up of these benefits.
- We reiterate **Recommendation 32** above, that the UK Government and devolved administrations should ensure that children in need of communication support aids must have access to such equipment for them to fully enjoy their Article 12 rights.

Article 24 (health and health services)

Inequalities in health

92. The Children's Commissioners welcome the priority given by the UK Government and devolved administrations to tackling health inequalities, along with the substantial investment in health services. Despite this, health inequalities remain stark and are, in some cases, widening. While the health of poorer groups has improved across the last three decades, the rate of improvement has failed to match that achieved by better-off groups.⁷⁵ The link between health inequalities and poverty and deprivation are pervasive and a recent UNICEF report reinforced this, highlighting the UK's poor performance in relation to child well-being.⁷⁶ The rate of infant mortality in the UK, for example, compares badly with that in other western countries. While the infant mortality rate for the UK as a whole has been declining, the gap between the most and least well-off groups has widened from 13% to 19%.⁷⁷

93. Smoking, drinking and problematic drug use are all more pronounced among children and young people from poorer backgrounds⁷⁸ and they are also much more likely to experience mental health problems than children from better-off families.⁷⁹ Poverty and disadvantage also have a major impact on obesity levels, diet and exercise. It is estimated that there are around one million obese children under 16 in the UK.⁸⁰ Improving the diet of children born into poorer families is more difficult due to inadequate income and restricted access to healthy food. We are also concerned about the growth in marketing to children, explicitly encouraging the consumption of unhealthy food products. In areas

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of socio-economic deprivation, opportunities to exercise are more likely to be limited; for example, there may be nowhere safe to play, no facilities for physical activities outside school, and a shortage of money to participate in such activities.

94. There are particular groups of children who are at greater risk of experiencing health inequalities and poorer health outcomes. This includes looked after children; children from black and minority ethnic groups (those from Pakistani, Bangladeshi and Black-Caribbean backgrounds report the poorest health); Gypsy and Traveller children; children and young people who offend; homeless young people; asylum seeking children; lesbian, gay, bisexual and transgender young people; and children with learning disabilities.

Access to health care

95. In the UK, access to health care can depend on where a child lives. This is a particular problem for children living in rural areas. In many areas, the communities in the greatest need are the least likely to receive the health services they require. There is also evidence that those in higher socio-economic groups are most likely to benefit from health interventions, whether preventive or therapeutic.⁸¹ There are also particular difficulties in children being able to access certain services such as a dentist or speech and language services across the UK. There is also a severe lack of service provision, including assessment, support and treatment programmes for children and young people exhibiting sexually harmful behaviour. At present there is an inconsistent response to this group at the local level, with different systems and policies operating in different areas and little development of the specialist services required to meet their specific needs.

96. Considering the key role that they can play in promoting child health and well-being, we are concerned about the falling number of school nurses and health visitors and the lack of a strategic approach to this provision in each of the four countries in the UK.⁸²

97. There is a lack of a co-ordinated approach to meeting the health and social needs of children whose parents have substance misuse and/or mental health problems across the UK. It is estimated that there are 250,000-350,000 children of problematic drug users in the UK; around 1.3 million children live with parents who misuse alcohol; and around 450,000 parents have mental health problems.⁸³ Many of these children assume a caring role and their needs are being inconsistently met by health and other professionals. This area highlights the lack of effective communication between adult services and children's services. While there have been some positive developments across all four countries, much more must be done to meet the needs of these children.

Sexual health

98. In England, we welcome the Government's strategy to reduce the rate of teenage conceptions: the rate is at its lowest for 20 years. Nevertheless, profound inequalities in teenage pregnancy rates persist and teenage girls living in deprived areas are over four times more likely to become pregnant than those living in

more affluent areas.⁸⁴ More must be done to target those young people at risk of teenage conceptions in the most deprived areas. Unlike England and Northern Ireland, there is no strategy to tackle teenage pregnancy in Wales.⁸⁵

99. We are concerned that health education, including sex and relationship education is not a compulsory part of the curriculum.

England and Wales

100. The National Service Frameworks for Children, Young People and Maternity Services in England and Wales are to be welcomed. While the frameworks in place in England and Wales are slightly different, there are problems common to both such as a lack of additional funding for their implementation. With no financial commitment, it is unclear how the aims sought by the frameworks will be achieved. It is hard to see how children's health care is given the same priority as adults whose health care is ensured through targets and additional funding.

Northern Ireland

101. Section 75 of the Northern Ireland Act 1998 requires the routine collection of data on health services provided to ethnic minority groups. Unfortunately, planning as a result of gathering such data is not in evidence in service commissioning. No regional statistics are routinely kept in relation to the health needs of ethnic minority and Traveller children and young people. Therefore, there remains a gap in matching provision to need.

Scotland

102. There is a need for more age appropriate services for teenagers. Young people should not be placed in adult wards, as sometimes happens in Scotland. Moreover, young people have told the Commissioner that they do not want to be placed in wards with very young children.

Recommendations

- **R63** The UK Government and devolved administrations should ensure a co-ordinated approach across all government departments to tackle health inequalities experienced by children and young people. Greater co-ordination is needed between health policies and those aimed at reducing income inequality and poverty.
- **R64** The UK Government and devolved administrations should ensure that health interventions are better targeted at those groups of children and young people at greatest risk of health inequality, poor health outcomes and with limited access to health services.
- **R65** The UK Government and devolved administrations should take all steps (including the allocation of additional resources) to ensure equal access to health care services for children.
- **R66** The UK Government and devolved administrations should each develop a coherent, strategic response to meeting the needs of children exhibiting sexually harmful behaviour.

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- **R67** The UK Government and devolved administrations should each develop a co-ordinated approach to meeting the needs of children whose parents have substance misuse and/or mental health problems. All services working with children and young people should assess the impact of living with parents with substance misuse and/or mental health problems and put in place services to meet their needs.
- **R68** The UK Government and devolved administrations should each develop strategies to tackle the higher level of teenage pregnancy in disadvantaged areas. Interventions should recognise the close relationship between risky behaviours (such as early sexual intercourse and the use of alcohol and drugs) and ensure a more holistic approach is developed.
- **R69** The UK Government and devolved administrations should each make health education, including sex and relationship education, a statutory requirement for all schools.

