



House of Lords
House of Commons
Joint Committee on
Human Rights

The UN Convention on the Rights of the Child

Tenth Report of Session 2002–03



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Report, together with formal minutes, minutes of evidence and appendices

Ordered by The House of Lords to be printed 9 June 2003

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders made under Section 10 of and laid under Schedule 2 to the Human Rights Act 1998; and in respect of draft remedial orders and remedial orders, whether the special attention of the House should be drawn to them on any of the grounds specified in Standing Order No. 73 (Lords)/151 (Commons) (Statutory Instruments (Joint Committee)).

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is three from each House.

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The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons London SW1A 0AA. The telephone number for general inquiries is: 020 7219 2797; the Committee's e-mail address is jchr@parliament.uk.

Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated by the page number as in 'Ev 12'.

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Summary

Our children are our most important resource, and as the Declaration on the Rights of the Child reminds us, “mankind owes the child the best it has to give.” They are also especially vulnerable and need protection. At the same time, children are entitled to respect for their human rights.

In this report we consider aspects of the implementation of the UN Convention on the Rights of the Child in the UK. We take as our starting point the Concluding Observations of the UN Committee on the Rights of the Child on the UK Government’s second periodic report under the Convention.

The Role of the Convention

The Convention on the Rights of the Child binds the UK in international law, but has not been incorporated directly into UK law. It is capable of having effect on judicial and governmental decision-making, whether in respect of the progressive realisation of economic, social and cultural rights or in relation to guarantees of civil and political rights. Unless and until any of its provisions are incorporated, however, the role of the Convention within the UK will be principally as the source of a set of child-centred considerations to be used when evaluating legislation, policy-making and administrative action.

Children and the Criminal Justice System

We remain unconvinced that criminalising young children, by a relatively low age of criminal responsibility, is the best way to ensure that they turn away from a life of crime. More cogent and convincing evidence of the effectiveness of maintaining the present age of criminal responsibility in reducing crime and disorder needs to be presented by the Government to support its argument against change. We recommend an increase in the age of criminal responsibility to 12.

We share the concerns of the UN Committee about the increasing levels of imprisonment of children and young people, and their treatment in custody. To bring the UK more fully into compliance with the Convention, the Government should devote more resources to devising alternatives to custody, and to rehabilitative opportunities for children in custody to ensure that they are more able to rebuild their lives constructively upon release.

We also share the concern expressed about the numbers of children and young people in custody who commit suicide and self-harm, and who are the victims of assault. We welcome the recent court decision that the Children Act applies to children in custody. The Government should take the necessary legislative steps to ensure that this duty also applies to prison authorities as well as to local authorities.

The education of young people in custody is fundamental to their life chances upon release. To achieve fuller compliance with the Convention, the Government should legislate to provide a statutory right to education and access to special needs provision equal to that enjoyed by all other children.

In relation to all young people under 18 serving custodial sentences, it is arguable that their best interests (and ultimately those of society as a whole) would be better served by their being removed from the responsibility of the Prison Service, making children in custody the responsibility of a separate organisation which is more fully imbued with a culture of respect for children's rights.

Other issues raised by the UN Committee

While acknowledging positive aspects of the UK's record of achievement, the UN Committee expressed concern about a large number of issues affecting children's rights in the UK. We examine the Government's responses, both in word or deed, to certain of these concerns, including those relating to child poverty, children in armed conflict, child health and parental identity.

We recommend that the UK's reservation to the Convention relating to nationality and immigration is withdrawn.

We conclude that the retention in UK law of the defence of "reasonable chastisement" is incompatible with the provisions of Article 19 of the Convention.

The Case for a Children's Commissioner for England

We reiterate the conclusion of our Ninth report of this Session that the protection and promotion of children's rights throughout the UK would be best advanced by the establishment of a children's commissioner in England, to work with the commissioners for children and young people already established by statute in Northern Ireland, Scotland and Wales.

1 Introduction

International Human Rights Instruments

1. The terms of reference of the Joint Committee on Human Rights are “to consider matters relating to human rights in the United Kingdom”.¹ These human rights are wider than the “Convention rights” as defined by the Human Rights Act 1998.² The UK is also a signatory to a large number of international conventions, covenants and other treaties which, together with the United Nations Universal Declaration of Human Rights, form what is sometimes known as the International Bill of Rights.³
2. The main UN instruments⁴ each require the Government to make periodic reports on compliance with their terms to the UN, and to keep under review such matters as ratification of optional protocols and maintenance of reservations. These periodic reports are then examined by UN committees of experts appointed by the member states for the purpose.⁵ After initial examination, these committees seek further written evidence from governments, receive submissions from NGOs, hold oral hearings, and issue their observations on the compliance record of the state parties to the treaties. These observations then feed into the next round of reporting.
3. At the start of this Parliament, we resolved to examine the observations from these international committees on the periodic reports from the UK Government. In October 2002 the UN Committee on the Rights of the Child published its Concluding Observations on the UK Government’s compliance with the Convention on the Rights of the Child (the UNCRC), based on the report made by the UK in 1999. We therefore decided to start our scrutiny of these international instruments with this Convention.

The UN Convention on the Rights of the Child

4. In June 1990, the then Minister of Health, Mrs Virginia Bottomley, told the House of Commons—

The United Kingdom played a leading role in drafting [the UNCRC]. We demonstrated our commitment to the Convention by signing it in April and aim to ratify it as soon as possible. The Convention specifically draws together the rights of the child in one internationally recognised document. It will serve as an international standard against which countries that turn a blind eye to child exploitation, abuse or neglect can be measured.⁶

¹ Excluding individual cases. See for example Standing Order No. 152B of the House of Commons and the resolution of the House of Lords of 22 January 2001.

² The Act came into effect on 2 October 2000.

³ For a more extensive discussion of these instruments, see our Sixth Report of Session 2002–03, *The Case for a Human Rights Commission*, HL Paper 67–I/HC 489–I, paras 14–25.

⁴ These are: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESC), the International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the United Nations Convention on the Rights of the Child (UNCRC) and the Convention against Torture and other cruel, inhuman or degrading Treatment or Punishment (UNCAT).

⁵ Details of the current membership of the UN Committee on the Rights of the Child can be found at www.unhchr.ch.

⁶ HC Deb., 6 June 1990, c 703.

The UK Government ratified the Convention on the Rights of the Child in December 1991.⁷ It has over 40 substantive articles.⁸ But perhaps the fundamental principle of the Convention is that enunciated in Article 3.1—

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Meaning of "children"

5. For the purposes of the Convention, as it applies to the UK, children are defined as those under 18 years of age.⁹ This is a legal definition and does not correspond to the way we ordinarily use the term. Since our views on what capacities children develop at what ages are culturally conditioned, different cultures assign different responsibilities to children for different actions at different ages. Thus children are held responsible for criminal acts at 10 in England, Wales and Northern Ireland but at 8 in Scotland. There are different ages at which they can: purchase a pet animal (12); view films of a violent or sexually explicit nature, depending on their parents' or carers' presence or consent (12, 15 or 18); work part time (13), work full time (16), become entitled to the minimum wage (18) but not the full rate (until 22); become entitled to full social security benefits (18 in most cases); purchase an air weapon (14) or be licensed to own a firearm (17); get married with parental consent (16) or without that consent (16 in Scotland, 18 elsewhere) or to a step-parent (21); join the armed forces (16) and be deployed to a combat zone (18); consent to sexual intercourse with a female if male (any age) or with a male if female or male (16 in Great Britain and 17 in Northern Ireland); purchase tobacco products, knives and national lottery tickets (16); drive a motorbike or moped (16) or a car (17) or an HGV under 7.5 tonnes (18) or an HGV over 7.5 tonnes or a PSV (21); go to an adult prison (17 on remand or 18 on conviction if a boy, much more confused if a girl); purchase alcohol products, place bets and vote (18); and stand for election to local authorities or the House of Commons (21).

6. These thresholds, not always logically related, reflect a tension in public policy between the restrictions we place on growing children, the responsibilities we invite them to exercise, and the protections we offer them. The Convention requires us to recognise that children are not merely recipients of adult protection, but holders of rights and, importantly, that those rights demand that children themselves are entitled to be heard in decisions relating to their protection, welfare and freedoms.¹⁰

7 The Convention was opened for signature in 1989, signed by the UK in April 1990 and ratified by the UK in December 1991. The only two UN member-states which have not ratified the Convention are Somalia and the USA.

8 The text of these is set out in Annex 1 to this report.

9 *ibid.*, Article 1.

10 Lansdown, Gerison, *Promoting Children's Participation in Democratic Decision-Making*, UNICEF Innocenti Research Centre, 2001 at 1, quoted by Cherie Booth QC in a lecture to the BIHR, January 2003.

Our Approach to the Inquiry

7. Our approach has been to take the recent Concluding Observations of the UN Committee on the Rights of the Child on the UK Government's second periodic report under the Convention on the Rights of the Child as our starting point, and to seek to address them systematically. We group our consideration of the UN Committee's Concluding Observations under the following headings—

- general, procedural and structural issues;
- children and the criminal justice system;
- health and welfare;
- education;
- care and protection;
- civil rights and freedoms.

8. In its Concluding Observations, the UN Committee expressed its concern—

... that the State party has not yet established an independent human rights institution for children in England.¹¹

In our recent report on *The Case for a Children's Commissioner for England*,¹² we set out our arguments for the establishment of an independent champion of children's rights—whether located within or alongside the human rights commission we have proposed in our Sixth Report of this Session.¹³ Throughout this report, we bear in mind the areas of Government activity in which a children's commissioner might be able to help ensure fuller compliance with the Convention on the Rights of the Child.

¹¹ See the Concluding Observations of the UN Committee on the Rights of the Child published on 4 October 2002 and printed as Annex 3 to this Report (hereafter "Annex 3"), para 16.

¹² Ninth Report, Session 2002–03, *The Case for a Children's Commissioner for England*, HL Paper 96/HC 666.

¹³ Sixth Report, Session 2002–03, *The Case for a Human Rights Commission*, HL Paper 67-I/HC 489-I.

2 General, Procedural and Structural Issues

The Reporting Process

9. Governments are required to submit a report to the UN Committee on the Rights of the Child every five years. The UK Government's second report was submitted in 1999, updated by a brief supplementary report in 2002.¹⁴ The UN Committee's Concluding Observations on the report, following its collection of further evidence, were issued on 4 October 2002.¹⁵

The 1999 Report and Supplement

10. The Government's 1999 report was criticised by some NGOs, and the UN Committee regretted that it did not follow its reporting guidelines, although it was not specific about how the report failed to do so.¹⁶ Although it is a serious effort to cover the ground, we agree that the Government's report is not an easy document to digest. It reads at times as either an agglomeration of data or a somewhat generalised commentary in which fact and opinion are insufficiently distinguished. Overall it gives the common reader little sense of how the information it provides relates to the principles of the Convention, or what the Government's strategic priorities for advancing children's rights are.

11. In June 2002, the Government submitted a supplementary report, updating the 1999 report.¹⁷ This provides a more concise and strategic assessment, though it does not claim to be comprehensive.

The 2008 Report

12. The UN Committee (presumably in the light of the delay in considering the 1999 report) has elided the requirement for the third and fourth periodic reports.¹⁸ The next UK report is therefore due in 2008. In a recommendation issued in May 2002, the Committee asked that future reports should be—

... concise, analytical and focusing on key implementation issues, and the length of which will not exceed 120 regular size pages; [and] aimed at: (a) ... informing the Committee on progress made on the enjoyment of human rights by children, factors and difficulties affecting the degree of fulfilment of obligations under the Convention, and measures taken to implement the Committee's concluding observations—by explicitly referring them—adopted with respect to the previous State party report and the ensuing dialogue; [and] (b)

¹⁴ The UK's first report was required to be made within two years of ratification, and was made in 1994.

¹⁵ See Annex 3.

¹⁶ See Annex 3, para 2.

¹⁷ See Annex 2.

¹⁸ See Annex 3, para 62.

informing the Committee on fundamental developments in the State party during the reporting period with regard to the human rights of children.¹⁹

13. We recommend that the UK's next periodic report under the UNCRC is structured to show—

- the general principles of Government policy and action in the UK related to each of the Articles of the Convention;
- a report on the activities relating to children's rights issues, separately, of each central government department together with relevant NDPBs and inspectorates related to each department, and each of the devolved administrations, and some effort to capture related activities at local government level;
- a specific response to each of the recommendations in the UN Committee's previous Concluding Observations; and
- a plan of strategic action in relation to children's rights for the coming five years, indicating measures of success against which implementation can be judged.

Listening to children

14. Article 12 of the Convention states—

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The contribution made to our inquiry by children and young people (six, aged between 10 and 16 gave oral evidence²⁰ and members of the Youth Parliament contributed questions for us to ask the Minister for Children and Young People) has influenced this report.²¹ The then Minister for Children and Young People, John Denham MP, described some of the initiatives the Government too has taken to consult children more widely when he gave evidence to us in November 2002—

... we have prioritised work ... around Article 12 of the UN Convention, the right to be heard. We have put in place over the last year a very substantial programme of work aimed at ensuring that central government encourages the participation of young people and consults much more widely and effectively with young people in the formation of policy that is going to affect young people ... my reflection on that would be ... that the right of young people to be heard is an area where there is a considerable amount of work to be done ...²²

¹⁹ CRC/C/118, 30th Session, May 2002.

²⁰ See Twenty-second Report from the Joint Committee on Human Rights, *The Case for a Human Rights Commission: Interim Report*, Session 2001–02, HL Paper 160/HC 1142, *op cit*, QQ 244–276.

²¹ We also took evidence from NGOs working in the field of children's rights and welfare, and from other representatives of public authorities delivering services to children. Some of this oral evidence was published with our Twenty-second Report of Session 2001–02 in September 2002.

