

Children's Rights Alliance
for England

State of Children's Rights in England 2011

Review of Government action on
United Nations' recommendations for
strengthening children's rights in the UK



The Children's Rights Alliance for England (CRAE) protects the human rights of children by lobbying government and others who hold power, by bringing or supporting test cases and by using regional and international human rights mechanisms. We provide free legal information and advice, raise awareness of children's human rights, and undertake research about children's access to their rights. We mobilise others, including children and young people, to take action to promote and protect children's human rights.

CRAE has produced an annual 'State of children's rights in England' report since 2003. This report is the ninth in the series. It summarises children's rights developments from November 2010 to November 2011.

This year's publication is timed to coincide with the twentieth anniversary of the UK ratifying the Convention on the Rights of the Child (December 2011).

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“ State children's rights in stone ”

Child taking part in a Children's Rights Director's consultation, 2011¹

Contents

Children’s wrongs in numbers

Overview

Introduction

Section 1	General measures of implementation	Page 6
Section 2	General principles	Page 14
Section 3	Civil rights and freedoms	Page 24
Section 4	Family and alternative care	Page 32
Section 5	Basic health and welfare	Page 40
Section 6	Education, leisure and cultural activities	Page 49
Section 7	Special measures of protection	Page 55
Optional Protocol on Armed Conflict		Page 66
Annex A:	Children’s rights proofing within Government (policy)	
References		



“ The *Ministerial Code* should be read alongside the Coalition agreement and the background of the overarching duty on Ministers to comply with the law including international law and treaty obligations ... (Revised Ministerial Code, 2010)² ”

Children's wrongs in numbersⁱ

Number of children in poverty, UK, 2009/10	3.8 million
Number of children living in severe poverty, UK, 2008/09	1.6 million
Number of modifiable (preventable) child deaths, England, 2010/11	800
Child deaths from deliberately inflicted injury, abuse or neglect, England, 2010/11	47
Number of children who died as a result of deliberately inflicted injury, abuse or neglect, who were, or had been, subject to an official child protection plan, England, 2010/11	40
Child deaths in penal custody since 1990, England and Wales	31
Number of public inquiries into child deaths in custody	0
Number of separate formal reports to Government alerting it to individual children's lives being endangered during restraint and of restraint leading to serious injuries and hospitalisation in four secure training centres since 2006	285
Life expectancy of baby girl born in Kensington and Chelsea, 2007/09	89 years
Life expectancy of baby boy born in Blackpool, 2007/09	73.7 years
Children aged 14 years or under admitted to hospital primarily because of malnutrition during past three years, England	83
Number of children affected each year by one or both of their parents being imprisoned	160,000
Children admitted to care primarily because of low income, England, 2010/11	270
Child victims of rape, England and Wales, 2010/11	6,033
% of all female rape victims who are girls under 16	35%
% of all male rape victims who are under boys under 16	70%
Number of times Tasers used on children, England, July 2007 to December 2009	252
Proportion of children in children's homes who have at least one sibling in care from whom they are separated	94%
Proportion of children in foster care who have at least one sibling in care from whom they are separated	71%
Proportion of children in care who had an advocate in their review meeting to help them express their views, 2010/11	1%
Number of children who were detained in custody during 2009/10, England and Wales	5,130
Proportion of places the Youth Justice Board commissions from prison service accommodation and child prisons run by G4S and Serco for the detention of children, April 2011	92.8%
Proportion of places the Youth Justice Board commissions from secure children's homes for the detention of children, April 2011	7.2%
Number of children detained for immigration purposes in the UK, October 2010 to October 2011	79
Proportion of children who obtained five or more GCSEs, 2010	53%
Proportion of children in care who obtained five or more GCSEs, 2010	12%
Average rate of primary school exclusions, England, 2008/09	0.02%
Average rate of primary school exclusions, England, 2008/09 – children in care	0.16%
Group of children most likely to be excluded from school, England, 2008/09	Gypsy and Roma children
Estimated number of children forcibly evicted from Dale Farm, Essex, October 2011	150
Number of children held in police cells overnight, England and Wales, 2008 and 2009	53,000
Number of children aged 9 to 13 years held in police cells overnight, England and Wales, 2008 and 2009	13,000
Proportion of youth offending team workers that visited a child's home in the preparation of a pre-sentence court report about the child's home circumstances	18%
Proportion of girls in custody that never receive visits, England and Wales, 2009/10	32%
Proportion of boys in custody that never receive visits, England and Wales, 2009/10	12%
Number of children requiring hospital treatment after self-harming in custody, 2009/10	21
European countries in addition to the UK that recruit 16 year-olds into the armed forces	0

ⁱ All statistics are drawn from official data, inspection reports, research and consultation documents referenced in this report.

Introduction

The UN Committee on the Rights of the Child is the highest authority on the Convention on the Rights of the Child. It issued its recommendations on the UK in October 2008 after considering evidence and analysis from the Government, the UK's four Children's Commissioners and the Equality and Human Rights Commission (EHRC), as well as non-governmental organisations (NGOs) and children and young people. It held separate sessions with Government officials, NGOs and children and young people, and the Committee's Country Rapporteur met a variety of children's rights experts (including under 18 year-olds) in England ahead of the formal proceedings in Geneva.

There are 118 recommendations applying to children's rights in England. In preparing this report, CRAE examined all significant developments in law and policy over the past 12 months; we analysed official data relating to children's well-being; scrutinised information made available through our own and others' Freedom of Information (FOI) requests and parliamentary questions; and read relevant research and consultation documents reporting children's own views and testimony.

Over 60 NGOs and representatives from the Office of the Children's Commissioner and the EHRC attended our children's rights symposium in July 2011 to examine key developments since the publication of last year's report in November 2010. We also received written evidence from a variety of NGOs – particularly from those working with and for children suffering rights violations.

This report summarises key developments – positive as well as negative – in children's human rights in England in the 12 months to November 2011. The review follows our comprehensive submission to the Committee on the Rights of the Child in 2008, which was supported by over 100 NGOs including all the major children's charities. Not all our member organisations will necessarily agree with all the assessments in this report.

We have shortened each of the Committee's 2008 concluding observations, and sometimes paraphrased them; we have not included those observations specifically relating to Scotland, Northern Ireland or Wales. The order of the recommendations in this report does not completely follow the order they appear in the UN Committee's concluding observations, as we have tried to group them to make easier reading.

As well as providing a written summary of the most important developments – good and bad – over the past year, we have signposted each assessment of progress using the following symbols:



This indicates significant improvement in law or policy in the past year



This indicates significant deterioration in law or policy in the past year



This indicates no significant change in law or policy in the past year



This indicates significant potential that this recommendation will be met shortly



This indicates that children's rights in this particular context are at risk



This indicates that the recommendation has already been achieved

Throughout this report we use the term children to refer to children and young people under the age of 18.

All documents relating to the UK's examination by the Committee on the Rights of the Child can be accessed on CRAE's website at www.crae.org.uk or on the website of the UN High Commissioner for Human Rights at www.ohchr.org/english/bodies/UNCRC/index.htm

Article 4 of the Convention on the Rights of the Child requires states to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights' in the Convention.

In relation to children's economic, social and cultural rights, states are legally bound as a party to the Convention to use the 'maximum extent of their available resources'.

Overview

The forerunner to the Convention on the Rights of the Child, the 1959 UN Declaration on the Rights of the Child, stressed *'mankind owes to the child the best it has to give'*. There is no sense that the men and women running our country are providing children with the best that a (still) rich country like ours can give. As we approach the twentieth anniversary of the UK ratifying the Convention on the Rights of the Child, on 16 December 2011, the coalition Government seems unaware of the extent of systematic rights violations suffered by children up and down the country.

No published strategy to end child homicide and other violence against children; inadequate resources to deal with the devastating impact of rape and sexual assault on children; laws still sanctioning parental punitive violence; poverty's corrosive effect on children's well-being and life chances, withdrawal of social housing as a state sanction; schools not being required to listen to children or involve them in decisions about their own education; Gypsy, Traveller and Roma children enduring the highest rate of exclusion from school; the separation of siblings in care; unequal access to mainstream education for disabled children; excessive criminalisation; incarcerating children in unsafe and brutalising prisons; allowing prison staff to deliberately hurt children; and relying on the recruitment of disadvantaged children to maintain our armed forces ... a government committed to the full implementation of the Convention on the Rights of the Child would not tolerate any of these rights violations. They would be brought to an end.

Were children in England to be served by a government that takes the Convention seriously, there would be a national children's rights action plan, Government officials dealing with children's law and policy would be fully briefed on their obligations under international law and the incorporation of the treaty into UK law would not seem like a utopian dream. Ministers would want to lead once again on the international stage: no longer living off the massive achievement of the Children Act 1989, drafted before we even signed the Convention. They would aspire to go much further in protecting children's rights. They would understand that the Convention has been incorporated in many other countries, with no threat to the economy or national security, they would want children everywhere to know they have rights and for our domestic courts to be able to protect these rights when necessary. This would be a sign of a mature government – just as parents who help their children to feel confident and to have high expectations in life are seen as successful, not struggling.

Last year, the highly respected Institute for Fiscal Studies warned that retrenchment in public spending has disproportionately hit children and families. This year it warns that child poverty targets – enshrined in law – will not be met. Far from children enjoying

the best we have to give, they have lost and are losing family support, youth services, libraries, play facilities and their homes. Estimates drawn up by the Government indicate there will be 40,000 more homeless families as a consequence of reductions in housing benefit. Shelter reports that 38% of families in privately rented accommodation have cut back on food in order to pay their rent. Sixteen and 17 year-olds living in residential care and schools will lose the mobility component of the new payment replacing Disability Living Allowance; and Ministers are still considering whether to remove this financial support from all children (older people in residential care are losing it too). The Cabinet Office's "Red Tape Challenge" recently asked whether protections for children in and leaving care would be better framed as a "voluntary code" – taking us back 100 years, before the 1908 Children Act of the then Liberal Government regulated foster care for the first time and empowered local authorities to remove children from workhouses. If there was no serious threat of children in care losing vital safeguards, why ask the public for their views? Why demean these children by conceptualising the care they receive from the state as a "burden"?

A lot was made about the Ministerial Code this year, when a Cabinet Minister took his friend along to international defence meetings. The Code was found to have been breached and the Defence Secretary resigned. There has never been a Ministerial resignation for breach of the Convention on the Rights of the Child, although the Code requires compliance with it as international law. In December 2010, a Ministerial statement vouched that due consideration would be given to the treaty when making new law and policy. CRAE along with many others warmly welcomed this statement, whilst being keenly aware that, under international law, Government is required to *uphold* the rights in the Convention not simply give them due consideration. Even within the scope of this promise, the coalition Government is failing. We made Freedom of Information requests to nine separate Government departments publishing Bills after the December 2010 pledge, and found only one case (from 11 Bills) of due consideration being given to the Convention. Our analysis of 34 policy documents showed only one giving a central place to the Convention – the Munro review of child protection – though, amazingly, this review managed to avoid any discussion, let alone criticism, of the legal defence of "reasonable punishment" available to parents and others accused of common assault on children. A country that allows children to be hit can never stand tall.

This year the UK Government has submitted reports to two international treaty monitoring bodies – the UN Committee Against Torture and the UN Committee on the Rights of Persons with Disabilities. Both reports skate over serious rights violations, including harmful restraint in child prisons, corporal punishment and the UK's reservation relating to disabled children's right to inclusive education. This Government, like its predecessors, presents its skewed interpretations of international law as if it were taking part in a public school debating society. 'The UN

says we must protect children from painful restraint but we say nothing in the Convention compels us to do so'; 'the UN says we should give children equal protection from assault but we don't want to criminalise parents'. Beneath these blithe statements are thousands of children who are having their rights breached. When the UN says a violation of human rights has occurred, this should be accepted and acted on.

Ministers were recently asked in Parliament how they plan to respond to the midterm report from the UK Children's Commissioners. Even though the Commissioners chose to only focus on five areas of children's law, policy and practice, and their main report was less than 20 pages long, the response from Government was non-committal. Parliament was told, *'It will not be possible to implement all of the UN Committee's recommendations, but we want to make further progress in ways that will bring about the greatest benefits for children'*.³ No explanation was given as to why the coalition Government finds it impossible to act on all of the UN Committee's recommendations, which simply reflect its legal obligations. Imagine a school or children's home making a similar response to recommendations from Ofsted – 'it will not be possible to act on all your recommendations but we will do what we believe is best for children'.

It is deeply regrettable that schools and children's homes – and children's social care, health services and prisons – continue to let down children. Far from children's best interests being given primary consideration, we have discovered practices across a wide range of settings showing children's needs and interests being put behind those of adults and institutions. Examples that particularly stand out come from criminal justice and immigration:

- A home visit had not occurred in 82% of cases where a youth offending team worker was preparing a report for court about the child's home circumstances; and the majority of reports did not consider the child's age and maturity
- Family prison visiting arrangements are often guided by the number of chairs available rather than the number of children or other family members visiting
- Security vans delivering children and adults to prison prioritise dropping off adults because adult prisons have an evening deadline after which they will not accept prisoners
- Even though the UK Border Agency has child-friendly interviewing rooms, not all of them have telephones so interviews with children are held in adult rooms where an interpreter can speak to them on the telephone (are we really incapable of providing children with interpreters they can meet and speak with in person?)
- Over a third of girls and more than one in 10 boys in prison never receive a visit – is our compassion in such short supply that we cannot extend the role of independent visitor (in law for children in care since 1991) to these children?

The Convention on the Rights of the Child, if used to full effect, could really shake up these unacceptable practices. But that would require a real recognition by Government of its legal obligations; an acceptance that all children have rights and the Convention protects all children equally (giving additional protection to those in especially vulnerable circumstances). There are no outsiders in children's rights – all children, whatever their background, age, size, deeds or parents' actions are entitled to the best possible childhood, in conditions of dignity, respect and safety. All children are entitled to the best we can give in order to reach their full human potential, now and into the future.

The coalition Government is working with the Office for National Statistics on the development of national well-being indicators and we are told there is *'the possibility of a child well-being indicator'*.⁴ The idea that a single indicator could ever encapsulate and adequately monitor child well-being is incredibly ambitious, unless the drafters are considering something like *'Every child is able to enjoy all of their rights in the Convention on the Rights of the Child'*. There will surely be those outside Government who would oppose such an indicator. But there should not be a single person working in and for Government standing against such a marker. Twenty years after the ratification of the Convention, with no reservations now in place and with a Government that says it is *'a proud signatory'*⁵ of the treaty, it is time for everybody to understand that children can only thrive by having their rights upheld.

Next year is also CRAE's twentieth anniversary and we continue, as ever, to commit ourselves to working constructively with Government and others who have the power to transform young lives.

Children's Rights Alliance for England December 2011

Progress at a glance



3 recommendations (3%)



59 recommendations (50%)



18 recommendations (15%)



13 recommendations (11%)



15 recommendation (13%)









10 recommendations (8%)

General measures of implementation



Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child

-  Significant improvement in past 12 months
-  Significant deterioration in past 12 months
-  No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)
-  Already achieved
-  At risk of significant deterioration
-  Potential that this recommendation will be met shortly

“ It is unfortunate that key concepts and the language of human rights have often been politicised and demeaned in political discourse. It also happens that government politicians object strongly when shortcomings in their own countries are exposed by mechanisms set up to verify the practical implementation of agreed standards. Yet those responsible have in all cases an obligation to demonstrate the political will to address the identified problems. ”

Thomas Hammarberg, Council of Europe Commissioner for Human Rights, September 2011⁶

“ It is time to be strong in standing up for human rights, for children’s rights, and for a society that is free and fair for all. ”

Sarah Teather, Children’s Minister, UK Government, September 2011⁷

“ ... If I talk to a lot of grown ups and say ‘What do you think your rights are’, they’ll give me a list. If I say to them ‘What do you think children’s rights are’, they’ll say ‘Oh’. And some will say, ‘Well, I don’t think children have rights really, they’re just children’. ”

Roger Morgan, Children’s Rights Director, November 2010⁸

1 Take measures to bring all legislation in line with the Convention on the Rights of the Child (CRC), in part by taking the opportunity of the development of a British Bill of Rights to incorporate its principles and provisions



Each time the UN Committee on the Rights of the Child has examined the UK's compliance with the Convention on the Rights of the Child – in 1995, 2002 and 2008 – it has recommended the incorporation of the treaty's principles and provisions into UK law. The Liberal Democrat 2010 general election manifesto pledged to fully incorporate the Convention; and Ministers in Wales and Scotland have taken bold steps to embed the treaty in domestic policy-making (see below). Yet the UK Government continues to show reticence in strengthening children's rights protection for England's 11 million children. Children's Minister Tim Loughton told Parliament in September 2011:

There are no plans to incorporate [the] UNCRC into domestic legislation. In general the UK Government does not incorporate treaties and international conventions directly into UK law. There is no requirement in the UNCRC that it be incorporated into a single piece of legislation. Our approach to deliver the UNCRC outcomes is through a mixture of legislative and policy initiatives.⁹

More hopefully, a few days after the above statement was made, Children's Minister Sarah Teather told Parliamentarians on a subcommittee of the European Scrutiny Committee:

*We do not have any plans **at the moment** to enshrine the UNCRC in British law [our emphasis].¹⁰*

In that same session, Labour's shadow Children's Minister Toby Perkins announced:

The Opposition wholeheartedly back enshrining the rights of the child...¹¹

Article 4 of the Convention on the Rights of the Child requires States Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the treaty. The UN Committee on the Rights of the Child gives its interpretation of Article 4 in its General Comment No. 5:

Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental... States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems.¹²

Furthermore, research undertaken by CRAE reveals four pieces of legislation *in addition to the Human Rights Act 1998* that give effect to international conventions:

Table 1: International conventions incorporated or given legal effect in national law

Child Abduction and Custody Act 1985	Gives effect to the Hague Convention on the Civil Aspects of International Child Abduction (1980) and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children (1980)
Human Rights Act 1998	Incorporates the European Convention on Human Rights (1950) into UK law
Adoption (Intercountry Aspects) Act 1999	Provides for regulations to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the Hague Convention, 1993)
Countryside and Rights of Way Act 2000	Places a duty on Ministers, Government departments and the Welsh Assembly, in carrying out their functions, to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biological diversity in accordance with the UN Environmental Programme Convention on Biological Diversity of 1992
Cluster Munitions (Prohibitions) Act 2010	Gives effect to the Convention on Cluster Munitions (2008)

In December 2010, the Children's Minister Sarah Teather announced the coalition Government would now be giving due consideration to the Convention when making new law and policy. The announcement was part of her Written Ministerial Statement in response to John Dunford's Review of the Children's Commissioner:

This Government is a proud signatory of the United Nations Convention of the Rights of the Child (UNCRC) ... I can therefore make a clear commitment that the Government will give due consideration to the UNCRC Articles when making new policy and legislation.¹³

This promise from the coalition Government signals a central place for the Convention in UK Government policy-making, and is a significant step forward. But giving due consideration to the Convention does not reflect the UK Government's legal obligation to fully implement the Convention as international law. Without incorporation, UK courts cannot directly apply the Convention – although it can be quoted and used. In December 2011, CRAE publishes an examination of how UK courts and tribunals are using the Convention to protect children's rights, in an effort to increase its use by legal practitioners and the judiciary. There has been no similar exercise conducted by Government in the 20 years since ratification.

CRAE's Freedom of Information requests to nine different Government departments about 11 separate Bills introduced into Parliament after the Minister's written statement reveals that only a single Act of Parliament was subject to rigorous scrutiny within Government – the Education Bill. As if this wasn't bad enough, almost a year after the announcement, Earl Listowel asked the Minister Lord McNally during the Lords

Second Reading debate on the Legal Aid, Sentencing and Punishment of Offenders Bill:

Is he prepared to undertake an impact assessment of the Bill's consequences for children and its compliance with the United Nations Convention on the Rights of the Child?¹⁴

The Minister gave no reply to this particular question.

Table 2: Evidence of children's rights consideration in Government Bills

Title of Bill	Date introduced to Parliament	Government department	Written evidence of due consideration being given to the Convention on the Rights of the Child
Armed Forces Bill	8 December 2010	Ministry of Defence	VERY MINIMAL ¹⁵
Education Bill	26 January 2011	Department for Education	YES ¹⁶
Energy Bill	8 December 2010	Department for Energy and Climate Change	VERY MINIMAL ¹⁷
Health and Social Care Bill	19 January 2011	Department of Health	NO ¹⁸
Legal Aid, Sentencing and Punishment of Offenders Bill	21 June 2011	Ministry of Justice	YES, but information not made available ¹⁹
Localism Bill	13 December 2010	Department for Communities and Local Government	NO ²⁰
London Olympic Games and Paralympics Games (Amendment) Bill	16 March 2011	Department for Culture, Media and Sport	NO ²¹
Police (Detention and Bail) Bill	5 July 2011	Home Office	NO ²²
Protection of Freedoms Bill	11 February 2011	Ministry of Justice	NO ²³
Terrorism Prevention and Investigation Measures Bill	23 May 2011	Home Office	NO ²⁴
Welfare Reform Bill	16 February 2011	Department for Work and Pensions	VERY MINIMAL ²⁵

The UK's minimal progress in giving legal effect to the Convention on the Rights of the Child stands conspicuously next to major developments this year in Wales and Scotland. This is reminiscent of the former Labour Government's refusal to appoint a Children's Commissioner to promote and protect the rights of children. Children in Wales, Scotland and then Northern Ireland were given rights-based Commissioners years ahead of children in England.²⁶

Duty to have due regard to Convention on the Rights of the Child part of Welsh law

The Rights of Children and Young Persons (Wales) Measure became part of Welsh law on 16 March 2011.²⁷ From May 2012, Welsh Ministers will be required to have due regard to the requirements of the Convention on the Rights of the Child and its Optional Protocols in making a decision about:

- A provision to be included in an enactment; or
- The formulation of a new policy; or
- A review of or change to an existing policy.²⁸

From May 2014, Ministers will be required by domestic law to have due regard to the requirements of the Convention on the Rights of the Child and its Optional Protocols in the exercise of any of their functions.²⁹ This requirement is, of course, already in international law. Ministers must issue a "children's scheme" which sets out how they intend to meet their "due regard" duty.³⁰ Children and young people, and the Children's Commissioner for Wales, must be involved in the preparation of the draft scheme.³¹ Importantly, Ministers must review (and revise if necessary) this scheme within six months of the UN Committee on the Rights of the Child issuing recommendations to the UK. Furthermore, the Welsh Assembly Government must publish a report by 31 January 2013 on how Ministers have complied with the duty.³² Subsequent reports must be published every five years. The Measure also gives Ministers the power to amend legislation or a prerogative instrument that does not comply with the Convention and its Protocols (though this only relates to devolved matters).³³

The Measure places a duty within domestic law on Welsh Ministers to promote knowledge and understanding of the Convention among the public, including children.³⁴ This is consistent with the requirements under international law, in Article 42 of the Convention.

In a further radical move, the Measure requires Ministers to consider the relevance of the Convention and its Protocols to young people (18 to 25 year-olds) and to apply any of the provisions to this age group as they determine necessary.³⁵

The Scottish Government commenced a public consultation on a Ministerial children's rights duty in September 2011. Like the Welsh Measure, the proposed Rights of Children and Young People Bill will place a legal duty on Ministers to have due regard to the Convention and its Optional Protocols in the exercise of any of their functions. The Scottish Government outlines four 'substantial' benefits:

- The prominence of the CRC will be increased
- Greater consistency and clarity
- Better transparency and parliamentary scrutiny
- Increased accountability to the Scottish people.³⁶

The Bill is expected to be introduced into the Scottish Parliament next summer and to be fully in force from autumn 2014.

This year saw the axing of the socio-economic duty in the Equality Act 2010. Section 1 of the 2010 Act placed a duty on public authorities when exercising a strategic function to have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage. In relation to children,

this would have greatly extended the existing duty on local authorities to reduce inequalities between young children (birth to five years) relating to social and economic well-being.³⁷ Although not creating justiciable economic and social rights, it would have been a significant measure in tackling the unequal enjoyment of Convention rights. The Conservatives fiercely opposed the socio-economic duty when it was added to the legislation late in its Parliamentary passage.

Home Secretary Theresa May announced the axing of the duty in a speech given at a community centre in London in November 2010. She pronounced:

You can't solve a problem as complex as inequality in one legal clause.³⁸

The following day, Equalities Minister Lynne Featherstone told Parliament: *'I said during the passage of the Bill that this was a weak measure, that it was gesture politics, and that it would not have achieved anything concrete. The [socio-economic duty] would only have been a bureaucratic box to tick – another form to fill in. It would have distracted hard-pressed council staff and other public sector workers away from coming up with the right policies that will make a real difference to people's chances in life'.³⁹*

This was a changed position from 2009 when, as a backbencher MP, the same Lynne Featherstone argued for the duty to be applied explicitly to fire authorities⁴⁰ (in the event this was unnecessary because fire authorities are part of local authorities). In her online blog in June 2009, Featherstone wrote:

What would it mean in practice? Well, consider the example of a fire authority making decisions about its fire prevention efforts. The duty would require them to consider the different risks in areas arising from how deprived they are – for example, in poorer areas there may be fewer fire alarms, buildings may be less fireproof, more use of paraffin heaters etc. If it then turns out some areas are therefore at greater risk of fires and death from fires – then they'd have to take this into account when planning their fire prevention work.⁴¹

The UN Committee specifically recommended the strengthening of children's rights through a British Bill of Rights. The Ministry of Justice established an independent Commission on a Bill of Rights in March 2011. In August, the Commission released a discussion paper asking 'Do we need a UK Bill of Rights?'. The short paper refers to the existence of international law protecting the rights of children and notes the inclusion of children's rights in the Northern Ireland Human Rights Commission's proposals for a Bill of Rights. Minutes from the Commission's first two meetings show a strong commitment to wide public consultation and to engage specifically with the judiciary and possibly also the academic community. There is



no reference to the particular needs of children in the public consultation. Furthermore, the Commission's initial agenda is focused on the UK's Chairmanship of the Council of Europe from November 2011, and the Justice Secretary Ken Clarke's desire to reform the European Court of Human Rights. The Commission's final proposals on any UK Bill of Rights must reach the Government by the end of 2012. CRAE and others are lobbying to ensure the Commission gives particular consideration to the rights of children noting, among other things, the conclusion of the parliamentary Joint Committee of Human Rights (JCHR) in 2008 that: 'there is a strong case for a Bill of Rights and Freedoms having detailed rights for children'.⁴²

2 Ensure effective co-ordination of the implementation of the UNCRC throughout the UK, including in local areas where authorities hold significant powers to determine priorities and budget allocation



The coalition Government has not published any strategic document relating specifically to the CRC, or made any announcement of how it plans to co-ordinate the implementation of the Convention across the UK.

A small Children's Rights and Participation team continues to exist within the Department for Education. The team comprises four posts (out of almost 2,500 Whitehall civil service posts in the Department for Education⁴³).