Mental health

103. The mental health of children and adolescents is an area of ongoing concern for the Children's Commissioners across the UK. It is estimated that one in 10 children aged five to 16 have a clinically recognised mental disorder.⁸⁶ There is evidence that the rates of mental health problems tend to be higher among those from black and minority ethnic groups, those living in poverty and those in the youth justice system. These groups are more likely to experience risk factors associated with poor mental health, such as deprivation, discrimination and poor educational and employment opportunities. There is a demonstrable and urgent need for comprehensive and fully resourced child and adolescent mental health services (CAMHS) and recognition that mental health promotion is the responsibility for all those working with children.

104. Despite considerable financial investment in England, CAMHS remain under-resourced across the UK. This leads to regional differences in service provision, long waiting times and a lack of specialised services linked to a corresponding shortage in the specialist workforce. Many children and young people who receive an assessment identifying the need for specialist intervention do not get any treatment, especially in some of the more specialised areas such as:

- Children and young people who self-harm;
- Children and young people who have eating disorders;
- Children and young people who have experienced abuse; and
- Children and young people who display sexually harmful behaviour.

105. Across the UK, the insufficient availability of adolescent mental health beds has led to the admission of children and young people for treatment to adult wards or to general paediatric wards.⁸⁷ The level of care offered to young people on adult wards is unsatisfactory, poorly planned, unsafe and inadequately monitored.⁸⁸ Care on a paediatric ward may also be inappropriate.

106. Although there are some examples of attempts to tackle the stigma of mental health issues (such as the 'See Me' campaign in Scotland), not enough is being done to raise young people's awareness of mental health problems.

107. The legal framework for the provision of mental health care to children and young people is complex and confusing, yet advocacy is only available for some children (such as those for whom electro-convulsive therapy is a treatment option). We believe that, at the very least, advocacy should be made available to all under-18s receiving in-patient mental health care.

England

108. There has been much improvement in the last few years, with increased expenditure on CAMHS and specific government targets and standards to deliver a comprehensive service. The Government is investing heavily in new and innovative interventions such as treatment foster care and highly intensive support for young first-time mothers. However, there continue to be problems for some children and young people in accessing appropriate mental health services. There is anecdotal evidence that the high level of need is not being met in full and that there has been some reduction in services. This undermines the Government's claim that a comprehensive child and adolescent mental health service has been delivered throughout the country.

109. We welcome the Government's commitment to increase the number of age-appropriate in-patient beds and to fund schools to work with mental health practitioners to improve the emotional well-being of pupils. Despite recognition that a whole-school approach is key to promoting emotional well-being, additional investment should be seen in the context of a severe shortage of school nurses who would be instrumental in supporting young people experiencing problems. The Government should ensure that the target of one full-time school nurse in every secondary school and its cluster of primary schools by 2010 is achieved.

Wales

110. Despite there being a mental health strategy for Wales, CAMHS provision is in crisis largely due to inadequate funding. Welsh children receive poor mental health services compared to children in England. Welsh Government commissioning guidelines result in there being no CAMHS available for 16 to 18-year-olds unless they are in full-time education and there is no guarantee that they would be able to access adult services. Moreover, children and young people who have a primary diagnosis of learning disability are unable to access some specialist CAMHS.

111. Given that data show that the suicide rate among 11 to 17-year-olds in Wales is more than twice that in England, we welcome the Welsh Assembly Government's recent announcement that it will develop a National Suicide Strategy.

112. Welsh children and young people with a mental illness have to be placed out of Wales, far from home and are usually unable to continue to use or be educated through the Welsh language. As a condition of the placement, they are often detained under the

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Mental Health Act 1983 in order to receive treatment, therapy and services.

113. There is considerable variation in the funding of Community Intensive Therapy Teams (CITTs) which provide services to children and young people in their local areas. Inadequate funding for CITTs in areas distant from in-patient units is incomprehensible and places children in those areas at greater risk.

Northern Ireland

114. In Northern Ireland, up to 20% of those under 18 have a mental health issue,⁸⁹ although the proportion of expenditure on child and adolescent mental health services is less than 5% of the mental health budget. In spite of a detailed government funded review which identified limited and geographically inequitable mental health services, no progress has been made to develop a corrective resourced action plan.

115. The legacy of 20 years of conflict has led to unique issues which have an impact on the well-being of children and young people in Northern Ireland. One of the many impacts of the “Troubles” is that children and young people continue to experience significant violent events and report much higher stress levels than children in the rest of the UK. While the Troubles are over, significant conflict continues within and between communities, often resulting in serious abuse of children’s physical, emotional and mental well-being. This is compounded by the absence of appropriate services to meet, in particular, self-harm and suicide among young people in Northern Ireland.

Scotland

116. Suicide rates for young people are falling but there is a need to continue to closely monitor these to ensure that a reduction is maintained. Research suggests that the incidence of self-harm is increasing among young people and tends to be more common amongst girls.⁹⁰ Despite a variety of self-harm initiatives in Scotland, treatment and support for children and young people has been sporadic.

Recommendations

- **R70** The UK Government and devolved administrations must map need and services to ensure appropriate allocation of resources.
- **R71** The UK Government and devolved administrations should take all necessary measures to strengthen mental health and counselling services and ensure they are accessible and sensitive to adolescents.
- **R72** The UK Government and devolved administrations should adequately resource and ensure provision of appropriate treatment services for children and young people with mental health problems, with priority being given to those who self harm, have eating disorders, have experienced abuse and/or who display sexually harmful behaviour.

- **R73** The UK Government and devolved administrations must provide independent advocacy for all under-18s receiving in-patient mental health care.
- **R74** The Northern Ireland Executive should ring fence funding to develop appropriate mental health services for children and young people.

Article 27 (standard of living)

Poverty

117. Child poverty is a major issue across all four countries of the UK, with the following proportions of children living in poverty: 29% in England and Northern Ireland, 28% in Wales and 24% in Scotland.⁹¹ We welcome the UK Government’s commitment to ending child poverty. While there has been some progress, with 600,000⁹² children being removed from poverty between 1998/99 and 2005/06, we are concerned that the latest figures show a rise of 200,000⁹³ children in poverty from the previous year. It is unacceptable that a country as wealthy as the UK has 3.8 million children (one in three) living in relative poverty.⁹⁴ Nearly 1.3 million children are living in severe poverty in the UK and there is a relatively high likelihood of severe poverty among children living in London, Wales and Northern Ireland.⁹⁵ Much more must be done to end child poverty across the UK. However, it should be noted that it is the UK Government that is often the duty bearer with regard to this issue: not all of the issues that affect child poverty levels are within the devolved administrations’ fields of competence, for example, tax and child benefit.