²² Q 37

15. The Minister acknowledged that many of these initiatives were at an early stage of development, and that their impact so far was largely “symbolic”.²³ Nonetheless, we welcome these initiatives—there is value in symbols. However, one of our witnesses from an NGO commented on—

... the almost total lack of direct consultation and involvement of children and young people in the compilation of the [1999 periodic] report. Certainly in Northern Ireland there were no attempts by government to talk to children.²⁴

This view is contradicted to some extent by the account given in the Government’s report itself of the involvement of children in its preparation, although this emphasises indirect consultation via NGOs rather than direct participation by children themselves.²⁵ We hope this will be remedied in future as the result of the establishment of the Children and Young Persons Unit. However, we believe the fullest participation of children in the preparation of the next report is likely to be best advanced by the work of the commissioners for children and young people in Wales, Northern Ireland, and Scotland—and, we hope, in England. **We recommend that the UK Government’s next periodic report under the Convention on the Rights of the Child should be prepared with much fuller involvement of children and young people.**

Resources

16. Article 27 of the Convention enjoins states parties, in implementing “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development” to “provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing” in cases of need. In various other Articles states parties are enjoined to act against other forms of deprivation—to provide health, education, information, protection from unacceptable or hazardous work, and opportunities for recreation.²⁶ The UN Committee recommended that public spending analyses should identify separately all spending on children.²⁷ In measuring severe deprivation among children (from data available from many countries in the form of Demographic Health Surveys and Multiple Cluster Indicator Surveys) a recent UNICEF report has used 8 indicators—food, safe drinking water, sanitation facilities, health, shelter, education, information and access to services. In each case operational criteria have been used to distinguish severe and extreme deprivation from mild and moderate deprivation and thereby to produce scientifically reliable and comparable data. The method of measurement was designed for application to all countries.²⁸ In the UK clusters of material deprivation indicators have been considered as an option in measuring child poverty by the Department of Work and Pensions.²⁹ This is one basis for reaching conclusions about an appropriate income threshold or poverty line. **Separate identification of public expenditure on children in relation to education, school meals, residential care, and**

²³ Q 49

²⁴ Q 16

²⁵ Second Report to the UN Committee on the Rights of the Child by the United Kingdom 1999, Section 1.6.

²⁶ Articles 6, 13, 17, 24, 28, 31 and 32.

²⁷ See Annex 5, para 11.

²⁸ UNICEF: Child Rights and Child Poverty in Developing Countries, to be published, UNICEF, New York, 2002.

²⁹ Department for Work and Pension, *Measuring Child Poverty Consultation, Preliminary Conclusion*, May 2003

some areas of health care and social service provision, as well as child benefit and tax credits, is not impracticable. Collating and publishing such data more fully would allow a beginning to be made in tracking trends in expenditure on children which would inform an assessment of the impact of the implementation of the CRC as a whole. We recommend that objective data on progress towards the elimination of child poverty should be included in the next periodic report under the Convention.

Implementation and Dissemination

Co-ordination and plan of action

17. The Government's initial written response to the UN Committee's observations was brief,³⁰ though longer than the then Government's response to the UN Committee's 1995 observations.³¹ The Government is also to be congratulated on initiating a debate in Westminster Hall on the Convention, on 24 October 2002.³² The then Minister for Children and Young People told us that the Government was—

... not planning a [further] specific response to the observations of the Committee at this stage. We are intending that when we publish the overarching strategy for children in the new year that people should be able to read from that generally how we believe we are implementing the UN rights of the child ...³³

18. We therefore asked the Minister to what extent the Convention did act as a guiding principle in the Government's development of policy. He answered—

[The Convention] is not the only thing that we try to build policy upon, some of our own objectives such as poverty reduction I suspect come from the government's own priorities as much as from the UN Convention on the Rights of the Child, but certainly it is one of the documents that we would expect in developing the overarching strategy for us very much to have in mind and to see how well our strategy equips us to say that we are following the UN Convention.³⁴

19. It remains to be seen whether the Government's forthcoming overarching strategy provides an adequate response to the UN Committee's recommendation for a national plan of action on children's rights.³⁵ But we are heartened by the Minister for Children and Young People's assertion that—

30 See Annex 2.

31 "Baroness Williams of Crosby asked Her Majesty's Government: What response they have made to the United Nations report criticising government policy with regard to the rights and welfare of children. The Parliamentary Under-Secretary of State, Department of Health (Baroness Cumberlege): My Lords, there is no obligation under the United Nations Convention on the Rights of the Child for the United Kingdom Government to respond to the observations of the United Nations committee, and we have no plans to do so." [HL Deb., 2 March 1995, c 1577; se also HC Deb., 9 February 1995, c 370W].

32 HC Deb., 24 October 2002, cc 139WH–182WH. There has also been a short debate in the House of Lords, on a starred question asked by Baroness Massey of Darwen, HL Deb., 21 October 2002, cc 1061–1064.

33 Q 43

34 Q 44

35 See Annex 3, para 15.

The overarching strategy will take the Convention on the Rights of the Child as part of its framework and use the Convention's principles to inform all our future work with children.³⁶

We recommend that the Government's overarching strategy for children and young people includes specific reference to the rights, principles and provisions of the Convention, and explains how these underpin its goals.

Effect on the law and the courts

20. International treaties do not have direct application in UK law unless they have been made part of domestic law by statute. Like the other UN Conventions, the Convention on the Rights of the Child has not been incorporated directly into UK law. Thus the rules contained in the Convention are examples of "rules of imperfect obligation": that is rules that are obligatory (in international law) but breach of which does not attract the imposition of a formal sanction by a judicial body.³⁷ Nonetheless, they are matters which judges bear in mind when interpreting legislation or developing the common law. The way in which the courts can use the UNCRC at present are similar to some of the ways in which they were able to use the European Convention on Human Rights (ECHR) before the Human Rights Act incorporated it into our law.³⁸ These include—

- the courts assume that Parliament does not intend to legislate in a manner incompatible with the United Kingdom's international legal obligations, including those arising under human rights treaties. They therefore interpret legislation in a manner consistent with those obligations whenever possible, even if there is no obvious ambiguity in the legislation;³⁹
- in particular, where a statute was enacted to fulfil an international obligation, the courts will assume that it was intended to be effective for that purpose and will interpret the legislation accordingly;⁴⁰
- where the common law is uncertain or there is a gap in the law, courts try to make decisions in a manner compatible with international obligations;⁴¹
- where possible, courts exercise their discretion in a manner compatible with international obligations;⁴²
- when reviewing the exercise of discretion by public authorities, the courts subject decisions or acts which interfere with human rights under international treaties to specially anxious scrutiny. Such decisions or acts require particularly strong

36 HC Deb., 24 October 2002, c 145WH.

37 H. L. A. Hart, *The Concept of Law*.

38 Described, for example by Lord Bingham, HL Deb., 3 July 1996, cc. 1465–1467.

39 See e.g. *Garland v. British Rail Engineering Ltd.* [1983] 2 AC 751 at p. 771 per Lord Diplock; *Litster v. Forth Dry Dock & Engineering Co. Ltd.* [1990] 1 AC 546, HL.

40 See e.g. *R. (Mullen) v. Secretary of State for the Home Department*, Times, 31 Dec. 2002, CA, interpreting s. 133 of the Criminal Justice Act 1988 in the light of Art. 14.6 of the ICCPR. See e.g. *R. (Mullen) v. Secretary of State for the Home Department*, Times, 31 Dec. 2002, CA, interpreting s. 133 of the Criminal Justice Act 1988 in the light of Art. 14.6 of the ICCPR.

41 See e.g. *DPP v. Jones* [1999] 3 WLR 625, HL, at p. 634 per Lord Irvine of Lairg LC.

42 See e.g. *Rantzen v. Mirror Group Newspapers (1986) Ltd.* [1994] QB 670, CA.

justification if they are not to be regarded as irrational or disproportionate and, therefore, unlawful;⁴³

- courts regard people dealing with governmental bodies as having a legitimate expectation that, other things being equal, the Government will act in a manner consistent with the United Kingdom's international obligations. The Government can make it clear that it does not intend to be bound by its obligations in its domestic decision-making, but until it does so the courts are able to quash decisions which disappoint the claimant's legitimate expectation;⁴⁴
- when courts are required to decide what legal public policy demands, they regard it as being part of the legal public policy of this country that courts should give effect to clearly established rules of international law, and so they treat international obligations as an indication of public policy.⁴⁵
- in addition, under section 2 of the Human Rights Act, the courts are required to take account of the case-law of the European Court of Human Rights in determining any question relating to "Convention rights" as defined by the Human Rights Act.

Incorporation

21. In its Concluding Observations, noting the entry into force of the Human Rights Act 1998, the UN Committee on the Rights of the Child observed that it was—

... concerned that the provisions and principles of the Convention on the Rights of the Child—which are much broader than those contained in the European Convention—have not yet been incorporated into domestic law.⁴⁶

and it encouraged the Government—

... to incorporate into domestic law the rights, principles and provisions of the Convention to ensure compliance of all legislation with the Convention [and] a more widespread application of the provisions and principles of the Convention in legal and administrative proceedings ...⁴⁷

When we asked the then Minister for Children and Young People about the prospects of incorporation of the CRC into domestic law he commented—

... we are not looking to incorporate the Convention or, indeed, individual elements of it. It is really framed, virtually all of it, in very aspirational language and not in the sort of language that seems easy to put into primary legislation although I think it is possible to point to areas where legislation we have enacted is helping to enact the spirit of the Convention, for

43 *Bugdaycay v. Secretary of State for the Home Department* [1987] AC 514, HL; *R v. Ministry of Defence, ex parte Smith* [1996] AC 517; *R. v. Secretary of State for the Home Department, ex parte Simms* [2000] AC 115, HL; *R. v. Secretary of State for the Home Department, ex parte Venables and Thompson* [1998] AC 407, HL (in which the CRC was taken into consideration).

44 *R. v. Secretary of State for the Home Department, ex parte Ahmed and Patel* [1998] INLR 570, CA, approving and applying *Minister for Immigration and Ethnic Affairs v. Teoh* (1995) 183 183 CLR 273, HC of Australia.

45 *Oppenheimer v. Cattermole* [1976] AC 249, HL; *Blathwayt v. Baron Cawley* [1976] AC 397, HL; *Cheall v. Association of Professional Executive Clerical and Computer Staff* [1983] 1 QB 127, CA.

46 See Annex 3, para 8.

47 See Annex 3, para 9.

example the statutory guidance on listening to young people in schools which is part of last year's Education Act ...⁴⁸

22. We do not accept that the goal of incorporation of the Convention into UK law is unrealisable. We believe the Government should be careful not to dismiss all the provisions of the Convention on the Rights of the Child as purely "aspirational" and, despite the ways we have listed above in which the CRC is currently able to exert influence, we firmly believe that children will be better protected by incorporation of at least some of the rights, principles and provisions of the Convention into UK law.

23. In view of the general importance of this issue, we intend to examine further the possibilities for incorporation of the CRC and other unincorporated human rights instruments. We believe that the assent of Parliament to these rights and principles, which could be secured by incorporation, would be a positive step towards enlarging and reinforcing the "culture of respect for human rights" which we wish to see in the UK, as well as enhancing their democratic legitimacy.

Policy and legislation: Child Impact Assessments

24. For the present, and unless and until Government proposes and Parliament agrees to incorporate its provisions in domestic law, the Convention will be used by the courts in the way described above. It also has an important effect on the Government's legislative proposals and policy initiatives. We are not convinced, from the evidence that we have heard, that all corners of Government are sufficiently aware of the obligation under CRC Article 4 to—

undertake all appropriate legislative, administrative and other measures for implementation of the [Convention] rights [and] with regard to economic, social and cultural rights ... [to] undertake such measures to the maximum extent of their available resources...

25. The Convention should function as the source of a set of child-centred considerations to be used as yardsticks by all departments of Government when evaluating legislation and in policy-making, whether in respect of the progressive realisation of economic, social and cultural rights or in relation to guarantees of civil and political rights. We recommend, particularly in relation to policy-making, that Government demonstrate more conspicuously a recognition of its obligation to implement the rights under the Convention.

26. In relation to new legislation, the UN Committee was UN Committee was—

... concerned [about the lack of] any formal process to ensure that new legislation fully complies with the Convention. The [UN] Committee ... is concerned that the State party does not ensure compatibility of the legislation with the Convention throughout the State party.⁴⁹

48 Q 51

49 See Annex 3, para 8.

In course of our own legislative scrutiny work, this committee seeks to ensure that Parliament is made aware of issues of compatibility with the Convention,⁵⁰ and that, in making the law, the two Houses are able to make well-informed judgements about what weight to give to children's rights, measured against the internationally agreed principles, guarantees and goals of the CRC.⁵¹ Our own scrutiny, however, is limited to review of compatibility with the rights set out in the Convention. It does not amount to a comprehensive consideration of the impact of proposed legislation on children themselves, which the UN Committee felt was needed.⁵² The child impact analysis scheme initiated by the All Party Parliamentary Group for Children has produced a number of well-researched and considered assessments of the impact on children of proposed legislation.⁵³ They are reported as being—

... of particular value because of the relative invisibility of children and young people in the political process...⁵⁴

27. In this context, we asked the Minister for Children and Young People whether he saw any merit in introducing child impact assessments for Government Bills introduced to Parliament. He was cautiously negative in response, fearing that they would not—

... amount to much more than either a rather bureaucratic exercise or sometimes exercises in creative writing. I think the problem is not so much to say in principle you can do them but to make sure they mean something and change something as a result. I have not an issue of principle about having child impact assessments but a bit of scepticism about whether they would add as much to the process as people would like ... You can create a huge infrastructure for doing this without any great impact on policy. I have not got a closed mind on it but we need to be convinced that it would have the effect that we ... want.⁵⁵

Despite the Minister for Children and Young People's concerns, we note that legislation is subject to an assessment of its potential implications for public finance and public service manpower, a regulatory burden appraisal, and a human rights compliance assessment. We believe that the idea of child impact assessments throughout the UK deserves further thought. Their presence in the explanatory notes to a Bill would be a sign of the Government's genuine commitment to place the best interests of the child at the heart of policy. **We recommend that the Government consider incorporating child impact assessments in the explanatory notes to Government Bills.** Such assessments will depend

50 For a description of our approach to legislative scrutiny, see our Fourteenth Report of Session 2001–02, *Scrutiny of Bills: Private Members' Bills and Private Bills*, HL Paper 93/HC 674, paras 1 to 5; and see also our First, Eighth, Fourteenth, Sixteenth, Seventeenth, Eighteenth, Twentieth, Twenty-fourth, Twenty-fifth and Twenty-sixth reports of Session 2001–02.

51 We do not, however, scrutinise Bills before the Scottish Parliament or the Northern Ireland Legislative Assembly; nor do we examine the draft subordinate legislation to be made by the National Assembly for Wales. The Northern Ireland Assembly has the benefit of the advice of the Northern Ireland Human Rights Commission, and there is a proposal to establish a Commissioner for Children and Young People in Northern Ireland. The Scottish Parliament is proposing to establish a Scottish Human Rights Commission, and one of its proposed functions is to advise on legislation. There is also a proposal to establish a Commissioner for Children and Young People in Scotland. The National Assembly for Wales, in the particular area of children's rights, can call on the Children's Commissioner for Wales for advice.