There has been no legislation introduced to replace the duty on local Children's Trust Boards to have regard to the importance of acting, so far as possible, in a way which is compatible with the Convention on the Rights of the Child.⁴⁴ This duty came into force on 1 April 2010 and was axed on 31 October 2010.⁴⁵

3 Establish a single high-profile mechanism to co-ordinate and evaluate the implementation of the UNCRC (in addition to well-resourced and functioning co-ordinating bodies in each jurisdiction)



The Children's Rights and Participation team within the Department for Education co-ordinates the implementation of the CRC across the UK. A Parliamentary Question in October 2010 described the team's remit:

Its current remit is to promote and support the implementation of the United Nations Convention on the Rights of the Child in England through Government policy, and to coordinate UK-wide reports on progress to the UN Committee. It oversees activity to support the involvement of children and young people in decision-making centrally and locally, and is the policy sponsor for the Office of the Children's Commissioner for England.⁴⁶

This is not a high-profile mechanism either within or outside Government. A Parliamentary Question answered in November 2010 noted the team has briefed Ministers in the Department for Education about the Government's obligations under the CRC, but not Ministers in any other Government department. There is 'regular dialogue' with officials in other departments.⁴⁷

4 Adopt comprehensive rights-based action plans to implement the UNCRC in all parts of the UK, in co-operation with public and private organisations involved in promoting and protecting children's rights



The coalition Government has not adopted a rights-based action plan to implement the CRC in England and across the UK, nor has it joined forces with public and private organisations involved in promoting and protecting children's rights. However, its final question in the public consultation on the Children's Commissioner could perhaps be taken to indicate the possible development of such an action plan:

What other practical steps could the Government take to demonstrate its commitment to the UNCRC?⁴⁸

The consultation closed at the end of September 2011. This was the first time the UK Government had asked the public about strengthening the implementation of the Convention, since the UK ratified the treaty in 1991. CRAE co-ordinated

a joint submission from NGOs promoting and protecting the rights of children and proposed three new broad duties, two relating to the Children's Commissioner:

- A public sector children's rights duty requiring public authorities, in the exercise of their functions, to have due regard to the need to (a) uphold children's rights; (b) actively seek and give due weight to the views of children in all matters affecting them; (c) take such steps as are appropriate to promote knowledge and understanding amongst children and adults of the Convention on the Rights of the Child and its Protocols; (d) ensure mechanisms are in place to investigate and rectify any violations of children's rights without undue delay; (e) ensure children are provided with information and assistance about making representations and protecting their rights; and (f) inform children of the role and function of the Children's Commissioner
- A duty on the Office of the Children's Commissioner to publish a statutory code of practice in relation to the public sector children's rights duty
- A power for the Commissioner to require a response to his or her recommendations following a children's rights impact assessment (similar to the existing power in Section 3(7) of the Children Act 2004 in relation to inquiries).

In March 2011, the Secretary of State for Education was asked in a Parliamentary Question to indicate how many reviews established by his Department included an explicit reference to the Convention (a matter considered by CRAE in last year's *State of Children's Rights in England* report). The reply from the Children's Minister Sarah Teather suggests her officials leading on the Convention are not actively monitoring (or influencing) the terms of reference of reviews set up by the Department for Education:

*All reviews led by the Department for Education and its predecessor Department since the UN Committee published its Concluding Observations in October 2008 relate to children and young people and touch their lives in some way. **A list and terms of reference are not provided on the grounds of disproportionate cost ... [our emphasis].⁴⁹***


5 Ensure adequate budget allocation and evaluation mechanisms for delivering action plans, in order to regularly assess progress and identify gaps in implementing the UNCRC



The new coalition Government has not published any action plans for implementing the CRC in England or across the UK and therefore no budget has been allocated to this task.


Section 251 of the Apprenticeships, Skills, Children and

Learning Act 2009 came into force on 12 January 2010. This requires local authorities to provide information to central Government about their planned expenditure on education and children’s services. A comparative analysis of 2008/09 and 2011/12 (the first period being the year the UK was last examined by the UN Committee on the Rights of the Child) shows a very slight overall increase in expenditure on children, with some notable decreases, particularly in youth services and museum and library services.⁵⁰

6 Implementation action plans should pay special attention to children belonging to the most vulnerable groups 

The coalition Government has not published any CRC implementation action plans for particularly vulnerable groups of children. However, a vast number of policy proposals published over the past 12 months relate to matters raised by the UN Committee in its last examination of the UK.

We analysed 34 policy documents published by the coalition Government between December 2010 and October 2011 and found only 8 (24%) mentioned the CRC; and just 1 (3%) referred to a policy proposal being in response to a recommendation from the UN Committee – see Annex A.

7 Allocate the maximum extent of available resources for the implementation of the UNCRC, with a particular focus on eradicating poverty and reducing inequality 

Ministers do not know how much they spend on children so it is impossible to assess whether they allocate the maximum amount of available resources to implementation of the CRC. In September 2011, Children’s Minister Tim Loughton told Parliament:

It is not possible to provide accurate information on the proportion of the public spending allocated either directly or indirectly to children. This is due to a number of factors, including the devolved nature of decision-making on spending priorities and differing ways in which budgets are allocated...⁵¹


In 1991, the year the UK ratified the CRC, 31% of British children lived in poverty (below 60% of median income after housing costs). By 2009/10 this had reduced by just two percentage points to 29% of UK children. This is a fall from 4.1 million children living in poverty to 3.8 million.⁵²

Over the same period, there was a welcome fall in pensioner poverty from 36% of pensioners living in poverty in 1991 to 16% in 2009/10 – included here to show comparative progress for another population group.⁵³

Government statistics illustrate the very unequal chances children have to enjoy their childhood:⁵⁴

	Poorest 20% of children	All children
Outdoor space / facilities to play safely	18% don't have this	89% have this
Enough bedrooms so children aged 10 or over of a different sex don't have to share	29% don't have this	81% have this
Has leisure equipment, for example a bicycle	16% cannot afford this	87% have this
At least one week's holiday a year	34% get this	59% have this
Go on school trip at least once a term	13% cannot afford this	89% have this
Able to go swimming at least once a month	23% cannot afford this	57% have this
Celebrations on special occasions like birthdays or Christmas	8% cannot afford this	95% have this

In February 2011, Save the Children published an analysis of child poverty figures by the New Policy Institute, showing that 1.6 million children in Britain live in severe poverty (2008/09 statistics). More than 1 in 10 of children in England (13%) lives in severe poverty, with this figure increasing to as high as 27% of children living in Manchester and Tower Hamlets.⁵⁵

8 Children’s rights impact assessments should be regularly conducted to evaluate whether budget allocations are proportionate to the implementation of legislation and policy 

As shown above, the coalition Government’s promise that due consideration would be given to the CRC when making new law and policy has not been fulfilled. In the absence of a legal duty on Government departments to conduct children’s rights impact assessments, this situation is unlikely to improve.

The legislative proposals for reforming the Office of Children’s Commissioner include a new power for the Commissioner to conduct assessments of the impact on children of proposed laws and policy. This is a very welcome suggestion though it does not absolve Government itself of its ongoing obligation to conduct children’s rights impact assessments.

In last year’s *State of Children’s Rights in England* report we examined major public spending cuts affecting children, young people and families. We reported the Institute of Fiscal Studies’ (IFS) conclusion that the 2010 Comprehensive Spending Review was regressive – in other words, transferring income and wealth from poor to rich. Action for Children has this year published its own “Red Book”, showing the scale of local authority cuts to local services for children and families in most

need. The children's charity urges the coalition Government to 'set out its vision for the most vulnerable children and young people and not allow the perception that ministers hide behind localism in the face of criticism'.⁵⁶ Children's rights impact assessments would achieve this transparency.

9 Ensure all four Children's Commissioners are independent and comply with the UN Paris Principles



In July 2011, the Department for Education published its plans for transforming the legislative framework for England's Children's Commissioner. This followed the publication of the Dunford Review of the Children's Commissioner in December 2010. Areas of significant progress include:

- The creation of a new Office of the Children's Commissioner for England to promote and protect children's rights
- A new power to investigate cases of individual children where the case has wider significance for the rights of children
- A new power to carry out inquiries on issues that have wider significance for the rights of children (this is broader than the current power in Section 3(1) of the Children Act 2004)
- A new power to carry out assessments on the impact of new policies and legislation on the rights of children in relation to the CRC
- A new duty to submit an annual report to Parliament each year, including recommendations relating to the promotion and protection of children's rights (this is more focused than the current duty in Section 8(1) of the Children Act 2004)
- The removal of the current requirement for the Children's Commissioner to consult the Secretary of State before undertaking an inquiry
- The removal of the current power of the Secretary of State to direct the Children's Commissioner to undertake an inquiry
- A greater role for Parliament and children and young people in the appointment of the Children's Commissioner.

CRAE co-ordinated a joint NGO submission on the coalition Government's legislative plans. We strongly welcomed the majority of the proposals though opposed the establishment of a statutory advisory board, seeing it as a threat to the independence and effectiveness of the Children's Commissioner. We also recommended that *'the legislation specifically requires Parliament to set a budget that enables the Children's Rights Commissioner to undertake her or his functions across a designated period, say three years'*; and that consultation on the budget be undertaken with the Commissioner and others concerned with the promotion and protection of children's rights in England.

The coalition Government is not, at this stage, proposing to give each of the four Children's Commissioners in the UK the legal power to promote and protect children's rights in relation to non-devolved matters. This is a continuing barrier to meeting the UN Paris Principles' requirement that national human rights institutions be given *'as broad a mandate as possible'*.⁵⁷

In order to draw a clear distinction between the "rights-lite"⁵⁸ Children's Commissioner established by the former Labour Government, and the coalition Government plans, we proposed the role be renamed Children's *Rights* Commissioner.

10 Ensure the Children's Commissioner is mandated, among other things, to receive and investigate complaints from children, and has the necessary human and financial resources to carry out the mandate in a co-ordinated manner to safeguard the rights of all children in the UK



The legislative proposals for the new Office of Children's Commissioner for England include the power to undertake casework, though the precise details of this are not yet known. The joint submission co-ordinated by CRAE urged the coalition Government to refrain from setting legislative limits to new casework functions, leaving these decisions to the Children's Commissioner. It also recommended a power to require authorities to provide a response to the Commissioner's recommendations arising from casework, similar to the provisions relating to inquiries in Section 3(7) of the Children Act 2004. We believe this is to be included in the legislation to be put before Parliament.

11 Strengthen efforts to ensure that the UNCRC is widely known and understood by adults and children, in part by including the UNCRC in the statutory national curriculum



In September 2011, almost 20 years after the UK ratified the CRC, Children's Minister Tim Loughton told Parliament:

*No assessment has been made of the level of knowledge of UNCRC among children, parents, child care and education professionals.*⁵⁹

The Minister declined to indicate whether the revised national curriculum – see page 51 – is likely to include the CRC, but his emphasis on removing prescription strongly suggests it will continue to be missing from the statutory national curriculum, despite recommendations from the UN Committee in 1995, 2002 and 2008.

[The] reduction in prescription will free up teachers to use their professionalism to design and plan lessons that inspire their

pupils, and also give schools much greater scope to innovate in how they teach about important topics such as the UN Convention on the Rights of the Child.⁶⁰

More positively, during this past year, extensive information about the Convention has been included on the Department for Education's website.⁶¹ The Health Professions Council, which is to take over the regulation of social workers (from the General Social Care Council), recently consulted on proficiency standards for social workers in England (consultation closed mid-November 2011). In a section covering law and ethics, draft standard 2.6 states social workers must:

[U]nderstand the need to respect and so far as possible uphold, the rights, dignity, values and autonomy of every service user.⁶²

A child taking part in this year's Children's Rights Director's consultation on the Children's Commissioner reforms gave this advice on how the coalition Government could show its commitment to children's rights: *'talk more about it in schools in lessons then all kids will know'*.⁶³

12 Ensure the principles and values of the UNCRC are integrated into the structure and practice of all schools



The annual TellUs survey was scrapped in August 2010. This was the only Government survey seeking children's views and experiences of school (and other aspects of life). Whilst it did not ask children directly about the values and ethos of their school, it did ask them related questions. For example, in the 2009 survey just 48% of children said they liked being at school; 67% said they learn a lot at school; and just 21% reported that their school helped them 'to meet people with different disabilities'.⁶⁴

The Education Act 2011 requires Ofsted to consider the spiritual, moral, social and cultural development of students and to assess whether children's needs are being met by the school. This duty particularly applies to the needs of disabled children and those with special educational needs. Ofsted's draft inspection framework, published in March 2011, states children's views will be sought in relation to behaviour and discipline, though omits to give children any role in assessing the quality of teaching and the overall effectiveness of their school.⁶⁵

13 Ensure adequate and systematic training of all professionals working with children, especially law enforcement officials, immigration officials, the media, teachers, health personnel, social workers, and childcare workers



There has been no progress in meeting this recommendation. Ministers have not set out any expectation that professionals

working with children will be trained in the CRC. Nevertheless, draft statutory guidance on the Director of Children's Services and Lead Member for Children's Services functions, released in September 2011, requires that both roles have regard to the general principles of the CRC. No explanation is given as to why these senior postholders should not have regard to *all* aspects of the treaty, bearing in mind that even this wider duty would be less than the obligation under international law to uphold the rights in the Convention.

14 Encourage the active and systematic involvement of NGOs, youth-led organisations and others in the promotion and implementation of children's rights, including in the development of policy



In September 2011, Children's Minister Sarah Teather held a stakeholder meeting on the CRC with a variety of organisations concerned with the promotion and protection of children's rights. This was the first time such a meeting had been held since the UK ratified the treaty in 1991. Other meetings between Government and "stakeholders" had been held previously, but always focused on the reporting process and not on the implementation of the Convention generally. A follow-up meeting is expected in Spring 2012.

15 Engage NGOs and youth-led organisations in the follow up to the UN's concluding observations and the preparation of the next periodic report



The follow-up to the UN's concluding observations was an item on the agenda of the September 2011 meeting. The Minister also sought views on engaging children and young people in the next reporting process.

16 Address those recommendations made by the UN Committee in 1995 and 2002 that have not yet – or not sufficiently – been implemented



In the absence of a strategic plan for implementing the Convention, there is no indication that the coalition Government is actively engaging with the many recommendations from 1995 and 2002 that have still not been progressed.

General principles



Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“I can't have my friends around, I can't do my homework with no lights and the teacher get mad with me. There is no TV, no proper wash area, no hot water ... We can't play with our games, please help us. I'm only 13 and my life is so sad.”

Young Traveller's letter to Travellers Aid Trust Panel, 2010⁶⁶

“Increasing the degree to which disabled children are educated alongside non-disabled children is an important element of developing a more inclusive society.”

Equality and Human Rights Commission's inquiry into disability-related harassment, 2011⁶⁷

“Goodie in a Hoodie is a task force of young people (wearing hoodies) doing positive activities in the community ... So far the Goodies in Hoodies have raised £300 for Age Concern and done a big beach clean up at Whitley Bay.”

Truth about Youth North East, 2011⁶⁸

“17% of children say they are sometimes or often discriminated against because they are in care.”

Children's care monitor 2010, March 2011⁶⁹

“7% of boys feel unsafe everywhere in prison.”

Prisons Inspectorate and YJB report, 2011⁷⁰

17 Take urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within society, including the media



In March 2011, the Government Equalities Office (GEO) published its proposed exceptions to the ban on age discrimination in services, public functions and associations. The prohibition on age discrimination was included in the Equality Act 2010 and is due to come into force in April 2012. Despite strong lobbying by CRAE and others (through the Young Equals campaign), and the recommendations of the UN Committee, former Ministers persisted with excluding children from protection from age discrimination. This latest publication continues the hypocrisy and incoherence. The document states:

[Protection from age discrimination] does not apply to the under-18s because a child's age is closely related to his or her levels of development and need. Therefore, the basic principle of age discrimination legislation – that people should be treated the same regardless of their age – is rarely appropriate to the treatment of children. A three-year-old would usually need to be treated differently from a teenager, for example.

It then outlines the many exceptions that will be introduced to cater for the vast variation in needs of the adult population, because:

We do not want the law to interfere unnecessarily where age is used in a valid way to help target or provide services, but need to ensure that age discrimination is taken as seriously as other types of discrimination.

The proposed exceptions (which will be listed in regulations) add to existing wide provisions in the 2010 Act that allow the differential treatment of adults (the “objective justification” test; the “positive action” provision; and the “statutory authority” exception). The specific exceptions proposed in the consultation document are:

- An exception to allow financial services providers to continue to use age when assessing risk and deciding prices
- An exception to allow any service provider in the public or private sector to use age to determine eligibility for concessions or benefits
- An exception to allow specialist holiday providers to continue to provide holidays for people in particular age groups
- An exception to allow immigration authorities to continue to treat some people differently because of their age
- An exception to allow residential park homes to include age limits in their park admission rules
- An exception to allow for the continuation of age-restricted sporting competitions.

The Department of Health conducted extensive consultations with external organisations (including CRAE) on age discrimination and advised the GEO that specific exceptions in relation to health and social care for adults are unnecessary because different treatment can be objectively justified under the Act. Clearly, the same argument could have been applied to children were Ministers committed to offering them protection too.

The authorities' responses to this summer's public disorder at best contributed to a misperception that the majority of offenders were young people:

- On 9 August, Prime Minister David Cameron made a speech outside 10 Downing Street in which he proclaimed: *'And I have this very clear message to those people who are responsible for this wrongdoing and criminality: you will feel the full force of the law and if you are old enough to commit these crimes you are old enough to face the punishment'*⁷¹
- On 10 August, Education Secretary Michael Gove told BBC Breakfast that it was too early to say what caused the riots but described an *'absence of discipline in the home and in the school'* and promised new powers for teachers to impose authority in school⁷²
- On 11 August, David Cameron gave his first Commons' speech on the disturbances. Young people were the only age group highlighted in his speech. The Prime Minister referred to *'young people stealing flat screen televisions'*; a *'hard core of young people [deciding] to carry out such appalling criminality'*; and described *'a major problem in our society with children growing up not knowing the difference between right and wrong'*. He observed, *'At the heart of all the violence sits the issue of the street gangs. Territorial, hierarchical and incredibly violent, they are mostly composed of young boys, mainly from dysfunctional homes'*. Despite the strong associations between violence and “youth”, Cameron closed his speech to fellow MPs urging the country to show the world that the perpetrators *'are not in any way representative of our country – nor of our young people'*
- On 11 August, Home Secretary Theresa May gave a speech in the Commons asking *'Why does a violent gang culture exist in so many of our towns and cities?'* Young people were the only demographic group the Minister specifically referred to when talking about gangs. Furthermore, the only policy response the Minister gave at that point was the extension of gang injunctions to under 18 year-olds⁷³
- On 16 August, the Daily Mail reported Home Secretary Theresa May asking prosecutors to, wherever possible, name children appearing in court
- On 18 August, the Crown Prosecution Service (CPS) issued guidance to its prosecutors on imposing and lifting reporting restrictions in cases involving convicted “youth” (children from

the age of 10 years). The guidance omitted any reference to the UK's obligations under international law and the privacy protection afforded to child defendants in Article 6(1) of the European Convention on Human Rights and in Article 16 of the CRC was also missing.⁷⁴

In September 2011, the Ministry of Justice issued a statistical bulletin on the August disturbances. This showed that, as of 12 September:

- 21% (364) of those brought before the courts were children
- 45.2% of these children had no previous offences
- Of 26 children sentenced to immediate custody, only one was convicted of a violent disorder offence.⁷⁵

18 Strengthen anti-discrimination activities, including awareness-raising, and take affirmative action where necessary to benefit vulnerable groups including Roma and Irish traveller children; migrant, asylum seeking and refugee children; LGBT children; and children belonging to minority groups



In December 2010, the coalition Government published its equality strategy detailing numerous actions aimed at tackling discrimination against adults and children. Actions relating to children specifically include:

- 4,200 extra health visitors for families with young children
- Free early years education for all disadvantaged two year-olds from 2013
- Pupil premium given to schools from 2011/12
- Publication of research on how to prevent and respond to bullying against disabled children and children with special educational needs
- Measures to tackle the commercialisation and sexualisation of childhood
- Development of a social mobility strategy
- Promotion of the CRC internationally, including by setting a good example nationally.

In addition, the strategy promised the formation of a Ministerial Working Group to tackle inequalities faced by Gypsies and Travellers and a cross-government action plan to tackle violence against women and girls as well as a cross-government programme to support lesbian, gay, bisexual and transgender people.

Within months of the publication of the coalition Government's equality strategy, the Equality Act was included in the Cabinet Office's "Red Tape Challenge" – an online public discussion about which regulations are working and which should be scrapped.

The website explains:

*The Government is determined to take a hard look at anything which imposes bureaucratic burdens. Fairness is important, and it is not the Government's intention to abolish the Equality Act, but it cannot be exempt from a comprehensive look to check that we are not imposing burdens that are out of proportion to the good they seek to do.*⁷⁶

The Equality and Diversity Forum, of which CRAE is a member, wrote to the Prime Minister expressing alarm over the Challenge, noting: '*robust and clear equality law is an essential component of a civilised society*'.⁷⁷

September 2011 saw the introduction of duties requiring a wide range of public authorities to publish information to demonstrate their compliance with the public sector equality duty; and to set at least one specific and measurable objective to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. These "specific duties" apply to maintained schools, local councils, police authorities, fire authorities, Government departments and other organisations having considerable impact on children's lives, including the Children and Family Court Advisory and Support Service, the Youth Justice Board (YJB) and Transport for London.⁷⁸

The Government acknowledges that '*Gypsies and travellers face the most serious disadvantages of all ethnic minority groups with a much shorter life expectancy, low income and poor access to finance. Their children have high mortality rates and the lowest educational attainment*'.⁷⁹ Yet Ministers are making it even harder for Gypsy, Roma and Traveller families to access sites with adequate amenities and safe play areas for children. They have failed to protect Traveller education services from local authority cuts (made as a consequence of reduced funding from central Government). Nearly half of local authorities in England and Wales have either abolished their Traveller education service or made major cuts,⁸⁰ despite a Government report in 2010 concluding '*much more needs to be done to achieve equality in educational opportunities for Gypsy, Roma and Traveller pupils. Without a framework of targeted support at both local and national levels, the improvement of outcomes for these pupils is likely to remain unacceptably slow*'.⁸¹

The coalition Government made available considerable funds⁸² to forcibly evict 86 Traveller and Gypsy families from land they own at Dale Farm in Basildon, Essex.

The UN Committee on the Elimination of Racial Discrimination urged the UK authorities to delay the eviction, noting it would *'disproportionately affect the lives of families and particularly women and children and create hardship'* and urged the state to ensure *'any evictions are conducted in accordance with the law and in a manner that respects the human dignity of all individuals in this community, in conformity with international and regional human rights norms'*.⁸³

Six weeks after these concluding observations were issued, riot police were tasked with forcing the families from their land and heavy machinery used to destroy homes and possessions. The removal began at 7am on 19 October 2011 with the disconnection of all electricity supplies. Up to 150 children lived on the land.

In the 1970s, the local authority gave planning permission to 40 English Romany families to live next to a scrapyard (an area called Oak Lane). In 1996, the scrapyard owner sold the adjoining land, Dale Farm, to an Irish Traveller family. Over the years more families joined, leading to the two sites at one stage being the largest Traveller community in the UK. The families were repeatedly refused planning permission and the local authority commenced legal proceedings in 2001. Local authorities have not been under any duty to provide Traveller sites since the Criminal Justice and Public Order Act 1994 repealed Part II of the Caravan Sites Act 1968 – see page 47.

19 Take all necessary measures to ensure that cases of discrimination against children are addressed effectively, including with disciplinary, administrative and penal sanctions



There has been no progress on this recommendation in the past 12 months. Like the former Labour administration, the coalition Government does not formally recognise that children endure discrimination because of their age and, accordingly, has no plans to address this unfair treatment.

20 Take all appropriate measures to ensure that the principle of the best interests of the child is adequately integrated into all legislation and policy affecting children, including in criminal justice and immigration matters



The child's welfare is the court's paramount consideration in judicial proceedings concerned with the child's upbringing. In adoption proceedings the child's welfare *throughout his or her life* is the court's paramount consideration. The Family Justice Review's interim recommendation this year *'that there should be a statement in legislation to reinforce the importance of the child continuing to have a meaningful relationship with*

*both parents [after parental separation] alongside the need to protect the child from harm'*⁸⁴ raised the welcome possibility of parental responsibility being defined in law – something CRAE has advocated for many years. This could have stressed the child's best interests being parents' main concern, consistent with Article 18(1) of the Convention. However, the Review's final report proposed a non-legislative way forward:

Government should find means of strengthening the importance of a good understanding of parental responsibility in information it gives to parents. *One step could be giving parents a short leaflet when they register the birth of their child, to give them an introduction to the meaning and practical implications of parental responsibility [Family Justice Review emphasis in bold].*⁸⁵

Local education authorities and school governing bodies are required by law to make arrangements for ensuring they exercise their functions with a view to safeguarding and promoting the welfare of children. In addition, since January 2010, schools have been under a duty to co-operate with children's services and others to improve the well-being of children in local areas.⁸⁶ Aspects of children's well-being are: (a) physical and mental health and emotional well-being; (b) protection from harm and neglect; (c) education, training and recreation; (d) the contribution made by them to society; and (e) social and economic well-being.

There is no specific provision in health legislation relating to the child's best interests or welfare though the Children Act 2004 requires that NHS bodies, alongside many other organisations, discharge their functions having regard to the need to safeguard and promote the welfare of children.⁸⁷

In criminal proceedings where the child is a defendant, the court must have regard to: the principal aim of the youth justice system (to prevent offending or re-offending); the welfare of the offender; and the purposes of sentencing (punishment; reform and rehabilitation; protection of the public; and reparation). The police, youth offending teams and the governors / directors of prisons and secure training centres must discharge their functions having regard to the need to safeguard and promote the welfare of children.⁸⁸ This duty does **not** apply to the YJB which, among other things, determines the form of detention children are sent to when remanded and/or sentenced.

There is no provision in domestic law for consideration of the best interests of affected children when sentencing or detaining parents, though CRAE is aware of one case this year where the Human Rights Act was used to this (positive) effect.⁸⁹

Since November 2009, the UK Border Agency (UKBA) has been required to make arrangements to safeguard and promote the welfare of children in discharging its immigration,

nationality and general customs functions (Section 55 of the Borders, Citizenship and Immigration Act 2009). Rule 11 of the Detention Centre Rules 2001 provide that detained families *'shall be entitled to enjoy family life at the detention centre save to the extent necessary in the interests of security and safety'*; that detained children and families *'will be provided with accommodation suitable to their needs'*; and *'everything reasonably necessary for detained persons' protection, safety and well-being and the maintenance and care of infants and children shall be provided'*.