118. A recent UNICEF report found that the UK ranks near the bottom when compared with other western countries in terms of relative poverty and deprivation, the quality of children’s relationships with their parents and peers, child health and safety, behaviour and risk-taking and their well-being.⁹⁶

119. The UK Government’s main focus has been to get more parents into work but this does not sufficiently recognise the extent of in-work poverty. There are more poor children in households where one or more parent is in employment (54% of poor children) than in households where parents are unemployed.⁹⁷ The strategy must do more to improve the quality of employment (including higher levels of pay, sustainability and progression) and provide more support to enable parents to balance work and caring, for example, the increased provision of childcare.⁹⁸ The Government’s approach is inappropriate for the substantial minority of parents who cannot work either because of their own poor health, disability or the caring needs of their children. Access to adequate benefits that safeguard these families from poverty are essential and more investment is needed for those unable to work.

120. The Government’s strategy to end child poverty is not sufficiently targeted at those groups of children at greatest risk of poverty and in the most severe poverty, in particular, black and minority ethnic children, those in large families, lone parent families,

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children with disabilities and with disabled parents, Gypsy and Traveller children, children leaving care and asylum seekers.⁹⁹

121. In addition, the Government's approach has paid insufficient attention to rural children living in poverty. Rural children face additional barriers that can exacerbate their experience of poverty, for example, the lack of, and problems accessing, essential services and affordable housing, temporary and part-time work, and a lack of public transport. There is a need for rural specific solutions.

122. The Government's approach to ending child poverty has made little impact on the levels of inequality in this country, in particular, income, health and educational inequality. The evidence shows that income inequality has increased over the previous year and still remains high in the UK by historical standards.¹⁰⁰ Overall, poor families paid a bigger slice of their incomes in tax than rich families. In addition, the poorest families pay an average of £1,000 extra for basic necessities like gas, electricity and banking.¹⁰¹ Fuel poverty is a major issue across the UK and there are two million households suffering fuel poverty.¹⁰² While each UK country has a specific fuel poverty strategy in place, brought together under the UK Fuel Poverty Strategy, more progress is needed.

123. Education can play a critical role in reducing inequality and decreasing the stigma associated with child poverty. There should be increased resources for schools attended by the poorest children to ensure they have the best teachers, and good leadership and facilities. Poverty not only impacts on children's access to and participation in education, but also on their access to wider activities including outdoor play space, leisure and entertainment facilities, and holidays.

124. There has been a worrying trend towards imposing conditions and sanctions in social security benefit entitlement, including proposals for withdrawing benefit¹⁰³ and penalising parents for their child's behaviour by, for example, fining or imprisoning parents for their child's non-attendance at school.¹⁰⁴ This conflicts with the Government's aim of eliminating child poverty as these measures have a greater impact on families living in poverty or at risk of poverty.

Measuring poverty

125. In 2003, the Government's child poverty measure changed to include absolute low income, relative low income and material deprivation and low income combined.¹⁰⁵ These new measures rely solely on before housing cost income figures. More children are defined as poor after housing costs than before housing costs as housing forms such a large and fixed part of family spending. This change in the Government's measure immediately reduced the number of children defined as poor.

126. There is also concern that the Government has shifted how it will judge its success in eradicating child poverty and it appears that this now does not mean removing every child from poverty at all. The Government's goal now is to reduce the relative child poverty rate to meet "the best in Europe".¹⁰⁶ In practice, this could

mean that there are up to 1.2 million children living in relative income poverty and the Government could still claim to have eradicated child poverty.¹⁰⁷

Northern Ireland

127. The Northern Ireland Commissioner has expressed concerns about the disparities between Northern Ireland and the remainder of the UK. The cost of childcare, household fuel and basic foodstuffs is markedly higher than in the rest of the UK. In 2004, 24% of homes in Northern Ireland suffered from fuel poverty compared with 9% in English regions. The Commissioner is particularly concerned about the inadequacy and short-term nature of funding. For example, Northern Ireland has the lowest provision of childcare in Europe and vital after-school facilities are at risk of closure due to lack of funding, which would have detrimental impacts on low-income and lone-parent families. In addition, 30 years of conflict have had a significant impact on child poverty in Northern Ireland and special measures are now required to remedy the lack of infrastructure and investment.

Recommendations

- **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.
- **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.
- **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.
- **R78** The UK Government and devolved administrations should ensure that the child poverty measures include after housing costs poverty rates.
- **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.
- **R80** A review of infrastructural investment is required within each jurisdiction to ensure economic regeneration supports areas affected by poverty.

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Education, Leisure and Cultural Activities

Article 28 (education) and Article 29 (the aims of education)

Education

128. Education is a key part of children's lives and is one of the most frequent topics of discussion between the Commissioners and children and young people. Children are, however, still not viewed as key participants in education: discussions around improving education are often adult-based and fail to include children and their views. We are also concerned that educational inequalities persist, despite considerable investment in education across the UK. Access to sufficient, quality education remains a problem for particular groups (such as Gypsy and Traveller children, children within the juvenile justice system and children in care).

Additional learning needs

129. The education system is failing to meet the needs of children with special educational or additional support needs. In particular, it is not coping with the rising numbers of children with autism and social, emotional or behavioural difficulties. There is also a relative lack of access to educational materials experienced by children with sensory impairments. A recent report showed that only 12% of mathematics and 8% of science GCSE textbooks are available in large print or Braille.¹⁰⁸ Without these textbooks, blind and partially sighted pupils cannot achieve their full educational potential. Although the Government in England has substantially increased investment in special educational needs (SEN), the existing presentation of school performance data in league tables can act as a disincentive for some schools to accept children with SEN.¹⁰⁹

Exclusions

130. Inequalities are also evident in school exclusion rates and there is a clear correlation between social disadvantage, including poverty, and exclusion. Permanent exclusion rates are higher than average for Gypsy and Traveller, Black Caribbean, Black Other and White /Black Caribbean pupils.¹¹⁰ In Scotland, from 2005/06 to 2006/07, the total number of exclusions from all local authority schools (primary and secondary) rose to 44,794, a 4% increase.¹¹¹

131. Pupils with statements of special educational needs are over three times more likely to be permanently excluded¹¹² and children in care are ten times more likely to be excluded from school than the rest of the school population. While children and young people in Wales and Scotland have the right to appeal their exclusion, children in England and Northern Ireland do not. During the exclusion process, there is a lack of access to representation and a lack of information shared with both the child and family.