52 See Annex 3, para 25.

53 Recent assessments have been produced on the Criminal Justice Bill and Licensing Bill.

54 *Child Impact Statements 1998/99: the next stage in child proofing UK Parliamentary Bills*, National Children's Bureau: 2000, edited by Lisa Payne.

55 QQ 51 & 52

on the extension and improvement of statistical indicators used in tracing, from time to time, the fulfilment or otherwise of the provisions of the Convention.

Current law and the UNCRC

28. We now turn to our consideration of the UN Committee's specific conclusions and recommendations. In this context we note that the UN Committee did not fully explain how far it had considered the extent to which existing laws, policies and administrative practices in the UK already offered protection against threats to children's full enjoyment of their rights which it had identified. To that extent, the UN Committee's own Concluding Observations mirror some of the faults it identified in the UK Government's periodic report.

29. For example, public authorities have responsibilities for combatting child poverty under a number of statutes (social security legislation, housing law, the Children Act 1989, the National Assistance Act 1948 and the Human Rights Act 1998), and at common law (which imposes a duty to support people who are destitute).⁵⁶ The significance of the UN Committee's comments on child poverty can be fully understood only in the light of the way in which the law is implemented, including how relevant financial and administrative policies and practices affect the practical benefit the law can confer on children who seek its protection. The same applies equally to other matters raised by the Committee, such as the protection of children against violence in the home, and such rights as life, liberty, physical integrity, due process, education and family life in the criminal justice and penal systems.

30. We have not attempted here to provide a full account of the effect of domestic law, policy and administrative practice on the matters raised by the UN Committee. However, these matters will have to be considered when concrete proposals for change are drawn up in response to the Concluding Observations of the UN Committee and in the Government's response to this report.

3 Children and the Criminal Justice System

Article 37

31. Article 37 of the Convention requires that—

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

32. We approach the question of the rights of children within the criminal justice system recognising that the prevention of crime, the reduction of the fear of crime and the tackling of the causes of crime, are legitimate and pressing social needs which any government has to address. A significant proportion of crimes are committed by young people and there is widespread public concern about young offenders.⁵⁷ Young people themselves are also particularly at risk from crime.⁵⁸

33. We also, however, approach this issue from a children's rights perspective. Kathy Evans of the Children's Society, reflecting the views of many of our witnesses, said—

... from the Children's Society point of view we would probably see the biggest children's human rights issue at the moment as being the treatment of children in the youth justice system and in the prison service in particular.⁵⁹

This view was confirmed by the UN Committee, which made more critical observations about children in the criminal justice system than in any other area. Though welcoming positive developments such as restorative justice, the UN Committee noted—

⁵⁷ 25% of "known offenders" are under 18 (Home Office, 1998) cited in *Tough Justice*, The Children's Society (2000), p 10.

⁵⁸ Howard League for Penal Reform, Citizenship & Crime Project, Youth Crime Survey 2000-02, 96% of young people reported having been a victim of crime; 50% stated that the crime took place at school; 61% feared being robbed in the street.

⁵⁹ Q 30

... with serious concern that the situation of children in conflict with the law has worsened since the consideration of the initial report.⁶⁰

34. We are therefore encouraged by the Government's statement that—

... reducing and preventing youth crime and delinquency, and reforming the youth justice system are a major part of the Government's effort to build safer communities and tackle social exclusion. The Crime and Disorder Act 1998 established preventing offending as the principal aim of the youth justice system.⁶¹

However, we concentrate in this section of our report on custodial arrangements for young offenders because of the widespread evidence that the human rights of this vulnerable group are insufficiently protected.⁶² First, we consider whether very young children should be involved in the criminal justice system at all.

The Age of Criminal Responsibility

35. The UN Committee was—

... particularly concerned that the age at which children enter the criminal justice system is low.⁶³

The age of criminal responsibility in the UK (10 in England, Wales and Northern Ireland, and 8 in Scotland) is the lowest in the European Union.⁶⁴ Article 3 of the Convention requires the best interests of the child to be a primary consideration in all actions taken by courts of law, administrative authorities or legislative bodies, which raises the question of how the age of criminal responsibility in the UK can be justified as being in a child's best interests. The Minister for Children and Young People argued—

... one of the things you can sometimes do through the criminal justice system is to ensure there is some sort of intervention in the young person's life, either what you do with them or what you may do with their parents, for example the implementation of the parenting order may follow from a case taken through the criminal justice system. I think it is very important to make sure that we have the ability to get effective preventive interventions in place and, on occasion, having the gateway through the criminal justice system can support you in doing that. It is not purely about the age at which punishment, if you like, kicks in, it can be the ability to take effective measures which may include sanctions but may well include supportive measures too.⁶⁵

60 See Annex 3, para 57.

61 See Annex 4.

62 The adverse conditions endured by children in custody have been the subject of a number of reports from the Howard League on Penal Reform, *Children in Prisons: Barred Rights* (2002), the Northern Ireland Human Rights Commission, *In Our Care: Promoting the Rights of Children in Custody*, March 2002, the Children's Rights Alliance for England, *Rethinking Child Imprisonment: A Report on Young Offender Institutions*, November 2002. the Prison Reform Trust, *Prison Overcrowding: The Inside Story* 2002 and the Children's Society *Tough Justice: Responding to Children in Trouble*, 2000.

63 See Annex 3, para 57.

64 The age of criminal responsibility in the other EU member states is as follows: Ireland, The Netherlands and Greece (12), France (13), Germany, Italy and Austria (14), Denmark, Finland and Sweden (15), Portugal and Spain (16), and Belgium and Luxembourg (18).

65 Q 70

36. We are not persuaded by the argument that criminalising children is the best route to rehabilitation. As the Children's Rights Alliance for England put it, responding directly to the Minister's comment—

The UK has a well-developed child welfare system that is more than capable of assessing and meeting the needs of children without them having to be charged or treated as criminals. The [JCHR] will be aware of the recent very critical joint report from eight Inspectorate and regulatory bodies into how well children are being safeguarded. Of the youth offending teams' work with children in prison, the report concludes, "the focus was almost exclusively upon the offending behaviour of the young people, and there was little evidence of welfare needs being considered and addressed." This should give a red signal to a government so intent on responding to children in trouble—especially the youngest ones —through the criminal justice system rather than through our child welfare system.⁶⁶

37. The UN Committee recommended that the UK raise the age of criminal responsibility "considerably". The case for the UK being so out of line with prevailing practice in Europe is difficult to understand or defend. Alternative methods of ensuring that children take responsibility for their actions need to be more thoroughly and openly explored, drawing on the positive lessons from reparation and referral orders and other recent restorative justice schemes for offenders commended by the UN Committee. It might also be an area where "listening to children" could pay dividends. The conclusions of the Howard League's survey in eight London comprehensive schools of young victims of crime were that—

The respondents felt that they are not listened to on issues of crime. They are seen as the offenders and not the victims ... [they] suggested [that] greater interaction between young people and the police and authorities would encourage young people to become part of the solution to crime and crime prevention ... yet they feel adults rarely listen to their suggestions about how crime could be prevented.⁶⁷

38. We also note, as did the UN Committee, that the Government has abolished the common law principle of *doli incapax* (the rebuttable presumption that children aged 10–13 years are incapable of criminal intent).⁶⁸ The effect of this has been described as follows—

This ... means that a 10-year-old child—still in primary school—is presumed to be as criminally responsible as a fully mature adult. This cannot be right.⁶⁹

In the light of the removal of this safeguard, we recommend that the Government review the effects of the low age of criminal responsibility on children and on crime. The criminalisation of young children has to be justified by very convincing evidence—it is not sufficient to assert that it is the best, or the only, way of diverting them from a future life of crime. Unless evidence of the effectiveness of the present age of criminal responsibility in reducing crime and disorder can be presented, and can be shown to be convincing, we conclude that to bring it more in line with our European neighbours would meet both the requirements of effective criminal justice and our duty under the UNCRC to

⁶⁶ CRAE, Ev 52–60.

⁶⁷ Howard League for Penal Reform, Citizenship & Crime Project, Youth Crime Survey Results, 2000-02.

⁶⁸ Crime and Disorder Act 1998. Section 34.

⁶⁹ The Children's Society, *Tough Justice: Responding to Children in Trouble*, 2000, p 5.

uphold children's human rights. We recommend that the age of criminal responsibility be increased to 12 years.

Children in Custody

As a measure of last resort?

39. UNCRC Article 37(b) requires that—

The ... detention or imprisonment of a child shall be ... used only as a measure of last resort and for the shortest appropriate period of time.

The numbers of children being locked up and rates of re-offending do not suggest that the Government's crime prevention strategy for young people is working.

- On 31 January 2003 there was a total of 2890 young people under 18 years old locked up in England and Wales. This is almost twice as many as ten years ago.
- The number of juveniles (15–17 year-olds) in prison in England and Wales increased by 24 per cent in the 12 months to November 2002.
- This increase in imprisonment has occurred during a period when recorded offending by children has been in decline.⁷⁰

It was not surprising therefore that the UN Committee expressed itself as—

... particularly concerned that more children between the ages of 12 and 14 are now being deprived of their liberty...

and

... deeply concerned at the high and increasing numbers of children in custody, at earlier ages for lesser offences, and for longer custodial sentence imposed by the recent increased court powers to give detention and training orders. Therefore, it is the concern of the Committee that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of Article 37(b) ...⁷¹

40. When we asked the Minister for Children and Young People about the use of detention and training orders he told us—

... the idea behind [them] ... is really to try to make sure that we bring a more structured approach into the education and training and supervision of young people than would happen normally in a traditional detention in a young offenders institution.⁷²

However, as the Chief Inspector of Prisons has observed, the detention period has to be used constructively if it is to be seen as an opportunity rather than simply a punishment—

70 Howard League for Penal Reform, *Children in Prison: Barred Rights*, 2002 p 3.

71 See Annex 3, para 57.

72 Q 77

It is becoming clear that a number of Magistrates are increasing the use of DTOs, and its offer of a period of time in custody. This is particularly true of the short 4 and 6 month sentence, of which only 2 or 3 months are spent in each phase. I suspect that one of the reasons is that they see it as an opportunity for [youth offending teams] to secure the re-engagement of children with mainstream services who, in many cases have abandoned them. This is a very short period of time in which to assess the needs of, treat and prepare for release of a juvenile...⁷³

41. The UN Committee welcomed—

... initiatives to introduce restorative justice and other constructive community based disposals for juvenile offenders ...⁷⁴

The Minister for Children and Young People told us—

We have been developing a range of alternatives to custodial sentences, including intensive supervision and surveillance orders, for example, which are designed to be an alternative to custody but also to deliver some of the support and the structured response to the needs of the young person which are needed. I think we have to recognise, though, that there are rights of other young people who have been the victims of crime who are rarely spoken about and rights of the wider community on occasion to be protected from young people who will otherwise be serious offenders or serious repeat offenders. I think if you look at our strategy overall you can see that the Youth Justice Board in particular has introduced a range of measures which are intended to give the courts alternatives to custody which they can use where appropriate.⁷⁵

We also welcome the Government's efforts to develop alternatives to custody for young offenders. Measures similar to community orders, which might provide the opportunity for young offenders to undergo periods of training and intensive supervision within particular public services could be a valuable development. The statistical evidence relating to the detention of children cannot be held to be consistent with a claim of compliance with the requirement of the Convention that this should be used as a measure of last resort. **We urge the Government to re-examine, with renewed urgency, sentencing policy and practice (and in particular the use of detention and training orders) and alternatives to custodial sentences, with the specific aim of reducing the number of young people entering custody and with a commitment to implementing Articles 37(b) and 40(4) of the Convention to the fullest extent possible.**

Treated in accordance with the needs of a person of his or her age?

42. UNCRC Article 37(c) requires that—

Every child deprived of liberty shall be treated ... in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall ... have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

73 HMIP report on Brinsford, May 2001, quoted in CRAE, *Rethinking Child Imprisonment*, p 16.

74 See Annex 3, para 57.

75 Q 75

Article 40(1) expands this obligation—

States parties recognize the right of every child [who has] infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Clearly there are cases where young people convicted of crimes must serve custodial sentences for reasons of public protection. But as the Children's Rights Alliance has put it—

What more worthwhile public service could the Government undertake than one that stops child criminals developing into adult criminals?⁷⁶

This common sense view is shared across the political divide. As the Minister for Children and Young People has said—

... while the Government have made it clear that we will not tolerate youth crime ... neither will we tolerate writing off young people and not working with them to ensure that they do not continue with a life of crime.⁷⁷

In his turn, the Conservative Party leader in his speech to his party's conference on 10 October 2002 said—

... crime is not a single act, it is a conveyor belt stretching right back to a child's early years at home. And we need to give young people every opportunity to opt out of a life of crime and to opt back into society.

Regrettably, however, re-offending rates are particularly high for young people emerging from custodial sentences. Over 84 per cent of male juveniles released from prison in 1997 re-offended within two years of release.⁷⁸

43. The UN Committee was “extremely concerned” at the “inadequate rehabilitative opportunities” in young offender institutions.⁷⁹ The Huntercombe Board of Visitors recently expressed concern about distances between the young persons’ homes and their places of custody. They commented—

This makes the resettlement effort and liaison with communities which will receive these lads almost impossible to deliver...⁸⁰

Research studies have shown that child imprisonment is generally counter-productive—

...more and more studies have demonstrated the tendency of these institutions to increase the reconviction rates of their ex-inmates, to evoke violence from previously non-violent

⁷⁶ *Rethinking Child Imprisonment*, *op cit.*, p 11

⁷⁷ HC Deb., 24 October 2002, c 142WH.

⁷⁸ *Prison Statistics England and Wales 2000*, Cm 5250 August 2000 quoted in CRAE *Rethinking Child Imprisonment*, p 8.

⁷⁹ See Annex 3, para 57.

⁸⁰ Information provided by the Prison Reform Trust.

people, to render ex-inmates virtually unemployable, to destroy family relationships and to put a potentially victimised citizenry at greater risk.⁸¹

When one considers the typical circumstances and life experiences of young people as they enter custody, coupled with the conditions prevailing within custodial institutions, the high rates of re-offending may appear to be almost inevitable. For all imprisoned children rehabilitation must be the primary function of the agencies with responsibility for them during their period of incarceration. This is what compliance with Article 29(1)(d) UNCRC (“the education of the child shall be directed to ...preparation ... for responsible life in a free society”) should mean as demonstrated in practice.