In last year's *State of Children's Rights in England* report, we commended Ministerial promises to end the practice of detaining children for immigration purposes though criticised the ever-shifting timetable. A UKBA policy document published in December 2010 clarified the coalition Government's position:

- Children will no longer be detained in Yarl's Wood immigration removal centre (IRC)
- There will be greater use of open accommodation – *'a type of hostel'* – where families' movements are not restricted
- Pre-departure accommodation – *'a secure and supervised building'* – will be used to detain children within families for up to 72 hours but exceptionally up to a week with Ministerial approval
- On arrival to the UK, children within families may be detained at the port for up to 24 hours then transferred to IRCs *'where there are more comfortable facilities and support services'*
- In all cases where ensured return of a family with children is deemed necessary, an Independent Family Returns Panel will consider the individual circumstances and the welfare of the children and recommend how removal should take place. The policy document states the UKBA will follow these recommendations; where the Panel cannot agree on how to proceed, the Immigration Minister will decide.

Between October 2010 and October 2011 (latest published figures), **79** children entered detention for immigration purposes. Cedars, the pre-departure accommodation able to detain up to nine families at Pease Pottage in Sussex, opened on 17 August 2011⁹⁰ and is run by G4S and Barnardo's. There has been no change to the law relating to the detention of children for immigration purposes. The Deputy Prime Minister, Nick Clegg, recently described the new arrangements as *'a complete, humane, liberal revolution, of which I am very proud indeed'*.⁹¹

In October 2011, the coalition Government made a welcome announcement that it will not *'in the near future'* bring into force Part 2 of the Children, Schools and Families Act 2010, which provides for authorised judgments from family proceedings to be made publicly available.⁹² This was in response to a recommendation from the parliamentary Justice Committee which observed the measure had attracted *'universal condemnation'*.⁹³

21 Use all available resources to protect the child's right to life, including by reviewing the effectiveness of preventive measures



There were 722 child homicides in the past 10 years (75% of children knew the suspect).⁹⁴

Official data shows there were 800 "modifiable" child deaths in England in 2010/11. A modifiable death is the official term given to a death where one or more factors could be modified (changed) to reduce the risk of future child deaths: these deaths were formerly classified "preventable". The age breakdown of the 800 child deaths is as follows:

- Infants aged between 28 and 364 days accounted for 33% of modifiable child deaths
- Newborns up to the age of 27 days accounted for 23% of modifiable child deaths
- 15-17 year-olds accounted for 17% of modifiable child deaths
- Children aged between 1 and 4 years accounted for 13% of modifiable child deaths
- Children aged between 10 and 14 years accounted for 9% of modifiable child deaths
- Children aged between 5 and 9 years accounted for 6% of modifiable child deaths.⁹⁵

Of the 47 children that died in England in 2010/11 as a result of deliberately inflicted injury, abuse or neglect, 29 (62%) were deemed to have modifiable factors. Forty of the 800 children who died where modifiable factors were identified were, or had been, subject to a child protection plan; and 27 of the 800 children who died where modifiable factors were identified were, or had been, subject to a statutory order.

Of a total of 1,201 recommendations made by Child Death Overview Panels in 2010/11, 32 related to legislation or policy. CRAE made a Freedom of Information request to the Department for Education to ascertain the types of legislative and policy recommendations. Astonishingly, we were told that such data is not collected centrally: it is therefore reasonable to assume that *no action* is being taken by central Government on these particular recommendations.

Infant mortality rates (death before child reaches one year) in England and Wales show continuing reduction since the UK ratified the Convention, from a rate of 7.2 per 1,000 live deaths in 1991 to 4.4 in 2009. However, sharp differences remain according to infants' socio-economic background. Office for National Statistics (ONS) figures show that in 2009 infants from the poorest households in England and Wales were almost twice as likely to die in their first year than infants with parents in higher managerial and professional occupations.⁹⁶



Eighty-three children aged 14 years or under were admitted to hospital with malnutrition in England in the past three years.⁹⁷

There continues to be considerable differences in life expectancy according to sex and geography. For example, a girl born in Kensington and Chelsea has an average life expectancy of 89 years compared with a boy born in Blackpool who can expect to live 73.7 years.⁹⁸

In April 2011, a 17 year-old boy died on remand in a young offender institution. He is the 31st child to die in custody since 1990, the year the UK signed the CRC. There has never been a public inquiry into a child death in custody and no large-scale review of how such deaths could be prevented.⁹⁹ In June 2011, the Prisons and Probation Ombudsperson published its review of learning from self-inflicted deaths in prisons. There is just one reference to children in the report – in the section giving the age range of people who suffered self-inflicted deaths in custody between January 2007 and December 2009 (15 to 77 years).¹⁰⁰

The second inquest into the restraint-related death in custody of 14 year-old Adam Rickwood gave its narrative verdict in January 2011, showing horrific failures in care and accountability. The jury was asked 16 questions about the circumstances leading to Adam hanging himself with his shoe laces hours after being restrained and subject to the nose “distraction” at Hassockfield secure training centre (STC).

The coroner asked *‘Before and at the time of Adam’s death, was there a serious system failure in relation to the use of PCC [Physical Control in Care – the restraint system used in these privately-run child prisons] at Hassockfield, giving rise to an unlawful regime?’*

The jury answered ‘Yes’.

The coroner asked *‘Before and at the time of Adam’s death, should the YJB (through their Monitors) have been aware that PCC was being used unlawfully and in breach of the Contract at Hassockfield?’*

The jury answered ‘Yes’.

The jury was asked whether the *‘unlawful use of PCC [and] the unlawful use of the nose distraction’* more than minimally contributed to Adam’s death.

The jury answered ‘Yes’ to both questions.

This second inquest was ordered by the High Court after Adam’s mother, Carol Pounder, successfully brought a judicial review. The YJB expressed regret but not any responsibility in its media response to the inquest’s verdict:

... the YJB deeply regrets [Adam’s] death and we would like to take this opportunity to once again express our condolences to Mrs Pounder and her family for their tragic loss.¹⁰¹

22 Introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or in custody



The duty on Local Safeguarding Children Boards to review any unexpected death¹⁰² (in force from 1st April 2008) is very welcome but it is not strong enough to meet the investigative duties under Articles 2 and 3 of the European Convention on Human Rights or the positive protection duties in Article 19 of the Convention on the Rights of the Child. Domestic homicide reviews, introduced by Section 9 of the Domestic Violence, Crime and Victims Act 2004, came into force in April 2011. These are required for all homicides of people aged 16 and over where the death appears to have resulted from violence, abuse or neglect by a person with whom the victim was in an intimate relationship, or a member of the same household. The aim of the review is to identify ‘the lessons to be learnt from the death’, similar to the function of serious case reviews.

This year CRAE brought judicial review proceedings of the coalition Government’s failure to review the restraint records of four STCs, run by G4S and Serco, and notify former detainees who may have been subject to unlawful restraint that they could be entitled to redress. The hearing took place in the High Court over three days in November 2011; the outcome of the review is not known at the time of writing. A couple of weeks ahead of the hearing, statistics were released to Parliament showing that Government officials have been handed **285** separate reports of children’s lives being endangered and of restraint leading to serious injuries and hospitalisation in the four STCs since 2006. Lord McNally told Parliament on 9 November 2011 that warning signs include:

- A child struggling to breathe
- Complaint from a child that he or she is unable to breathe
- Nausea
- Vomiting

- Swelling to the child's face or neck
- Abnormal redness to the child's face
- Blood spots on the child's face or neck
- Child is limp or unresponsive
- Change in the degree of agitation
- Respiratory arrest
- Cardiac arrest.

The Minister said serious injuries requiring hospital treatment include:

- A serious cut
- Fractures
- Concussion
- Loss of consciousness
- Damage to the child's internal organs.¹⁰³

Last year we noted the coalition Government's announcement of the abolition of the new role of Chief Coroner before the post had even started. We are pleased to report that this decision was finally reversed at the end of November 2011, after strenuous campaigning by INQUEST and bereaved families.

23 Treat Taser guns and AEPs [Attenuating Energy Projectiles] as weapons subject to applicable rules and restrictions



No specific rules or restrictions have been issued to police forces in relation to the use of Taser guns on or around children.

CRAE obtained information from the Home Office under a Freedom of Information request revealing that Tasers were used on children aged between 13 and 17 years **252** times by police forces in England between July 2007 and December 2009 (latest available statistics).¹⁰⁴

In November 2006, the Home Office Scientific Development Branch reported a safety notice issued by the manufacturer Tasertron (now Taser Technologies Inc.) warning against the use of Tasers on children. Amnesty International reviewed 334 deaths following Taser use by law enforcement officers in the US (including the deaths of three children). It examined available research literature that pointed to the enormous risks of Taser use on children and other people of small stature.¹⁰⁵

24 End the use of all harmful devices on children



Police, prison and immigration staff continue to be permitted to use ratchet handcuffs on children.

The follow-up report of Peter Smallridge and Andrew Williamson's restraint review was published in March 2011. This noted enthusiasm among prison staff for using handcuffs on children:

*Representatives from the youth secure estate considered handcuffs were an effective tool because they have 'no personality' and can be used to end swiftly a dangerous situation without the use of pain.*¹⁰⁶

There was no discussion in this follow-up report of children's views and experiences of being handcuffed, nor any analysis of why other institutional settings, including secure children's homes, do not use such devices.

We made a number of requests for information under the Freedom of Information Act relating to the use of handcuffs and escort chains on children by escort providers, staff in child prisons and staff in immigration detention, including the new Cedars pre-departure accommodation. The Home Office is apparently still checking data and the YJB delayed responding to our request and then, when it finally did send the information, it informed us that it does not hold data on young offender institutions and that this is held by the National Offender Management Service (NOMS). Clearly, this information could have been provided by the YJB immediately had it been keen to assist CRAE obtain the data.

The data we were provided from the YJB on use of handcuffs on children detained in STCs shows:

- There was a 300% rise in use of handcuffs by STCs between 2008/09 and 2010/11, with handcuffs being used **21** times last year (7 times in 2008/09)
- Escort providers working for Reliance security firm used handcuffs on children **207** times between June 2010 and March 2011. This included use of handcuffs on a 12 year-old child.

We were told the YJB does not collect data on the use of escort chains on children; also that this year's data is provisional (no explanation given) and that the information provided does not include use of handcuffs by STC staff 'for trips such as visits to hospitals'.

25 Through legislation and in practice, promote, facilitate and implement the principle of respect for the views of the child – in the family, in schools, in the community, and in institutions



It is three years since the Education and Skills Act 2008 received Royal Assent. Yet the part of the Act which supports children's rights to be heard and taken seriously has still not been brought into force.¹⁰⁷ Education Secretary Michael Gove made a speech at the beginning of the 2011 academic year

where he referred to discipline on 21 separate occasions; stressed the need for children to obey their teachers; and outlined how his Government was strengthening ‘*the hand of teachers*’ – through extra search powers for example.¹⁰⁸ The Minister made one reference to children’s right to express themselves but omitted to say how schools could support this right or when his department plans to bring into force legislation that simply requires schools to invite and consider children’s views.

The Education Act 2011 removes the new right of parents and children to complain to the Local Government Ombudsperson about the actions of a school governing body or the way in which a headteacher has discharged his or her functions (not including admissions or matters subject to appeal rights).

In September 2011, sixth-formers in “special” schools gained the right to opt in or out of collective worship.¹⁰⁹ No explanation was given by Ministers as to why disabled sixth-formers should have had to wait almost three years for this right to be extended to them (the provision came into force for other sixth-formers in February 2009).

The Protections of Freedom Bill currently being debated in Parliament proposes to enable children to refuse to provide biometric information to their schools. CRAE is pushing an amendment to the Bill requiring schools to inform children (and their parents) of their right to withhold consent – a necessary condition of them being able to exercise their right to express their views freely.

In April 2011, regulations came into force strengthening the rights of children in care to be heard and taken seriously. The regulations require that the child’s wishes and feelings be included in their placement plan, health plan, personal education plan and their care plan.¹¹⁰

The Alternative Vote referendum took place in May 2011. Only registered voters were permitted to participate in the referendum, so teenagers able to vote in the next general election were excluded. A debate in the Commons the previous October attracted 200 votes for 16 and 17 year-olds to be allowed to participate in the referendum: only one Member of Parliament derided the idea. At its annual sitting in Leeds in July 2011, the UK Youth Parliament selected votes at 16 as its top priority campaign for the coming year. In March 2011, the Council of Europe Parliamentary Assembly’s Political Affairs Committee adopted a resolution discussing developments across Europe towards enfranchising young people and concluded ‘*the most reasonable option is to harmonise the right to vote at 16 years in all countries and for all elections*’.¹¹¹



26 Promote, facilitate and implement the principle of respect for the views of the child in administrative and judicial proceedings



Ministers have agreed to pilot children themselves having the right to appeal special educational needs (SEN) assessment and statement decisions made by local authorities to the First-tier Tribunal – see page 88. However, there is still no provision in law for children’s views to be heard in exclusion proceedings. Furthermore, the removal of exclusion appeal panels’ power to reinstate excluded students takes away any chance of a child’s perspective having any weight. During the passage of the Education Act 2011, many Peers gave impassioned speeches in support of children’s fundamental rights in exclusion proceedings, including Lord Peston who noted in July’s Grand Committee debate:

*... the fact that these people are young children does not mean that they have no human rights. None of us would tolerate being treated in this way on anything else that we encountered as adults. Whatever was going on, and if we were doing something wrong, we would certainly expect to be dealt with with due process and the right of appeal against anything that was relevant.*¹¹²

Lord Morris of Handsworth articulated the imbalance of power in the Government's plans:

*Fairness and justice lie at the heart but it seems that the Secretary of State has taken the position that the heads and governing bodies are always right and that the pupil is always wrong. That cannot be sustained because here we have a situation where those associated with a decision, whether it is the heads or governing body, are the accusers in the first instance. They are the investigators, assembling the facts and putting together the arguments. They prosecute in the case and, in the end, they are the judge and jury, all without any recourse to justification. The review panel ... has no powers for reinstatement, however unjust the decision might have been.*¹¹³

Following lobbying by CRAE on behalf of Participation Works, it seems likely that the involvement of children will be included in the coalition Government's pilot scheme on exclusions; and revised statutory guidance on exclusions will give greater emphasis to the child's right to be heard. In July 2011, the Children's Commissioner launched her first inquiry using her statutory powers, focusing on school exclusion. The Commissioner's call for evidence did not specifically raise the child's right to be heard during exclusion proceedings though the inquiry will be examining whether exclusions law, policy and practice complies with the requirements of the CRC, including Article 12.

In October 2011, Ofsted launched an online facility for parents to give their assessment of their child's school.¹¹⁴ The organisation states it will use the information to decide which schools to inspect, and when. There is no equivalent mechanism for children to alert Ofsted to the need for a school inspection.

In January 2011, the Government published a guide for children in care on their rights, noting their entitlement, among other things, to request an advocate to attend their review meetings. Regulations which came into force in April 2011 require independent reviewing officers (IROs) to ensure that children in care have been informed by the local authority of their right to apply, with leave, for a Section 8 order or discharge of their care order; as well as their right to make representations (including complaints) about their care. This is a very significant development.¹¹⁵ Less positively, only 12% of children taking part in a Children's Rights Director survey (n=858) this year listed 'Making sure my views are heard and wishes and feelings are taken into account' as one of the main jobs of an IRO.¹¹⁶

Data released by the Department for Education on 30 November 2011 shows a decline between 2008 and 2011 in the proportion of looked after children attending and speaking for themselves at their review meetings, from 48% to 45%. There was no increase in the miserly proportion of children having an advocate with them to speak on their behalf (1% in

2008 and 2011). Three percent of children neither attended their review nor had their views conveyed to the meeting, presumably making it impossible to properly assess the child's welfare and plan for his or her future.^{116a}

In April 2011, the coalition Government, like the former Labour Government, rejected the Education Select Committee's recommendation that access to independent advocacy be considerably extended for children in care. However, it has provided funding to a number of advocacy providers.¹¹⁷

Labour and Co-operative MP Luciana Berger tabled a Parliamentary Question this year to ascertain the steps being taken by the Department for Education and the public bodies it is responsible for (e.g. Office of Children's Commissioner) to increase the involvement of young members of the public in the making of decisions that affect them. She also asked for details of the mechanisms in place to take into account the views of young people in the Department's policy and funding decisions. Children's Minister Tim Loughton gave the following response:

- The Department is committed to young people's engagement in decision-making at local and national levels
- Ministers and officials 'actively engage' with children and young people through the Office of Children's Commissioner and the Department's Children and Youth Board, as well as through children's and youth organisations
- The Minister is in regular contact with members of the UK Youth Parliament
- The Minister has asked the Children's Rights Director to establish quarterly meetings with groups of looked after children and care leavers
- Young people are being consulted about the future of youth services
- Government is assessing 'current approaches to youth empowerment and democratic engagement' and the experiences of youth organisations will inform Ministers' future funding decisions
- Young people's 'direct contribution' to the National Citizen Service is 'essential'.¹¹⁸

27 Support forums for children's participation



The Department for Education has provided an £850,000 grant for 2011/13 to the British Youth Council to support young people's voice and involvement in local and national decision-making. This is part of the coalition Government's broader "Positive for Youth" initiative, aimed at 13 to 24 year-olds. The grant includes provision for the UK Youth Parliament. A further

two years' funding may be available, though Ministers' ambition is that these activities become self-financing. A similar aspiration for the funding of democratic structures for adults – local councils and Parliament for example – would be unthinkable.

In October 2011, Peers debated placing youth councils on a statutory footing as part of the Localism Bill. The Minister in the Department for Communities and Local Government supported the principles behind the amendment but said embedding these structures through legislation was unnecessary and stated *'rather than prescribing from the centre which services should be provided and to what level, the Government should look to local authorities to publish their own local offer of services to young people'*. The amendment was withdrawn.

Government funding is being provided to A National Voice to build the capacity and influence of Children in Care Councils, including disseminating best practice to local authorities and publishing a national overview report. In addition, the Department for Education, A National Voice and the Office of Children's Rights Director are collaborating to bring together the Chairs of these Councils to share progress and increase their advocacy power locally.¹¹⁹

28 Continue to collaborate with civil society to increase opportunities for children's meaningful participation, including in the media



The Department for Education's national prospectus showing the activities it planned to fund through civil society organisations gave great emphasis to children's participation in the section relating to children in care. Applicants for any kind of funding were required to demonstrate *'evidence of engaging users in the design of services'*.¹²⁰

Part of the Government funding given to the British Youth Council is to support a small number of youth representatives to represent the views of young people in the media.

The Positive for Youth Summit in March 2011 attracted 300 delegates, including 50 young people and officials from several Government departments.

This year the YJB further developed its relationship with User Voice, publishing joint reports on complaints and safeguarding from the perspective of children and young people in custody. 25 young people with experience of the criminal justice system attended the YJB's Annual Youth Justice Convention in November 2011.¹²¹

Officials from the Department for Education continue to attend the National Participation Forum, a group of influential organisations and individuals committed to strengthening children's participation.

Civil rights and freedoms



Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“ 41.6 per cent of the parents or guardians said they had physically punished or “smacked” the child or young person in the past year, 39.4 per cent of the parents or guardians of under 11s and 45.9 per cent of the parents or guardians of 11–17s ... This may be an underestimate of the extent of physical punishment of children and young people by main caregivers as some parents or guardians may have been reluctant to report having used physical punishment towards their children. ”

NSPCC, September 2011¹²²

“ In many cases, the shock of contact with the police and the criminal justice system will be enough to return a child to lawful behaviour. However, if the child continues to offend, the Government considers that it is appropriate to retain their biometric details indefinitely in order either to deter them from future criminality or to ensure they are brought swiftly to justice for any future offending behaviour. ”

Home Office response to Joint Committee on Human Rights, November 2011¹²³

“ When I had my first full search I was 14, it was horrible as I have been sexually abused and I didn’t feel comfortable showing my body as this brought back memories. They told me if I didn’t take my clothes off they would do it when they got permission. ”

Child in custody, 2011¹²⁴

29 Reconsider ASBOs as they may violate children's rights



The Government has still not conducted a children's rights analysis of the use of ASBOs on children – see page 64.

30 Reconsider other anti-social behaviour measures, such as the mosquito device, as they may violate children's rights to freedom of movement and peaceful assembly



In October 2011, Children's Minister Sarah Teather was asked about the appropriateness, legality and ethics of the mosquito device. These electronic machines emit a high-pitched noise to cause sufficient discomfort to children and young people to force them to move away from a public place. The Minister expressed clear opposition but failed to give any details of any action taken or planned by the coalition Government to protect children from these discriminatory devices.¹²⁵

Sheffield City Council voted unanimously in January 2011 to ban the use of mosquito devices on all council buildings. It also recommended that the device be banned from "partnership" buildings, such as those used by the police. Sheffield's ban follows similar action by Kirklees Council (2010), Kent County Council (2008), Westminster City Council (2008) and Lancashire County Council (2007) – all achieved following powerful campaigns by young people. The EHRC wrote to Children's Minister Tim Loughton MP in June 2011 warning that the lack of a regulatory regime may cause Ministers to 'be in breach of the positive obligations inherent in Articles 8, 11 and 14 [of the European Convention on Human Rights]'.¹²⁶

31 Ensure children are protected against unlawful or arbitrary interference with their privacy in legislation and practice



The Protection of Freedoms Bill will ensure that schools cannot obtain children's biometric data without permission from each of their parents. The provisions also enable children of all ages to refuse to provide their biometric data. However, CRAE believes an additional duty must be placed on schools to inform children and parents of their right to withdraw consent, to make this a meaningful right in practice.

Schools are currently using biometric systems for a variety of purposes including library, canteen and attendance systems. Technology using fingerprint, iris, face and palm vein recognition is either already in use in schools or has been trialled.¹²⁷

The Protection of Freedoms Bill also sets out the Government's plans for the retention of DNA and fingerprints by the police.

These plans make very little distinction between the DNA retention of adults and children:

- A child who is found to be not guilty, or who is not charged, of a *minor* offence will have his or her DNA and fingerprint records destroyed
- A child found to be not guilty, or not charged, of a *serious* offence, will have his or her DNA and fingerprint records kept for three years with the possibility of a two year extension (as long as he or she does not have a prior conviction which resulted in a custodial sentence of five years or more)
- Children found guilty of a first minor offence will have their DNA stored for a limited time as long as they do not receive a custodial sentence of five or more years
- The DNA and fingerprints of all other children will be stored indefinitely.

The Bill strengthens the regulation of CCTV, requiring the Government to publish a code of practice on the development and use of CCTV and establishing a Surveillance Camera Commissioner to monitor the implementation of the code. Schools will not have to have regard to the code although the Government '*expect[s] them to do so on a voluntary basis*'.¹²⁸ CRAE is lobbying for an amendment to the Bill to ensure the inclusion of schools. In February 2011, it was reported that one school in Coventry has installed 112 CCTV cameras.¹²⁹

The coalition Government has indicated that it is '*minded to stop its support for National eCAF and to decommission the system*', referring to Professor Eileen Munro's recommendation that Ministers should not endorse nationally prescribed approaches to IT systems.¹³⁰ The National eCAF system is currently being used to record and share information about children with the practitioners working with them. Although the system looks set to be scrapped, the coalition Government is considering whether eCAF could continue without its backing.¹³¹ Transfer of the system into the private sector could pose a serious threat to children's privacy rights.

These measures highlight a limited degree of progress in protecting children's privacy rights. However, this year has also seen a number of serious threats to children's privacy.

School and college staff powers to search children without their consent have been extended despite no evidence of their necessity. Staff are already able to search students for weapons,¹³² alcohol, drugs, and stolen property.¹³³ The Education Act 2011 extends the items for which staff can search children to include any article that staff reasonably suspect has been (or is likely to be) used to commit an offence or to cause personal injury or damage to property, as well any other item prohibited in a school's rules. In addition, the 2011 Act enables staff to look through students' phones, laptops and other devices and delete information '*if the person thinks there is a good reason to do so*'.¹³⁴

As well as extending the search powers themselves, the Education Act 2011 removes a number of significant safeguards for children who are being searched. It repeals requirements for the search to be carried out by a member of staff of the same sex as the student, and to be witnessed by another member of staff, if they reasonably believe that there is a risk that serious harm will be caused if the search is not conducted. There is no requirement to record when a child is searched.

The coalition Government has decided to repeal the duty on schools to record significant incidents where force is used on a child and to report these incidents to parents.¹³⁵ The decision follows two Government reviews of the duty carried out in the past year. The first concluded in January 2011 that implementing the duty 'is in the best interests of teachers, pupils and their parents'.¹³⁶ The second concluded that the duty 'is [not] necessary either to keep children safe or to protect school staff' and that 'it would add to the bureaucratic burden of some, but not all, schools'.¹³⁷ Duties to record use of force are already in place in other settings like children's homes (including secure children's homes), STCs, young offender institutions (YOIs), IRCs, and by police and mental health workers – see page 29.

Earlier this year, it emerged that journalists had hacked into the phones of a large number of individuals, including murdered 13 year-old Milly Dowler.¹³⁸ The Independent Police Complaints Commission is investigating claims that a police officer passed the girl's phone number to the News of the World.¹³⁹ In response to the wide-ranging claims of phone hacking, the Prime Minister announced an independent judicial inquiry¹⁴⁰ which is currently seeking submissions of evidence.

In November 2010, a large number of young people protested in London about increases to university tuition fees. The Metropolitan Police attempted to contain the crowds by "kettling" methods, cordoning off groups of protestors, including under-18s, and refusing to let them leave. There were reports that children as young as 11 were detained until after dark.¹⁴¹ Three young people (aged 15 and 16) took their case to the High Court, arguing that the police had failed to take account of their duties under Section 11 of the Children Act 2004 to safeguard and promote the welfare of children and that their rights to liberty, privacy, freedom of expression and freedom of peaceful assembly were breached. One of the young people said that they had been kettled within an hour of arriving at the protest 'with no food and very little water' and that:

Everyone was just cold, huddling up together, people just squeeze up to keep warm. It seemed like a punishment to go on protest and everyone was just demoralised. As children we can't vote, so one of the best ways for us to voice our opinion is through protest and if that's stopped or inhibited by kettling then where are we left?¹⁴²

The High Court ruled that the Metropolitan Police's methods were necessary, proportionate and lawful. Specific provisions of the CRC

are not mentioned in the judgment but there is reference to the UN Committee's general comments and to children's rights generally.¹⁴³ Lawyers from Bhatt Murphy Solicitors representing the children have applied for permission to appeal the judgment.

32 Introduce stronger regulations for data protection in relation to children



The coalition Government has not introduced stronger regulations for data protection in relation to children specifically.