132. Despite the duties that school governing bodies and local education authorities have to ensure that a child's education continues through the period of exclusion, in practice, access to full-time education for excluded pupils is problematic. Government guidance and local authorities place considerable pressure on schools to avoid the use of both fixed-term and permanent exclusion as a sanction and this has given rise to the illegal practice of persuading parents to keep their child at home. With no associated appeal procedure or alternative education on offer, this practice denies many children their right to education.

Target-driven nature of education

133. The focus on formal testing and school performance league tables based on grades in England and academic selection at 11 in Northern Ireland disadvantages low academic achievers and those with complex social and emotional needs.¹¹³ While we welcome the duty placed on schools in England and Wales to safeguard and promote the well-being of pupils, a key priority for Government must be to address the adverse effects of testing on children, including increased anxiety and stress.¹¹⁴

Children in custody

134. Children in custodial settings in England, Wales and Northern Ireland do not have an equal statutory right to education. Young offenders are three times more likely to have poorer basic skills than other young people of their age and lose the educational provision promised under a statement of SEN when in custody.¹¹⁵ In young offender institutions, around 25% of young people receive less than 15 hours of education and around 15% receive 15 to 20 hours. Welsh children in custody in England are unable to access the Welsh national curriculum and are rarely able to receive education in the Welsh language. This infringes their right to have their cultural identity respected although the Welsh Assembly Government Offender Learning Project has made some progress in ensuring that English secure institutions address Welsh young people's education.

Children in care

135. Children in care have consistently poor educational outcomes: in England, for example, only 12% obtained at least five GCSE grades A*-C (compared with 59% of all children) and they are over-represented in those children with SEN as well as those who are permanently excluded.¹¹⁶ We welcome government proposals to improve educational achievement for looked after children in England and Scotland.¹¹⁷ Similar initiatives aimed at improving these educational outcomes should be adopted in Wales and Northern Ireland.

136. Children in public care who go on to further and higher education often do not receive the same support as other young people and face uncertainty (for example, over housing) during vacation periods. While academic attainment is important for children in public care, broader indicators or measures of success should be developed.

Bullying

137. The UK Government and devolved administrations have undertaken and supported various initiatives designed to address bullying. Nonetheless, it remains a key concern for children and young people. For example, in a national survey of children carried out by the Scottish Commissioner regarding the issues most important to them, bullying came second. Each of the Commissioners routinely receive bullying-related enquiries or complaints, including bullying of pupils by teachers, and parents' uncertainty about what to do when the issue has been raised and acknowledged by the school, but the situation does not improve.

Education, Leisure and Cultural Activities

England

138. Of great concern is the Education and Inspections Act 2006, which reaffirms a teacher's power to use physical force to restrain or control pupils. Where schools experience a high level of conflict, it is important that the response is systematic and organisational, considers the inclusiveness of the learning environment and does not centre exclusively on the behaviour of individual pupils.

139. There are high numbers of children in England not in education, training or employment (around 10% at the end of 2006). While, in principle, we welcome the Government's plans to raise the statutory education and training participation age to 18, we are concerned about the application of punitive measures to those children not engaging in education and training.

Northern Ireland

140. One of the most distinctive characteristics of the Northern Ireland education system is the high level of religious segregation. At present, about 5% of pupils attend planned integrated schools. The vast majority of pupils receive their education in schools that are, for all practical purposes, homogeneously Protestant or Catholic. In spite of the Committee's recommendation in 2002, there has been no real increase in the budget allocated for integrated schools. In addition, with regard to the Committee's recommendation that Northern Ireland takes "appropriate measures and incentives to facilitate the establishment of integrated schools", it should be noted that no strategic policy has been put in place to proactively increase the number of integrated schools. This is primarily because planning for integrated schools is in response to actual rather than predicted demand.

Scotland

141. Under section 2(2) of the Standards in Scotland's Schools Act 2000, education authorities must have regard to the views of the child or young person in decisions that significantly affect them. However, many of the enquiries received by the Commissioner suggest that this does not always happen. There is frequently a lack of effective involvement of children and young people in the planning of new schools and in some cases there have been failings in their design. The facilities are often not entirely fit for purpose and thus impede access to and participation in education and sport.

Recommendations

- **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.
- **R82** The UK Government and devolved administrations should legislate for exclusion from school to be a very last resort and for the shortest period of time. Children should have the right to be heard before they are excluded, in their exclusion hearing and to appeal their exclusion. Children who

are excluded should be guaranteed access to full-time education.

- **R83** The UK Government and devolved administrations should take all necessary measures to eliminate inequalities in educational achievement and in exclusion rates, and to guarantee all children an appropriate, quality education. This will include addressing the target-driven and testing dominated focus of education in England and Northern Ireland.
- **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.
- **R85** In Northern Ireland, the Executive should replace academic selection at age 11 with a fairer system that honours all children's right to education.
- **R86** The Northern Ireland Executive should implement the Committee's 2002 recommendation to increase the budget for and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland.

Article 31 (rest, leisure, recreation, and cultural and artistic activities)

Play

142. In response to the views expressed by children and young people regarding the lack of play and leisure facilities, all four UK Commissioners have either carried out research in this area or have play or "something to do" as a key priority area for further work.

143. There have been some positive developments in relation to play. For example, in England, the Government has committed substantial investment for more safe spaces for children to play and is developing a play strategy. In Northern Ireland there has been a first attempt to develop a play strategy. In 2002, the Welsh Assembly Government launched a Play Policy in 2002 which was rooted firmly in the UNCRC. In Scotland, there has been no explicit commitment by the Government to a play strategy.

144. However, with the exception of Wales, at present government policy on play remains piecemeal and a low priority. There should be a more strategic approach to provision, led by cohesive national policies offering co-ordinated guidance, standards and direction from central government.

145. Children's ability to fully access play opportunities is limited by a number of factors some of which are outlined below.