44. Children in detention are among the most vulnerable people in society and most in need of the protection of their human rights. The Government’s Social Exclusion Unit recently found that—

- nearly half have literacy and numeracy levels below those of an average 11 year old; over a quarter have literacy and numeracy levels of seven-year olds;
- over 50 % have been in care or involved with social services;
- two out of five girls and one out of four boys report suffering violence in the home;
- one in three girls and one in 20 boys report sexual abuse;
- around 85% show signs of a personality disorder;
- over half the girls and two-thirds of the boys had alcohol problems before entering prison.⁸²

In addition, significant numbers of juveniles in prison are parents. At present their needs and those of their children largely go unmet. They are often held a long way from their homes, making visits unlikely and the ability to exercise the right to family life difficult.

45. We share the concern of the UN Committee that rehabilitative opportunities in young offender institutions are inadequate to meet the requirements of Article 40.1 of the CRC. We recommend that the Government initiate a review of the range of rehabilitative opportunities available to those in young offender institutions.

Treated with humanity and respect?

46. Article 37(c) of the Convention requires that—

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person ...

It is not simply minimising the number of young people who lose their liberty, or the duration of their incarceration, that are central to the question of compliance with the Convention. There is abundant evidence that detention precipitates the loss of other

81 Pitts, J. *Working with Young Offenders* (1990) quoted in *Tough Justice*, op. cit., p 8.

82 Reducing re-offending by ex prisoners, July 2002 quoted in *Rethinking Child Imprisonment*, op cit., p 6.

fundamental rights. In this report, we have addressed only some of these rights (such as the right to life, the right not to suffer inhuman or degrading treatment and the right to an education). The loss of those rights seems to us likely to entrench alienation and inspire a commitment to a life outside the law.

Self-inflicted death and self-harm: the right to life

47. Article 6 of the CRC and Article 2 of the ECHR guarantee the right to life. This right is precarious for young people in custody. Between April 1998 and October 2002, thirteen boys aged 16 or 17 years old killed themselves in prison, all by hanging.⁸³ Between January 1998 and January 2002, there were 1,111 reported incidents of self-harm by children in young offender institutions.⁸⁴

48. We asked the then Minister for Children and Young People (who was also a Home Office Minister at that time) what was being done to address these problems. He told us—

We are implementing ... a three year strategy to reduce suicide and self harm which the Home Secretary announced in February 2001. That is being piloted at the moment in five institutions ... it includes better screening, better risk analysis, more support for the first night in accommodation and so on. More generally there are other strategies in place, including counselling, support groups [and] psychological supports ... The work that the YJB did with the prison service in 2001 looked specifically at juvenile self-harm and suicide. I understand that the recommendations for its report are being implemented now across the under 18 prison service.⁸⁵

In his supplementary note to us, the Minister for Children and Young People gave more details about implementation of the Safer Custody strategy including the provision of funding for new protection and prevention initiatives.⁸⁶

49. We welcome the work being undertaken by the Youth Justice Board but we share the “extreme concern” expressed by the UN Committee about the loss of life amongst children in custody. **We conclude that the right to life of vulnerable children could be still more adequately protected by the juvenile detention system. These deficits in the protection of this most fundamental human right should be addressed as a priority. We recommend that the Government, in its response to this report, set out the achievements of the safer custody strategy in reducing suicide and self-harm amongst juveniles in detention, and its strategy for the further elimination of these incidents.**

Assaults, injuries, control and restraint and segregation

50. The CRC requires that children in custody should be treated with humanity. The state is also required to protect all children from physical and psychological assault. Children in custody inhabit an environment of violence, and physical attack is frequent.

83 *ibid.* and information from the author.

84 *ibid.*, p 64.

85 Q 80

86 Memorandum from Rt Hon John Denham, Home Office, Ev 30.

- Young offender institutions experience the highest levels of assaults among prisoners, staff and others of all prisons in England and Wales. From 2001-2002, the five prisons with the highest assault rates all held young people, the worst being Ashfield (assault rate of 74 %).⁸⁷ In contrast, the Prison Service has a national Key Performance Indicator target for assaults of 9 per cent. This is also the average assault rate for adult male local prisons.⁸⁸
- 976 juveniles were held in segregation (typically solitary confinement) for more than a week between April 2000 and April 2002. Between April 2000 and January 2002, 3776 children were held in segregation cells at various times.⁸⁹
- Control and restraint (the use of a pain reliant system of physical restraint by staff) was used 3,615 times on children in prison between April 2000 and January 2002, resulting in recorded injuries to 296 juveniles, 5 of whom required outside hospital treatment for fractures or suspected fractures.⁹⁰

51. The UN Committee expressed itself as—

... particularly concerned at [these] recent figures ... [and] concerned at the frequent use of physical restraint [] in custody as well as at the placement of children in juvenile detention and in solitary confinement in prisons.⁹¹

and also—

... extremely concerned at the conditions that children experienced in detention and that children do not receive adequate protection or help in young offender institutions (for 15- to 17 year-olds), noting the very poor staff-child ratio, high levels of violence, bullying, ... the solitary confinement in inappropriate conditions for long time as a disciplinary measure or for protection.⁹²

In the same month that the UN Committee's observations were issued, a joint report by chief inspectors found that—

Young people in YOIs still face the gravest risks to their welfare, and this includes those children and young people who experience the greatest harm from bullying, intimidation and self-harming behaviour.⁹³

52. The level of physical assault and the degree of physical restraint experienced by children in detention in our view still represent unacceptable contraventions of UNCRC Articles 3, 6, 19 and 37. These statistics do not provide reassurance that the Prison Service is implementing fully its responsibilities to respect the rights of children in custody.

87 Incidents of assaults (as proven at an adjudication) are measured as a percentage of the prisoner population.

88 Prison Reform Trust, *Monitoring Prison Regimes*, August 2002.

89 Howard League for Penal Reform, *Barred Rights*, 2002 p 12.

90 *ibid.*, p 13.

91 See Annex 3, paras 33 and 34.

92 See Annex 3, para 57.

93 *Safeguarding Children*, joint report of chief inspectors of social services, health improvement, constabulary, CPS, magistrates' courts services, prisons and probation, October 2002, Conclusion 8.19, p. 72.

Application of the Children Act to children in custody

53. The High Court recently decided that the Children Act 1989 applies to children held in prison custody.⁹⁴ In his judgement, Mr Justice Munby said, in relation to the evidence he had heard—

[there] are things being done to children by the State—by all of us—in circumstances where the State appears to be failing, and in some instances failing very badly, in its duties to vulnerable and damaged children.

The judge went on to say that the Prison Service may also be breaching the Human Rights Act—

If it really be the case, as the Chief Inspector of Prisons appears to think, that there are YOIs which are simply not matching up to what the Children Act 1989 would otherwise require, if it really be the case that children are still being subjected to the degrading, offensive and totally unacceptable treatment described and excoriated by the Chief Inspector... then it can only be matter of time ... before an action is brought under the Human Rights Act 1998 by or on behalf of a child detained in a YOI and in circumstances where, to judge from what the Chief Inspector is saying, such an action will very likely succeed.

54. The Howard League and other organisations which supported the judicial review believed that the court's decision should mean—

... greater social services involvement in ensuring children in prison are treated humanely and that their welfare is safeguarded. We hope this involvement will end some of the worst aspects of imprisoning children—the use of solitary confinement and high levels of bullying and self-harm.⁹⁵

We note these organisations' concern that—

... because as a matter of law, the Children Act does not confer any duties directly on the Prison Service we have a nonsensical situation whereby social services have a statutory duty to safeguard the welfare of children in prison but the Prison Service does not. The Children Act needs urgent amendment and we hope to work constructively with the Government to achieve this.⁹⁶

55. In the light of the decision of the court that the Children Act applies to children in custody we recommend, in order to ensure that those with responsibility for children in custody will now treat these young people “in a manner which takes into account [their] needs” as required by UNCRC Article 37(c), the amendment of the Children Act at an early opportunity, to place this duty on the Prison Service, as well as local authorities, on a statutory footing. Measures must also be taken to make a reality of the obligation which has now been placed on social services.

94 R (on the Application of the Howard League for Penal Reform) v Secretary of State for the Home Department [2002] EWHC 2497 (Admin).

95 Howard League for Penal Reform, Press Release 12.11.02.

96 *ibid.*

The right to education

56. It is a matter of general agreement that the most effective route out of crime is through better education and training opportunities. The UN Committee, however, was—

... particularly concerned that children deprived of their liberty ... do not have a statutory right to education and that their education is not under the responsibility of the Departments responsible for education and that they do not enjoy support for special education needs.⁹⁷

There were 493 young people in custody under school leaving age last Autumn.⁹⁸ Research done by the Howard League reveals the general inadequacy of educational provision for young people in custody.⁹⁹ We asked the Minister for Children and Young People why educational provision for children in detention was so patchy, given the Government's commitment to the rehabilitation of young offenders into the mainstream of society. He told us—

I think we are a bit disappointed in this area that some of the changes we have made have not been picked up more widely. The responsibility for providing education for young people in custody has been transferred to the Prisoners Learning and Skills Unit which is part of the Department for Education and Skills and they fund the Youth Justice Board now to provide education. It is on the back of that the majority of juveniles in custody now have access to 15 hours of learning a week and that will increase to 30 hours a week by the end of March [2004].¹⁰⁰

57. The UN Committee recommended that the UK—

... ensure that children in detention have [an] equal statutory right to education ...¹⁰¹

We asked the Minister for Children and Young People what was the justification for offering no statutory right to education in young offender institutions, and how he reached the conclusion that this was a reasonable interpretation of compatibility with Articles 2, 28, 29(1)(a) and (d) of the CRC and Article 2 of the First Protocol to the ECHR taken together with Article 14. He argued—

I think we can demonstrate that irrespective of whether the law does or does not apply we are making moves in the right direction.¹⁰²

and added—

I do not think I will end up justifying a difference in practice on the basis of any principle.¹⁰³

58. Of particular concern is the position of young offenders with special educational needs. In the Howard League's recent report, based on visits to 13 establishments holding boys, they recounted finding—

97 See Annex 3, para 45.

98 Memorandum from Rt Hon John Denham, Home Office, Ev 29.

99 Howard League, *Missing the Grade: Education for Children in Prison*, 2001.

100 Q84 and Memorandum from Rt Hon John Denham, Home Office, Ev 29.

101 See Annex 3, para 46(d).

102 Q 79

103 Q 88

... boys with special educational needs, such as emotional and behavioural difficulties, were being placed in solitary confinement in prisons as a response to their behaviour.¹⁰⁴

We asked the Minister for Children and Young People for some indication of the Prison Service's commitment to both assessing and meeting these needs. He told us—

Special education needs are important. It is true that many offenders have learning difficulties or other disabilities and the DfES is developing a special educational needs policy in partnership with prisons and also juveniles in custody. I understand that special educational needs co-ordinators and learning support assistants with a ratio of one to ten are being appointed now in all young offender institutions which are caring for juveniles. I think there is progress in this area.¹⁰⁵

In his supplementary memorandum, the Minister for Children and Young People told us—

A recent Youth Justice Board audit of education provision in custody indicated that as many as 50% of all young people in custody would qualify as having special educational needs (SEN). However in only 1% of cases was there evidence that LEAs had made formal SEN statements.

59. We do not find the arguments presented by the Minister for Children and Young People against giving detained juveniles the same rights to education as other children persuasive—indeed we find them puzzlingly contradictory. He argues that such guarantees are unnecessary because the Government is doing all that is required. The same sorts of arguments were made against the application of the Children Act and the consequence was a judicial finding against the Government. We consider that the persistence of the Government's resistance to placing the educational rights of young offenders on a statutory footing is a contravention of the UK's international obligations. We conclude that voluntary educational provision in custodial settings is insufficient to comply with the equal right of all children and young people to education. **We recommend that, as a matter of urgency, the Government bring forward legislative proposals to provide children in custody with a statutory right to education and access to special needs provision equal to that enjoyed by all other children.**

Children in detention with adults

60. Article 37(c) of the Convention states—

... every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so ...

On ratification, the UK entered a reservation to this Article in the following terms—

Where at any time there is a lack of suitable accommodation or adequate facilities for a particular individual in any institution in which young offenders are detained, or where the mixing of adults and children is deemed to be mutually beneficial, the United Kingdom

104 *ibid.*

105 Q 84

reserves the right not to apply article 37 (c) in so far as those provisions require children who are detained to be accommodated separately from adults.

61. Adult prisons provide ‘overflow’ accommodation for male juveniles on an ad hoc basis but the main problem preventing full implementation of Article 37(c) is finding suitable accommodation for the increasing numbers of girls being given custodial sentences.¹⁰⁶ In March 1999, the then Home Secretary committed the Government to removing all under 18 year old girls from the prison system to local authority care by April 2000. This was not achieved. Instead, in April 2000 with the setting up of the Youth Justice Board, a deadline of March 2001 was set. This was not met. Between April 2001 and March 2002 the number of girls under 18 being remanded or sentenced to prison custody rose from 89 to 119. As the Children’s Rights Alliance points out—

The main difficulty for girls under 18 at present is that, because they are floating in some kind of unofficial limbo within the Prison Service, they are not receiving the benefits of reforms for under-18s brought about by the Youth Justice Board.¹⁰⁷

Following the critical report of the Chief Inspector of Prisons on Holloway Prison in February 2003, the Prison Service has recently restated its commitment to remove all girls under 17 from Prison Service accommodation during 2003.

62. We recommend that the Government reinforce its efforts to ensure there are sufficient suitable places under local authority care to allow the removal of all girls under 17 from prison custody into local authority secure accommodation by the end of 2003, and so enable the reservation relating to Article 37(c) of the Convention to be withdrawn.

Respecting the human rights of children in custody

63. What would a rights-based approach to children in custody be? The Children’s Rights Alliance for England offered a definition in its recent report,¹⁰⁸ from which we freely borrow in proposing the following set of principles—

- With the obvious exception of the right to liberty, children in custody should be entitled so far as possible to the same rights, services and safeguards that can be claimed by children who are not locked up.
- Such rights should be enshrined in primary legislation whenever possible.
- The enjoyment of their rights by children in custody should, so far as possible, be consistent regardless of where they are placed.
- Children in custody should know what their rights are.