Both the Information Commissioner and the Child Exploitation and Online Protection Centre have, however, produced online advice for children and young people on protecting their personal information.¹⁴⁴ Amongst other things, the resources include a template letter for making a subject access request under the Data Protection Act 1998.¹⁴⁵

There are concerns that children's personal information is not being adequately protected online and in particular on social networking sites. A survey of over 4,100 children and young people found that 60% had never read a privacy policy on a social networking site.¹⁴⁶ Children did, however, identify privacy as being important, with 85% stating that social networking sites should have the highest privacy settings by default.¹⁴⁷ 94% of the children questioned thought that there should be clear rules to enable the removal of photos and videos that had been posted without consent.¹⁴⁸

33 In co-operation with the media, intensify efforts to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame



The coalition Government's proposals to replace anti-social behaviour orders (ASBOs) indicate that they will continue the policy of "naming and shaming" children. In October 2008, the Council of Europe Commissioner for Human Rights issued a memorandum on the UK's juvenile justice system and stated: 'It is difficult to comprehend why any civilized government would permit such a practice, let alone pro-actively pursue it'¹⁴⁹

Following the disorder and looting in August this year, the Prime Minister made a statement to the House of Commons:

We are making technology work for us, by capturing the images of the perpetrators on CCTV, so even if they have not yet been arrested their faces are known and they will not escape the law. As I said yesterday, no phoney human rights concerns about publishing these photographs will get in the way of bringing these criminals to justice.¹⁵⁰

Media reports of children and young people involved in the disturbances received considerable attention and unedited photos



of under-18s were published and broadcast.¹⁵¹ Home Secretary Theresa May called for revised guidance from the CPS saying that *'where possible, [prosecutors] should be asking for the anonymity of juveniles who are found guilty of criminal activity to be lifted'*.¹⁵²

The identity of a 16 year-old boy convicted of inciting thefts and criminal damage was revealed by a Magistrates' Court although the case had initially been heard in the Youth Court where sentencing was also carried out.¹⁵³

The Education Act 2011 introduces reporting restrictions for teachers alleged of committing a crime against a child at the school. The court may dispense with reporting restrictions in the interests of justice but it is revealing that Ministers have introduced such safeguards for professional adults whilst appearing perfectly relaxed about children, including primary school children, being vilified in the media.

34 Regulate children's participation in TV programmes, notably reality shows



In December 2010, the Government confirmed its plans to reconsider child performance laws, following the publication of Sarah Thane's independent review in March last year.¹⁵⁴ An advisory group including production companies, broadcasters, children's charities and child psychologists has been established to work with the Government. Members of the advisory group are taking part in a number of working groups to examine some key issues raised by Thane's report in more detail. One of the working groups will consider *'improving safeguarding arrangements ... looking at the evidence, benefits and risks of child performance, and building on the best examples of good safeguarding arrangements already being used by production*

*companies and theatre groups...*¹⁵⁵ This working group is being led by representatives of the British Psychological Society and the Producers Alliance for Cinema and Television. The announcement last year indicated there would be a public consultation on the Government's proposals in 2011, but no further information has been released by the Department for Education.

The participation of children in reality TV shows continues to cause concern. In January 2011, for example, Channel 4 was criticised for broadcasting sexualised images of young Gypsy and Traveller children in the documentary *'My Big Fat Gypsy Wedding'*.¹⁵⁶

35 Ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child and others



The use of restraint in child custody is falling but it remains incredibly frequent. Statistics published by the YJB and the Ministry of Justice in January 2011 show:

- There were 6,904 incidents of restraint in child custody in 2009/10
- 257 (4%) resulted in recorded injuries on children
- On average, 11% of children in custody are restrained at least once whilst incarcerated
- For every 100 girls entering custody, 42 are subject to restraint
- For every 100 boys entering custody, 15 are subject to restraint
- The YJB reports no difference in the use of restraint according to children's ethnicity
- No data appears to be collected on the use of restraint on disabled children in custody
- No data appears to be collected on the use of restraint on pregnant girls in custody.¹⁵⁷

In a remarkable move, the Home Secretary has refused to place a copy of the manual governing use of force by private companies contracted to undertake forced deportations. The reasoning given is almost identical to the refusal of CRAE's application for the Physical Control in Care manual, governing use of force on children in privately-run STCs and IRCs. A full copy of the manual was finally handed over days ahead of Information Tribunal proceedings in July 2010. In response to a Parliamentary Question from shadow Home Secretary Ed Balls about the deportations manual, the Home Secretary said:

The guidance to which you refer is the Use of Force Manual, owned by the National Offender Management Service (NOMS). The document is restricted on the grounds that knowledge of the specific techniques it contains could be used against officers or to counter attempts to restrain individuals, thus putting at risk good order and discipline in prisons, immigration removal centres and during the escorting of individuals for removal.

Table 3: Lawful reason for use of force and restraint in different settings

Setting	Lawful reason for restraint
Schools	<p>Use of force: for the purpose of preventing a pupil from doing (or continuing to do) any of the following, namely—</p> <ul style="list-style-type: none"> (a) committing any offence, (b) causing personal injury to, or damage to the property of, any person (including the pupil himself), or (c) prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise¹
NHS settings (mental health)	<p>Use of physical restraint, seclusion or rapid tranquillisation: The most common reasons for needing to consider such interventions are:</p> <ul style="list-style-type: none"> • physical assault; • dangerous, threatening or destructive behaviour; • self-harm or risk of physical injury by accident; • extreme and prolonged over-activity that is likely to lead to physical exhaustion; and • attempts to abscond (where the patient is detained under the Act)²
Children's homes	<ul style="list-style-type: none"> (a) preventing injury to any person (including the child who is being restrained); (b) preventing serious damage to the property of any person (including the child who is being restrained); and (c) in the case of a child accommodated in a secure children's home, preventing the child from absconding from the home, and then only where no alternative method of preventing the event specified in sub-paragraphs (a) to (c) is available³
Secure children's homes	<ul style="list-style-type: none"> (a) preventing injury to any person (including the child who is being restrained); (b) preventing serious damage to the property of any person (including the child who is being restrained); and (c) in the case of a child accommodated in a secure children's home, preventing the child from absconding from the home, and then only where no alternative method of preventing the event specified in sub-paragraphs (a) to (c) is available⁴
Prisons – young offender institutions	<p>Use of force: An officer in dealing with an inmate shall not use force unnecessarily...⁵</p> <p>Put under restraint: where this is necessary to prevent the inmate from injuring himself or others, damaging property or creating a disturbance⁶</p>
Child prisons – secure training centres	<p>Use of force: An officer in dealing with a trainee shall not use force unnecessarily...⁷</p> <p>Physical restraint: for the purpose of preventing him from—</p> <ul style="list-style-type: none"> (a) escaping from custody; (b) injuring himself or others; (c) damaging property; or (d) inciting another trainee to do anything specified in paragraph (b) or (c) above, <p>and then only where no alternative method of preventing the event specified in any of paragraphs (a) to (d) above is available⁸</p>
Immigration detention	<p>Use of force: A detainee custody officer dealing with a detained person shall not use force unnecessarily⁹</p> <p>Special control or restraint: ... necessary to prevent the detained person from injuring himself or others, damaging property or creating a disturbance¹⁰</p>

1 Section 93 of Education and Skills Act 2006

2 Paragraph 15.17, page 116, of Mental Health Act 1983 code of practice (revised 2008)

3 Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

4 Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

5 Rule 50(1) of The Young Offender Institution Rules 2000

6 Rule 52(1) of The Young Offender Institution Rules 2000

7 Rule 37(1) of The Secure Training Centre Rules 1998

8 Rule 38(1) of The Secure Training Centre Rules 1998

9 Rule 40(1) of The Detention Centre Rules 2001

10 Rule 43(1) of The Detention Centre Rules 2001

Table 4: Legislative safeguards in different settings

	Schools	NHS settings (mental health)	Children's homes	Secure children's homes	Prisons – young offender institutions)	Child prisons – secure training centres	Immigration detention
Last resort prescribed in law	No	No, but in statutory code of practice ¹¹	Yes ¹²	Yes ¹³	No	Yes ¹⁴	No
Promotion of child's dignity prescribed in law	No	No, but in statutory code of practice ¹⁵	Yes ¹⁶	Yes ¹⁷	No	No	Yes ¹⁸
Restraint methods must be approved by Secretary of State	No	No	No	No	Yes ¹⁹	Yes ²⁰	Yes ²¹
Requirement to have policy setting out methods of restraint	No	Yes, <u>and</u> advance wishes and feelings of patient ²²	Yes ²³	Yes ²⁴	No	No	No
Deliberate infliction of pain expressly prohibited	No	Yes, except for staff self defence ²⁵	No	No	No	No	No
Prohibition on provoking	No	No	No	No	Yes ²⁶	Yes ²⁷	Yes ²⁸
Recording requirements	Yes, but not brought into force and Ministers plan to repeal ²⁹	Yes ³⁰	Yes ³¹	Yes ³²	Yes ³³	Yes ³⁴	Yes ³⁵
Requirement to record injuries	No	No	Yes ³⁶	Yes ³⁷	No	No	No
Notification requirements	Yes, but not brought into force and Ministers plan to repeal ³⁸	Yes ³⁹	No	No	Yes, in relation to 17 year-olds 'being put under restraint' and use of handcuffs ⁴⁰	No	Yes, in relation to special control or restraint ⁴¹
Child's account in written record	No	Yes ⁴²	No, but manager must speak with the child ⁴³	No, but manager must speak with the child ⁴⁴	No	No	No
Mandatory reporting of abuse	No	No	Yes ⁴⁵	Yes ⁴⁶	Yes ⁴⁷	Yes ⁴⁸	Yes ⁴⁹

1 Section 93 of Education and Skills Act 2006

2 Paragraph 15.17, page 116, of Mental Health Act 1983 code of practice (revised 2008)

3 Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

4 Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

5 Rule 50(1) of The Young Offender Institution Rules 2000

6 Rule 52(1) of The Young Offender Institution Rules 2000

7 Rule 37(1) of The Secure Training Centre Rules 1998

8 Rule 38(1) of The Secure Training Centre Rules 1998

9 Rule 40(1) of The Detention Centre Rules 2001

10 Rule 43(1) of The Detention Centre Rules 2001

11 Paragraph 15.8, 15.17 and 15.20 of Mental Health Act 1983 code of practice (revised 2008)

12 Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

13 Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

14 Rule 38(1) of The Secure Training Centre Rules 1998

15 Paragraphs 15.9 and 15.12 of Mental Health Act 1983 code of practice (revised 2008)

16 Regulation 11(2)(a) of The Children's Homes Regulations 2001

17 Regulation 11(2)(a) of The Children's Homes Regulations 2001

18 Rule 3(1) of The Detention Centre Rules 2001

19 Rule 52(8) of The Young Offender Institution Rules 2000

20 Rule 38(2) of The Secure Training Centre Rules 1998

21 Rule 43(12) of The Detention Centre Rules 2001

22 Paragraphs 15.21 and 15.11 of Mental Health Act 1983 code of practice (revised 2008)

23 Regulation 17B(1)(a) of The Children's Homes Regulations 2001 (as amended)

24 Regulation 17B(1)(a) of The Children's Homes Regulations 2001 (as amended)

25 Paragraph 15.22 of Mental Health Act 1983 code of practice (revised 2008)

26 Rule 50(2) of The Young Offender Institution Rules 2000

27 Rule 37(2) of The Secure Training Centre Rules 1998

28 Rule 41(2) of The Detention Centre Rules 2001

29 Section 93A(1)(a) of Education and Inspections Act 2006 (as amended by Section 246 of Apprenticeships, Skills, Children and Learning Act 2009)

30 Paragraph 15.28 of Mental Health Act 1983 code of practice (revised 2008)

31 Regulation 17B(3) and 17B(4) of The Children's Homes Regulations 2001 (as amended)

32 Regulation 17B(3) and 17B(4) of The Children's Homes Regulations 2001 (as amended)

33 Rule 52(6) of The Young Offender Institution Rules 2000

34 Rule 38(3) of The Secure Training Centre Rules 1998

35 Rule 43(8) of The Detention Centre Rules 2001

36 Regulation 17B(3)(g) of The Children's Homes Regulations 2001 (as amended)

37 Regulation 17B(3)(g) of The Children's Homes Regulations 2001 (as amended)

38 Section 93A(1)(b) of Education and Inspections Act 2006 (as amended by Section 246 of Apprenticeships, Skills, Children and Learning Act 2009)

39 Paragraph 15.29 of Mental Health Act 1983 code of practice (revised 2008) – carers and family (where appropriate)

40 Rule 52(3) of The Young Offender Institution Rules 2000 – member of the board of visitors and to the medical officer or a medical practitioner

41 Rule 43(3) of The Detention Centre Rules 2001 – visiting committee, the medical practitioner and the manager of religious affairs

42 Paragraph 15.30 of Mental Health Act 1983 code of practice (revised 2008)

43 Regulation 17B(3)(h) of The Children's Homes Regulations 2001 (as amended)

44 Regulation 17B(3)(h) of The Children's Homes Regulations 2001 (as amended)

45 Schedule 5 of The Children's Homes Regulations 2001

46 Schedule 5 of The Children's Homes Regulations 2001

47 Rule 81(4) of The Young Offender Institution Rules 2000 in relation to the board of visitors

48 Rule 44(4) of The Secure Training Centre Rules 1998 in relation to independent persons

49 Rule 45(2) of The Detention Centre Rules 2001 in relation to custody officers; Rule 61(4) of The Detention Centre Rules 2001 in relation to visiting committees



For this reason I cannot release a full copy of the manual but arrangements are being made for a redacted version to be placed in the House Library.¹⁵⁸

CRAE has analysed law and policy relating to the use of restraint, and the safeguards provided to children in different settings. This shows wide and completely unjustified variation in protection – see Tables 3 and 4 on previous pages.

36 Abolish all methods of physical restraint for disciplinary purposes



CRAE is aware of only one change to the law on use of force in custody since the deaths of Gareth Myatt and Adam Rickwood in 2004; and the UN Committee's concluding observations in 2008. In 2009, the YOI Rules were amended to remove the requirement for a member of the board of visitors to give a direction in writing for a child to be kept under restraint for more than 24 hours.¹⁵⁹

37 Prohibit as a matter of priority all physical punishment in the family, including through the repeal of the legal defence



The “reasonable punishment” defence, which under the Children Act 2004 still allows parents and those acting *in loco parentis* to justify common assault on children, still denies children's equal

right to respect for their human dignity and physical integrity. The Children Are Unbeatable! Alliance continues to campaign for equal protection and has the support of over 600 organisations and projects and more than 250 Parliamentarians.

In its report to the UN Committee Against Torture, the Government states that it *‘does not wish to criminalise parents for administering a mild smack’*.¹⁶⁰ Ministers do not explain why they consider it impossible to remove the “reasonable punishment” defence whilst ensuring parents are not inappropriately criminalised – through, for example, the inclusion of a legal safeguard prioritising the child's best interests when the CPS is considering whether to prosecute parents.

38 Ensure that physical punishment is explicitly prohibited in schools and all other institutions and forms of alternative care



Physical punishment is explicitly prohibited in state and private schools, care settings (including day care and childminding) but it continues to be permitted in a range of settings where adults are acting *in loco parentis* – including in madrassahs and Sunday schools and by private tutors, sports coaches, babysitters and nannies. The coalition Government's report this year to the UN Committee Against Torture does not acknowledge these extensive gaps in legal protection.¹⁶¹

39 Actively promote positive and non-violent forms of discipline, and respect for children's equal right to dignity and physical integrity, with a view to raising public awareness of children's right to protection from all physical punishment



The coalition Government has not undertaken any activities to raise public awareness of children's right to protection from all physical punishment.

In its response to a series of independent reviews concerning the early years, the Government stated that its *‘focus on the foundation years and the proposals in [Supporting families in the foundation years] are guided by the evidence from the recent reviews and are underpinned by the principles of the [CRC] in pursuit of a safe, happy and fulfilled childhood for all’*.¹⁶² Neither this document – nor any of the reviews themselves – mention the physical punishment of children.

The Government's response to the *Munro review of child protection* stated that *‘The [CRC] recognises children and young people as individuals with rights ... Crucially, the [CRC] establishes that a child's right to protection from maltreatment means designing a child protection system that does not just*

react when things go wrong but also provides support to children and families to prevent maltreatment happening in the first place'.¹⁶³ Neither the Government's response nor the review itself made any reference to physical punishment. Professor Munro does refer to Article 19 of the Convention, but not to the UN Committee's consistent interpretation of this requiring the abolition of corporal punishment in all settings.

40 Provide parental education and professional training in positive child-rearing



The coalition Government insists that it is encouraging 'the provision of evidence-based parenting programmes that promote alternatives to physical punishment to manage children's behaviour'.¹⁶⁴ However, we have found no evidence of Government-backed parenting programmes which advise against physical punishment.

In July 2011, the Departments for Education and Health published *Supporting families in the foundation years* in response to a series of independent reviews concerning the early years. In the document, the Government highlights a new e-learning course for the Healthy Child Programme which includes a module on 'Positive parenting and parenting Issues'.¹⁶⁵ The curriculum for the e-learning course makes no mention of preventing physical punishment. Professor Munro does refer to Article 19 of the Convention, but not to the UN Committee's consistent interpretation of this requiring the abolition of corporal punishment in all settings.

More positively, to coincide with the publication of *Supporting families in the foundation years*, a website was launched for parents of under-5s and professionals working with them.¹⁶⁶ This refers to the Children Are Unbeatable Alliance and the Global Initiative to End All Corporal Punishment of Children's 'advice pages to promote positive discipline, rather than resorting to physical punishment'.

41 Take all necessary measures to implement the recommendations contained in the report of the UN Study on Violence Against Children



In November 2010, the Government pledged to tackle violence against children as part of its *Call to end violence against women and girls*. This strategic document states that the Government is 'committed to continuing to uphold the principles of the [CRC]. It takes all forms of violence against children extremely seriously'.¹⁶⁷ As part of this work, a consultation scheduled for December 2011 will consider a revision of the definition of domestic violence to include under-18s. The proposal is likely to include partner violence between

young people, but not violence against under-18s by adults.

Neither this document, nor the action plan published in March 2011 made any reference to the UN Study on Violence Against Children.

42 Use the recommendations from the UN Study on Violence Against Children as a tool to ensure (with civil society and children) that every child is protected from all physical, sexual and mental violence



The coalition Government has not set out a response to the recommendations of the UN Study on Violence Against Children. In October 2010, the Department for Education said it had no plans to contribute funding to the UN Special Representative on Violence Against Children, a role established in response to the Study.¹⁶⁸ Children's Minister Tim Loughton recently gave a very non-committal response to a question about the Special Representative of the Secretary-General on Violence against Children's global survey on violence against children:

*The Department is now considering the United Nations Global Survey on Violence against Children. A copy of any Government response will be placed in the House Libraries.*¹⁶⁹

Family and alternative care



Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“ 58% of children living in relative poverty in the UK in 2009/10 had at least one parent working. ”

Households below average income, May 2011¹⁷⁰

“ The duty on the state to provide adequate support through the benefits system for people who are unable to work because of a serious health condition or illness is a fundamental principle of British society. ”

Parliamentary Work and Pensions Committee, July 2011¹⁷¹

“ The practice of stopping children having contact with their families when they are in “separation” (more commonly known as solitary confinement) has the effect of making them feel even more isolated, angry and depressed ... These practices offend basic human empathy, compassion and children’s fundamental human rights ... It is almost as if the state wants children in custody to be truly alone. ”

CRAE report on children’s rights and juvenile justice, June 2011¹⁷²

“ Prison visits can be extremely stressful for children and families. Anxiety arises due to the often lengthy journey to the prison, the fear of being late, the prison environment and the searching and other security procedures. A normal family environment is very difficult to achieve on prison visits and there is no opportunity for privacy or intimacy. ”

Action for Prisoners’ Families, September 2011¹⁷³

43 Render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities



This year's report card from the Family and Parenting Institute (FPI) – on the extent to which the UK is “family friendly” – showed a small deterioration in last year's poor positioning: D+ compared with C-.

The worst of four assessment categories related to the financial pressures facing families and the extent to which the UK is a fair society. FPI assessed this as D-, with the report card noting that positive policy plans are not yet being felt by families who ‘are shouldering the burden of cuts’.¹⁷⁴ Family Action has estimated that a low-income family with two young children is set to lose almost £8,000 between 2012 and 2014 following stringent cuts in state support.¹⁷⁵ The Trussell Trust now has 100+ foodbanks across the UK – providing three days' emergency food in exchange for a voucher given by health and social care professionals. The charity's website explains: ‘Most foodbank recipients are not homeless; they are low-income working families who hit crisis, people who have been made redundant or people experiencing benefits delays’.¹⁷⁶

In last year's *State of Children's Rights in England* report we noted the IFS assessment that Government spending was being moved away from families with children towards pensioners. A preliminary analysis of the new Universal Credit, published by IFS in January 2011, noted that families with children will be among the winners but lone parents will lose out once transitional protection ends.¹⁷⁷

The Universal Credit will merge all state benefits and tax credits into a single scheme. IFS has recently assessed that 450,000 more children will be taken out of poverty between 2015 and 2020 as a consequence of the Universal Credit but that the coalition Government's policies will ‘fall far short’ of meeting statutory child poverty targets, with the likelihood of relative child poverty in 2020 being at its highest rate since 1999 and absolute child poverty the highest since 2001.¹⁷⁸ The Children's Society has pointed out that the introduction of the Universal Credit could leave families with a young carer nearly £3,000 a year short. Currently, disabled adults are entitled to a £70 a week Severe Disability Premium – claimable if they have no-one to care for them or receive assistance from a young carer.¹⁷⁹

A number of grants supporting families have ended this year, including:

- Health in Pregnancy grant – worth £190 to any pregnant women receiving health advice from a doctor or midwife during pregnancy; ended in January 2011¹⁸⁰
- Sure Start maternity grant –£500 for pregnant women on low incomes; restricted to the first child only from April 2011 (though legislation came into force in January 2011)¹⁸¹

- Child Trust Fund – scheme closed in January 2011 and local authorities no longer required to make top-up payments to looked after children from 31 December 2010
- Baby element of child tax credit – ended in April 2011 (previously worth an extra £10.40 per week up to the child's first birthday).

In April 2011, Alison Garnham, the chief executive of the Child Poverty Action Group described as ‘absolutely staggering’ the inclusion of housing benefit cuts and reductions in support for sick and disabled people in the Government's child poverty strategy.¹⁸² In the Children's Minister Sarah Teather's foreword to the child poverty strategy, she explains the intention to ‘ensure there is a stronger focus on policies that genuinely benefit children and families’.¹⁸³ The strategy describes a range of measures being pursued by the coalition Government, including:

Government action	CRAE comment
Monitoring child poverty across three family types –married couple or a couple in a civil partnership; cohabiting couple; and lone parent	The presumption behind this monitoring is that children whose parents are married or in a civil partnership fare better because of this factor alone. However, the IFS shows that parents who are married tend to have a higher level of education and income and that differences in children's cognitive and socio-emotional development ‘mainly or entirely reflect the selection of different types of people into marriage, rather than effects of marriage itself’ ¹⁸⁴
Increase in income tax personal allowance	In March 2011's budget, the Chancellor announced the personal tax allowance would be £8,105 from April 2012 (a £630 rise) – bringing us closer to the coalition Government's £10,000 personal allowance promise ¹⁸⁵
The new Universal Credit will support parents in jobs of less than 16 hours per week	As now, families will be able to recover 70% of childcare costs, with a weekly ceiling of £175 for one child or £300 for two or more children. However, there will be no minimum hours, allowing parents to work much more flexibly. Family Action says it is ‘really pleased’ with the news but notes twice the funding (£600 million rather than £300 million) is required. Save the Children and Daycare Trust estimate the reduction in the amount of childcare costs families can now claim back (from 80% to 70% from April 2011) means an average loss of over £500 per year ¹⁸⁶
Investment in new affordable homes	The Government's Affordable Homes Programme 2011-15 is expected to provide 80,000 new homes, the majority being for rent. 29% of the homes will have three bedrooms or more. But most tenants will be on fixed-term tenancies and providers will be able to charge rents higher than in social housing. In October 2011, Shelter reported that 38% of families in privately rented accommodation have cut back on food in order to pay their rent ¹⁸⁷

Changes to housing benefit entitlement	<p>This policy is aimed at forcing families out of their homes should they not be able to afford to live in them were they to be employed. A leaked letter to the Prime Minister's private secretary from Eric Pickles' office revealed an expected 40,000 more homeless families as a consequence. The Mayor of London calculates a 50% increase in homelessness in London.^{186a}</p> <p>The parliamentary Work and Pensions Committee has noted that multi-generational families living together could be split up by these changes and also that, whilst a concession has been agreed for overnight carers (needing their own bedroom), no provision has been made for disabled children and adults who may need additional space for dialysis and other essential equipment, wheelchair access and guide dogs for example. The Committee made the point that some disabled children cannot share a bedroom with a sibling because of the space required for essential equipment.¹⁸⁸</p> <p>76% of councillors surveyed by ComRes for Shelter said housing benefit should be based on local housing cost instead of a national measure of inflation (the Consumer Price Index)¹⁸⁹</p>	Roll-out of Education Endowment Fund by a new Foundation funded by the Department for Education	<p>The first four grants – worth a total of £1.6 million – were announced in October 2011:</p> <ul style="list-style-type: none"> • US-style summer camps, run by US charity BELL (Building Educated Leaders for Life) with a UK organisation not yet announced • A Durham University pilot in 80 schools of 10 and 11 year-olds tutoring 8 and 9 year-olds in Maths • Delivery of the “Mathematics Mastery” programme (originated in Singapore, run by ARK Schools) to 50 disadvantaged primary and secondary schools • The smallest grant – £180,000 – will go to a new charity, The Tutor Trust, offering one-to-one and small group tuition to disadvantaged schools in Manchester.¹⁹⁶ <p>The Education Endowment Foundation was established with £125 million funding from the Department for Education in October 2010.</p>
Changes to income support entitlement of lone parents	<p>From January 2012, the majority of lone parents will be expected to look for work when their child reaches 5 years (currently 7 years; was 16 years until November 2008). The Chief Executive of Gingerbread described the policy change as <i>'disastrous'</i> and urged the coalition Government to delay its implementation until 2013 when the Universal Credit is introduced and parents are supported to work more flexibly¹⁹⁰</p>	Retention of Care to Learn scheme	<p>Less than six months after the publication of the child poverty strategy, promising the retention of the Care to Learn scheme, the Department for Education published a consultation document outlining four options for responding to expected increased demand once the school leaving age increases: allow decisions to be taken at a local level (by schools, colleges and training providers); introduce means-testing; reduce the maximum weekly amounts; or reduce the age eligibility from 20 years to 18 years (at the point a young parent starts a course).¹⁹⁷ The coalition Government's preferred option is to reduce the age criteria, forcing those aged over 18 to apply for discretionary adult learner support – a move criticised by the Daycare Trust which points out the scheme has been <i>'incredibly successful'</i>¹⁹⁸</p>
Assistance for disabled parents and those with health conditions to find and stay in work	<p>Disability Alliance has warned that the focus on supporting disabled people to be “work ready” can obscure the enormous cultural and environmental barriers facing them. The organisation strongly welcomed the Liz Sayce review¹⁹¹, published in June 2011, for shifting the debate and focusing on the experiences of disabled people¹⁹²</p>	Extending the right to request flexible working	<p>A week before the child poverty strategy was published, regulations were laid before Parliament revoking 2010 regulations that extended the right to request flexible working for parents right up to the day before their child's 18th birthday (previously 17).¹⁹⁹ The 2011 regulations took effect from 1 April 2011.²⁰⁰</p> <p>In October 2011, the chief executives of the FPI and Working Families and another 11 organisations wrote to the Prime Minister urging him to press ahead with promises to extend the right to request flexible working and improve parental leave.²⁰¹ The week earlier, Equalities Minister Lynne Featherstone described as <i>'hideous'</i> reports that some of the Prime Minister's closest advisers were recommending he scrap flexible working and shared parental leave and even maternity pay²⁰²</p>
Improved support for parents who misuse drugs or alcohol	<p>In March 2011, Health Minister Anne Milton reported that there is no central collection of data indicating how many children have parents who misuse drugs or alcohol. However, the Adult Psychiatric Morbidity Survey 2007 revealed that nearly a third of people dependent on drugs and alcohol live with children (27% and 29% respectively)¹⁹³</p>	Assisting parents to deal with debt and other financial difficulties	<p>Citizens Advice has calculated its local offices deal with over 9,000 debt problems every working day. It points out that families are often tricked into paying fees for debt management services and calls on the Office for Fair Trading to continue to take robust action against unscrupulous companies.²⁰³ It also welcomes proposals for a Consumer Bill of Rights, which was formally announced in September 2011.²⁰⁴ The Bill will bring together 12 existing laws and regulations and implement the new EU Consumer Rights Directive (coming into force in 2013)</p>
Additional 4,200 health visitors, extending coverage of Healthy Child programme	<p>Rather than increasing, <i>Children and Young People Now</i> reports a drop in health visitors since this 2015 additional target was announced (from 8,092 to 7,879)¹⁹⁴</p>		
Pupil premium for the most disadvantaged children, children whose parents are in the armed forces and children who have been in care for more than six months	<p>The pupil premium is administered to schools through the local authority or the Young People's Learning Agencies (funding to academies). In October 2011, a further increase was announced, taking the rate to £488 for children in receipt of free school meals or who have been in care for more than six months; and £200 for all children of service families¹⁹⁵</p>		