Poverty

146. According to a poverty and social exclusion survey in Northern Ireland, one in five children does not have access to nearby safe play areas, and this rises to more than one in three experiencing severe child poverty. Of children living in severe poverty, one in seven is unable to take part in any hobby or leisure activity because their parents are unable to afford them.¹¹⁸

Education, Leisure and Cultural Activities

Attitudes towards groups of children

147. Children and young people have told the Commissioners that the absence of appropriate, adequate and affordable play and leisure facilities has a negative impact on their lives. It can lead them to gather in public spaces, but often such gatherings are seen as anti-social and can cause tension between the young people and others. In one survey in England, two-thirds of children said they liked to play outside daily, mostly to meet friends. However, 80% have been told off for playing outdoors, 50% say they have been shouted at for playing outside and 25% of 11 to 16-year-olds were threatened with violence by adults.¹¹⁹

Accessibility of play and leisure activities

148. There should be greater emphasis on providing inclusive, affordable social opportunities for marginalised children and young people, particularly those who have disabilities and those living in rural communities. For many disabled children and young people, fully inclusive play provision has yet to become a reality. In some cases, disabled children are provided with separate and discrete provision that is not freely chosen and leads to them being away from their peers. This in turn has a negative impact on their social development.

149. Given the detrimental impact the conflict in Northern Ireland has had on children's lives over the past 30 years, there should be a more concerted effort to tackle the problems of poor play infrastructure and community segregation in play, youth, sport, recreational and arts activity.

Planning policies

150. The use and availability of open space and sporting and recreational facilities are central to children's ability to take part in play and leisure opportunities. In Scotland, some school development programmes have reduced the availability of open spaces and outdoor facilities which has had a knock on effect on children's physical health and well-being. There is clear need for annual monitoring of changes in the local provision of green/open spaces. Without such monitoring, it would be impossible to determine the effect that such development is having on these spaces and, as a consequence, the impact this is having on the lives of children and young people.

151. Children and young people also play in spaces that are not officially designated for that purpose. It is therefore essential to map out where children do play and to factor this into planning and development decisions. If this is not done, land may be identified as surplus to adult requirements when it is, in fact, significant to children and young people. There has been a steady reduction in play space, including playing fields, open spaces and playgrounds over the past 20 years. It has been estimated that today's children enjoy on average one-ninth of the space in which to freely roam compared to previous generations.¹²⁰ A recent worrying development in England has been the building of new schools without playgrounds. This reflects not only the low priority given to play, but also a lack of recognition of the importance of play for children's learning, development, health and well-being.

Recommendations

- **R87** The UK Government and devolved administrations must take further steps to address the barriers to children's right to play.
- **R88** The UK Government and devolved administrations must urgently address the widely held intolerance of children in public spaces.
- **R89** The UK Government and devolved administrations should ensure fully inclusive play provision for children with disabilities.
- **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 age 18.

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115. Department for Education and Skills. *Education of young people supervised by the youth justice system* (2007).
116. Department for Education and Skills. *Outcome indicators for looked after children* (2007).
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Special Protection Measures

Article 22 (refugee children)

Asylum seeking and refugee children

152. Nationality and immigration, including asylum, is reserved to the UK Government and this can lead to tensions between legislation, policy and practice at devolved and non-devolved levels. Across the UK, children seeking asylum experience serious breaches of their rights. The Commissioners do not agree that the reservation to Article 22 of the UNCRC is necessary for effective immigration control and therefore welcome the Government's intention to review it. The child's best interests are not a primary consideration in immigration decisions. Immigration control takes priority over human rights obligations to children seeking asylum and their families.

Unaccompanied children seeking asylum

Recent changes to the asylum process

153. A new 'case-owner' based model for processing asylum claims was introduced in April 2007.¹²¹ While we welcome the faster decision making process, we are concerned that there may not be sufficient safeguards built in to the system for children. Since December 2007, it has been a requirement of the immigration rules to interview all children claiming asylum in their own right. Children need high quality representation, sensitive interviewing and should not be penalised for late disclosure of events they have found difficult to speak about.

154. In January 2008, the Government published proposals to reform the care and support of unaccompanied children.¹²² While welcoming the establishment of "specialist" authorities to care for separated children, we are concerned that, overall the rights gap between child citizens of the UK and children seeking asylum is significantly widened by the proposals. The Government is seeking to restrict entitlements to work, social security, leaving care support and access to education for separated children whose claims are not initially successful. There is a clear drive to remove children whose asylum claims have failed or who have just obtained the age of majority at the earliest opportunity, with no mechanism for ascertaining whether this would be in their best interests or tracking their welfare after removal.

155. In addition, we are concerned about the following proposals:

- Unaccompanied children turning 16 being moved from foster placements despite the Government's intention to veto such moves for citizen children in care;
- To curtail or remove discretionary leave to remain¹²³ for those whose asylum claims fail. This may leave children without a legal status pending removal and will stop them from receiving a leaving care service, entering employment or receiving benefits once they reach the age of 18; and
- There is no clear agency responsible for the care of young people with no further right to remain and, as yet, no guidance on how they should be supported. This could potentially lead to large numbers of unaccompanied minors disappearing from the care system before they turn 18, leaving them vulnerable to exploitation.

Age disputes

156. Since 2004, 40-45% of all those claiming to be unaccompanied asylum seeking children have had their age disputed (between 2,000 and 2,500 individuals a year).¹²⁴ The majority of age-disputed cases remain unresolved a year later and the individuals concerned continue to be treated as adults. It appears that the policy of applying the "benefit of the doubt" to "borderline" cases is not being adhered to and an informal higher threshold is being operated by immigration officers. We strongly object to Government proposals to introduce dental x-ray procedures to establish the age of asylum applicants on the grounds that they are unethical, unlawful and cannot predict chronological age any better than non-invasive methods.

Guardians for unaccompanied minors

157. We disagree with the UK Government's assertion that a formal "guardianship scheme" is not necessary or that existing arrangements are adequate. Many asylum seeking children are not allocated their own social worker and while the Children's Panel of Advisers provides an excellent service in England, it has no statutory role and is unable to meet the demand for its services. A legal guardian should be appointed as soon as an unaccompanied asylum seeking child is identified and the arrangement maintained until the child reaches 18 or has permanently left the UK. Despite asylum policy being a reserved to the UK Government, the Scottish Government has begun to develop a new model for dealing with unaccompanied minors which is to be welcomed.