¹⁰⁶ At the time of agreeing this report, the total number of 15 and 16 year-old boys in Young Offender Institutions was 908, in Secure Training Centres was 594, and in local authority secure children’s homes 134. The number of girls aged 16 in Young Offender Institutions was 116, and aged 17 was 104 (all figures for the Prison Service for England & Wales and for local authorities for England).

¹⁰⁷ *Rethinking Child Imprisonment*, *op cit*, p 32.

¹⁰⁸ *Rethinking Child Imprisonment*, *op cit*, p 13.

— Children in custody should have independent assistance in informing them of their rights and, where necessary, in enforcing their access to them.

64. In 1997, the then Chief Inspector of Prisons recommended that the Prison Service relinquish responsibility for children under the age of 18.¹⁰⁹ Since then changes have been made (notably the establishment of the Youth Justice Board) which have improved the situation of children in custody. But the evidence is that not enough has been done. The Howard League's conclusion in a report published in 2002 is that the—

... juvenile prison ... system ... is simply not designed, equipped or resourced to meet the welfare needs of young people.¹¹⁰

65. A number of campaigners have argued that children in custody should become the responsibility of an organisation entirely separate from the Prison Service and the Home Office. **We recommend that the Government revisit the idea of completely separating the organisation responsible for the custody of offenders under the age of 18 from the Prison Service. These young people should be looked after by a group of people whose outlook is firmly grounded in a culture of respect for children's human rights, devoted to rehabilitation and care.** As a starting point, the Government should also take steps to transfer responsibility for 15 and 16 year-olds in custody from the Prison Service to local authorities as soon as possible.

¹⁰⁹ *Young Prisoners: A Thematic Review.*

¹¹⁰ Howard League, *Children in Prison: Provision and Practice at Hollesley Bay*, 2002.

4 Health and Welfare

Child Poverty

66. The UN Committee recommended that the UK undertake “all the necessary measures to the ‘maximum extent of available resources’ to accelerate the elimination of child poverty”.¹¹¹ The Government’s response accepts “that the levels of child poverty in the UK are unacceptable”, and lists measures taken to “reverse the legacy we found when we came to office”. As discussed above (paragraph 16), alternative measures, including clusters of indicators of material deprivation, are under active consideration. The Government’s commitment to tackling child poverty is well-known and often restated.¹¹² As the UN Committee comments, it is likely to be poverty which most dramatically limits and compromises children’s enjoyment of the rights set out in the Convention, and that is the wider context in which the Government’s record in relation to the UNCRC should be assessed.

Children’s Mental Health

67. The recommendations of the UN Committee relating to the right to health¹¹³ seem to us to be best addressed in the context of the overall setting of priorities in the NHS—few of them appear to raise issues which are not the subject of current debate and/or action in the UK, including, for example, the promotion of breastfeeding and the reduction of teenage pregnancy. In relation to the UN Committee’s comment on the high rate of adolescent suicide, however, we recall that the President of the Royal College of Paediatrics and Child Health told us that—

... child and adolescent mental health services in this country are a total disgrace. There are many places where the waiting list is 18 months or more. If that were an adult service there would be a public outcry but this is just accepted as being the situation.¹¹⁴

Young Minds, a children’s mental health charity, also made similar points in their submission to us, particularly in relation to the deprivation of other rights that children suffer on being taken into the mental health services.¹¹⁵ We commented on some of these issues in our report last year on the Draft Mental Health Bill.¹¹⁶ In this context, we note the Minister for Children and Young People’s reply to the Westminster Hall debate on the Convention, when he drew attention to the announcement—

¹¹¹ See Annex 3, para 44.

¹¹² See for example HC Deb., 24 October 2002, cc 139WH to 141WH.

¹¹³ See Annex 3, paras 40 and 42.

¹¹⁴ Twenty-second report, *op cit*, Q 285 [Professor David Hall].

¹¹⁵ Young Minds, Ev 40–42.

¹¹⁶ Twenty-fifth Report from the Committee of Session 2001–02, *Draft Mental Health Bill*, HL paper 181/HC 1294, paras 18, 19, 28 and 80.

... of a significant expansion of child and adolescent mental health services during the next three years as a result of the spending review ... Mental health has been regarded by many ... as an area in which we did not do as much as we should have done for children ...¹¹⁷

We are certainly among those who welcome this announcement.

Female Genital Mutilation

68. In the light of evidence of the continuation of the practice of genital mutilation (FGM, sometimes termed female circumcision) of girls in the UK we consider that the UN Committee was right to remind the Government of its obligation under Article 19 of the Convention to take not only legislative, but also administrative, social and educational measures “ ... to protect the child from all forms of physical or mental violence, injury or abuse ... ” The physical pain, mental anguish, threat to life, harm to sexual and reproductive health and discriminatory nature of female genital mutilation makes it a grotesque violation of children’s rights.

69. We applaud the Department of Health’s funding to the organisation FORWARD for cross-discipline training to mobilise professionals from various disciplines to meet the needs of women and girls affected by FGM. However, it is widely alleged that FGM continues to be practised both within private hospitals in the UK and on girls sent from the UK to countries where the operation has not been outlawed. While exact figures are impossible to calculate, FORWARD estimates that currently 20,000 girls under the age of 16 who live in practising communities may be at risk in the UK.¹¹⁸ To date there have been no prosecutions relating to FGM in this country.

70. Ann Clwyd MP has presented a Private Member’s Bill to “restate and amend the law relating to female genital mutilation”, which received its Second Reading in the House of Commons on Friday 21 March.¹¹⁹ As well as restating the current law,¹²⁰ it makes extra-territorial provisions.¹²¹ But, as a report by the All Party Parliamentary Group on Population Development and Reproductive Health, based on hearings held in 2000, emphasised, “the adoption of legislation alone to ban FGM is not enough”. **We too stress the need for the Government to invest more energy into culturally sensitive, educative approaches for the effective eradication of this gross breach of the rights of young girls.**

¹¹⁷ HC Deb., 24 October 2002, c 179WH.

¹¹⁸ This estimate is from extrapolations from the Labour Force Survey 1999 based on their being eight practising communities in the UK.

¹¹⁹ Female Genital mutilation Bill, HC Bill 21, see HC Deb., 21 March 2003, cc 1190–1210.

¹²⁰ Prohibition of Female Circumcision Act 1985.

¹²¹ See Eighth Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 90/HC 634.

5 Education

School Exclusions

71. In its Concluding Observations the UN Committee stated that it was—

... concerned at the still high rate of temporary and permanent exclusions affecting mainly children from specific groups (ethnic minorities inter alia black children, Irish and Roma travellers, children with disabilities, asylum seekers etc.)...¹²²

and recommended that the Government—

... take appropriate measures to reduce temporary and permanent exclusions...¹²³

72. In our recent report on the case for a children's commissioner for England,¹²⁴ we noted that although the Government had begun to take measures to address the needs of permanently excluded children, the right to education guaranteed by Article 28 of the UNCRC was unlikely to be realised by children who suffer frequent temporary exclusion from school.

Bullying

73. We also noted in our report on the case for a commissioner that the UN Committee was "... concerned at the widespread bullying in schools".¹²⁵ In this context we welcomed the new initiative launched by the Government on 26 March 2003 to promote anti-bullying measures,¹²⁶ and expressed our hope that it would not suffer the fate of other anti-bullying initiatives, and fade after an initial burst of enthusiasm. We concluded that the persistence of the experience of mental and physical violence by children against children in our schools needs to be tackled with at least as much attention and vigour as has been given to the problems of adults within the workplace.

Education about Rights

74. We also noted in our report on the case for a commissioner that the UN Committee was—

... particularly concerned that, according to recent studies, most children are not aware of their rights included in the Convention.¹²⁷

We welcomed the introduction of the citizenship curriculum, but expressed some disappointment at the lack of prominence given within it to the UN Convention and about the nature of a "culture of respect for human rights" more generally. We welcome the

¹²² See Annex 3, para 45.

¹²³ See Annex 3, para 46(a).

¹²⁴ Ninth report, Session 2002–03, *The Case for a Children's Commissioner for England*, *op cit*.

¹²⁵ See Annex 3, Para 45.

¹²⁶ See DfES Press Notice 2003/0046 of 26 March 2003.

¹²⁷ See Annex 3, para 20.

recent announcement by the Children and Young People's Unit that it will be launching a website "for people to learn about children's rights and find out what the UK Government is doing to promote and protect them".¹²⁸ We concluded in our earlier report that an independent commissioner for children could make a significant difference to the work of teachers in seeking to ensure that all children are taught about their rights and the responsibilities that they entail.

Participation by Children in Decisions that affect them

75. We also noted in our report that the UN Committee was concerned that—

... there has been no consistent incorporation of the obligations of article 12 in legislation for examplein education ... school children are not systematically consulted in matters that affect them.¹²⁹

Since the UN Committee's report, the Government has made progress in implementing Article 12, particularly in education. The Department for Education and Skills has recently published a progress report on its Learning to Listen initiative which involves consultation with young people about a range of education issues.¹³⁰ However, in our earlier report, we concluded that the best means of developing these initiatives would be the establishment of a children's commissioner for England who, together with those in Northern Ireland, Scotland and Wales, could help children and young people make an appropriate contribution to consultation by public authorities, and could provide useful guidance to all levels of government and public services on the effectiveness of meaningful consultation with children and young people about decisions that affect them.

128 CYPU, call for information, 20 May 2003.

129 See Annex 3, para 29.

130 DfES Press Release, 21 May 2003.

6 Care and Protection

Violence against Children

76. The UN Committee expressed concern in its Concluding Observations about what it described as “growing levels of child neglect”.¹³¹ It did not provide evidence of a deteriorating situation in this regard. The report of Lord Laming’s inquiry into the death of Victoria Climbié, however, did draw attention to serious deficits in child protection services, and the Government is considering his recommendations. Its response should take into account the recommendations of the UN Committee as well.

77. In this context, it is worth recalling the words of the then Secretary of State for Health to the House of Commons when presenting Lord Laming’s report—

Time after time, Kouao [Victoria’s murderer] was interviewed and spoken to. Her needs were assessed and she had frequent and continual meetings with social care staff and other staff in the caring professions. It is noticeable that at virtually no point did anyone bother to ask Victoria what was happening to her.¹³²

Listening to children is not just about public consultation—it is about the everyday work of our public services as well. It can sometimes be a matter of life or death.

78. The UN Committee noted that crimes committed against children below the age of 16 years are not separately recorded.¹³³ The Minister for Children and Young People conceded—

We certainly need to do more to capture statistics about young people as victims of crime ... although crimes are recorded by the police, whatever the age of the victim, they are not recorded by age ... In time we will be able to do that but I have not got a deadline for it. The second problem we have is crime survey ... where individuals are asked about their experience of crime. That ... has only been 16 upwards. We are doing a one-off extension of that initially which will capture 10–15 year olds ... and we should have the results next year.¹³⁴

79. We welcome these developments, but **we recommend that the Government systematically collect and analyse representative data on violence against children, including data collected from children themselves, which should seek to include: the age and sex of the child, the nature of the violence, by whom it was allegedly committed, whether a prosecution was initiated and if so what the outcome was.**

80. Anticipating our discussion below of the defence of “reasonable chastisement”, we note that records are simply not available to ascertain the extent to which the defence of reasonable chastisement has either been invoked in cases of severe physical assault on children or against charges relating to a “loving smack”. In a debate in Westminster Hall on youth policy on 23 January 2003, the Minister for Health stated that the Attorney

¹³¹ See Annex 3, para 37.

¹³² HC Deb., 28 January 2003, c 744.

¹³³ See Annex 3, para 37.

¹³⁴ Q 99

General was keeping the defence “under review”.¹³⁵ In order to provide the evidence required to assess the strength of the arguments for and against retaining the defence of reasonable chastisement **we recommend that statistics record whether the defence of reasonable chastisement was invoked in cases of violence against children brought to the courts.**

The Reservation to the Convention relating to Immigration and Nationality

81. The UN Committee reiterated in its Concluding Observations its previous request that the Government review its reservation relating to Article 22 of the Convention with a view to withdrawing it.¹³⁶ It made a number of other recommendations relating to the treatment of children within the immigration and asylum system.¹³⁷ Article 22 of the Convention provides that—

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status—shall, whether unaccompanied or accompanied—receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights [under the Convention].

On ratification of the Convention, the Government entered the following reservation—

The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under [UK] law to enter and remain in the UK, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.

82. Article 51.2 requires reservations to be compatible with the object and purpose of the Convention. The Government has argued that the reservation is necessary to preserve the integrity of the immigration laws, by making it clear—

... that nothing in the CRC is to be interpreted as creating further legal obligations in respect of those subject to immigration control or to allow entry to be gained to the United Kingdom simply in order to make use of rights under the CRC.¹³⁸

In a report last Session on the Nationality, Immigration and Asylum Bill, we expressed our doubts that a reservation as wide as that which the United Kingdom maintains is necessary for those purposes, or that it is compatible with the object and purpose of the CRC.¹³⁹ The UN Committee echoed our doubts—

... the Committee remains concerned that the State party does not intend to withdraw its wide-ranging reservation on immigration and citizenship, which is against the object and purpose of the Convention.¹⁴⁰

¹³⁵ HC Deb., 23 January 2003, c 161WH.

¹³⁶ See Annex 3, para 7.

¹³⁷ *Ibid.*, para 48.

¹³⁸ Home Office memorandum, Seventeenth Report of the Joint Committee on Human Rights, Session 2001-02, *Nationality, Immigration and Asylum Bill*, HL Paper 132/HC 961, Ev 3, para 13.

¹³⁹ Seventeenth Report of 2001-02, paras. 17, 46-51.

¹⁴⁰ See Annex 3, para 6.