A new fairness premium to, among other things, extend free education to disadvantaged two year-olds	The fairness premium of £7 billion over three years includes 15 hours of free early education a week for disadvantaged two year-olds, the pupil premium and higher education reforms. ²⁰⁵ All local authorities in England were already providing between 10 and 15 hours of free education to disadvantaged two year-olds since 2009. The entitlement of 15 hours will start in 2013 and is expected to increase the number of children benefiting from 20,000 to 130,000. Meanwhile, in June 2011, the Department for Education announced 15 local authorities would receive between £43,000 and £400,000 to support capacity-building: the funding was an additional Early Intervention Grant ²⁰⁶
A new Early Intervention Grant for local authorities	The Early Intervention Grant (EIG) replaces 23 separate grants to local authorities, including funding for Sure Start children's centres, with an overall reduction in funding from 2010/11 to 2011/12 of £261 million. ²⁰⁷ The Association of Directors of Children's Services observed the funding <i>'is not ringfenced to early intervention services, or even to services for children and young people'</i> ²⁰⁸
Support for families with multiple problems	Successive recent governments estimate there are 120,000 families in England with multiple problems. Action for Children conducted in-depth interviews with 22 of its intensive family support services, providing support to over 1,000 families (1,263 children). Five of the services had already been closed due to withdrawal of funding and a further two faced closure; and nearly three-quarters (73%) have faced reductions in funding. Many have had to reduce the hours their service is available, at a time of increased need among already struggling families. ²⁰⁹ Barnardo's also reports 9% cuts in its funding from local authorities, two-thirds of which affect family support services ²¹⁰

The Child Poverty Action Group is seeking permission for judicial review proceedings challenging the lawfulness of the Government's child poverty strategy, arguing that it fails to establish how child poverty targets will be met and socio-economic disadvantage among children ended. The Act also required consultation with the Child Poverty Commission in the preparation of the child poverty strategy: this Commission had not been established prior to the strategy being published and, in May 2011, an amendment was accepted to the Welfare Reform Bill that provides for the creation of a Social Mobility and Child Poverty Commission instead.²¹¹

44 Avoid children being taken into care as a result of parental low income



Nearly 91,000 children were looked after in England in the year to 31 March 2011. Of these, local authorities recorded low income as being the most applicable category of need for 270 children. In the year ending March 2008 – the year the UK was

last examined by the UN Committee on the Rights of the Child – this number was 170 (59% increase).

On 31 March 2011, there were 110 children being looked after whose most applicable category of need was low income – 83% more than in 2008 (when 60 children were categorised as being looked after principally because of low income).

An analysis of the reasons children were looked after in 2011 shows 'family dysfunction' and 'low income' as the only two categories to have increased as a proportion of all looked after children since 2008.²¹²

Table 5: Reasons for children being looked after, 2008 and 2011

Most applicable category of need – registered by local authority	2008 Number of children	2008 % of all children looked after	2011 Number of children	2011 % of all children looked after
Abuse or neglect	48,370	59%	53,760	59%
Child's disability	2,980	4%	2,890	3%
Parents illness or disability	4,070	5%	3,900	4%
Family in acute stress	7,260	9%	8,540	9%
Family dysfunction	9,290	11%	12,650	14%
Socially unacceptable behaviour	2,270	3%	2,160	2%
Low income	170	0.2%	270	0.3%
Absent parenting	8,100	10%	6,740	7%
Total	82,520	101.2%	90,920	98.3%

45 Take into account the views of children in all measures, and provide them with child-accessible complaint mechanisms



Research to be published by Children England shows *'the inadequacy and complexity of most statutory complaints procedures for children and young people who would seek to use them'*.²¹³

The YJB has made a number of commitments this year to improve complaints procedures for incarcerated children.²¹⁴ In judicial review proceedings concerning restraint in STCs, in November 2011, the Ministry of Justice claimed research by User Voice revealed no significant issues in relation to these privately-run child prisons. The court was not told that children reported complaints forms being placed in a shredder and the bin.²¹⁵

The Independent Police Complaints Commission surveys the confidence of "adults" (aged 15 years and over) in the police complaints system. This year's report echoes previous findings that 15-24 year-olds are the least satisfied with their contact with the police. Just 27% of this age group had heard of the IPCC, compared with 84% of 55 to 64 year-olds.^{215a}



Almost 1,200 children gave their views on social care in England to the Children's Rights Director in 2010. Their views concerned 111 different social care services. When asked how often they are asked their opinions on things that matter, less than a quarter (23%) said 'always'. Nearly a third (30%) said 'usually'; 32% said 'sometimes'; and 11% said 'not usually'. Almost 1 in every 20 children (4%) said 'never'.

When children were asked how often their decisions make a difference to decisions about their lives:

- 19% said children's opinions always make a difference
- 32% said children's views usually make a difference
- 34% said children's views sometimes make a difference
- 11% said children's views do not usually make a difference
- 4% said children's views never make a difference.

Just over a third (35%) of children reported that they were always informed of major changes about to happen in their lives. The Children's Rights Director noted a difference in age, with 79% of children aged 14 years or over reporting they were usually or always told about major changes, compared with 64% of children aged under 14. The three most common suggestions for matters children wished to have more of a say on were: decisions about their future; placement decisions; and contact with their families. Being involved in decisions about their education was the most common request from asylum seeking children.

The Children's Rights Director also asked about children's experiences of making suggestions and complaints. The first observation was a significant reduction in children making complaints, from 43% of respondents to the care monitor in 2008 to 25% in 2010. Of those that had made a complaint in 2010, 60% said it was sorted fairly – but 21% said it was not sorted fairly and a further 19% were not told the outcome of their complaint. Just over half (56%) of children in the latest survey knew how to access an advocate but nearly a third (30%) didn't know what an advocate is. Less than half (45%) knew how to contact Ofsted, which inspects children's social care services. Of those children who had made a suggestion to improve a service, nearly a quarter (22%) said they weren't told the outcome of their advice.²¹⁶

46 Monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions, including through regular visitations



All children who are looked after or provided with accommodation by a local authority must have their care and circumstances reviewed within four weeks and every six months thereafter.²¹⁷ The IRO must ensure the child's views are understood and taken into account; and provide assistance to a child who wishes to bring proceedings under the Children Act 1989 to obtain legal advice and appropriate representation.²¹⁸ Only half of the children taking part in the Children's Rights Director's 2010 survey knew how to contact their IRO and nearly a quarter (22%) did not even know what an IRO is.²¹⁹

Regulations came into force in April 2011 requiring social worker visits to looked after children (though not those in pre-adoption placements) within a week of their placement and then at least every six weeks for the first 12 months and then at intervals of no more than three months.²²⁰ The local authority representative must speak to the child in private (unless the child is of sufficient understanding and objects or the representative considers it inappropriate to do so).²²¹ Similar requirements already exist for children who are being privately fostered.²²² Children who were consulted by the Children's Rights Director about the frequency of social worker visits said they should occur at least once a month, with extra visits if the child *'has problems, needs to talk or is unhappy'*.²²³

The Legal Aid, Sentencing and Punishment of Offenders Bill proposes that the status of children who are refused bail and remanded will be that of a looked after child. This is a very welcome development though, clearly, this protected status should extend to **all** children who are sentenced to custody, consistent with Article 20 of the CRC.

47 Assess why so many children with disabilities remain in long-term institutional care, and review their care and treatment in these settings



The coalition Government has not investigated why so many disabled children remain in long-term institutional care.

Regulations now require local authorities (from April 2011) to provide, so far as is reasonably practicable, a range of services that enable carers of disabled children to continue providing care, or to provide more effective care. The services specifically noted in the regulations are:

- Day-time care in the homes of disabled children or elsewhere
- Overnight care in the homes of disabled children or elsewhere
- Educational or leisure activities for disabled children outside their homes, and
- Services available to assist carers in the evenings, at weekends and during the school holidays.

From 1 October 2011, each local authority has also been required to provide a “short breaks services statement”, and consult carers in its preparation and revision.²²⁴

48 Provide training and education programmes to prepare children in care and institutional care for adult life



In April 2011, the National Care Advisory Service told the Department for Communities and Local Government’s “burdens team” that:

*The duties local authorities have in relation [to] looked after children and care leavers have been essential in driving up standards and they are vital to ensure a consistent level of support to all children and young people who local authorities are responsible for as corporate parents, wherever they are in the country.*²²⁵

The Association of Directors of Children’s Services noted in its response the many reviews being undertaken concerning children’s services and stressed ‘for the time being there should be a presumption in favour of maintaining all of those statutory duties that relate to children and young people’.²²⁶ CRAE advocated a children’s rights framework for reviewing which duties should continue:

It is alarming that so many important provisions for children that have been developed and strengthened over many years are subject to only a six week ‘informal consultation’ ... It is unclear to what extent compliance with the CRC has been considered as part of this review. There is only one apparent reference to children’s rights, where the review states that the duty to safeguard and promote the welfare of children in care ... is [r]equired for

compliance with articles 12&13 of United Nations Human Rights Charter’. Whilst this reference to the CRC (albeit mistakenly referring to the treaty as the UN Human Rights Charter) is welcome, all duties under review must be considered in light of the Government’s obligations under the CRC and other human rights instruments. The concluding observations and recommendations of human rights monitoring bodies should be an explicit part of each review.

Notwithstanding this, in October 2011 the Cabinet Office’s “Red Tape Challenge” opened an online public debate on children’s services. Among the regulations under challenge are those protecting children in care – with the public asked whether a “voluntary code” could replace duties on local authorities. This would take arrangements for child welfare back 100 years: the 1908 Children Act, introduced by the then Liberal Government, first regulated foster care and empowered local authorities to keep children out of workhouses.

Information released by Ofsted in September 2011 shows there is no place for complacency – of 29 services for looked after children inspected between November 2010 and June 2011, 55% of local authorities were judged to provide ‘good’ services and 45% ‘adequate’ services. Of 73 inspections between June 2009 and November 2010, 32 (44%) were assessed as providing a good service to looked after children and 39 (53%) were providing an adequate service. Two (3%) local authorities were assessed as providing an inadequate service to looked after children; and none were deemed to be providing an outstanding service.²²⁷

In October 2011, *Children and Young People Now* magazine revealed huge variation in leaving care grants across England, from less than £800 set by Slough and Nottingham City and £2,500 agreed by Halton and the City of London. The figures were obtained following an FOI request to each English local authority (answered by 114 of 152 councils). Even the agreed rates were not always followed: the average grant given to care leavers last year ranged from £145 in one local authority to £2,274 in the most generous.²²⁸

49 Facilitate the initiation of contact proceedings for all children separated from parents and siblings, including those in long-term residential care



Section 22C(8)(c) of the Children Act 1989 (as amended by the Children and Young Persons Act 2008) provides that, so far as is reasonably practicable, siblings must be placed together. This echoes the previous provision, though not as strong as the duty advocated by CRAE during the passage of the 2008 Act.²²⁹

74% of children in care participating in an online survey from the Children’s Rights Director reported that at least one of their siblings also lived in care – *but in another placement from them*. Children in children’s homes were much more likely than those in foster care to be separated from their siblings – 94% compared with 71%.²³⁰

50 Ensure support to children with one or both parents in prison, in particular to maintain contact with the parent (unless contrary to the child's best interests) and prevent stigmatisation and discrimination



A study led by the Danish Institute of Human Rights in collaboration with the University of Ulster and EUROCHIPS examined whether children's rights are considered and respected when their parents are imprisoned in Denmark, Italy, Poland and Northern Ireland. Its report, published in June 2011, makes 33 recommendations, including that:

*The child's best interest must be considered when a parent is sentenced, with regard to both the choice of punishment and, if imprisoned, the choice of where the sentence is served so as to ensure the possibilities for face-to-face contact between the child and the parent during the stay in prison.*²³¹

This is similar to the recommendation made by CRAE in its 2008 submission to the UN Committee on the Rights of the Child, supported by 100+ NGOs.

It is estimated that 160,000 children each year are affected by parental imprisonment in England and Wales, with almost 18,000 children separated from their mothers. Action for Prisoners Families reported to the UN Committee on the Rights of the Child's day of general discussion this year that:

- Extended family visits are only available in a limited number of prisons and are currently under threat due to funding cuts
- Prison visits are organised *'to comply with a prison's staffing profile and regime and not on the needs of the visiting children and families'*. Visits are often scheduled in the morning or in school time
- The length of time of a prison visit, and the number of visitors, is *'more linked to the physical environment of the visits hall and how many chairs there are'* than the needs of families
- Telephone contact *'is limited to a few minutes at a time due to the cost and access'*, with telephones frequently only being available on prison landings offering no privacy
- There is no provision for electronic contact between children and their parents – email, Skype and texting for example.

Action for Prisoners' Families also reports that two mothers have made applications for a judicial review of the NOMS' refusal to grant them Child Resettlement Leave. Both mothers have children whose health is suffering. The applications rely heavily on children's rights in the Convention on the Rights of the Child and, if successful, could force NOMS to routinely consider the interests and views of children when making decisions about their parents.²³² This year, the Howard League for Penal Reform published a report describing the impact on

children of imprisoning mothers, observing that 11,000 children a year could be protected from such harm were mothers not imprisoned for non-violent offences. The organisation's Chief Executive, Frances Crook, explained: *'Visiting mum in prison is one of the most distressing things a child can experience'*.²³³ The Prisons Inspectorate's annual report for 2010/11 describes parents without work in prisons being unable to afford telephone calls to their children; visitors at one prison only being allowed to go to the toilet if they first agreed to be strip-searched; toilet trips leading to the termination of a visit in another prison; and prisoners having to wear coloured bibs during visiting times in nine separate prisons.²³⁴

51 Take into account the Committee's recommendations issued at the Day of General Discussion on children without parental care (16 September 2005)



There is no indication that the recommendations from the Day of General Discussion on children without parental care are being considered in the coalition Government's decision-making.

52 Strengthen efforts to ensure that children are adopted as speedily as possible, in line with their best interests and taking into account factors such as cultural background



Official statistics show no progress between 2008 and 2011 in the speed at which children entering care are assessed as requiring adoption, adoptive parents found and the adoption secured.

	2008	2010	2011
Average time between entry into care and decision that should be placed for adoption	11 months	11 months	11 months
Average time between decision to place for adoption and matching of child and adopters	8 months	9 months	9 months
Average time between date of matching and date placed for adoption	1 month	1 month	1 month
Average time between date placed for adoption and the date child adopted	10 months	10 months	10 months
Total average time between entry into care and adoption	2 years, 6 months	2 years, 7 months	2 years, 7 months

For infants under 1 year, the time period between entry into care and adoption increased by one month between 2008 and 2011 – to 2 years, 3 months. For children aged 7 or over, there was a two-month decrease in average waiting time – to 3 years, 4 months.²³⁵

In July 2011, former head of Barnardo's Martin Narey was

appointed as Ministerial adviser on adoption. His brief includes raising awareness of the need to speed up adoptions, where this is in the best interests of children.²³⁶

53 Establish mechanisms for monitoring the extent of violence, sexual abuse, neglect, maltreatment or exploitation, in the family, in schools and in institutional and other care



There is no central monitoring – within or outside of government – of the extent to which children in England are subject to violence, sexual abuse, neglect, maltreatment or exploitation. Data is dispersed across child protection statistics, serious case review publications, criminal statistics and the British Crime Survey (which only adequately collects information from those aged 16 and above, though the Home Office has experimented with collecting figures from 10 to 15 year-olds).

54 Ensure that professionals working with children receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children



In March 2011, the coalition Government published its *Call to end violence against women and girls*. Training features very heavily in the action plan, which attracted strong support from the End Violence Against Women Coalition. Research published in the *Lancet* in October 2011 shows that GPs and health professionals trained in domestic violence are 22 times more likely to refer women subject to domestic abuse to advocacy organisations.²³⁷

Seventeen Council of Europe member states have signed the Convention on Preventing and Combating Violence against Women and Domestic Violence since it was opened for signature in May 2011. This does not include the UK. The definition of women in the Convention includes girls under the age of 18 and Article 15 requires appropriate training of professionals. In a short debate in the House of Lords in November 2011, the Minister Baroness Verma sought to explain why the UK has not yet signed the Convention:

*The Home Secretary has commissioned a cross-Whitehall consultation and has identified that legislative reform in various complex policy areas will be necessary if the UK is to sign and ratify the convention. However, I reassure my noble friend and other noble Lords that the Home Office is continuing to work robustly with interested government departments to identify obstacles in the way of signature and ratification so that they can be addressed ... we are making sure that when we sign up we will have something that we can deliver on.*²³⁸

55 Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure they are not victimised during legal proceedings



In last year's *State of Children's Rights in England* report we noted several very positive developments aimed at better supporting child witnesses during legal proceedings. The NSPCC reports that many child-specific developments are now under threat due to public spending cuts, though notes that *'outcomes for young witness cases could be improved without additional cost'*.²³⁹ That just 43% of children believe the police treat young people the same as adults – a result obtained from the first experimental British Crime Survey of 10 to 15 year-olds²⁴⁰ – will inevitably be one factor affecting whether they report crimes committed against them.

56 Provide access for child victims of abuse to adequate services for recovery, counselling and other forms of reintegration



The NSPCC has published an assessment of the possible impact of public spending cuts on children's social care. The analysis was undertaken by the Chartered Institute of Public Finance and Accountancy and shows an average reduction of 24% in local authority children's social care budgets in England in 2010/11. The NSPCC especially warns about the impact of cuts to preventative services, with likely increased demand on child protection services and even further increases in the number of children having to be looked after.²⁴¹ Although not one of the report's direct conclusions, it is inevitable that this increased demand will limit the resources available for therapeutic and other services to child victims of abuse. Notwithstanding this, the announcement in October 2011 that £32 million is to be invested in psychological therapies for children is very welcome news. The Deputy Prime Minister noted that 1 in every 10 children suffers from a mental health problem and said: *'we cannot ignore the issue or hope that existing services for adults will work for children'*.²⁴² The UK's four Children's Commissioners have recently concluded *'the provision of mental health services for children drawn into the youth justice system is not good enough in any part of the UK'*.²⁴³

Basic health and welfare



“ If you’re in poverty, or you don’t have much money and you’re just trying to get by, you suffer mentally, because you get bullied, unless you’re strong enough to shrug it off. ”

Child taking part in Children’s Commissioner consultation on child poverty, 2011²⁴⁴

“ Personalisation is about respecting a person’s human rights, dignity and autonomy, and their right to shape and determine the way they lead their life. Personalised support and services are designed for the purposes of independence, wellbeing and dignity. Every person who receives support should have choice and control, regardless of the care setting. ”

Government’s mental health strategy, February 2011²⁴⁵

“ The Government has no plans to change the law on sex education or parents’ right to withdraw their child from sex education. ”

Review of Personal, Social, Health and Economics (PSHE) Education, July 2011²⁴⁶

Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

57 Develop a comprehensive national strategy for the inclusion of disabled children in society



Like its predecessor, the coalition Government has not developed a comprehensive national strategy for the inclusion of disabled children. The Department for Education's Green Paper, *Support and aspiration: a new approach to special educational needs and disability*, actually seeks to 'remove the bias towards inclusion' of disabled children and children with SEN in mainstream schools.²⁴⁷ Such statements do not bode well for the inclusion of disabled children in wider society.

The *Life opportunities survey* reveals that disabled children (aged 11-15) continue to face substantial barriers to their active participation in society. The area most affected is leisure and play activities, where 37% of disabled children were unable to fully participate (compared to 8% of non-disabled children). Disabled children also face substantial barriers to education (30%), transport (21%) and personal relationships (22%), compared to their non-disabled peers (3%, 5% and 1% respectively).²⁴⁸

The Office for Disability Issues uses a set of disability equality indicators to monitor progress on the *Independent living strategy*, the *Roadmap to disability equality* and the UN Convention on the Rights of Persons with Disabilities. These include equality indicators for children:

- Use of childcare
- Unauthorised absence from school
- Educational achievements at Key Stages 2, 3 and 4
- 16 year-olds studying for Level 3 qualifications
- Young people who attain Level 3 qualifications by the age of 18.²⁴⁹

Of course, Ministers are completely mistaken if they believe they can monitor the implementation of either Article 23 of the CRC (additional rights to disabled children) or the whole of the Disability Convention in just five indicators.

From this year, the annual pupil census will also include information on disabled children specifically, rather than using SEN as a proxy.²⁵⁰

58 Develop early identification programmes for disabled children



The coalition Government's Green Paper on SEN and disability focuses on the importance of early identification and assessment.²⁵¹ It sets out plans for health professionals to work with parents to assess the development of all children in order to identify additional support needs. It is claimed, for

example, that the expanded health visiting service will prioritise health and development reviews for all children aged 2-2½. The National Institute for Health and Clinical Excellence has published guidelines on the recognition, referral and diagnosis of children on the autism spectrum and the Department of Health is considering further guidance and quality standards.

Plans to ensure that high quality childcare and early education is accessible to all children and that early years professionals monitor developments in communication and language, social and emotional skills as well as physical development have also been set out.

The Green Paper asks how the existing SEN assessment system can be made more efficient and proposes a reduction in the time limit for assessments from 26 to 20 weeks. Ultimately, the coalition Government plans to replace statements of SEN or learning difficulty with an education, health and care plan setting out multi-disciplinary support for children and young adults from birth to 25 years.

59 Undertake awareness-raising campaigns on the rights and special needs of disabled children, encouraging their inclusion in society and preventing discrimination and institutionalisation



The Office for Disability Issues worked with young Whizz-Kidz Ambassadors to produce a film for children to raise awareness about the UN Convention on the Rights of Persons with Disabilities. The film focuses on children's right to equal participation in education, sport and leisure activities and children's right to be involved in decision-making that affects them.²⁵²

The Office for Disability Issues hopes that the 2012 Olympic and Paralympic Games will '*provide a catalyst to a fairer and more inclusive society for us all*' and has set out plans to:

- Transform the perception of disabled people in society
- Support opportunities to participate in sport and physical activity
- Promote community engagement through the Games.²⁵³

This includes encouraging schools to hold annual Olympic and Paralympic style sports days, enabling disabled children to participate within their school, county and in the national finals. Change4Life Sports Clubs also offer children the opportunity to try out Olympic and Paralympic sports including wheelchair basketball.

60 Provide training for professionals working with disabled children



The coalition Government's *Early support programme* offers a range of accredited and non-accredited training for professionals working with disabled children and their families.

The Green Paper on SEN and disability seeks to improve training for teachers working with students with SEN. The coalition Government has pledged to:

- Provide additional funding to increase the number of placements for trainee teachers in “special” schools
- Develop training materials for qualified teachers on SEN and disability
- Improve training on SEN and disability for teachers in colleges
- Fund scholarships for teachers to improve their work with disabled students and students with SEN
- Enable outstanding “special” schools to become teaching schools.²⁵⁴

The Alliance for Inclusive Education points out that training led by “special” schools rather than mainstream schools will not improve teachers’ skills to support students in an inclusive environment.²⁵⁵

61 Take all necessary measures to ensure that protective legislation, programmes and services for disabled children are effectively implemented



The public sector equality duty, including positive duties to reduce disability discrimination, came into force on 5 April 2011. The Disability Charities Consortium, however, is concerned that the specific duties, which were intended to support public authorities to comply with the general duty, are not robust enough to fulfil this purpose.²⁵⁶

The Department for Education is currently consulting on when to introduce the new duty on schools to provide auxiliary aids for disabled children.²⁵⁷

Although the Government has committed £800 million to fund short breaks for families with disabled children over the next four years, nearly half of Action for Children’s services in this area reported a decrease in their overall budgets.²⁵⁸

Proposals in the Welfare Reform Bill look set to have a substantial negative impact on the lives of disabled children. The Bill removes the mobility component of the Disability Living Allowance for 16 and 17 year-olds who live away from home

in residential schools and care for more than 84 days per year. Currently this money enables disabled children to fund transport (such as a motability car) to and from home as well as to leisure activities. Without this money, these children are likely to become increasingly isolated from their families and the wider community. The coalition Government has not yet decided whether under 16s will also be affected by this policy change.