Care and support for unaccompanied children seeking asylum

158. In England and Wales, there is inconsistent care and support for unaccompanied children seeking asylum. Despite Government guidance recommending that separated asylum seeking children should be accommodated under section 20 of the Children Act 1989, many local authorities are either providing less comprehensive support under section 17 of the same Act or they are removing these children from care at 16 rather than looking after them until they turn 18.¹²⁵ Such practices are discriminatory and these children are being removed from the care system without due regard to the law or their welfare. Local authorities report a lack of resources and outstanding immigration issues as barriers to meeting the needs of these children.¹²⁶ Grants provided by central Government are insufficient to enable local authorities to provide appropriate care for unaccompanied asylum seeking children.

Issues primarily affecting children accompanying

adult family members

Support

159. Adult asylum seekers receive 70% of the level of social security benefits available to UK citizens. This will inevitably have a detrimental impact on any children involved particularly where the claim remains unresolved for years and the parents are prevented from working. Asylum seekers who give birth to a first child after the final refusal of their application will be placed on section 4 ("hard case") support. This takes the form of accommodation and vouchers for food and toiletries to the value of 50% of the basic income support level. This does not provide sufficiently for basic

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living needs. Recently introduced rules now allow for the provision of essential travel costs. In Wales, no section 4 support is available and families have to move to England.

Legacy cases

160. The Borders and Immigration Agency review of legacy cases¹²⁷ should be completed as soon as possible to end the uncertainty and stress for families who have no decision on their asylum claim. The rights of the child must be taken into account during this review and consideration given to the length of time that a family has been in the UK. There are around 400,000-450,000 legacy cases in the UK. In Scotland, there is a very high proportion of families with children within the asylum seeking community. A welcome speeding up of the review of legacy cases involving children has resulted in a substantial number of the 1,450 cases being approved. Whilst precise figures are not available, it is understood that the approval rate for this group has been around 90%.

Access to further and higher education

161. We welcome the Scottish Government's decision to support access to higher education for children seeking asylum who have attended Scottish schools for three years. We question why this cannot be implemented across the UK where children seeking asylum (in families or unaccompanied) have very limited access to further and higher education.

Detention

162. Children and their families are being detained in significant numbers. In 2005, 1,860 children in families were detained using immigration powers.¹²⁸ We are very concerned at the duration of detention for children arising from both single and cumulative spells in detention. Contrary to international human rights standards, detention of children is often not used as a measure of last resort or for the shortest possible time and does not occur only in exceptional cases. There is no judicial oversight of decisions to detain children and their welfare is not adequately considered when decisions to detain or continue detention are made. Of particular concern is the prevalence of mental health problems exhibited in detained children, and their inability to access mental and wider health services during detention.

163. A significant percentage of children detained are later released on bail or granted temporary admission, raising a question over the quality of the initial decision to detain or the ability of the Government to effect removal.¹²⁹ In Scotland, an asylum seeking child may only be detained for a maximum of 72 hours. Consequently, children are transferred and detained elsewhere in the UK. This leads to separation from legal advice and support networks. We have serious concerns over the conditions under which these transfers are made and their duration.

164. While it is Government policy not to detain unaccompanied children seeking asylum except in exceptional circumstances, concern remains that age-disputed applicants continue to be detained and removed without receiving an independent age assessment.¹³⁰

Removals

165. The Commissioners are concerned about removals involving children, including the disproportionate use of force by immigration enforcement officers and the impact such removals have on the mental and physical well-being of children. The Scottish Parliament and the Scottish Government have declared their opposition to "dawn raid" removals. Adequate risk assessments are not carried out and decisions are not based on the best interests of the child but on the efficacy of the removal operation. We are also concerned about ensuring that the removal takes place at appropriate breaks in the child's education; that the current physical and mental health of the child and their suitability for travel should be assessed; and that children's own concerns are heard and that there are no outstanding child protection or medical issues.

Health care

166. Recent regulations in England extend charging for NHS secondary health care (that is, hospital care, mental health provision) to refused asylum seekers.¹³¹ These have had a particularly adverse effect on pregnant women, some of whom are being denied access to maternity care unless it is paid for in advance.¹³²

Additional issues of concern

167. Other issues of concern include:

- Children entering the UK on false documents being prosecuted for fraud;
- The lack of information provided to children about their rights and entitlements whilst in the UK;
- The lack of access to quality legal advice and representation. This is further threatened in England and Wales with the awaited implementation of changes in legal aid;¹³³
- In England and Wales, the exclusion of immigration services from the duty to safeguard children under section 11 of the Children Act 2004. This is illustrative of the wider failure to treat children seeking asylum as children first and foremost; and
- While the Government is not rolling out section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, which would withdraw all support, including accommodation, for failed asylum seeking families, we are concerned that the possibility for its use remains and it could be applied in individual cases.

Scotland

168. The UK Government often fails to give consideration to differences in Scots law. For example, the Home Office fails to take into account the different timescales for lodging appeals to the Court of Session when assessing timelines of appeals. In addition, immigration law can be used to override decisions made by the children's hearing system.

169. We welcome the piloting of a 'lead professional' in Scotland who will support the welfare of children at the end of the asylum process. However, we are concerned that these posts will have a limited information gathering role and will not be in a position to influence decision making.

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Northern Ireland

170. The Commissioner in Northern Ireland is concerned that children and young people do not have a say in the asylum process. After an asylum seeking family have been in Northern Ireland for seven years, the interests of the child may be taken into account, but this is discretionary. The Commissioner is unable to intervene as her statutory remit does not extend to asylum seeking children.

Recommendations

- **R91** The UK Government should remove their reservation to Article 22 of the UNCRC.
- **R92** Detention should be used only as a last resort. The UK Government must explore meaningful alternatives to detention including other forms of supervision.
- **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.
- **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.
- **R95** The UK 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.
- **R96** In England and Wales, all local authorities should provide unaccompanied asylum seeking children support under section 20 of the Children Act until they are 18.
- **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.
- **R98** The UK Government should provide adequate levels of funding to enable local authorities to meet their legal obligations to asylum seeking children.
- **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.
- **R100** The UK Government should repeal section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.