83. In its written response to the UN Committee the Government did not answer these criticisms directly but stated that the reservation—

... is justified in the interests of effective immigration control ... notwithstanding the Reservation, there are sufficient social and legal mechanisms in place to ensure that children receive a generous level of protection and care whilst they are in the UK.¹⁴¹

84. We probed the Government's grounds for continuing to insist on the necessity of the reservation in evidence with the Minister for Children and Young People. He told us—

The feeling in layman's terms rather than legal terms is that if we did not have the reservation and were the Convention to be given perhaps greater weight in law or in court judgments than it has been given so far in the court cases you could end up with a position where an unaccompanied young asylum seeker who gets to this country is able to say under the Convention, "You should not be able to apply any asylum legislation to me because you are looking at me as a child under the Convention", and, further than that, because of the rights of the Convention for a child to be re-united with its parents their parents would also have the right to come to this country. The difficulty is to see how that would be compatible with running any type of asylum or immigration system at all. It is for the reason of the concern that at some point in the future the Convention could be interpreted that way that the Government has entered its reservation and has re-considered it within the last year and decided that the reservation should still stand.¹⁴²

The Government's elucidation of its reasons for maintaining the reservation increases rather than diminishes our doubts about its validity. In a response to comments in one of our reports on the Nationality, Immigration and Asylum Bill,¹⁴³ we received a letter from the Home Office Minister, Lord Filkin, which argued—

The UK acceded to the UNCRC on the basis of reservations, including the immigration and nationality reservation. This was necessary to preserve the integrity of immigration laws and procedures in the UK and because we did not want entry to be gained by those simply wishing to make use of UNCRC Rights and with no other justification to come to the UK ... However, this does not prevent the UK from having regard to the UNCRC in its care and treatment of children. Moreover, the basic human rights of children are protected under the Human Rights Act, which applies to all children in the UK without exception ... The Government remains of the opinion that the Reservation is justified in the interests of effective immigration control. The UK is not complacent and does take its international obligations seriously.¹⁴⁴

The Government could simply qualify the reservation to make the primacy of its domestic law clear, if it really has this concern, though we note that the right to family reunion, in any event, is discretionary. In his letter, Lord Filkin also said—

¹⁴¹ See Annex 4.

¹⁴² Q 117

¹⁴³ Seventeenth Report, Session 2001–02, *Nationality, Immigration and Asylum Bill*, HL Paper 132, HC 961, pp 18–19 paras 46–51; Twenty-third Report, Session 2001–02, *Nationality, Immigration and Asylum Bill: Further Report*, HL Paper 176, HC 1255, pp 12–13, paras 27–28.

¹⁴⁴ Twenty-first Report, Session 2001–02, *Scrutiny of Bills: Further Progress Report*, HL Paper 159/HC 1141, Ev 2.

The UNCRC is not binding on the UK in so far as a matter falls within the reservation, and there is therefore no requirement to make the best interests of the child a primary consideration or to adhere to any other principles set out in it.¹⁴⁵

This claim that the Convention can be entirely disappiled in relation to refugee and asylum seeking children is clearly incompatible with its object and purpose, and is inconsistent with the Government's own stated intentions. But it does point to what we perceive as the fundamental flaw in the reservation, which encourages us to support the recommendation of the UN Committee. Article 22 is widely drawn to ensure that while such children are in the UK they receive "appropriate protection and humanitarian assistance" in the enjoyment of CRC rights. The reservation *appears* to deny such protection to this vulnerable group of children when they particularly need it for the period that they are present in this jurisdiction. The protection is then, in the Government's argument, offered as an act of charity, rather than a right.

85. We do not find this justifiable. The UN Committee raised a number of concerns about the treatment of these children, which would appear to counter the Government's claims that they enjoy sufficient protection already. These included concerns about detention, dispersal and access to health care and education.¹⁴⁶ We have already reported on our concerns about the segregated education scheme introduced by the Nationality, Immigration and Asylum Act.

86. Evidence available from non-governmental organisations amplified these deprivations, many of which have subsisted since the Human Rights Act came into force. Save the Children noted—

Too often, these vulnerable young people are placed in inappropriate accommodation—given only local authority vouchers for subsistence, and not even assigned a social worker to advise and support them. The Audit Commission found that more than half of unaccompanied minors aged over 16 and 12 per cent of those under 16 were living in bed and breakfast hostels and hotel annexes.¹⁴⁷

The Children's Rights Alliance for England drew our attention to the scale of the problem—

In 2001, 3,356 children claimed asylum in the UK with their families. In addition, 3,469 children aged 17 or under claimed asylum on their own ... At the end of 2000 there were over 5,000 unaccompanied minors living in England ... it is estimated that at any one time around 300 young asylum seekers are detained [in prison]...¹⁴⁸

The Refugee Council alerted us to—

... growing evidence that a significant number of refugee children are trafficked into the UK prior to commencing an exploitative working relationship with a third party. It remains a challenge to instigate child protection procedures in such cases and we have yet to systematically develop procedures for supporting and protecting these children—the state

¹⁴⁵ Twenty-first Report, Session 2001B02, *Scrutiny of Bills: Further Progress Report*, HL Paper 159/HC 1141, Ev 2.

¹⁴⁶ See Annex 3, para 47.

¹⁴⁷ Save the Children, Briefing November 2001.

¹⁴⁸ Children's Rights Alliance for England, Ev 52–60.

still seems to have difficulty in perceiving trafficked children as victims rather than perpetrators of crime.¹⁴⁹

and, in relation to the right to a fair hearing—

An unaccompanied child who appeals against a refusal of asylum is liable to find themselves before an appeal hearing. The safeguards that would normally exist in other court settings for children, whether they are in family proceedings or a juvenile court are not in place in immigration appeal hearings.¹⁵⁰

There is not necessarily a direct causal link between the reservation and discriminatory treatment and sexual exploitation of asylum seeking children. We are concerned, however, that the existence of the reservation could appear to legitimise unequal treatment of these vulnerable children both by central government and local service providers.

87. We remain unconvinced by the Government's defence of its position in relation to the reservation to the CRC relating to refugee children. We think that the fear of the CRC compelling the acceptance of children and their families without regard to their entitlement under the Refugee Convention is far-fetched. In any case, it seems to us that the reservation is far wider than necessary to protect against that risk—and it provides cover for a different range of deprivations. We recommend that the Government demonstrate its commitment to the equal treatment of all children by withdrawing the reservation to the Convention on the Rights of the Child relating to immigration and nationality.

Children and Armed Conflict

88. The UN Committee recommended that the UK ratify the Optional Protocol to the Convention on Children in Armed Conflict.¹⁵¹ In its response the Government reaffirmed its commitment to the principles of the Protocol and indicated that the process of ratification was beginning. The relevant substantive provisions of the Protocol are—

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities ... States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces ... recognizing that under the Convention persons under the age of 18 years are entitled to special protection ... States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that: (a) such recruitment is genuinely voluntary; (b) such recruitment is carried out with the informed consent of the person's parents or legal guardians; (c) such persons are fully informed of the duties involved in such military service ...

We asked the Ministry of Defence for a memorandum on its implementation plans following ratification of the Protocol.¹⁵² These were set out clearly, but we note the 'exceptional instances' cited in the UK's Declaration made on signing the Protocol—

¹⁴⁹ Refugee Council Children's Section, Ev 68–69.

¹⁵⁰ *ibid.*

¹⁵¹ See Annex 3, para 52.

¹⁵² Ev 31–32.

The United Kingdom will take all feasible measures to ensure that members of their Armed Forces who have not yet attained the age of 18 years old do not take a direct part in hostilities. However, the United Kingdom understands that Article 1 of the Protocol would not exclude the deployment of members of the Armed Forces under the age of 18 to take a direct part in hostilities where:

- there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and
- by reason of the nature and urgency of the situation:
 - it is not practicable to withdraw such persons before deployment, or
 - to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and or the safety of other personnel.

Of these two conditions, only the second seems to us to be a compelling reason for allowing under 18s into combat zones, and we express the view that the words “not practicable” should be interpreted to mean “impossible”. **We welcome the Government’s decision to ratify the Optional Protocol on Children in Armed Conflict, but are concerned at the extent to which the commitment to keep under-18s in the Armed Forces out of combat zones is undermined by the terms of the Declaration made on signature.¹⁵³**

Sexual Exploitation

89. Article 34 of the Convention obliges states to “take all appropriate measures to protect the child from all forms of sexual exploitation”. There can be little doubt that the eradication of such activities should be a high priority for the law enforcement agencies. The UN Committee recommends that the Government should ensure that—

... adequate resources (human and financial) are allocated to policies and programmes in this area.¹⁵⁴

We asked the Minister for Children and Young People about the priority to be given to child protection in the first national policing plan to be made under the Police Reform Act. He assured us—

It will certainly address the issue of child protection. The National Policing Plan is not that specific about detailed elements and strategies to tackle the whole range of different crimes. It has to be a manageable document, but certainly the issue of child protection and the responsibilities that the police have in that area will be included in the National Policing Plan.¹⁵⁵

The plan was published on the following day. It contains a requirement that local plans address child protection issues, including co-ordination with other agencies and staff

¹⁵³ We welcome, however, the Government’s confirmation in March that no under-18s were then deployed to the conflict in Iraq (HC Deb., 5 March 2003, c 1054W).

¹⁵⁴ See Annex 3, para 56.

¹⁵⁵ Q 101

selection and training.¹⁵⁶ We would expect that its inclusion in the national policing plan will enable child protection to compete more successfully for resources within local policing budgets. We recommend that in its response to this report the Government set out its assessment of the extent to which this has happened, and how it intends to monitor the resources devoted to child protection in the future.

90. The UN Committee also recommends that the Government—

... review its legislation [so as] not to criminalise children who are sexually exploited ...¹⁵⁷

Although the Government's White Paper on sexual offences addressed some connected issues in a positive spirit, it did not appear directly to address this point. As we noted recently in our Seventh Report,¹⁵⁸ there are circumstances in which the Sexual Offences Bill would criminalise consensual sexual touching between young people. In the context of our earlier discussion of children and the criminal justice system, we note that this is an example of the Government not only maintaining a relatively low age of criminal responsibility but also extending the contexts in which children may be defined as criminal. **We would welcome information from the Government about its response to the UN Committee's recommendation, and its view of the circumstances in which it is proper to penalise children and young people for sexual activity more generally.**

91. We are pleased to note, in connection with the UN Committee's recommendation that the UK ratify the Optional Protocol on the sale of children, child prostitution and child pornography,¹⁵⁹ that the Minister for Children and Young People stated on 24 October that—

We intend to ratify the convention, and we will be in a position to do so when we have found a way to ensure that our laws cover internal child trafficking as well as the external trafficking that will soon be so covered.¹⁶⁰

On 18 November the Minister for Children and Young People told us—

... we have [not] yet found the parliamentary opportunity to [close] some of the major gaps that were there in legislation and we are not fully able to comply but it is an important issue for us.¹⁶¹

We look forward to early legislative action and strongly support the signing and ratification of the Optional Protocol on the sale of children, child prostitution and child pornography by the UK.

¹⁵⁶ *The National Policing Plan 2003–2006*, Home Office/TSO, November 2002, pp 17–18.

¹⁵⁷ See Annex 3, para 56.

¹⁵⁸ Seventh Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 74/HC 547, p 14, para 40.

¹⁵⁹ See Annex 3, para 60.

¹⁶⁰ HC Deb., 24 October 2002, c 182WH.

¹⁶¹ Q 100

7 Civil Rights and Freedoms

Right to establish the Identity of a Parent

92. The recommendation of the UN Committee that—

...the State party undertake all necessary measures to allow children, irrespective of the circumstances of their birth, or adoptive children, to obtain information on the identity of their parents as far as possible.¹⁶²

is a complex issue. The UK made a Declaration, on ratification of the Covenant, that it interpreted—

... the references in the Convention to ‘parents’ to mean only those persons who, as a matter of national law, are treated as parents. This includes cases where the law regards a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent.

Some of the UN Committee’s concerns have been addressed by the Adoption and Children Act 2002, which established detailed arrangements for deciding when adopted children (when they become adults) will be able to obtain information about their backgrounds and birth parents and families, taking account of the need to balance the right of the adopted person to information as an aspect of his or her right to respect for private and family life with the right of birth parents and others to confidentiality. That Act also establishes for the first time that an unmarried or same-sex couple may jointly adopt a child and provides that the adopted person is to be treated in law as if born as the child of the adopters.¹⁶³

93. In relation to information about the background of children born by assisted fertilisation techniques, the UN Committee does not distinguish in its observations between such circumstances and the situation of adopted children and children born out of wedlock. We consider that the giving of the right to know the identity of their “parents” to children conceived by such techniques needs very careful consideration, and will involve a complex and delicate balancing of competing rights and needs. Following a consultation exercise, the Government announced on 25 January 2003 that it proposed—

... to lay regulations before Parliament, so that people conceived as a result of sperm, egg or embryo donation will be able to obtain more information about their donors in the future. The information will not identify the donors. We hope that donor-conceived people are all part of loving families but we also understand that at some point in their lives they may decide they want to know more about their genetic origins and we think it is right that they should be able to ask for non-identifying information. We propose that the regulations enable the Human Fertilisation and Embryology Authority (HFEA) to provide non-identifying information about donors to donor-conceived people aged 18 or over who request that information and who were born after the HFEA’s register came into effect in 1991. In practice the information would be available from 2010 (eighteen years after the register came into operation). To enable standardised information to be available in the

¹⁶² See Annex 3, para 32.

¹⁶³ Adoption and Children Act 2002, ss. 77 and 79– 81 and Sch. 1.

future, we will seek approval for the regulations to require the HFEA to collect standardised non-identifying information with immediate effect. We will also explore the possibility of setting up a pilot scheme for a voluntary contact register for donor-conceived people aged 18 and over.

We consider that this is an appropriate and proportionate resolution of the issue. However, we note with some regret that no reference was made to meeting obligations under the CRC in this announcement.

“Reasonable Chastisement”

94. In its Concluding Observations the UN Committee said that it deeply regretted—

... that the State party persists in retaining the defence of “reasonable chastisement” and has taken no significant action towards prohibiting all corporal punishment of children in the family ... governmental proposals to limit rather than to remove the “reasonable chastisement” defence do not comply with the principles and provisions of the Convention ... since they constitute a serious violation of the dignity of the child. Moreover, they suggest that some forms of corporal punishment are acceptable and therefore undermine educational measures to promote positive and non-violent discipline.¹⁶⁴

In 1995, the UN Committee had also commented that—

The imprecise nature of the expression of reasonable chastisement ... may pave the way for it to be interpreted in a subjective and arbitrary manner ...¹⁶⁵

In this section of the report we consider, in that context, whether the current statutory position in the UK confers adequate protection against potential breaches of Article 19 of the Convention, which provides that—

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The defence of “reasonable chastisement”

95. UK law provides a legal defence for parents (and, currently, some other carers with parental authority)¹⁶⁶ physically to punish a child. The common law defence of reasonable

164 See Annex 3, para 35.

165 See Annex 6, para 16.

166 The DfES announced on 6 May 2003 that with effect from September 2003 the National Standards for Under Eights Childminding and Day Care would be revised to forbid smacking by childminders regardless of parental consent.

chastisement¹⁶⁷ is statutorily confirmed by Section 1(7) of the Children and Young Persons Act 1933—

Nothing in this section shall be construed as affecting the right of any parent, or (subject to section 548 of the Education Act 1996) any other person, having the lawful control or charge of a child or young person to administer punishment to him.