The Bill also replaces Child Tax Credit with a new system of Universal Credit. The Children’s Society estimates that this could halve the support that disabled children currently receive.²⁵⁹

62 Ratify the International Convention on the Rights of Persons with Disabilities and its Optional Protocol



The UK ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 8 June 2009. The coalition Government’s initial report to the UN confirms that it is maintaining an interpretative declaration to permit the long-term continuation of “special” schools and a reservation permitting children to be educated away from their local community.²⁶⁰

63 Address inequalities in access to health services through a co-ordinated approach across all Government departments



The White Paper on public health, published in November 2010, sets out a cross-Government framework to address health inequalities.²⁶¹

Amongst other things, the coalition Government has committed to taking forward the *Inclusion health programme* to improve access and outcomes for socially excluded groups.²⁶² The Government is also using progress in reducing health inequalities as a criterion for developing public health outcome indicators.²⁶³

The Health and Social Care Bill proposes a new duty on the Secretary of State to have regard to the need to reduce inequalities between people in England with regard to the benefits they can obtain from the health service. Similar duties are also placed on NHS commissioning boards and clinical commissioning groups. No equivalent duty (even in this limited form) is being proposed for local authorities or the new health and well-being boards, a failure criticised by the Royal College of Paediatrics and Child Health (RCPCH). The RCPCH also criticises the 5% reduction in NHS funding towards reducing health inequalities.²⁶⁴

The Children’s Commissioner for England has voiced concerns that children may be subject to a postcode lottery when power is handed down to local areas to commission their

own healthcare services. The equality impact assessment for the Health and Social Care Bill, for example, states that GP commissioning consortia may have *'insufficient knowledge of the range of services for vulnerable children'*²⁶⁵ and seeks to mitigate this by saying that consortia can enter into partnership arrangements with local authorities. The Children's Commissioner believes this will not consistently protect children and echoes RCPCH's call for minimum standards of care and expertise to be introduced for the commissioning of children's (health and well-being) services.²⁶⁶

64 Better co-ordinate health policies with those aiming to reduce income inequality and poverty



The White Paper on public health draws links with the child poverty strategy and the social mobility White Paper.²⁶⁷ Dr Jessica Allen, Project Director for the Marmot Review of health inequalities welcomes the White Paper's emphasis on the Review's recommendations, but calls for further action.²⁶⁸

The child poverty strategy establishes that, in order to address the causes of poverty, the Government must tackle poor health by *'introducing a public health approach based on the life course for addressing the wider social determinants of health and building self-esteem, confidence and resilience from infancy with stronger support for the early years'*.²⁶⁹ The strategy sets out plans to reduce inequalities in health services, improve community health for the most vulnerable, and improve families' mental health. Nevertheless, it has been subject to strong criticism, including from the Child Poverty Action Group – see page 33.

65 Provide additional resources and support for children with mental health difficulties, including a focus on children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law



In a debate in the House of Lords earlier this year, the Earl of Listowel drew attention to the lack of support available for addressing the mental health needs of children in care:

*There is very clear evidence that when children are taken into care and have had trauma, they should be properly assessed by a psychiatrist or a clinical psychologist. They are not currently getting that proper assessment. The specialist looked-after children's mental health teams that have been developed in recent years are expensive, complex to run and are only patchily in place.*²⁷⁰

Ministers have said that it is up to local authorities to decide how their child and adolescent mental health services (CAMHS) meet the needs of children in care. They recommend, however, that *'[t]argeted CAMHS for looked-after children should work closely alongside the child's social worker, carers and other professionals such as nurses and paediatricians'*.²⁷¹

The Ministry of Justice has set out plans to expand liaison and diversion services so that those in contact with the criminal justice system receive the mental health support that they need. It also plans to increase treatments for severe personality disorders amongst people that pose a high risk of harm.²⁷² These measures, however, are not specifically targeted at children.

The Office of the Children's Commissioner recently conducted some research on support for children's emotional wellbeing and mental health in the juvenile justice system. The research found that there was a great deal of inconsistency in the support available, particularly for children in custody. It also identified a wide variation in the understanding and recognition of emotional and mental health issues by staff. There was a tendency to use physical controls to manage risk and to address challenging behaviour rather than developing therapeutic relationships. In custodial settings, it emerged that screening and assessment tools were being used that did not take account of the children's age and development.²⁷³

We've all got something that needs sorting out, else we wouldn't be here.

15-year-old boy in a secure training centre

*Things that I've been through, things that I've seen, sometimes I've lied in my bed at night and I've cried and f** it's been really s**. But I need to move on.*

Boy on his experiences in custody²⁷⁴

Far from nurturing children, and dealing with complex mental health needs, there is an abundance of evidence that custody is positively harmful. Even in the most basic of care – the provision of food – the state seemingly finds it difficult to put the child's needs above the convenience of the institution, as the Howard League for Penal Reform's briefing on food in young offender institutions this year showed:

*Many YOIs issue a week's worth of breakfast packs in one go or children receive them the evening before. Children are so hungry that they can eat the limited contents of these packs straight away, leaving them without any food in the morning.*²⁷⁵

Notwithstanding this, the announcement in May 2011 that the NHS will now be responsible for the health care of children held in secure children's homes and secure training centres (young offender institutions have been covered by the NHS

since 2006) was warmly welcomed. Juliet Lyon, Director of the Prison Reform Trust, explained:

[This] will go a long way to ensuring that vulnerable children and young people in trouble gain access to the mental health treatment and social care that they need.²⁷⁶

The coalition Government has not set out specific plans to focus mental health support on children affected by conflict and children living in poverty.

In considering mental health provision for children generally, it is simply unacceptable that children (those aged under 19) in England spent a total of 5,166 days on adult mental health wards in 2010/11²⁷⁷ – despite an amendment to the Mental Health Act 1983 made in 2007 requiring age-appropriate accommodation.

66 Fully implement the International Code of Marketing of Breastmilk Substitutes



The coalition Government has not fully implemented the International Code of Marketing of Breastmilk Substitutes. The promotion of follow-on formula is still not regulated in the same way as infant formula.

Baby Milk Action explains:

The marketing of formula is very poorly regulated in the UK, with the government ignoring repeated calls by the UN Committee on the Rights of the Child to implement minimum international marketing standards. Companies exploit the narrow legislation and its loopholes to promote formulas and all claim that their brands are the best on the market.²⁷⁸

A review of formula milk by the Food Standards Agency in 2010 concluded that there was not sufficient confusion between infant and follow-on formula to justify further restrictions on advertising. However, a more recent study of formula milk advertisements in four countries, including the UK, concluded that follow-on milk is 'presented in ways that encourage consumers to associate the claims made in them with a group of products (a product line) that includes infant formula'.²⁷⁹ UNICEF UK says this demonstrates that comprehensive legislation is needed to fully implement the International Code of Marketing of Breastmilk Substitutes.²⁸⁰

67 Encourage the inclusion of breastfeeding in nursery training



The coalition Government has committed to provide 4,200 additional health visitors by 2015.²⁸¹ UNICEF UK, however, has recommended that more training is needed for health visitors and midwives on breastfeeding.²⁸²



There is to be an expansion of the family nurse partnership programme which supports young first-time mothers through intensive, structured home visiting. The expansion is expected to more than double the number of families who can be on the programme at one time, from 6,000 at present to 13,000 by 2015.²⁸³ Research shows that breastfeeding initiation rates are higher amongst mothers involved in the programme (63%) than for under-20s in the wider population (53%).²⁸⁴

The Department of Health has come under criticism from the Royal College of Midwives for withdrawing its funding for National Breastfeeding Awareness week this year.²⁸⁵ Organisations are also concerned at the abolition of national and regional infant feeding co-ordinators.²⁸⁶

Overall, breastfeeding initiation rates have increased slightly from 72.7% in 2009/10 to 73.7% in July-September 2010. More mothers are also continuing breastfeeding 6-8 weeks after birth, representing 46.2% in July-September 2010 as opposed to 45% for the same period in 2009.

However, regional differences are stark: for example, 95% of mothers begin breastfeeding in Hammersmith and Fulham but only 36% in Knowsley. At 6-8 weeks there are similar regional differences, with 84% of mothers continuing breastfeeding in Westminster but only 17% in Hartlepool.²⁸⁷

68 Promote baby-friendly hospitals



The Department of Health says that it:

*... supports the National Institute for Health and Clinical Excellence (NICE) guidance that recommends NHS facilities achieve the World Health Organization/UNICEF UK Baby Friendly Initiative accreditation as a minimum standard. This includes training and education of frontline staff to achieve appropriate standards of care.*²⁸⁸

Across the UK there are 236 maternity hospitals and 98 Primary Care Trusts at various stages of “baby friendly” accreditation. This represents a substantial increase since last year when the respective figures were 196 and 73.²⁸⁹

However, out of all the countries in the UK, England has the lowest number of births in baby friendly hospitals.²⁹⁰ There also remain stark regional variations in the percentage of children born in baby friendly hospitals: 35% births in the North East compared with none in the East of England.²⁹¹

In partnership with the Baby Friendly Initiative, the Department of Health has published a leaflet for mothers, showing what support women can expect to receive during pregnancy, birth and the postnatal period.²⁹²

69 Provide appropriate reproductive health services for young people



In April 2011, the Department of Health published quality criteria for young people friendly health services, including sexual and reproductive health. The criteria set out the range of services that young people should expect and states that they should be ‘*offered appropriate information and advice to help them develop their ability to make safe, informed choices*’.²⁹³

The Health Protection Agency reports that young people under the age of 25 experience the highest rates of sexually transmitted infections, despite a decrease in the number of new diagnoses.²⁹⁴ The Family Planning Association has called on Government to sustain investment in sexual health services and to improve sex and relationships education in schools.²⁹⁵

Figures indicate that the National Chlamydia Screening Programme has led to an increase in the number of young people tested. In 2008/09 16% of 15-24 year-olds had been tested: in 2009/10 this had doubled to 30%.²⁹⁶

70 Increase provision of appropriate sex and relationships education in schools



The coalition Government has said it has no plans to change the law on sex education in schools.²⁹⁷ At present, sex education is compulsory in secondary schools but parents can withdraw their child from this education up to the age of 19.

Schools must have regard to statutory guidance on sex and relationships education (SRE). The Government is consulting on how this guidance can be simplified whilst ‘*strengthening the priority given to: teaching about relationships; to the importance of positive parenting; and to teaching young people about sexual consent*’.²⁹⁸

The House of Lords Select Committee on HIV and AIDS has recommended the Government consider access to SRE as a central theme of its review of PSHE. The Committee recommends that age-appropriate SRE should be compulsory in all schools – not just secondary – and that teachers must be trained to deliver this.²⁹⁹

The Committee called for teaching on the biological and social aspects of HIV and AIDS to be integrated into SRE and for teachers to be trained specifically on all aspects of HIV and AIDS to ensure their confidence in speaking on the subject.³⁰⁰

The Government’s PSHE consultation does not incorporate any of these recommendations.

Although teaching on HIV and AIDS is compulsory in secondary schools, one in four young people surveyed by the Sex Education Forum said they had not learnt about HIV and AIDS in school.³⁰¹

71 Strengthen mental health and counselling services and ensure they are both accessible for and sensitive to young people



According to Relate, by the time an average class of 30 children reaches their 16th birthday:

- 10 of them will have witnessed their parents separate
- 8 will have experienced severe physical violence, sexual abuse or neglect
- 7 will have reported having been bullied
- 3 will have suffered from mental health problems
- 3 will be living in a step family
- 1 will have experienced the death of a parent.³⁰²

The Department of Health has published quality criteria for young people friendly health services, including CAMHS. These set out that young people should receive advice and information to help them make informed decisions about their care and that staff should be properly trained and monitored on how they work with young people.³⁰³

In October 2011, the coalition Government announced that it would invest £32 million in psychological therapies, including talking therapies, for children and young people with mental health problems.³⁰⁴ However, there are concerns that children's mental health services are being cut around the country. Information gathered by YoungMinds indicates that 53% of health trusts and councils across England have decreased their funding for CAMHS for 2011/12.³⁰⁵

71 Study the causes of substance misuse in order to provide targeted preventative measures



In December 2010, the coalition Government published its strategy to tackle drug abuse. Home Secretary, Theresa May, said:

*The causes and drivers of drug and alcohol dependence are complex and personal. The solutions need to be holistic and centred around each individual, with the expectation that full recovery is possible and desirable.*³⁰⁶

The strategy notes the distinct problem of young people's drug misuse. In the majority of cases young people do not suffer from dependency, but substance misuse can have a major impact on their education, health, families and long-term life opportunities.

One of the strategy's three themes focuses on reducing demand for drugs:

*... creating an environment where the vast majority of people who have never taken drugs continue to resist any pressures to do so, and making it easier for those that do to stop. This is key to reducing the huge societal costs, particularly the lost ambition and potential of young drug users.*³⁰⁷

The strategy sets out a number of preventative measures for young people and families. It identifies children who are particularly at risk of drug misuse and who should receive targeted support. This includes children truanting or excluded from school, children in care, children in conflict with the law, those at risk of involvement in crime or anti-social behaviour, children with mental health problems and those with parents who abuse drugs or alcohol.³⁰⁸

73 Provide accurate and objective information on drug and alcohol to young people

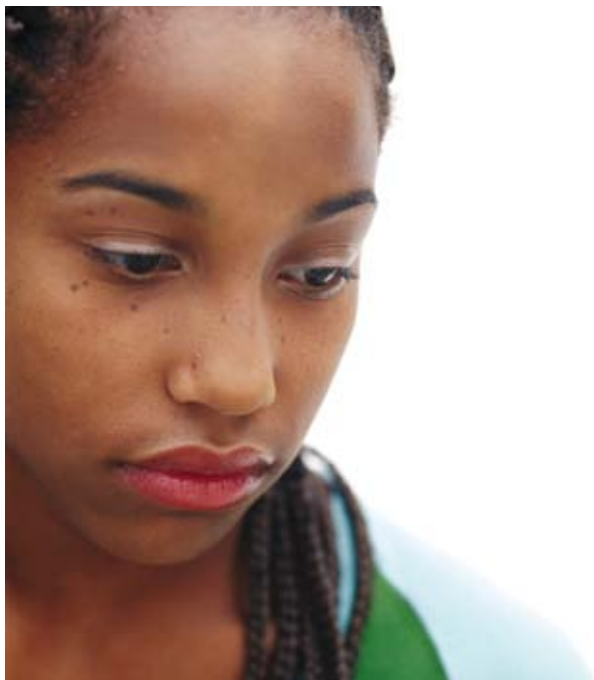


The Government's drugs strategy establishes that *'[a]ll young people need high quality drug and alcohol education so they have a thorough knowledge of their effects and harms and have the skills and confidence to choose not to use drugs and alcohol'*.³⁰⁹ The strategy says that schools will be supported to provide accurate information on drugs and alcohol through education and use of the FRANK service, which provides support, information and advice on drugs. In 2010 the FRANK helpline received 340,000 calls and 2.9 million people accessed the website. Eighty-one percent of young people say they trust FRANK to provide reliable information on drugs.³¹⁰ In October 2011, the coalition Government launched an advertising campaign to promote the service further to 11-18 year-olds.³¹¹

The coalition Government has also committed to sharing teaching materials and lesson plans from successful schools and organisations. However, there are plans to simplify guidance for schools on preventing drug and alcohol misuse, which is likely to reduce the amount of information and advice reaching schools. The Department for Education's review of PSHE is looking at evidence based interventions which lead to positive results and the Government maintains that this will include interventions on drugs.³¹²

A 2010 survey of over 7,000 students found that 61% of 11 to 15 year-olds had received lessons, seen videos or been part of discussions in class on drugs. 60% had received lessons on alcohol. The survey also found that more children thought that teachers were a source of helpful information on drugs and alcohol than last year (67% compared to 63%).³¹³

The coalition Government's "public health responsibility deal" includes pledges to increase the information on alcohol labelling, to control alcohol marketing and advertising, and to not place posters for alcohol within 100 metres of schools.³¹⁴ Whilst a number of large companies have supported the pledges, health organisations involved in the Responsibility Deal Alcohol Network have said that the pledges do not go far enough to protect young people from alcohol.³¹⁵ Alcohol Concern, British Association for the Study of the Liver, British Liver Trust, British Medical Association, Institute of Alcohol Studies and the Royal College of Physicians have all refused to sign up to the deal and have voiced their concerns to the Government.



74 Ensure support is given to those attempting to end dependency on toxic substances



The National Treatment Agency (NTA) reports that 23,582 children accessed specialist substance misuse services in 2009/10 (525 less than in 2008/09). This levelling of numbers reflects an overall decline in the number of children misusing drugs and alcohol and the NTA insists that children are benefiting from an increased availability of services.

The NTA reports that most young people receiving specialist support have not been misusing substances for long. In 2009/10, cannabis (56%) and alcohol (35%) were by far the most common forms of substance misuse being treated amongst children. The number of children successfully completing treatment has more than doubled over the past five years to 10,160, but still only represents two out of every three children leaving treatment.³¹⁶

75 Adopt and adequately implement legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators



The Government's child poverty strategy sets out measures to meet the 2020 targets established by the Child Poverty Act 2010 (see recommendation no. 43). This includes a series of indicators for measuring progress over the next three years, including indicators on household income, numbers of children

in workless households, educational attainment, teenage pregnancy and contact with the juvenile justice system.³¹⁷

The strategy has attracted strong criticism from the Child Poverty Action Group:

A child poverty 'strategy' which does not set out how poverty numbers will fall, and by when, is not a strategy and is incredibly disappointing and surprising given the Prime Minister's stated commitment on tackling poverty.³¹⁸

76 In such measures, prioritise children and families in most need of support



The child poverty strategy does not set out measures to prioritise children most in need of support. It does, however, seek to identify those children living in the poorest conditions.

According to Save the Children, 1.6 million children in Britain live in severe poverty.³¹⁹

The IFS examined the impact of Government policies on child poverty and estimates that between 2009/10 and 2012/13, 600,000 more children will be in absolute poverty. In the long term, it is estimated that absolute and relative child poverty in 2020/21 will be 23% and 24%, falling far short of the targets of 5% and 10% set out in the Child Poverty Act.³²⁰

77 Extend material assistance and support programmes for children living in poverty, particularly with regard to nutrition, clothing and housing



The coalition Government plans to introduce a cap on the total amount of benefit that working-age people can receive from 2013. The purpose is to ensure that workless households do not receive more than the average working household receives in wages. The impact assessment for the household benefit cap estimates that around 50,000 households will see their income reduced, more than 90% of which will include children. Forty percent of the households will have five or more children and 80% will have three or more children.³²¹

The Employment Minister, Chris Grayling, says the Government is 'looking at ways of easing the transition for families and providing assistance in hard cases'. The Government has yet to confirm details of the proposal and Grayling has suggested that the number of households affected would decrease by 40%-50% if child benefit were excluded from the cap. If child tax credit or housing benefit were excluded, this would reduce the number of households affected by 80%-90%.³²²

78 Re-introduce a statutory duty for local authorities to provide safe and adequate sites for travellers



There is still no statutory duty to provide safe and adequate sites.

Official figures show that in January 2011 there were 18,383 Gypsy and Traveller caravans in England, 83% of which were on authorised land.³²³

Government plans to scale back targets and guidance on Traveller site provision risks further rights violations of Traveller families around the country. It will be up to local authorities to determine for themselves how to assess the accommodation needs of travellers, rather than use the *Gypsy and Traveller accommodation needs assessment*.³²⁴

The coalition Government intends to move planning policy on Traveller sites closer to planning policy on other forms of housing. Local authorities will no longer be required to meet regionally-set targets for providing housing and Traveller sites. Instead, there are plans to provide funding incentives for improving provision, which are intended to benefit the wider community.³²⁵ Because the plans include both housing and Traveller sites, however, it is very likely, given high levels of prejudice and discrimination³²⁶, that Travellers will be marginalised.

The coalition Government has now implemented amendments to the Mobile Homes Act 1983 to provide security of tenure for tenants of Gypsy and Traveller pitches on public sites. Local authorities have been provided with guidance on implementing the measures.³²⁷

Education, leisure and cultural activities



“Deprivation continues to be a significant factor influencing the quality of schools.”

Ofsted annual report, 2011³²⁸

“Sometimes teachers don’t find out the whole story, they just exclude you. They should ask people, not just hear one story and make your mind up. Obviously you’ve got to listen to everyone who is there.”

Child talking about school exclusion to Office of Children’s Commissioner, 2011³²⁹

“In spite of the Deputy Prime Minister’s promise of a task force to investigate new ways to support community play provision, and the pre-election statement from Children’s Minister Tim Loughton, that *‘it would be a false economy to cut children’s play services’*, every penny of government funding for play provision and play policy has been cut.”

Adrian Voce, former Director of Play England, November 2011³³⁰

Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

79 Invest considerable additional resources to ensure the right of all children to a truly inclusive education, in particular children from disadvantaged, marginalised and school-distant groups



The coalition Government has said that it will 'remove the bias towards inclusion' of disabled children and children with SEN in mainstream schools by increasing diversity of provision.³³¹ Ministers maintain that this will not have a negative effect on children's right to be educated in mainstream schools.³³²

Government figures indicate that only 54% of children with SEN are currently educated in mainstream schools.³³³ Many organisations have refuted the coalition Government's claim that there is a bias towards inclusion, pointing towards the difficulties children face in gaining access to (and remaining in) mainstream education.³³⁴ The following responses from mainstream schools were reported by parents:

Your child will need full-time 1:1 but we don't have enough money to be able to provide that, therefore your child would only be able to attend part-time.

Your child's statement doesn't give enough money to provide a qualified nurse ... but we can include them if you can come in every day to cover those requirements.

We do not tolerate behaviour like that ...if your child came to our school I can guarantee they would be permanently excluded after a short while.

*We are not a special school.*³³⁵

The Department for Education is currently consulting on when to introduce the new duty on schools to provide auxiliary aids for disabled children.³³⁶

In 2009/10, 8.5% of students with SEN were persistent absentees from school (including "special" schools). This figure includes the 20.3% of students with a profound and multiple learning difficulty who are persistent absentees. This compares to 2.9% for the overall student population. Students are identified as persistent absentees if they are absent for 20% of school time.³³⁷

Other groups of children also appear to be marginalised from the education system. In 2009/10, 6.4% of students eligible for, or claiming, free school meals were considered persistent absentees. Children from certain ethnic groups are also much more likely to be identified as persistent absentees. For Travellers of Irish Heritage this represents 30.8% and for Gypsy/Roma children this represents 23.3%. Children from mixed (White and Black Caribbean) ethnic groups also had higher than average rates of persistent absentees at 4.5%.

Overall, investment in education looks set to decrease dramatically. A recent report by the IFS shows that public spending on education in the UK is due to fall by over 13% between 2010/11 and 2014/15. This represents the largest cut in the sector since the 1950s. Education at 16-19 and in the early years are some of the areas expected to be hit the hardest.³³⁸

80 Continue and strengthen efforts to reduce the impact of socio-economic background on children's achievement at school



The Government's pupil premium provides additional funding for the education of children eligible for free school meals; children who have been in care for more than six months; and (to a lesser extent) the children of members of the armed forces. The funding will be available for students in schools and in non-mainstream settings.

In 2011/12 £625 million is being provided for the pupil premium, equating to £430 per child (£200 for children of members of the armed forces). The Government plans to increase funding to £2.5 billion a year by 2014/15 and to extend the number of eligible children.³³⁹

To assess the impact of the pupil premium, the Government plans to include information on the achievements of eligible students in school performance tables. The new schools inspections framework will also examine how well educational achievement gaps are narrowing between different groups of students.³⁴⁰

The coalition Government plans to support schools by providing them with evidence and information on improving the educational achievements of disadvantaged students. From September 2012 schools will have to publish how they have used the pupil premium funding allocated to them.

The Government has also consulted on plans to enable Academies and Free Schools to prioritise children attracting the pupil premium in their admissions arrangements.³⁴¹

Other positive measures include the extension of free early years education to disadvantaged two year-olds in the Education Act 2011 (notwithstanding concerns about the institutionalisation of young children).

Older children, however, have been hit by the abolition of the Education Maintenance Allowance (EMA) which provided up to £30 per week for disadvantaged 16-19 year-olds who remained in education. The £560 million scheme was replaced with bursaries for 16-19 year-olds totalling £180 million. Although the scheme prioritises the most disadvantaged (including students on income support and children in care), many believe the axing of the EMA restricts young people's access to education, with half of all further education colleges reporting a decline in student numbers.³⁴²

The Prime Minister has asked the Government's social policy review, established after the summer disturbances, to consider whether benefits should be cut from the families of persistent truants.³⁴³ This is further evidence of Ministerial ignorance of, or refusal to accept, the legal basis in international law of economic and social rights. No equivalent non-criminal sanctions – for example removal of tax concessions – were considered for bankers and Parliamentarians who were found to have acted unlawfully.

81 Ensure children without parental care have an advocate to actively defend their best interests in school



All schools are required to have a qualified, designated teacher to promote the educational achievement of children in care. The Government estimates that, in addition to this, nearly all local authorities have a virtual school head teacher or equivalent, who oversees the educational progress of children in care in their area.³⁴⁴ Whilst not being independent advocates, these roles do enable the educational interests of children in care to be promoted.

Local authority funding for the education of children in care decreased by 21% from 2010/11 to 2011/12.³⁴⁵ It has been reported that local authorities may be trying to move these costs over to schools whose budgets have been protected by Government.³⁴⁶ However, the core school funding for the 2011/12 year does not continue the funding for designated teachers.³⁴⁷

Children in care are still much more likely to be permanently excluded and to receive longer fixed period exclusions. In 2008/09, 0.16% of primary aged children in care were permanently excluded, compared to 0.02% of all children. In secondary schools, 0.58% of children in care were permanently excluded, compared to 0.17% of all children. In secondary schools, the average length of a fixed period exclusion was 5.5 days for children in care compared to 2.6 days for all children.³⁴⁸

Despite an increase in the educational attainment of children in care, the gap between them and their peers continues to widen:

Table 6: Percentage of children achieving five or more GCSEs including English and mathematics at grades A* to C³⁴⁹

	Children in care	All children	Attainment gap
2007	7	46	39
2008	9	48	39
2009	10	50	40
2010	12	53	41

82 Intensify efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance



Bullying continues to be a major concern for children. When asked by the Children's Commissioner what their top priorities were for school, 46% of children said stopping bullying. Figures were higher in primary schools, with 57% of children putting this as a priority.³⁵⁰

Earlier this year, the coalition Government published its revised guidance for schools on tackling bullying, reducing it from 60 to 8 pages. This forms part of the Government's drive to reduce "bureaucratic burdens" on schools. The guidance advises schools to:

[O]penly discuss differences between people that could motivate bullying, such as religion, ethnicity, disability, gender or sexuality. Also children with different family situations, such as looked after children or those with caring responsibilities. Schools can also teach children that using any prejudice based language is unacceptable.³⁵¹

In January 2011, the Government launched the first phase of its National Curriculum Review which questioned whether citizenship (including human rights education) should remain compulsory in state schools. Apparently unaware of its obligations under Article 42 of the Convention, the Government claims a 'reduction in prescription' could lead to more schools teaching human rights.³⁵² The recommendations from the first phase of the Review are expected in early 2012.³⁵³

UNICEF UK's Rights Respecting Schools Award puts children's rights at the centre of the whole school environment. An evaluation of the scheme found that bullying had reduced significantly in all schools questioned.³⁵⁴ At the time of writing there are 1,753 Rights Respecting Schools across England (comprising primary, secondary and "special" schools as well as pupil referral units). The former Government's funding for the award scheme ended in March 2010.