Article 40 (administration of juvenile justice) and Article 37(b-d) (children deprived of their liberty)

Juvenile justice

171. The youth justice systems across the UK are not always compliant with the principles of the UNCRC. The system in England and Wales is dominated by a punitive approach and does not sufficiently distinguish between adult offenders and children who break the law. Too many children are being criminalised and brought into the youth justice system at an increasingly young age. Between 2002 and 2006, crime committed by children fell, yet during the same period, it is estimated that there was a 26% increase in the number of children criminalised and prosecuted.¹³⁴ We are also concerned about the over-representation of black children in the criminal justice system and evidence of direct or indirect discrimination in policing and the youth justice system.¹³⁵

172. In Northern Ireland, the youth justice system's primary aim is to prevent offending but it also requires regard to be had to the child's welfare, while encouraging a restorative justice approach. Diversionary strategies and alternatives to custody have been successful in Northern Ireland, compared to England and Wales.

173. In Scotland, most offenders under the age of 16 are dealt with by the children's hearing system, which is welfare-based. Youth justice is less punitive and imprisonment is far less common. However, there is concern that the distinctive Scottish approach is being eroded, for example, with the introduction of Anti-Social Behaviour Orders and suggested changes to the children's hearing system. It is vital that the Scottish Government resists importing initiatives that threaten the best interests of the child and that shift the focus from the child's needs and welfare.

Best interests

174. The principle of primary consideration for the best interests of the child is not being applied to children involved in the juvenile justice system, particularly for those children in England and Wales. Children in trouble with the law are regarded as offenders first and children second. This is graphically illustrated in the Serious Case Review report on a 14-year-old who died in custody, which found that "the 'whole [criminal justice] system' treated AR as a child in need of custody, rather than a child in need of care".¹³⁶

Age of criminal responsibility

175. The ages of criminal responsibility in the UK (eight in Scotland, ten in England, Wales and Northern Ireland) remain among the lowest in Europe. The respective governments have nevertheless resisted pressure to raise them. Moreover, recent developments have brought even younger children into contact with criminal justice agencies: in England and Wales, for example, parental compensation orders and acceptable behaviour contracts apply to children under ten.

The negative image of children

176. In the UK, there is a widely held fear of young people, which has partly been fuelled by the consistently negative portrayal of young people in the media. Seventy-one per cent of media stories

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about young people are negative and a third of articles about young people are about crime.¹³⁷ Young people feel the media represent them as anti-social, a group to be feared, selfish, criminal and uncaring. They believe that the media stereotypes the majority of young people based on the bad behaviour of a minority.¹³⁸ The incessant portrayal of children as “thugs” and “jobs” not only reinforces the fears of the public but also influences policy and legislation.

Anti-social behaviour orders

177. Anti-social behaviour legislation has resulted in more children being drawn into the criminal justice system. Anti-Social Behaviour Orders (ASBOs) have been disproportionately used on children.¹³⁹ Inappropriate, prohibitive and punitive conditions which many children find difficult to comply with have been attached to ASBOs. In addition, ASBOs are being issued to children who have a diagnosed mental health disorder or learning difficulty¹⁴⁰ and are being disproportionately issued to children from ethnic minority groups.

178. While breach of an ASBO is a criminal offence across the UK, in Scotland, a breach cannot result in a custodial sentence for a child under the age of 16. This approach should be adopted across the UK.

179. Except in Scotland, children issued with an ASBO and those who breach their ASBO may have their right to privacy infringed as their details can be publicised in the media and in the local community. The removal of reporting restrictions has left children vulnerable to hostile media attention. We have serious concerns about the harm and stigmatisation that could result as a consequence of this ‘naming and shaming’.

180. There has been no proper evaluation of the effectiveness of ASBOs by government. The National Audit Office questions their effectiveness in preventing anti-social behaviour among young people and found that informal warning letters were the most effective method of preventing further offending.¹⁴¹

Dispersal powers

181. In England and Wales, the Anti-Social Behaviour Act 2003 introduced powers to disperse groups of two or more people in a designated dispersal zone if it is believed that the group’s presence “has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed”. The group need not have engaged in anti-social behaviour. This power may be disproportionately used against groups of children ‘hanging around’ and may penalise law-abiding children with nowhere else to go. Research has questioned the effectiveness of dispersal orders and their inability to address root causes of anti-social behaviour.¹⁴²

Adult courts

182. In England and Wales, the Criminal Justice Act 2003 reintroduces situations in which children can be committed up to Crown Court for sentence (as well as trial). Children being tried for violent and sexual offences can have cases sent to the higher (adult) courts at an earlier stage and for less serious offences.

183. In Northern Ireland, if a young person is charged with an offence, they will usually appear before a youth court. However, their trial may be held in an adult court if they are charged jointly with an adult.

184. In Scotland, most offenders under the age of 16 are referred to the children’s hearing system but can be dealt with in adult court if the alleged crime is very serious. Scotland is the only country in the UK that routinely processes children and young people between the ages of 16 and 17 before adult criminal courts. This contrasts with international standards and good practice.

Custody¹⁴³

185. Custody is not being used as a last resort, particularly in England and Wales. The UK detains more children than any other country in western Europe and there are growing numbers of children serving longer sentences. At 29th February 2008, there were 2,837 children in custody in England and Wales.

186. There is a small secure estate in Wales but there is a lack of mental health provision at Parc Prison in Bridgend. There is no secure estate setting in North Wales and so young people sentenced to custody in this area are held in the secure estate in England. In late 2006, 84% of Welsh children sentenced to custody were held in England.¹⁴⁴ There are concerns about the impact this has on their families’ ability to keep in regular contact and about the extent to which these children are able to enjoy their cultural and education rights.

187. There are relatively few young people under 16 held in prisons in Scotland. In 2006-2007, 22 children under 16 were detained in prison in Scotland (only one was female).¹⁴⁵ Nonetheless, prison is an inappropriate setting for these children and although under-16s are placed in separate accommodation, there is concern for their safety. In adult prisons, some are held in hospital accommodation and others in the “vulnerable unit” with adults needing protection (which could include sex offenders). We therefore welcome the Scottish Government’s recently announced intention to end the detention in adult prisons of under-16s on remand.