96. The Law Commission has recently published a consultative report about changes to those parts of section 1 which deal with non-accidental death and serious injury to children but does not deal with the relatively minor forms of injury usually occasioned by corporal punishment.¹⁶⁸ We, here, examine the effect of section 1 on corporal punishment as a separate issue. There is no defence in UK law that a “reasonable” degree of physical assault on adults is permissible. In maintaining this statutory and common law distinction between the rights of children and adults, the UK differs from the current situation in many of our European neighbours.¹⁶⁹ And a wide range of international opinion does not accept that the continuance of the statutory defence of reasonable chastisement is compatible with the UK’s international obligations—not only with Article 19 of the CRC but also with the child’s right to equal treatment under the law.

97. The Government has recognised this problem. In January 2000, following the adverse judgement in the European Court of Human Rights in the case of A v UK,¹⁷⁰ it launched a consultation on the replacement or limiting of the defence of reasonable chastisement.¹⁷¹ In November 2001, the Minister for Health announced that following the consultation, the Government did not believe—

...that any further change to the law at this time would be appropriate—it would neither command widespread support nor be capable of enforcement.¹⁷²

Does the defence adequately protect children?

98. The Government’s position is that—

The law only allows what is reasonable in terms of the physical punishment of children—it does not permit child abuse.¹⁷³

The Minister for Children and Young People enlarged on this argument in his oral evidence—

... the sort of mild smack that most parents have in mind if they are talking about smacking their children is not ... in the same category as the person who is ... beating up their children. I think it is quite important that we do not ... lump this in as all being indistinguishable

¹⁶⁷ R v. Hopley (1860) per Cockburn CJ.

¹⁶⁸ Law Commission No. 279, *Children: Their Non-Accidental Death or Serious Injury (Criminal Trials): A Consultative Report*.

¹⁶⁹ Other countries that have abolished the physical punishment of children include Sweden, Italy, Austria, Croatia, Cyprus, Denmark, Finland, Germany, Latvia, Norway and Israel.

¹⁷⁰ The judgement related to ECHR Article 3, not CRC Article 19.

¹⁷¹ In line with an undertaking given in Strasbourg in response to the judgement . In Scotland, the equivalent provision to s 1(7) of the Children and Young Persons Act 1933 (s 12(7) of the Children and Young Persons (Scotland) Act 1937) has been replaced by s 51 of the Criminal Justice (Scotland) Act 2003.

¹⁷² Department of Health Press Release 2001/0524, 5 November 2001.

¹⁷³ See Annex 4.

violence and therefore all bad in the same category because I think we lose contact then with the common sense of most people in the world outside ...¹⁷⁴

99. There is evidence, however, that “reasonable” is interpreted by juries and the courts to cover a range of behaviour that many people would consider went beyond a “loving smack”. Although there are no official statistics, the Children’s Rights Alliance for England cited recent cases drawn from newspaper reports—

A father was cleared of assault in a Skye court by a Sheriff who said he considered the father’s actions “wholly justifiable”. The man was charged after striking his 12 year-old daughter in the face, causing it to swell and making it difficult for her to move and open her jaw. The father took her to hospital where the doctor who examined her was so worried by the father’s attitude he called the police. The father ... told the court that he had “measured” the blow: “I did it for her own good. I used to play rugby. I know how to take a man’s head off. I hit her with the back of my hand. It was a small slap.” (Sunday Mail, April 8 2001)

... A judge ordered the jury to find a stepfather not guilty on three counts of cruelty. He had admitted “smacking and tapping” his three children aged nine, six and five to discipline them ... using a wooden spoon and a slipper. (Daily Mail, November 24 2001)

... A stepfather was acquitted after admitting slapping his ten-year old stepson twice across the cheek, causing bruising, for stealing from his teacher. The man admitted he slapped him out of frustration and with hindsight may have used too much force but pleaded not guilty on the grounds of reasonable chastisement. (Bath Chronicle, October 20 2000)¹⁷⁵

100. The defence of reasonable chastisement has also been found to be compatible with the Human Rights Act in cases where it is certainly appears to be at least debatable whether the level of chastisement was “reasonable”—

A judge was to hear a case in which a father admitted using a belt causing bruising when he punished his four year-old son for refusing to write his name. The father indicated his intention to use the common law defence of “reasonable chastisement”. The judge was concerned that the “A v UK” judgment and implementation of the Human Rights Act could make use of the defence inappropriate. The case was referred for direction to the Court of Appeal (Criminal Division) [which held] that parents and other carers retained use of the defence and that courts should take account of certain factors in determining whether punishment was “reasonable”: the nature and context of the defendant’s behaviour, its duration, its physical and mental consequences in relation to the child, the age and personal characteristics of the child and the reasons given by the defendant for administering punishment. At trial, the father invoked the defence and was acquitted.¹⁷⁶

It is perhaps cases like these that have led to the Committee of Ministers of the Council of Europe, at its February 2003 meeting, to conclude—

In view of recent case-law evidencing a continuing high degree of tolerance in respect of what violence constitutes “reasonable chastisement” ... and the Government’s undertaking before the Court [in *A v UK*], several Delegations and the Secretariat expressed that, apart from the measures already announced, legislative changes would be needed in this case. The

¹⁷⁴ Q 97

¹⁷⁵ CRAE, Ev 52–60.

¹⁷⁶ Peter Newell Ev referring to R v H, Court of Appeal, Criminal Division, judgment April 25 2001; reported in *The Times* May 17 2001.

Committee has asked to be kept informed of any new development in particular as regards legislative change.¹⁷⁷

101. In oral evidence, the Director of the NSPCC also raised the issue of the difficulty of interpretation, echoing the concerns of the UN Committee—

The fact that people occasionally smack their children does not lead automatically to abuse but there is no doubt at all that the evidence from all children who suffer from abuse is that they have been in an environment which begins with light smacking and then that smacking becomes harder ... It becomes very easily something which does escalate.¹⁷⁸

The Children's Commissioner for Wales has asked—

... “What do you do when a smack fails? Hit them harder?” Smacking carries with it an inbuilt tendency towards an escalation of violence. There have been cases of beatings with belts and bits of wood having been deemed acceptable in the British courts, treatment that would probably have been successfully prosecuted if the victims were animals.¹⁷⁹

Perhaps most chillingly, we have the testimony of Marie-Therese Kouao, the murderer of Victoria Climbié, who blamed health service staff for Victoria's death, saying—

You don't kill people by smacking them.¹⁸⁰

102. The Minister for Children and Young People argued that it was not only wrong but dangerous to link smacking and child abuse deaths—that this risked diverting attention from children who were genuinely at risk. But we conclude that, sometimes, the failure to make the connection can be equally dangerous. The question is whether the existence of the defence of reasonable chastisement helps or hinders in drawing the line between smacking and abuse. As the UN Committee noted, records are simply not available to ascertain the extent to which the defence of reasonable chastisement has either been invoked in cases of severe physical assault on children or against charges relating to a “loving smack”.¹⁸¹

Do children feel their rights are protected?

103. The Minister for Children and Young People told us that he—

... would say, having talked to a lot of young people about this, that smacking is not the issue they are talking about. They are talking about other types of violence ...¹⁸²

However, research for the Children's Society revealed that physical punishment in the home was a matter of concern for among younger children and older teenagers with step-

¹⁷⁷ A v UK supervision by Council of Europe Committee of Ministers; annotated minutes from February 2003 meeting.

¹⁷⁸ Q 23

¹⁷⁹ Children's Commissioner for Wales, Annual Report 2001-02, p. 20.

¹⁸⁰ At her appearance at the Laming inquiry hearings, quoted in *The Guardian*, 9 January 2002.

¹⁸¹ See Annex 3, para 37.

¹⁸² Q 99

parents.¹⁸³ The National Children's Bureau and Save the Children consulted 76 five, six and seven year-olds about smacking. They responded—

'It feels like someone banged you with a hammer' (5 year-old girl) ... 'It hurts and it's painful inside—it's like breaking your bones' (7 year-old girl) ...'[It feels] like someone's punched you or kicked you or something' (6 year-old boy) ... 'you're hurt and it makes you cry [and] drips come out of your eyes' (5 year-old girl).¹⁸⁴

Certainly, there are children who have strong views on the matter. One seven year-old was reported as observing—

I was just thinking that if they changed the law then a lot of people will realise what they had done to their child and they would probably...be happy that the law was changed. If they don't change the law they will think "oh well, the child doesn't mind so we can keep on doing it".¹⁸⁵

Would abolition of the defence infringe the rights of the family?

104. The Minister for Children and Young People told us—

The results of the Government's own consultation in 2000 was that it would be better and it was the preference of parents for us not to change the law in this area.¹⁸⁶

There are strong views expressed on both sides which perhaps go some way to explain the Government's reluctance to take a position on the issue of "smacking"—

On the basis of the experience of generations of parents and recent academic research findings, Families First rejects the notion that all forms of corporal discipline are negative and violent, and constitute a violation of a child's human dignity and physical integrity ... While there may be a place for public education to discourage the improper use of physical sanctions and encouraging their proper use, there is no basis for stigmatising it and rejecting its use wholesale.¹⁸⁷

These comments from Families First reflect Article 18.2 of the CRC, which requires that—

[the Government] shall render appropriate assistance to parents ... in the performance of their child-rearing responsibilities.

105. On the other hand, 99% of parents have declined to give permission for childminders to smack their children.¹⁸⁸ A journalist (and parent) recently described his own rapid conversion to the case for abolishing the defence—

... I have occasionally smacked my children, and felt it was wrong to criminalise a punishment that could be less ugly than, say, the psychological cruelty of withdrawing love or imposing silence. But ... I recently found myself on a [London] Tube train watching a young woman attack a child, who couldn't have been more than a year old, in her pushchair

¹⁸³ The Children's Society, *It's not fair: young people's reflections on children's rights*, 1999 p 2.

¹⁸⁴ CRAE, Ev 52–60.

¹⁸⁵ *ibid.*

¹⁸⁶ Q 98

¹⁸⁷ Families First, Ev 76.

¹⁸⁸ DfES press release, 6 May 2003.

... I could not help an expression of revulsion and sadness momentarily crossing my features ... [seeing this] the mother [informed] me that it was her child and she could do what she liked with it ... It was then I realised how necessary it was for smacking to become illegal. The levels of child abuse in this country are appallingly high as it is, and they cannot be helped by the fact that the law sanctions physical punishment.¹⁸⁹

We heard from another parent, in her capacity as UN High Commissioner for Human Rights. Mary Robinson's view was that—

... there is an approach which recognises the need for discipline, the need for children to know that there are consequences of bad conduct, that they are consistent and that they will be applied. It takes a bit more time sometimes if you are not going to use physical force to drive home your point but it is an extremely important message for the child who will grow into an adult ...¹⁹⁰

106. As described to us by the Minister for Children and Young People in his evidence, the Government's approach is to—

... put the emphasis much more strongly on the positive measures we can take as a government through programmes like Sure Start, for example, to promote good parenting. An intrinsic part of that work is to support parents in understanding alternatives to corporal punishment as a way of disciplining their children ... given ... that it would be desirable to minimise the use of smacking, the really practical question is, are we doing things that would minimise it and supporting parents to bring up their children in different ways.¹⁹¹

This approach is in line with some expert opinion. The British Medical Association has argued—

Children often learn most effectively by example, and smacking provides the example that problems should be solved by resorting to physical aggression. Smacking is therefore a lesson in bad behaviour rather than good behaviour and can increase the likelihood of violent and aggressive behaviour in the long term.¹⁹²

The Government's efforts in this area are clearly in compliance with Article 18.2 of the CRC. But the UN Committee was concerned that—

... [current laws] suggest that some forms of corporal punishment are acceptable and therefore undermine educational measures to promote positive and non-violent discipline.¹⁹³

More than 350 organisations recently joined forces to say that—

The current law sends out a dangerous and misleading message to parents that it is safe and acceptable to physically punish their children, even babies who are the most vulnerable. They

¹⁸⁹ Tim Lott, *Evening Standard*, October 25, 2002.

¹⁹⁰ 22nd report, Q 95.

¹⁹¹ Q 93 and Q 96

¹⁹² British Medical Association (1999), *Growing Up in Britain: Ensuring a healthy future for our children*, BMJ Books, London.

¹⁹³ See Annex 3, 2002, para 35.

believe that the law as it stands undermines their work with children and is at odds with their positive parenting messages.¹⁹⁴

Could a change in the law be made to work?

107. If the retention of the defence of reasonable chastisement risks undermining the Government's efforts to promote positive approaches to parenting in line with its obligations under Article 18.2 of the Convention, and if it puts the UK at risk of contravening the Convention, what is the argument for retaining it? The Minister for Children and Young People told us that one of the difficulties he had was that replacement legislation would be difficult to enforce.¹⁹⁵

108. We agree that if it were believed that removal of the reasonable chastisement defence would lead to parents being prosecuted for mild smacks, the measure would probably fail to command public and parliamentary support. But a majority would probably agree that the progressive narrowing of the limits on lawful corporal punishment of children has been a positive feature of social development in the UK. Physical assault on children should continue to be seen as being in almost all circumstances a disproportionate, and futile, violation of children's rights.

109. There is little ambiguity in Article 19 of the CRC, which requires States Parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse ... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". On the face of it, the retention of the defence of reasonable chastisement is a breach of Article 19 (although there is room for debate over the word "appropriate"). Its wholesale repeal could have the virtue of greater clarity than the current law. It would then be necessary to rely on current prosecution policy—the evidential test and the public interest test—to ensure that mild smacks of children, like minor assaults on adults, would not be prosecuted. Careful prosecution guidelines would have to ensure that there is a reasonable degree of legal certainty for parents at the same time as providing greater protection for children.

110. We have examined the case for retaining the defence, but find the lack of respect it embodies for children's entitlement to be free from physical assault to be unacceptable. The case for change is reinforced by recommendations of the UN Committee on Economic, Social and Cultural Rights and the European Committee on Social Rights,¹⁹⁶ and by the observations of the Council of Europe's Committee of Ministers on the steps required for the proper execution of the judgement in the case of A v UK. In determining how best to

¹⁹⁴ NSPCC press release, October 2002, about a conference organised by the NSPCC, the National Early Years Network, the Community Practitioners' and Health Visitors' Association and the National Childminding Association.