83 Use permanent or temporary exclusion from school only as a last resort, and reduce the number of exclusions



The number of permanent and temporary (or fixed period) exclusions remains high, despite a decrease since last year. In 2009/10 there were 5,740 permanent exclusions from primary, secondary and "special" schools, representing a 12.4% decrease.³⁵⁵ Fixed period exclusions fell by 8.8%, but still totalled 331,380.³⁵⁶

These statistics highlight an over-representation of certain groups of children. For example, students with SEN are eight

times more likely to be permanently excluded than other students and Black Caribbean students and students eligible for free school meals are four times more likely to be permanently excluded.³⁵⁷ Figures also show a disproportionately high level of Irish Traveller and Gypsy and Roma children receiving permanent and fixed term exclusions.

Government figures are only part of the story. Recent research by Barnardo's and the Centre for Social Justice has highlighted the prevalence of illegal "unofficial" exclusions by schools which are not recorded or monitored by Government.³⁵⁸ Some schools, for example, unofficially exclude students after the Christmas term in Year 11.³⁵⁹ Other students are unofficially excluded on a temporary basis, with an alternative reason being given for their absence.³⁶⁰ As the former head of social inclusion at Westminster local authority explains:

In the last few years pan-London conferences have been held on attendance and exclusion. When asked the question 'are there illegal exclusions and off-rolling in some of the schools in your [local authority]?' every principal education welfare officer put up their hand. It happens in every [local authority].³⁶¹

Sixty-one percent of children surveyed by the Children's Commissioner said that exclusions were 'sometimes' used fairly and 11% said they were 'never' used fairly. Just 15% said exclusions were 'always' used fairly.³⁶²

The coalition Government intends to pilot a different type of exclusions system in order to 'encourage schools to intervene early on and focus on supporting those pupils whose behaviour problems are likely to escalate and put them at risk of permanent exclusion'.³⁶³ The new approach would mean that schools who exclude students would be responsible for finding and funding alternative education provision. The academic achievements of those students would also contribute to the school's standing in performance tables.³⁶⁴ Although it is hoped that this will result in a reduction in the number of exclusions, there are serious concerns that schools will be less willing to admit students who are more likely to be excluded.

84 Place social workers and educational psychologists in schools to support children in conflict with their schools



The coalition Government has announced a reduction in funding for the training of educational psychologists. At present the Government provides funding to the Children's Workforce Development Council (CWDC) to administer voluntary contributions from local authorities for educational psychologists' initial training. The Government states that these contributions have been steadily decreasing and that the CWDC has had to meet the shortfall in funding. The Government intends to meet

the costs of those educational psychologists who started training in September 2011, but has made no further commitment to funding saying that the current system is 'not sustainable'.³⁶⁵ The Government has said it will 'consider options for placing the training of educational psychologist on a more secure footing'.³⁶⁶

A survey of nearly 2,000 children by the Children's Commissioner found that large numbers feel under too much pressure at school. Over a third (34%) of children said that their school puts too much pressure on them and a quarter (24%) said that their parents/carers pressurise them.³⁶⁷

A year 6 student (aged 10-11) explained: '[Teachers are always] telling us, you can do better, you can do better – we're just tired'.³⁶⁸

The research found that such pressure had an impact on children's self-esteem, as this teenage girl explains:

Sometimes you get home you're still thinking about it [the test]. You are like, 'I wish I could have done better'. You didn't answer the question and you get home and you think, and you answer it in your head. You just hate yourself for it, because you knew the answer but you couldn't think of it at the time.³⁶⁹

85 Ensure that all children out of school receive high quality education



As of September 2011, all children who are unable to attend school due to illness, childcare, exclusion or any other reason, now have the right to full-time alternative education.³⁷⁰ Previously this right only applied to excluded students.

Educational outcomes for children out of school remain a concern. In 2010/11 1.7% of students in hospital schools, pupil referral units and alternative provision achieved five or more GCSEs at grade A*-C including English and mathematics, compared to the average of 58.3%.³⁷¹

Ofsted undertook a survey of alternative education and found that only 17 of the 61 providers visited were subject to any inspection regime.³⁷² Furthermore, such an inspection might simply constitute a visit to the provider's headquarters rather than the education site itself. Although most placements offered accredited qualifications, some did not.

Communication between schools and alternative education providers was found to be inconsistent, often with no transfer of written information about the students' needs from the schools to the providers. Although in the majority of cases, schools made visits to the alternative education provider before the placement, follow-up visits were variable and sometimes non-existent. Eleven of the 61 providers had never received a visit from the school responsible for arranging the placement³⁷³ and there was very little systematic monitoring of students' skills development by schools.



Despite these inconsistencies, students' views of their placements were broadly positive:

*Many mentioned their enjoyment of the largely practical work they were doing. They often valued their relationships with the providers' staff; feeling that they were being treated with respect while at the provision was a common theme. Several students indicated that their placement had expanded their horizons.*³⁷⁴

The coalition Government plans to use Ofsted's findings to develop new standards for high quality alternative education, which could include a 'quality mark' or 'tighter regulation'.³⁷⁵

86 Strengthen children's participation in all matters of school, classroom and learning that affect them



The coalition Government has voiced its support for children's right to participate in school decisions:

*[We] are committed to ensuring that children and young people's views are listened to and respected. I can confirm that we will work with children's organisations to revise the current statutory guidance to set out clearly the legal obligations that apply to schools in relation to consultation with pupils.*³⁷⁶

However, there is no indication of when Ministers plan to commence the duty on school governing bodies to invite and consider the views

of students.³⁷⁷ A recent question in Parliament on the subject was met with an evasive answer. An intervention by Conservative Peer Lord Tebbit exposed acute ignorance of the terms of the 2008 duty and the requirements of Article 12 of the CRC:

*Would it not be a good idea to get back to the idea that teachers teach, pupils learn and that one has to learn to take orders before one can give orders?*³⁷⁸

A cross-Government policy statement on services for young people is expected in the autumn, although plans to ensure young people's involvement in decision-making do not include schools and colleges. The Government has said that '*it is for [schools and colleges] and their governing bodies to decide what arrangements for pupil voice are in place*'.³⁷⁹

During Parliamentary debates on the Education Act 2011, Ministers confirmed that revised guidance on school exclusions will continue to encourage the involvement of students at all stages of the exclusions process.³⁸⁰ Draft text seen by CRAE cross-references the statutory guidance on student participation.

The Government has resisted calls from MPs and Peers for students to become full members of school governing bodies (as they could before 1986):

*Pupils can already be invited to attend and speak at governing body meetings and can serve as associate members of governing bodies. Like the previous Government, we think that these arrangements allow for governing bodies to take proper account of pupils' views.*³⁸¹

Revised guidance for schools highlights their obligations to consult students on the general principles guiding their behaviour and discipline policy '*in whatever manner [the governors] think appropriate*'.³⁸²

Earlier this year, the National Foundation for Educational Research investigated children's views on education on behalf of the Children's Commissioner for England. Focus group interviews found that ensuring schools ask and listen to what students think was one of their main priorities.³⁸³

Their survey of children revealed mixed reviews of school councils. Thirty-nine percent thought that their school councils were good at listening to people's ideas about school but 27% did not and 31% were unsure. Three percent of children indicated that their school did not even have a school council.³⁸⁴

Only 18% of children had been involved in the selection or recruitment of new teachers, but 65% said that they would like to be involved.³⁸⁵ These views were reflected in the focus group interviews:

*At the end of the day we are the ones that are working with them. So, the teachers may like them, but the teachers aren't the ones that are learning things from them – we are.*³⁸⁶

87 Ensure that children, and particularly children in care, have the right to appeal against their exclusion



The coalition Government says it does not plan to enable children to appeal their own exclusions, although it does *'not want to rule out further changes in future'* and is *'willing to consider how such arrangements could work'*.³⁸⁷ It has announced no measures to address the substantial difficulties children in care face when challenging exclusion.

The right to appeal exclusions has been significantly weakened by provisions in the Education Act 2011. Independent appeals panels are to be replaced by independent review panels that will have no power to reinstate wrongfully excluded students. Education Secretary, Michael Gove, said *'[w]e believe that ... the authority of head teachers should not be undermined by exclusion decisions being overturned, allowing excluded pupils, many of whom might have been guilty of violent offences, to march back into the classroom'*.³⁸⁸ In 2009/10 only 0.5% of permanently excluded students were reinstated following an appeal – this represents just 30 cases across the country.³⁸⁹ The Government has produced no evidence to show the necessity of removing reinstatement rights, only anecdotal examples.

The JCHR has stressed that the proposals represent a breach of Articles 6 and 13 of the European Convention on Human Rights – the right of access to an independent court or tribunal and the right to an effective remedy.³⁹⁰

Government plans to remove the availability of legal aid for education cases mean that children's access to justice will be restricted further.³⁹¹

88 Ensure that children, and particularly children in care, have the right to appeal to a special educational needs tribunal



In March this year, the Department for Education launched a Green Paper, announcing its plans to enable children to appeal to a First-Tier Tribunal on SEN and disability. The Government intends to pilot the scheme in two or three local authorities, with a view to extending it across England. The intention is to *'test whether the right to appeal is something that children would use, the best way to handle these appeals, and the cost implications of this change'*.³⁹² This reform is not particularly aimed at children in care.

89 Strengthen efforts to guarantee children's right to rest and leisure, to engage in play and recreational activities appropriate to their age, and to participate in cultural life and the arts



A survey by Fair Play for Children found that, on average, each acre of local authority playground serves 752 children under the age of 16.³⁹³ Children's right to play is seriously threatened by a raft of spending cuts announced by Government.

The former Government's 10-year play strategy has effectively been abandoned through the removal of ring-fenced budgets devolved to local authorities.³⁹⁴ This will result in inconsistency of play provision around the country as each local authority makes its own spending decisions.

Play England is concerned about the impact cross-Government spending cuts will have on the play sector, with 12% cuts to the Department for Education's non-schools budget, 25% cuts in the Department for Culture, Media and Sport, and 33% cuts in the Department for Communities and Local Government. On top of this, local government funding will be cut by 28% over the course of four years.³⁹⁵

In the youth sector, the House of Commons Education Committee has already identified *'very significant, disproportionate cuts'* to local authority services, ranging from 20% to 100%.³⁹⁶

£200 million has been made available to local authorities to assist them in transferring services to the voluntary and community sector. In addition to this, £470 million will be provided for capacity building in the sector. However, these funds already include resources for the Big Lottery Fund, the Community First Fund and National Citizen Service.³⁹⁷

90 Provide children, including those with disabilities, with adequate and accessible play spaces



The funding allocated to the *Aiming High for Disabled Children* strategy has now come to an end. A substantial number of local authorities had used these funds to increase the accessibility of play facilities.³⁹⁸ The coalition Government's Green Paper on SEN and disability does not set out any plans to fund accessible play provision.³⁹⁹

Special measures of protection



“ I’m a persistent young offender. I’ve heard it so many times now, it’s the easiest way to describe me. ”

Young person interviewed by Howard League for Penal Reform, 2011⁴⁰⁰

“ One of the most alarming and disturbing statistics that is seldom recognised on the scale that it should be is that, since 1990, 31 children have died in care in young offender institutions and secure establishments. Contrast that with the fact that there have been no deaths in secure children’s homes during that period ... If we are going to strengthen anything in our penal system for the young it should be to strengthen, not diminish, the role of secure children’s homes. ”

Lord Judd, House of Lords, November 2011⁴⁰¹

“ The penal priorities of the YJB and Ministry of Justice are clear in the name they give to children who self harm in custody – “perpetrators” – and in their conceptualisation of restraint, self harm and assault in custody as “behaviour management”. ”

Children’s Rights Alliance for England, 2011⁴⁰²

Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

91 Intensify efforts to ensure that the detention of asylum-seeking and migrant children is always used as a measure of last resort, and for the shortest appropriate period of time



The principal detention centre in the UK housing families, Yarl's Wood in Bedfordshire, closed its family unit in December 2010 following an announcement by the Deputy Prime Minister in which he also said that *'the practice (of detaining children) will end completely by May 2011'*.⁴⁰³

In March 2011, the UKBA wrote to its corporate partners providing details of the new "end to end" process for family removals.⁴⁰⁴

Where families have not departed voluntarily, the coalition Government retains the power to ensure that they comply with removal directions. The "ensured returns" process will be mediated by a new Independent Family Returns Panel which will provide expert advice to the UKBA on the method of removal for families who have failed to leave the UK voluntarily. According to the terms of reference for the Panel, its advice will *'help to ensure that individual return plans take full account of the welfare of the children involved and that the UK Border Agency fulfils its responsibilities under Section 55 of the Borders, Citizenship and Immigration Act of 2009'*.⁴⁰⁵ The Panel will have a number of options open to it and one is to recommend placing a family in secure "pre-departure accommodation" for the last 72 hours before removal (extendable to a week in exceptional circumstances).

This "pre-departure accommodation" (see page 18) is governed by the short term holding facility rules, and will be within the inspection remit of the Prisons Inspectorate (as are IRCs). Furthermore, families will remain there under the detention powers of the Immigration Act 1971; and may be detained for up to a week with Ministerial authorisation. These facts have led to many refugee and children's organisations accusing Ministers of simply "rebranding" child detention.

It is too early to assess whether the changes in detention arrangements will ensure compliance with Article 37b of the Convention – the duty to only use detention as a last resort and for the shortest period of time – as well as other treaty requirements, including Articles 3 and 12 (the child's best interests and the right to be heard in proceedings). The coalition Government has committed itself to monitoring and evaluation and the existence of the Family Returns Panel will be a "live" check on the process.

Tinsley House IRC, near Gatwick airport, has accommodated families in small numbers since the closure of Yarl's Wood family unit. Considerable financial investment was made to refurbish and extend family accommodation at the IRC.⁴⁰⁶

A Freedom of Information request by The Children's Society found that 697 children were held at Greater London and South East ports between May and August 2011.⁴⁰⁷ The Prisons Inspectorate published three reports this year of inspections of short-term holding facilities at Heathrow airport:

- The inspection of facilities at Heathrow airport terminal 1, at that time run by G4S (contract now with Reliance), revealed that 71 children were detained over the previous three months, 10 of whom were unaccompanied. The average period of detention for accompanied children was 7 hours 42 minutes; for unaccompanied children this was 3 hours 30 minutes. The youngest unaccompanied child was 14 years old. Eight accompanied children were held for more than 12 hours and two were held for more than 24 hours. The longest detained unaccompanied child was held for 9 hours and 30 minutes. The Prisons Inspectorate made recommendations about child protection training and child-friendly interview environments, noting *'there were no dedicated child-friendly interview rooms and children were interviewed in stark rooms with chairs attached to the floor'*. There was no access to fresh air in the holding facility.⁴⁰⁸
- The inspection of facilities at Heathrow airport terminal 3, run by G4S, revealed that 98 children were detained over the previous three months, 8 of whom were unaccompanied. The average period of detention for accompanied children was 8 hours and 20 minutes though 12 children had been held for over 18 hours, with one child held for 30 hours. There was a child-friendly interviewing room but no telephone available so the adult interview room was used if children needed an interpreter. There was no access to fresh air in the holding facility.⁴⁰⁹
- The inspection of facilities at Heathrow airport terminal 4, run by G4S, revealed that 78 children were detained over the previous three months, 8 of whom were unaccompanied. The average period of detention for accompanied children was 9 hours and 54 minutes, though 12 children had been held for more than 18 hours. The longest period of detention for an unaccompanied child was 23 hours and 54 minutes. A five year-old child was detained without an authority form, which the Inspectorate notes *'could have been unlawful'*. The young child was given a rub-down search by an officer wearing latex gloves who told him, *'You're a big boy now so I have to search you'*. There was no access to fresh air in the holding facility.⁴¹⁰

We have assessed developments across the past year as a significant improvement because of the efforts made to reduce the numbers of children detained. However, it would be wrong to believe that the immigration detention of children has ended; and it remains far from clear whether detention is being used strictly as a last resort.

92 Ensure there are adequate safeguards in place when children are returned to their originating country, including an independent assessment of the conditions upon return, and of the family environment awaiting the child



There are a number of concerns related to the return of children from the UK, including:

- Returns of separated children to Europe under the “Dublin II” arrangements⁴¹¹
- Plans to return 16 and 17 year-old Afghan separated children to Kabul irrespective of family tracing efforts
- Separation of children from parents as a means of enforcing removal of the family.

Returns of children to Europe under the “Dublin II” arrangements

There is no consensus or agreement between Dublin signatories on how to assess the age of undocumented young people, and this can lead to young people who have been assessed as children by a local authority in the UK being removed to a third country where they are treated as an adult.

A wider concern is the assessment of best interests by the Third Country Unit in the decision-making process. In October 2010, the Administrative Court held a decision taken in December 2009 to return a child to Belgium under Dublin II arrangements to be unlawful by reason, in part, of a failure to comply with the statutory duty to have regard to the child’s welfare.⁴¹²

Plans to return 16 and 17 year-old Afghan children to Kabul irrespective of family tracing efforts

The current policy of the UKBA is that an unaccompanied child whose asylum claim is refused will only be returned to his or her country of origin if there are adequate reception arrangements available in that country. In most of the countries from which children seek asylum, it will be unlikely that reception arrangements other than the care of their own family will exist so, in practice, children are rarely removed from the UK while under the age of 18. The UKBA will therefore, if it believes that no adequate reception conditions exist, grant the child discretionary leave to remain, until they reach 17½ years. The child must then make a further application to remain in the UK beyond this time.⁴¹³

The UKBA has not amended this policy. However, it has explored funding “reception arrangements” for children in countries of origin which would then allow for children to be returned. As reported in last year’s *State of Children’s Rights in England* report, in March 2010, a tender document was issued by the UK Government, inviting bids for the provision of reintegration assistance in Kabul. The tender was primarily for adult returnees, but also asked that

additional assistance be provided, in the form of accommodation and other services, for up to 12 Afghan children (aged 16 and 17) every month. Following widespread condemnation, the tender was withdrawn and a new one issued just for adult services.⁴¹⁴ It is not anticipated that any arrangements facilitating the return of Afghan minors will be in place before 2012.⁴¹⁵

The Refugee Children’s Consortium (RCC), a group of 30 NGOs working collaboratively to protect the rights of refugee children, has for many years raised concerns regarding the forced return of separated children to their countries of origin. Most recently, the RCC has urged the UK Government to recognise that all Afghan children in the UK are in need of international protection from armed conflict and that their best interests would not be met by being returned to that country whilst these conditions persist. In February 2011, the UN Committee on the Rights of the Child published its first periodic report on the implementation of children’s rights in Afghanistan. This identified major problems and concerns for the well-being and rights of children in that country. The UN Committee expressed ‘*deep concern over the death of hundreds of children as a result of attacks and airstrikes by insurgent groups, international military forces and the Afghan National Army...*’⁴¹⁶

Furthermore, the recent Supreme Court’s judgment in *ZH (Tanzania) v SSHD*⁴¹⁷ underlines the importance of considering the child’s best interests in immigration and asylum decision-making.

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

There have been cases where, in attempting to get children and their parents onto an aeroplane, restraint has been used either on children or on their parents in sight of the children. In other cases children have been separated from parents in order to try and ensure the family travels. Such actions are likely to be in breach of the welfare duty in Section 55 of the Borders, Citizenship and Immigration Act 2009. The UKBA is late in its response to a Freedom of Information request from CRAE about the use of handcuffs and escort chains on children by escort providers, in IRCs and in the new pre-departure accommodation. The UKBA says it is ‘*checking some data to ensure we provide you with an accurate reply*’⁴¹⁸ which suggests there is no ongoing monitoring, or Ministerial oversight, of such practices.

93 Ensure that the UK Border Agency appoints specially-trained staff to conduct screening interviews of children



All UKBA staff working with children must now undergo training at a level appropriate to their contact with children. Some evidence suggests that this is happening with reports that the training has been ‘*useful and informative*’.⁴¹⁹

"In-country" adult asylum applicants and their children are now screened in Croydon. Unaccompanied children detected entering unlawfully at a port may be screened on location.

In February 2011, the Office of the Children's Commissioner published a report describing the views and experiences of children held at Millbank Reception and Assessment Centre in Kent, following an announced visit there in August 2010.⁴²⁰ The report notes '*All of the young people we spoke to praised staff in all roles for the way they had been treated since their arrival at Millbank*' but makes a series of recommendations, including:

- Improvements in the use of telephone interpreting to ensure children feel comfortable and fully informed
- When children's mobile phones are confiscated, they should be permitted to retain the contact details of family and friends (and phones should be returned when no longer required for evidential purposes)
- Interviews should always follow the requirements of the Police and Criminal Evidence Act and children should have an "appropriate adult" present
- Documents removed from children by immigration officials or the police should be kept safe.⁴²¹

Last year, CRAE reported on harrowing and abusive interviewing practices with children, exposed by Refugee and Migrant Justice. The Office of the Children's Commissioner reports this has reduced, though it clearly has not *ended*.

*We are pleased to note that discussions between RMJ and United Kingdom Border Agency, and ongoing litigation, appear to have combined to reduce the incidence of unacceptably lengthy and inappropriately unaccompanied interviewing of children on arrival.*⁴²²

94 Consider the appointment of guardians to unaccompanied asylum-seekers and migrant children



In July 2011, the coalition Government wrote to the European Commission for permission to opt in to the EU Trafficking Directive. Article 14 of the Directive requires that every child suspected of being trafficked be provided with a representative, appointed by the court, during the investigation and throughout any judicial proceedings. However, the Government continues to reject a system of guardianship for unaccompanied asylum-seekers and migrant children.

In a letter to ECPAT UK on 25 May 2011, the Immigration Minister, Damian Green MP, stated:

... with such comprehensive arrangements currently in place, the Government does not support the idea of introducing a

*further "guardian" to the range of professionals who already have responsibility for looked after children. We remain of the view that we are compliant with the EU Directive on Human Trafficking, and that adding a new "guardian" to the current framework risks creating unnecessary complexity and confusion, which would not help to improve current practice.*⁴²³

ECPAT UK reports that separated children, including child victims of trafficking, 'are suffering unnecessarily due to the lack of continuity and support from a dedicated individual who can represent their best interests and advocate on their behalf' and that social workers do not have 'parental responsibility'.⁴²⁴ Separated or unaccompanied children will encounter the complex demands of the health, social care, immigration and police services, often without English language skills and a lack of understanding of the processes. They will need to instruct their own solicitors (they may have a criminal solicitor, an immigration solicitor and a welfare solicitor or any combination of these). Many of these children may still be under the control of their traffickers (e.g. psychologically or through debt bondage) and may not be in a position to advise solicitors effectively and build trusting relationships with them.⁴²⁵

95 Provide disaggregated statistical data in the next periodic report on the number of children seeking asylum, including those subject to age disputes



The Home Office has published asylum data on a quarterly basis since 2001. The quarterly statistics provide information on applications and initial decisions of unaccompanied asylum seeking children by country of nationality. In the quarterly statistical summary for Q3 of 2010, the Home Office introduced for the first time data on unaccompanied children broken down by age and sex and initial decisions going back to Q1 2006.⁴²⁶

Age disputed applications are also provided in a table both by country of nationality and by location of application.

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

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



96 Give the benefit of the doubt to children in age-dispute cases



This recommendation applies to all authorities charged with the task of determining the age of a person claiming to be an unaccompanied child.

The evidence from around the UK is that local authorities do not consistently give the benefit of the doubt to a young person claiming to be a child.⁴²⁷ Where a child is incorrectly assessed as an adult, or as older than they actually are, this has profound effects on the child's enjoyment of their rights under the CRC. Such effects include being detained with adults; being housed with adults; missing out on education; not having the protective support of a corporate parent; and loss of identity leading to self harm and depression. In addition, the young person loses safeguards provided to children within the asylum determination procedure.

The UKBA updated its guidance to staff in 2011, and the current process guidance⁴²⁸ sets out the policy and procedure to be followed where an applicant claims to be a child but has no definitive documentary evidence to prove this:

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

1. *The claimant should be treated as an adult if their physical appearance/demeanour **very strongly suggests that they are significantly over 18 years of age.** These applicants fall within the adult process....*
2. *All other applicants should be afforded the benefit of the doubt and treated as children ... This policy is designed to safeguard the welfare of children. It does not indicate final acceptance of the applicant's claimed age, which will be*

considered in the round when all relevant evidence has been considered, including the view of the local authority to whom unaccompanied children, or applicants who we are giving the benefit of the doubt and temporarily treating as unaccompanied children, should be referred [our emphasis].

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

In Harmondsworth IRC alone in 2010, the Independent Monitoring Board recorded 45 detainees claiming to be children.⁴²⁹ The Refugee Council (who has one dedicated worker assisting with age disputed cases across the whole detention estate) took up 37 detained age disputed cases in 2010, of which 26 were released as children; only 6 were considered to be adult; and the remaining cases were outstanding as of April 2011.⁴³⁰

Where UKBA doubts the age of an applicant, it will defer a final decision and ask the local authority for an age assessment. The UKBA will then treat the claimant as a child until the local authority reports back to them or other evidence comes to light. UKBA policy requires staff to accept the age determination of the local authority unless there is strong countervailing evidence.

While it is preferable that child care professionals make the assessment on age, there is a potential conflict of interest where a local authority has the dual role of making the decision on the age of the young person and then accommodating them if found to be a child. The potential conflict is exacerbated by the insufficient 'per capita' grant that UKBA provides for the care of each person found to be a child and the subsequent financial consequences for the authority.

97 Seek guidance from experts when determining age in disputed cases



Although a high level "Age Assessment Working Group" was convened in 2008 by the then Immigration Minister, this group was unable to deliver a final report due to unresolved differences of approach between Home Office officials, local government, the medical professions and voluntary sector stakeholders – in particular over the issue of the use of radiographic techniques to determine chronological age.

Therefore, there is still no statutory guidance on conducting

age assessments, and practice is shaped by regional initiatives and protocols and case law. The lack of statutory guidance has meant that the quality of decision-making remains variable both between and within local authorities.

98 Consider amending section 2 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 to allow for an absolute defence for unaccompanied minors entering the UK without valid immigration documents



There is no absolute defence for unaccompanied minors entering the UK without valid immigration documents. Criminal prosecution can proceed on the same basis for children (aged 10 and above) and adults, though case law has widened the statutory defences to the offences in the Act for all age groups.⁴³¹

99 Do more to collect data on the extent of sexual exploitation and abuse of children, in order to prepare adequate responses to these issues



The UK Government does not systematically collect or bring together statistics on the extent of sexual exploitation and abuse endured by children. Home Office statistics on crimes detected in England and Wales, released in July 2011, give some indication of the scale of abuse:

- In 2010/11, 2,880 rapes of a girl aged under 16 were recorded
- In 2010/11, 2,235 rapes of a girl aged under 13 were recorded
- In 2010/11, 247 rapes of a boy aged under 16 were recorded
- In 2010/11, 671 rapes of a boy aged under 13 were recorded.⁴³²

These figures show that, of all recorded rapes last year, the victim was a child aged under 16 in **38%** of cases.

Disaggregated by gender:

- Of all recorded rapes against females in 2010/11, the victim was a girl aged under 16 in 35% of cases
- Of all recorded rapes against males in 2010/11, the victim was a boy aged under 16 in 70% of cases.