Conditions and treatment in custody in England and Wales

188. Thirty children have died in custody since 1990 yet there has never been a public inquiry. We are concerned about conditions and treatment of children in custody including:¹⁴⁶

- Children being held far away from home and the impact on family visits (in one establishment, over 73% of children were held over 100 miles from home);
- Limited time out of cells and access to exercise in the fresh air (a contributory factor to conflict);
- Lack of meaningful vocational education and training;
- Health needs inadequately dealt with; and
- The over-use of physical control and restraint, strip-searching and segregation.¹⁴⁷

Special Protection Measures

189. The protection of children in custody remains a fundamental concern. There are high incidences of mental health problems, self-harm and bullying, with a significant proportion of children feeling unsafe.¹⁴⁸ There are high levels of intimidation, violence and abuse, not only from other prisoners but also from staff.¹⁴⁹ Children in custody have limited access to an independent advocate, with only a quarter of boys and around a third of girls in young offender institutions having spoken to an independent advocate since their arrival.¹⁵⁰

Separation from adults

190. Children can be detained with adults in Northern Ireland and Scotland. The Government should address this situation and withdraw its reservation to Article 37(c).

Northern Ireland

191. In spite of the restorative approach in Northern Ireland, there are too many young people detained in secure care and custody. In particular there is an over-representation of care experienced children in the juvenile justice and young offenders' centres. There is also an absence of appropriate facilities for young female prisoners in Northern Ireland. The continuing impact of the conflict presents specific difficulties for young people, especially those from deprived areas. This is often expressed in the form of paramilitary beatings, exclusions, threat and inter-communal violence, which has a major impact on children and young people. Services to support these young people, particularly through mental health, drug and alcohol and suicide support services are minimal and often do not take account of the brutalisation of lots of these children and young people. In addition, the combined effects of poverty, poor access to educational opportunities and deficits in support services leads to a lack of hope, and for some this has led to involvement in youth crime, self harm and suicide. There is an absence of a centralised government-led strategy to deal with conflict and poverty on criminal justice and youth crime. A recent development is the draft Criminal Justice (Northern Ireland) Order 2007 about which the Commissioner has serious concerns. Many aspects of the new legislation bring Northern Ireland into line with the rest of the UK and result in a lowering of standards in terms of application of rights (for example, the introduction of an interim ASBO without the need to give notice is not compliant with Article 40; using children as sources of entrapment is not compliant with Articles 3 and 36).

Recommendations

- **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.

Conclusion

121. Case owners are professionals who deal with all aspects of each asylum application.
122. Border and Immigration Agency. Better Outcomes, The Way Forward: Improving the care of unaccompanied asylum seeking children (2008).
123. Discretionary leave to remain may be given to a person who has not been granted asylum or humanitarian protection, but who still has a compelling reason to remain in the UK.
124. Home Office. Asylum Statistics United Kingdom 2004 (2005); Home Office, Asylum Statistics United Kingdom 2006 (2007)
125. 11 MILLION. The Children's Commissioner's findings and recommendations regarding the care of unaccompanied asylum seeking children in the London Borough of Hillingdon (2008).
126. Save the Children. Local authority support to unaccompanied asylum seeking young people: changes since the Hillingdon judgement (2005).
127. "Legacy cases" (now known as case resolution) are asylum claims made before 5 March 2007 and which are unresolved. The Borders and Immigration Agency has established a Case Resolution Directorate to review these cases by 2011.
128. Home Office. Asylum Statistics 2005 (2006)
129. Bail for Immigration Detainees. Immigration Detention in the UK – key facts and figures (2007).
130. Quarterly Reports of Oakington Inter-agency Meeting 2005-2008, Refugee Council and Cambridge County Council.
131. The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2004.
132. Refugee Council. First do no harm: denying health care to people whose asylum claims have failed (2006)
133. Lord Carter's Review of Legal Aid Procurement. Legal Aid: A market-based approach to reform (2006).
134. Professor Rod Morgan (Former Chair Youth Justice Board), May 2007, Speech at New Developments in Criminal Justice Lecture Seminar Series.
135. House of Commons Home Affairs Committee. Young Black People and the Criminal Justice System, Second Report of Session 2006-07, Vol 1 (2007).
136. LSCB. Report of the Serious Case Review Panel upon the circumstances surrounding the death of AR at Hassockfield Secure Training Centre on 9th August 2004 (2007).
137. Mori/Young People Now. Young people and the media (2005).
138. YouthNet and the British Youth Council. Respect? The voice behind the hood (2006).
139. Anti-Social Behaviour Orders are civil orders that can be applied to anyone from the age of 10 (12 in Scotland) and set out prohibited behaviour and restrict an individual's freedom of movement and association.
140. British Institute for Brain Injured Children (2007).
141. National Audit Office. The Home Office: tackling anti-social behaviour (2006).
142. Crawford, A. and Lister, S. The use and impact of dispersal order (2007).
143. Children in England and Wales can be held in custody in young offender institutions run by the prison service, secure training centres run by private providers or local authority run secure children's homes. In Northern Ireland, children can be detained in either the Juvenile Justice Centre run by the Youth Justice Agency or the Youth Offender Centre run by the prison service. In Scotland at present, children may be held in a young offenders institution or other prisons run by the prison service, or in local authority secure accommodation.
144. IC Wales. Welsh young offenders held in England, 14th December 2006.
145. Communication from Scottish Prison Service (22/01/2008).
146. HM Chief Inspector of Prisons for England and Wales. Annual Report 2005/06 (2007).
147. See paras 49-52.
148. HM Chief Inspector of Prisons for England and Wales. Annual Report 2004/2005 (2006); HM Chief Inspector of Prisons, 2007, op.cit.
149. HM Inspectorate of Prisons & Youth Justice Board. Young People in Custody 2004-2006: an analysis of children's experiences of prison (2006).
150. Ibid.
192. In the UK today, the gap between rich and poor is increasing, along with associated disparities in the well-being of children and respect for their rights. As Children's Commissioners, we take seriously our responsibility to ensure that the rights of children are promoted and their voices heard within the clamour of competing claims. We are still very young institutions but we believe we have worked together effectively to promote and safeguard those rights and to ensure that those voices are heard with their distinctive national and regional tongues and accents where appropriate. We look forward to working with the Committee to ensure that every child in the UK grows up in the atmosphere of happiness, love and understanding that is the essential basis for individual fulfilment and peaceful communities.



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