There were 152 offences committed of abuse of children through prostitution or pornography and 20,659 sexual assaults of girls aged under 16 and 1,125 sexual assaults of boys aged under 13 in 2010/11. In addition, there were 146 offences of abuse of position of trust of a sexual nature and 310 sexual grooming offences.⁴³³

The NSPCC conducted research in 2009 on child abuse and neglect (published 2011) and found:

- 0.5 per cent of under 11s had reported contact sexual abuse as defined by the criminal law at some point in childhood

- 4.8 per cent of 11 to 17s had reported contact sexual abuse as defined by the criminal law at some point in childhood.⁴³⁴

Sixty-six percent of sexual abuse was perpetrated by other children.⁴³⁵ The rate of sexual abuse of children by a parent or guardian during their childhood was 0.1% – 1 in every 1,000 children (though this increases to 2 in every 1,000 girls aged 11 to 17 years).⁴³⁶

In UK law, there is no specific offence related to *child* trafficking and / or sale of children. Crime statistics show 67 cases of trafficking for sexual exploitation in 2010/11, though this is not disaggregated between child and adult victims.⁴³⁷

The UK has legislation for the prosecution of British nationals who abuse children abroad.⁴³⁸ However, ECPAT UK reports the legislation being rarely used and points out that British nationals are routinely arrested abroad for sexual offences against children.⁴³⁹ Although the UK has a robust approach in law and policy to the management of registered sex offenders, there are major failings when it comes to the sharing of information on a timely basis to authorities abroad. Nonetheless, the coalition Government has signalled it will close the “3-day loophole” that allows UK registered sex offenders to travel abroad for up to 72 hours without notifying police.

100 Ensure that, in both legislation and practice, children involved in sexual exploitation and abuse (including as child prostitutes) are always considered as victims of crime in need of support, not as offenders



There has been no change to the law that criminalises children for involvement in prostitution. In September 2011, the Liberal Democrats passed a motion at their party conference to end the criminalisation of child prostitutes. Speaking at a fringe event at the conference, Barnardo's chief executive, Anne Marie Carrie, explained the term child prostitute ‘*could not be more misleading*’.⁴⁴⁰

Although the CPS has introduced guidance to prevent the arrest and prosecution of children committing crimes as a result of being trafficked, ECPAT UK reports there are still children who are being arrested and convicted for crimes such as immigration offences, theft, drug (cannabis) cultivation and associated crimes. The coalition Government is unable to provide any significant statistics on the number of suspected trafficked children currently in UK prisons.

The Immigration Minister is the Minister responsible for human trafficking policy and no separate Minister is responsible for the welfare of children who have been trafficked. The Home Office routinely frames child trafficking as an immigration offence in

policy and strategy. The Home Office is the lead government agency for child trafficking. ECPAT UK considers this to be 'highly inappropriate'.⁴⁴¹

In a User Voice consultation of children in custody about safeguarding this year, several children likened routine strip-searching to the experience of being raped. One child in a young offender institution explained:

*It reminds me of the sexual abuse I have suffered, makes me feel like I am being abused again.*⁴⁴²

The YJB subsequently confirmed its 'commitment to the principle that full searches should only ever be undertaken on a risk-led, rather than a routine basis'.⁴⁴³ This was almost five years after it rejected the Carlile Inquiry's very same recommendation. At that time, the YJB said it would need to review the practices of the different custodial establishments before being able to commit to such a shift.⁴⁴⁴ Even reports that children had had their clothes cut off,⁴⁴⁵ and that staff were restraining children during strip searching,⁴⁴⁶ had not resulted in a change of policy. It would appear that the powerful accounts from children of feeling utterly degraded by strip-searching are now forcing a change in policy, though it's interesting that the YJB has retained the term "full search" to describe children being forced to strip naked (one half of their body at a time) in front of staff.

101 Ratify the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse



The coalition Government has not yet ratified the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Abuse. Fifteen member states of the Council of Europe have ratified it to date.

102 Provide the necessary resources to effectively implement the Anti-Trafficking Action Plan



There is no specific UK national action plan or strategy to combat the sale or traffic in children. In the 2011 *UK strategy on human trafficking* there is a very small section on children. However, this does not contain any resource commitments or plans to introduce any new legislation or special protection measures for children. There is no implementation plan for the 2011 strategy. In an important step forward, the coalition Government has recently (23 November 2011) published an action plan to tackle child sexual exploitation. This includes a Home Office commitment to provide an additional £400,000 across each of the next three years to support children who have been raped or subject to other sexual abuse. Given there were 6,033 reported rapes and

21,784 reported sexual assaults of children in 2010/11 – see page 60 – this new funding, although very welcome, cannot possibly meet the scale of children's needs.

The UK has just seen the first conviction for trafficking of Nigerian girls out of the UK, though this is an area that is not well researched by police or authorities. The safeguarding provisions for children departing the UK at ports (including Eurostar) on their own are very weak. This is a major gap for combating the sale and trafficking of children. No statistics exist for children leaving the UK as unaccompanied minors.

103 Ratify the Council of Europe Convention on Action Against Trafficking in Human Beings



The UK Government ratified this treaty on 17 December 2008 and it came into force on 1 April 2009.⁴⁴⁷

104 Ensure child protection standards for trafficked children meet international standards



Current government guidance for local authorities on safeguarding child victims of trafficking is 'supplementary' and not mandatory. It is not subject to inspection or reporting.

Local authorities are responsible for the provision of accommodation for children up to 18 years. However there are no national standards for safe accommodation for child victims of trafficking. Accommodation provision for trafficked children varies significantly across the UK – from residential care homes, shared flats and houses, bedsits, bed and breakfast emergency housing and foster care. Children under the age of 16 are entitled to receive foster care but not all trafficked children will receive accommodation specific to their safety and security needs. ECPAT UK reports the provision of accommodation is not based on the best interests of children but on availability and cost.

105 Fully implement international standards of juvenile justice, in particular articles 37, 39 and 40, and General Comment 10 on Children's rights in juvenile justice, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Guidelines for the Prevention of Juvenile Delinquency, and the UN Rules for the Protection of Juveniles Deprived of their Liberty



This year CRAE published a comprehensive analysis of international juvenile justice standards and the extent to which England is

complying with these. The report, *Doing right by children*, shows how the coalition Government is failing to protect children from persistent violations of their rights under the Convention:

- There is no real distinction in law, policy and practice between how the state responds to adults and children in conflict with the law, in contravention of Article 37c of the CRC
- The arrest of children is not a last resort, in contravention of Article 37b of the CRC
- The detention of children is not a last resort, in contravention of Article 37b of the CRC
- Children are still being tried in adult courts, in contravention of Article 37c of the CRC
- Children in contact with the criminal justice system are not having their human dignity and particular needs as *children* consistently upheld, in contravention of Articles 3(1), 6(2), 37a, 37c and 39 of the CRC
- Not all children in custody are enjoying special protection and assistance, in contravention of Article 20(1) of the CRC
- Harmful and neglectful treatment continues in child custody, in contravention of a vast number of provisions in the CRC.

Table 7: Indicators showing the extent to which the UK is breaching its international juvenile justice obligations⁴⁴⁸

	2007/08	2009/10
Number of children given criminal justice system disposals (non-court and court)	210,670	155,856
Number and proportion of children dealt with outside of court	89,554 (43%)	63,152 (41%)
Number of children given fixed penalty notices (£50-£80 fine) (16 and 17 year-olds)	14,497 (2008)	7,093 (12 months to June 2011)
Number and proportion of children dealt with by court	121,116 (57%)	92,704 (59%)
Number of children remanded to custody	5,663 children (6.6%)	3,404 (3.7%)
Number of children subject to anti-social behaviour orders	719	536
Number and proportion of children appearing in court who are detained	6,853 (6%)	5,130 (6%)
Number of children self-harming in detention	2,594	2,072
Use of physical restraint in detention	7,909	6,904
Proportion of boys detained in prison service accommodation who say they have felt unsafe	27%	31%
Proportion of girls detained in prison service accommodation who say they have felt unsafe	30%	22%
Proportion of boys who never have anyone visiting them in prison	16%	12%
Proportion of girls who never have anyone visiting them in prison	29%	32%



106 Raise the minimum age of criminal responsibility



The minimum age of criminal responsibility remains at 10 years. Successive Ministers would have us believe that human beings this age can withstand contact with the criminal justice system, even incarceration. It is worth pausing to acknowledge that this is the age when children are reading books such as *Wind in the Willows*, *Big Friendly Giant* and *the Lion, the Witch and the Wardrobe*.⁴⁴⁹

The UN Committee on the Rights of the Child criticised the UK's low age of criminal responsibility in 1995, 2002 and 2008. In July 2011, the coalition Government was asked if it would raise the age of criminal responsibility to 14 and thus only partially meet the Convention's requirement to protect **all** children from contact with the criminal justice system. Prisons Minister Crispin Blunt even rejected this modest proposal:

*The Government have no plans to raise the age of criminal responsibility to 14.*⁴⁵⁰

107 Develop a broad range of alternative measures to detention for children in conflict with the law



The youth rehabilitation order came into effect on 30 November 2009 and gives the court a range of non-custodial options for responding to child offending. Nevertheless, inspections of six areas in England and Wales revealed inadequate information being presented to the court ahead of children being sentenced. An analysis of 115 pre-sentence reports (of which 24 were prepared for the adult crown court) showed:

- A visit to the child's home had not occurred in 82% of cases
- More than a third (36%) of reports failed to consider alternatives to custody when a court had indicated this was a likely option
- The majority of reports did not consider the child's age and maturity: *'The lack of consideration of age, child development and adolescence was so distinct in some reports that they could have been written about adults'*
- Nearly three-quarters (71%) of reports did not adequately assess the risk of harm to others presented by the child
- Reports prepared for the youth court had been discussed with the child in just over a quarter of cases; and with parents / carers in only 10% of cases
- It was not the practice of youth offending teams to give children or parents/carers copies of the reports
- Only 42% of reports sufficiently addressed safeguarding and vulnerability. One example was particularly alarming:

... we read a report on a young person who had been subjected to domestic violence, was estranged from his parents, living rough and had been reported as missing. The report read, somewhat to our surprise: 'There is no evidence at my disposal to suggest that he is vulnerable'.

Furthermore, children's services continue to fail to provide children with suitable alternative accommodation to custodial remand. Inspectors found many children being accommodated in bed and breakfast, despite guidance issued by the former Government, in April 2010, stating that this is unsuitable for 16 and 17 year-olds. Some children were remanded in custody due to lack of accommodation and support provided by the local authority.⁴⁵¹

An innovative provision in the Offender Management Act 2007⁴⁵², whereby children subject to a detention and training order can be placed in alternative accommodation authorised by the Secretary of State has **never** been used. The YJB's draft strategy for the secure estate timidly recommends this could be used for a small number of children, because:

*In a small number of individual cases we believe that the present secure estate is not always the best place to manage certain young people.*⁴⁵³

The organisation does not propose any criteria for selecting children for this alternative accommodation; nor does it give any evidence for its implicit assertion that custody is the best place for virtually every other child currently incarcerated. In 2009/10, **21** incarcerated children required hospital treatment for serious injuries arising from self-harming.⁴⁵⁴

108 Establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle



The principle that child detention be used as a measure of last resort and for the shortest period of time is not enshrined in domestic law. Indeed, the purposes of sentencing for adults and children are virtually identical. Where custodial sentences are not required by law, the courts can only impose a custodial sentence if the seriousness of the offence (or offences) would make a fine or community sentence unjustified: this provision is exactly the same for adults and children⁴⁵⁵ and, of course, does not meet the requirements of Article 37b of the Convention.

The YJB reports that, as of April 2011, only 7.2% of the places of detention it commissions are in secure children's homes (SCHs). These establishments are subject to children's homes regulations, have high staff to child ratios and reject penal practices such as pain-inducing restraint techniques, routine strip-searching and the use of ratchet handcuffs. More than 8 in every 10 places (80.9%) are in prison service accommodation – YOIs – and a further 11.9% of places are commissioned from G4S and Serco who run the country's four STCs. There are grave concerns that the YJB plans to decommission yet more places in SCHs (13% of places already decommissioned since April 2009).⁴⁵⁶

109 Ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty



A report this year from joint inspections of juvenile court work and reports revealed that children are being transported from court to prison with adults. Even worse, because adult prisons have an earlier evening deadline for accepting prisoners, adults were being given priority over children.⁴⁵⁷ On some occasions children were held in transportation vehicles *'for part of the day'* because of lack of court cells.⁴⁵⁸

The annual juvenile survey conducted by the Prisons Inspectorate and YJB reports that in 2009/10:

- 31% of boys and 41% of girls travelled with adults or someone of a different gender in their most recent journey to or from the prison
- Girls are held in adult segregation units in prison.

In June 2011, the Howard League for Penal Reform released figures obtained through the Freedom of Information Act from half of police forces in England and Wales showing that at least 53,000 children under the age of 16 were held overnight in police cells in 2008 and 2009. This included 13,000 children aged between 9 and 13 years.⁴⁵⁹

110 Provide a statutory right to education for all children deprived of their liberty



This was achieved through the Apprenticeships, Skills, Children and Learning Act 2009 (which amended the Education Act 1996).⁴⁶⁰ The provision was due to come into force in September 2010⁴⁶¹ but was delayed by the Ministry of Justice to April 2011.⁴⁶² Local authorities must now ensure 'enough suitable education is provided to meet the reasonable needs' of children in custody. Children in custody continue to be excluded by law from all other provisions in the Education Act 1996.⁴⁶³

111 Ensure that children in conflict with the law are always dealt with in the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with



In 2010, **1,041** children were remanded to custody from the crown court.⁴⁶⁴ This accounted for over a third (35%) of all child remands that year, giving an indication of the still high use of these adult courts.

This year the human rights organisation Justice and The Police Foundation called for the end of children being tried in crown courts, observing that, despite some adaptations, '*... the basic Crown Court process remains unsuitable for children. This is due, inter alia, to oppressive courtroom venues, a large adult presence (including a full jury of 12 for trials) spectators in the public gallery and a lack of specialist lawyers and other staff, including judges, who are trained to work with children and young people.*'⁴⁶⁵

112 Adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process



Last year, we reported on many positive developments in law, policy and practice relating to support for child victims and witnesses of crime, particularly welcoming many features of the Coroners and Justice Act 2009.

The NSPCC reports a number of threats arising from public spending cuts, including:

- Only 53% of live link rooms across the country – where children can give evidence without being in court – are adequately soundproofed. Upgrading is seen as necessary to protect children's privacy but the funding is not readily available

- The use of registered intermediaries for child witnesses has increased but this is now being threatened by cuts to local CPS and police budgets
- Only a small proportion of young witnesses receive assistance from specialist victim support services and many of Victim Support's court-based services do not have the capacity to offer home visits
- A pop-up courtroom resource, '*particularly valuable with younger witnesses*', and a DVD which were part of a Young Witness Pack have been discontinued
- Even though the Ministry of Justice has accepted a recommendation to update the 1998 handbook for child witness supporters, this is not happening because of lack of funding.

Furthermore, the provision in Section 28 of the Youth Justice and Criminal Evidence Act 1999, allowing for pre-trial cross-examination of children, has still not been brought into force. Successive governments have failed to accept the NSPCC's call for the collection and publication of statistics relating to young witnesses.⁴⁶⁶

The coalition Government has not assessed whether the voluntary sector's role in child protection has been affected by reductions in statutory funding. Notwithstanding this, a new grant agreement worth £11.2 million was announced in February 2011 for ChildLine and the NSPCC HelpLine.⁴⁶⁷

113 Review the application of the Counter Terrorism Bill to children



Latest Home Office data shows that, between 2005/06 and 2010/11, 40 children in Britain were arrested for terrorism; and 6 of these were subsequently charged (therefore only 15% of arrests resulted in a charge).⁴⁶⁸

In January 2011, the Home Secretary presented to Parliament the report from her review of counter-terrorism and security powers.⁴⁶⁹ Neither the terms of reference of the review, or any part of the report, considers the rights and needs of children so this recommendation from the UN Committee also remains unfulfilled.

114 Conduct an independent review of ASBOs with a view to abolishing their application to children



The Home Office's proposals for dealing with anti-social behaviour, published in February 2011, relate to both adults and children. Very little concession is made for children's developmental stage and additional protection under the CRC. Indeed, the Convention is not mentioned once in the document.

There are three areas of ASBO policy that have attracted serious criticism from human rights bodies – the criminalisation of children in breach of Article 37b of the CRC; the persistent violation of children’s right to privacy; and the custodial penalty for breach of ASBO conditions.

Whilst the Green Paper bemoans ‘an approach that has unnecessarily criminalised people, particularly young people’,⁴⁷⁰ its proposals risk drawing even more children into contact with criminal justice agencies. For example, the “Community Trigger”, whereby communities can force local agencies to take action against anti-social behaviour, is bound to be applied disproportionately to younger members of local communities. Indeed, the British Crime Survey only asks about five forms of behaviour, which are:

- Noisy neighbours
- Teenagers hanging around
- Vandalism and graffiti
- People using or dealing drugs
- People being drunk or rowdy.

A neutral observer might find it difficult to work out the reasons for teenagers hanging around being officially defined as anti-social. Indeed, all of the other four types of behaviour can be criminal offences – whereas simply hanging around is not against the law (unless in a dispersal area). Previous British Crime Surveys have asked respondents about a much wider range of behaviours, with members of the public citing speeding traffic as the most menacing problem.⁴⁷¹

There is nothing in the proposals to suggest that children’s privacy rights will be properly protected in any future measures; and the sanction of custody is to be retained for children and adults alike.

115 Ratify all international human rights instruments it is not yet party to, including the International Convention on the Protection of the Rights of All Migrant Workers and members of their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the protection of all Persons from Enforced Disappearance



The UK has ratified two more human rights instruments since October 2008 – the Convention on the Rights of Persons with Disabilities and its Optional Protocol (8 June 2009) and the Council of Europe Convention on Action Against Trafficking in Human Beings (17 December 2008) No human rights treaties have been ratified in the past year.

116 Ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child pornography.



The UK ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on 20 February 2009.

117 Take all appropriate measures to ensure the full implementation of the UN’s recommendations by submitting them to Parliament, relevant Government departments and the devolved administrations for consideration and action



Save the Children’s analysis of the extent to which the general measures of the Convention, which necessarily includes responding to the UN Committee’s recommendations, highlights the wide disparity in Government commitment and action across the UK. The Welsh Assembly Government particularly stands out in its steadfast progress in promoting and protecting children’s rights. Save the Children observes:

*Devolution is not an excuse for where there is disparity in the realisation of the CRC. These rights are universal and inalienable and together the UK and devolved governments must strive to make sure they are fully implemented.*⁴⁷²

Of course the only legitimate marker of whether or not the coalition Government is ensuring the full implementation of the UN’s recommendations is the *action* it is taking; and the *impact* on children. CRAE’s comprehensive analysis shows the UN Committee’s recommendations have barely impacted on, let alone driven, the development of law, policy and practice affecting children.

118 Make widely available, in relevant languages and also online, the Government report and the UN’s concluding observations to the public at large, civil society, youth groups and children in order to generate debate and awareness of the UNCRC



Last year we noted the absence of any information on the CRC on Government websites. We are pleased to report that this has now been rectified and the Department for Education includes a wide range of information about the CRC and the reporting process.⁴⁷³ CRAE is also listed within the section on children’s rights, underneath the Children and Family Court Advisory Support Service and the Children’s Commissioner.⁴⁷⁴ This positive development can, in no way, be seen to fully discharge the coalition Government’s legal obligation to raise awareness of the CRC.

Optional Protocol On Armed Conflict

In 2008, the UN Committee on the Rights of the Child reviewed the UK's implementation of its obligations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and made a number of recommendations to improve compliance.⁴⁷⁵

The UK Government continues to recruit children⁴⁷⁶ into the armed forces in large numbers: 2,760 children were recruited in the financial year to 1 April 2011.⁴⁷⁷ Children constituted 24.1 per cent of the armed forces total recruitment intake for the year, and 29.8 per cent of intake in the Army alone.⁴⁷⁸ This was contrary to the UN Committee's recommendation that the UK should reconsider its policy of actively recruiting children and raise its minimum recruitment age to 18 years. The UK continues to operate the lowest recruitment age in Europe, and is the only permanent member of the UN Security Council to recruit 16 year-olds.

In stark contrast to the steady downward trend evident over the previous decade, the number of children recruited into the armed forces rose significantly in 2011.⁴⁷⁹ The increase resulted from a four percent rise in the recruitment of 16 year-olds which meant that for the first time on record the UK recruited more 16 year-olds than 17 year-olds. This was in direct contravention of the UN Committee's recommendation that, for as long as it continued to recruit children, the UK should prioritise recruitment of the oldest among child recruits.

Despite these high recruitment levels, dissatisfaction with armed forces life contributed to maintaining a high drop-out and discharge rate of child recruits. In the financial year to 1 April 2011, 27% of children dropped out of initial training.⁴⁸⁰ This was significantly higher than the average drop-out rate of adult recruits.

Following revelations that children had been imprisoned for attempting to leave the armed forces without authorisation (going absent without leave), in June 2011 the Ministry of Defence introduced new regulations granting children in the armed forces the right to be discharged up until their eighteenth birthday.⁴⁸¹ This amendment addressed the UN Committee's recommendation that the UK expand the right of discharge for child recruits. However, the new regulation allows commanding officers to delay a child's discharge by up to three months following notification of their wish to leave.⁴⁸²

The Ministry of Defence has still not amended regulations which require children recruited into the Army to serve a longer minimum service period than adults ("the six-year trap"), contrary to national legislation prohibiting age discrimination in terms of employment. The RAF and Navy ended age discrimination in their terms of service in 2001. The UN Committee had

recommended that this discrepancy be amended, echoing the same recommendation made previously by Parliament's Select Committee on the Armed Forces Bill in 1991 and 1996.⁴⁸³ This recommendation was repeated by the JCHR in its legislative review of the Armed Forces Bill,⁴⁸⁴ which passed through Parliament in 2011. The JCHR further recommended that Parliament review the service of children in the armed forces, expressing concern at various aspects of current policy, and called on the coalition Government to adopt an action plan for responding to the 2008 concluding observations.

The UK has still not amended its policies or procedures in relation to the deployment of children into hostilities. Despite the fact that international law requires the UK to take all feasible measures to prevent children from participating in hostilities, in 2011 it was revealed that five underage soldiers were deployed to Afghanistan and Iraq between 2007 and 2010.⁴⁸⁵ These deployments were in addition to the 15 underage soldiers already known to have been deployed to Iraq between 2003 and 2005.⁴⁸⁶ The UN Committee had recommended that the UK should review its policy and practice to ensure children are not exposed to the risk of taking part in hostilities.

During the passage of the Armed Forces Act 2011, MPs and Peers voiced strong concerns about Britain's policy on child recruitment. Particular concern was expressed at the poor educational provision for children in the armed forces after questions in Parliament revealed that the academic curriculum for children at the Army Foundation College (Harrogate) did not include GCSEs, A-levels, BTECs, HNCs, HNDs, or NVQs. Recruits studied Level One Functional Skills in English and Maths and a Level Two IT diploma.⁴⁸⁷ Over the 50-week training period, total study time equated to approximately one hour per day. The range and level of courses on offer was much more limited than equivalent educational provision for children who remain in school or college.

ANNEX A: Children's rights proofing within Government (policy)

Policy document issued in past 12 months that directly relates to children's rights in the CRC	Any reference in the policy document to Convention on Rights of Child	Any reference in the policy document to UN Committee's recommendations
Liberating the NHS: Legislative framework and next steps (December 2010)	No	No
Review into ending the detention of children for immigration purposes (December 2010)	No	No
National Curriculum Review – Call for Evidence (January 2011)	No	No
More effective responses to anti-social behaviour (February 2011)	No	No
No health without mental health. A cross-government mental health outcomes strategy for people of all ages (February 2011)	Yes	No
Equality Act 2010: Banning age discrimination in services, public functions and associations. A consultation on proposed exceptions to the ban (March 2011)	No	No
Support and aspiration: A new approach to special educational needs and disability Green Paper (March 2011)	No	Yes, in relation to the right of children to appeal themselves to a special educational needs tribunal
Consultation on a code of practice relating to surveillance cameras (March 2011)	No	No
UN Convention on the Rights of Persons with Disabilities. Review of immigration reservation (March 2011)	No	No
A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Families' Lives (April 2011)	Yes	No
Ensuring good behaviour in schools: guidance for governing bodies, head teachers, school staff and Employers (April 2011)	No	No
Government's response to the consultation on Disability Living Allowance reform (April 2011)	Yes, in a quote from The Children's Society	No
Consultation on the Changes to the [school] Admissions Framework (May 2011)	No	No
Wolf Review of vocational education – Government Response (May 2011)	No	No
The Government's response to the Independent Review of the Commercialisation and Sexualisation of Childhood (June 2011)	No	No
Government response to the NHS Future Forum report (June 2011)	No	No
Legal aid reform in England and Wales: the Government response (June 2011)	No	No
Government response to the consultation. Financial Support for 16-19 Year Olds in Education or Training (June 2011)	No	No
Breaking the cycle: Government's response (June 2011)	Yes, in relation to treating 17 year-olds on secure remands as children, not adults	No
Reforming the Notification Requirements of Registered Sex Offenders (Part 2 of the Sexual Offences Act 2003): A Targeted Consultation (June 2011)	No	No
Healthy Lives, Healthy People Summary of responses to the consultations on our strategy for public health in England (July 2011)	No	No
A child-centred system. The Government's response to the Munro review of child protection (July 2011)	Yes, the document places the CRC at the heart of developing a child-centred system	No
Establishing a new office of the children's commissioner for England (OCCE): consultation on legislative proposals (July 2011)	Yes	No

Consultation on a Revised Early Years Foundation Stage (EYFS) (July 2011)	No	No
Family migration. A consultation (July 2011)	No (though there is reference to a legal judgment emphasising the state's obligations under Article 3 of the CRC)	No
Consultation on preventing suicide in England. A cross-government outcomes strategy to save lives (July 2011)	No	No
Strategy for the secure estate for children and young people in England and Wales (July 2011)	Yes	No
Consultation on reforms proposed in the Public Bodies Bill. Reforming the public bodies of the Ministry of Justice (July 2011)	No	No
Consultation on the proposal by the European Commission for a regulation of the European parliament and of the Council on foods intended for infants and young children and on food for special medical purposes (August 2011)	No	No
Changes to the Care to Learn Childcare Support Scheme (August 2011)	No	No
Statutory guidance on the roles and responsibilities of the director of children's services and the lead member for children's services (September 2011)	Yes	No
Auxiliary Aids for Children with Disabilities (September 2011)	No	No
Implementing a 'Duty of Candour'; a new contractual requirement on providers. Proposals for consultation (October 2011)	No	No
Consultation on the Review of Intercountry Adoption Legislation (October 2011)	No	No

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Children's Rights Alliance for England

94 White Lion Street, London N1 9PF

England, United Kingdom

Web: www.crae.org.uk

Tel: 00 44 (0) 207 278 8222

Email: info@crae.org.uk

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