¹⁹⁵ Q 96

¹⁹⁶ The UN Committee on Economic, Social and Cultural Rights, reported in May 2002 that: "Given the principle of the dignity of the individual that provides the foundation for international human rights law ... the Committee recommends that the physical punishment of children in families be prohibited..." [E/C.12/1/Add.79, para 36] and the European Committee on Social Rights, in a general observation issued in 2001, commented: "The Committee does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence. The Committee does not consider that there can be any educational value in corporal punishment of children that cannot be otherwise achieved." [Conclusions XV-2, Volume 1, published in 2001].

achieve full compliance with its international obligations, the Government should review the experience of other member states of the Council of Europe.

111. We conclude that the time has come for the Government to act upon the recommendations of the UN Committee on the Rights of the Child concerning the corporal punishment of children and the incompatibility of the defence of reasonable chastisement with its obligations under the Convention. We do not accept that the decision of the Government not to repeal or replace the defence of reasonable chastisement is compatible with its obligations under the Convention on the Rights of the Child.

8 Conclusion

112. The Government has assumed obligations under the Convention on the Rights of the Child which include the duty to implement its provisions to the maximum extent possible within the UK, to publicise those provisions and to make periodic reports on its implementation.¹⁹⁷ It is the job of Parliament to hold Government to account for the discharge of such obligations.

113. In their Concluding Observations, the UN Committee referred approvingly to a number of Government initiatives which have advanced compliance with the Convention. We agree that the Government has given serious attention to issues affecting children's rights, but the evidence suggests that its record of achievement is uneven and, in criminal justice and penal matters at least, questionable.

114. On an initial reading, the impression given by the UN Committee's observations and recommendations is of numerous breaches of the Convention and widespread failure to protect children's human rights within the UK.¹⁹⁸ This seems to us to misrepresent the UK's record to a significant extent. However, the Government itself recognises that there is still more work that needs to be done.¹⁹⁹ We have sought in this report to place the UN Committee's concerns in the political context of competing priorities for limited resources, but we too acknowledge that the UK has some way to go before it could be said to be in full compliance with the CRC.

115. We conclude that the reporting process under the Convention has the potential to provide impetus to develop a culture of respect for children's rights within Government, and focus attention on the impact of policy, practice and legislation upon children. The quality of the dialogue between the Government and the UN Committee could certainly be improved. Both sides need to give attention to how this might be achieved, but the Government is the partner with the resources, and therefore the prime responsibility, to make the principles of the Convention a reality in the lives of children in the UK.

116. We intend to play a part in holding the Government to its commitment to use the Convention's principles to inform all its future work with children. We have not, however, attempted to review in this report every possible aspect of the impact of the Convention on the policies and practice of Government and public authorities.²⁰⁰ Progress towards fuller compliance with the Convention cannot be assured if it is only measured once every five years or so. It requires more sustained attention, and the Government's achievements in

¹⁹⁷ Articles 4, 42, 44.6 and 44.2.

¹⁹⁸ We have condensed the UN Committee's concerns into a list of 84 concerns raised which is printed as Annex 5 to this report.

¹⁹⁹ See Annex 4.

²⁰⁰ After our inquiry was announced, we received a large number of letters from members of the public urging us to consider the implications of the words of the preamble to the Convention: "... Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth ...". The burden of these submissions has been that the UK Government should withdraw its Declaration, made on ratification, that "it interprets the Convention as applicable only following a live birth". [See for example letter from SPUC, Ev 40] They go on to argue that complete adherence to the wording in the Preamble would, in their view render abortion non-compliant in most circumstances. We note these submissions, and recognise the strongly-held views of those who have made them. However, the validity of the UK's Declaration is not an issue we intend to explore in this report.

this area need to be subject to more regular independent audit. A children's commissioner for England, whose establishment we recommended in our Ninth Report,²⁰¹ could have a valuable role to play in providing this independent scrutiny. The establishment of a children's commissioner for England, working in collaboration with the commissioners for Northern Ireland, Scotland and Wales, would, we believe, help to promote respect for the rights of children throughout the UK. We reiterate the conclusion of our earlier report here—Independent human rights institutions are, we believe, necessary catalysts for change, not a sufficient excuse for others to neglect their responsibilities to respect and advance the rights of the child.

²⁰¹ Ninth Report, Session 2002–03, *The Case for a Children's Commissioner for England*, HL Paper 96/HC 666.

Conclusions and recommendations

General, Procedural and Structural Issues

1. We recommend that the UK's next periodic report under the UNCRC should be prepared with much fuller involvement of children and young people should be structured to show—
 - the general principles of Government policy and action in the UK related to each of the Articles of the Convention;
 - a report on the activities relating to children's rights issues, separately, of each central government department together with relevant NDPBs and inspectorates related to each department, and each of the devolved administrations, and some effort to capture related activities at local government level;
 - a specific response to each of the recommendations in the UN Committee's previous Concluding Observations; and
 - a plan of strategic action in relation to children's rights for the coming five years, indicating measures of success against which implementation can be judged. (Paragraph 13)
2. We recommend that the UK's next periodic report under the UNCRC should be prepared with much fuller involvement of children and young people. (Paragraph 15)
3. We recommend that objective data on progress towards the elimination of child poverty should be included in the next periodic report. (Paragraph 16)
4. We recommend that the Government's forthcoming overarching strategy for children and young people includes specific reference to the rights, principles and provisions of the Convention, and explains how these underpin its goals. (Paragraph 19)
5. We do not accept that the goal of incorporation of the Convention into UK law is unrealisable. We believe the Government should be careful not to dismiss all the provisions of the Convention on the Rights of the Child as purely "aspirational", and that children will be better protected by incorporation of at least some of the rights, principles and provisions of the Convention into UK law. (Paragraph 22)
6. We recommend, particularly in relation to policy-making, that Government demonstrate more conspicuously a recognition of its obligation to implement the rights under the Convention. (Paragraph 25)
7. We recommend that the Government consider incorporating child impact assessments in the explanatory notes to Government Bills. (Paragraph 27)

Children and the Criminal Justice System

8. We recommend that the age of criminal responsibility be increased to 12 years. (Paragraph 38)
9. We urge the Government to re-examine, with renewed urgency, sentencing policy and practice (and in particular the use of detention and training orders) and alternatives to custodial sentences, with the specific aim of reducing the number of young people entering custody and with a commitment to implementing Articles 37(b) and 40(4) of the Convention to the fullest extent possible. (Paragraph 41)
10. We share the concern of the UN Committee that rehabilitative opportunities in young offender institutions are inadequate to meet the requirements of Article 40.1 of the CRC. We recommend that the Government initiate a review of the range of rehabilitative opportunities available to those in young offender institutions. (Paragraph 45)
11. We recommend that the Government, in its response to this report, set out the achievements of the safer custody strategy in reducing suicide and self harm amongst juveniles in detention, and its strategy for the further elimination of these incidents. (Paragraph 49)
12. The level of physical assault and the degree of physical restraint experienced by children in detention in our view still represent unacceptable contraventions of UNCRC Articles 3, 6, 19 and 37. These statistics do not provide reassurance that the Prison Service is implementing fully its responsibilities to respect the rights of children in custody. (Paragraph 52)
13. We recommend the amendment of the Children Act at an early opportunity, to place a duty on the Prison Service, as well as on local authorities, to apply the Children Act to children in detention on a statutory footing. Measures must also be taken to make a reality of the obligation which has now been placed on social services. (Paragraph 55)
14. We recommend that, as a matter of urgency, the Government bring forward legislative proposals to provide children in custody with a statutory right to education and access to special needs provision equal to that enjoyed by all other children. (Paragraph 59)
15. We recommend that the Government reinforce its efforts to ensure there are sufficient suitable places under local authority care to allow the removal of all girls under 17 from prison custody into local authority secure accommodation by the end of 2003, and so enable the reservation relating to Article 37(c) of the Convention to be withdrawn. (Paragraph 62)
16. We recommend that the Government revisit the idea of completely separating the organisation responsible for the custody of offenders under the age of 18 from the Prison Service. These young people should be looked after by a group of people whose outlook is firmly grounded in a culture of respect for children's human rights, devoted to rehabilitation and care. (Paragraph 65)

Care and Protection

17. We stress the need for the Government to invest more energy into culturally sensitive, educative approaches for the effective eradication of the practice of female genital mutilation. (Paragraph 70)
18. We recommend that the Government systematically collect and analyse representative data on violence against children, including data collected from children themselves, which should seek to include: the age and sex of the child, the nature of the violence, by whom it was allegedly committed, whether a prosecution was initiated and if so what the outcome was. (Paragraph 79)
19. We recommend that statistics record whether the defence of reasonable chastisement was invoked in cases of violence against children brought to the courts. (Paragraph 80)
20. We recommend that the Government demonstrate its commitment to the equal treatment of all children by withdrawing the reservation to the Convention on the Rights of the Child relating to immigration and nationality. (Paragraph 87)
21. We welcome the Government's decision to ratify the Optional Protocol on Children in Armed Conflict, but are concerned at the extent to which the commitment to keep under 18s in the Armed Forces out of combat zones is undermined by the terms of the Declaration made on signature. (Paragraph 88)
22. We recommend that in its response to this report the Government set out its assessment of the extent to which its inclusion in the national policing plan has affected the resources devoted to child protection, and how it intends to monitor the resources devoted to this area in the future. (Paragraph 89)
23. We would welcome information from the Government's response to the UN Committee's recommendation that legislation be reviewed to ensure children who are sexually exploited are not criminalised, and its view of the circumstances in which it is proper to penalise children and young people for sexual activity more generally. (Paragraph 90)
24. We look forward to early legislative action and strongly support the signing and ratification of the Optional Protocol on the sale of children, child prostitution and child pornography by the UK. (Paragraph 91)

Civil Rights and Freedoms

25. We conclude that the time has come for the Government to act upon the recommendations of the UN Committee on the Rights of the Child concerning the corporal punishment of children and the incompatibility of the defence of reasonable chastisement with its obligations under the Convention. We do not accept that the decision of the Government not to repeal or replace the defence of reasonable chastisement is compatible with its obligations under the Convention on the Rights of the Child. (Paragraph 111)

Annexes to the Report

Annex 1: Text of key Articles of the UNCRC

The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force 2 September 1990, in accordance with article 49.

ARTICLE 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

ARTICLE 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

ARTICLE 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

ARTICLE 4

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

ARTICLE 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local

custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

ARTICLE 6

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

ARTICLE 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

ARTICLE 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

ARTICLE 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

ARTICLE 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

ARTICLE 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

ARTICLE 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

ARTICLE 13

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

ARTICLE 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

ARTICLE 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

ARTICLE 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

ARTICLE 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

ARTICLE 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

ARTICLE 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

ARTICLE 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

ARTICLE 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

ARTICLE 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

ARTICLE 23

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

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

ARTICLE 24

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

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

ARTICLE 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

ARTICLE 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

ARTICLE 27

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

ARTICLE 28

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

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29 General comment on its implementation

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

ARTICLE 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

ARTICLE 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

ARTICLE 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

ARTICLE 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

ARTICLE 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

ARTICLE 35

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

ARTICLE 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

ARTICLE 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and

shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

ARTICLE 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

ARTICLE 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

ARTICLE 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

ARTICLE 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

ARTICLE 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Annex 2: UK implementation of the United Nations Convention on the Rights of the Child (CRC): An update to the UK'S second report to the UN Committee on the Rights of the Child in 1999

INTRODUCTION

1. The United Nations Convention on the Rights of the Child (CRC) came into force in the UK in January 1991. The CRC requires Governments to report to the UN Committee on the Rights of the Child their progress in implementing the Convention two years after ratification and every five years subsequently. The UK's second report was published in 1999 and the Committee is considering it in 2002.

2. The UK Government's 1999 report records clear progress in the UK towards establishing and supporting a greater focus on children's rights and well being. But there have been significant developments in the Government's approach to children since that report was written; and mechanisms are now in place to ensure a more strategic and coherent approach to children's issues across Government. Our aim is to—

- put the interests of children and young people at the heart of Government; and to
- deliver better outcomes in the lives of all children and young people. This is an essential element of the Government's wider efforts to combat social exclusion and to eradicate child poverty.

3. It is too early to report on the outcomes of our new approach and we recognise that we still have much to do. We hope to be in a position to cover outcomes in the next full UK report, due in 2004, and in subsequent full reports. We also do not seek to offer here a comprehensive view of child rights in the UK. That too is the task of future full reports.

4. The purpose of this brief update is to inform the Committee about the new landscape for children early in its consideration of the UK record, and to signal the direction we are taking. In addition, the annex to this paper notes the latest position on the UK's reservations to the CRC and on the Optional Protocols to it.

A NEW APPROACH FOR CHILDREN AND YOUNG PEOPLE

5. There is a new approach to children across the UK. Specific measures inevitably and rightly vary between the four countries of the UK: England, Scotland, Wales and Northern Ireland in view of the devolution of policy responsibility on many issues affecting children. But the shared commitment from the Government in Westminster and all the Devolved Administrations remains clear: to deliver better outcomes in the lives of all children and young people and to put the interests of children and young people at the heart of Government. The measures being put in place to meet these commitments deliver, in many cases, clearly and directly against CRC provisions. Paragraphs 33 - 41 set out in more detail how the CRC informs the UK Government approach.

6. Specific mechanisms for achieving these priorities also vary across the UK, but comprise three key elements:

- New structural arrangements to ensure policies and services for children are better co-ordinated and prioritised. In England the Prime Minister established in November 2000 a new Cabinet Committee for children and young people, to ensure a focus on children's interests at the highest levels of Government. He also created the first ever post of Minister for Children and Young People, and a cross-government children's unit. Other structural changes to champion children's

interests have been made in specific areas, such as services for children in care. The Welsh Assembly Government has established a Cabinet Sub-Committee on Children and Young People to coordinate strategies for children and young people at the highest level in the National Assembly. In Northern Ireland, a Children and Young People's Unit (CYPU) within the Office of the First Minister and Deputy First Minister was established in January 2002 to ensure that the rights and needs of children and young people are given a high priority within the Executive. In Scotland the Children and Young People's Group was established in 1999 as part of the then new Scottish Executive Education Department. The emphasis of the work of the Group is on joint working and better integration of policy across the Executive. A Cabinet Sub-Committee for Children's Services, chaired by the First Minister, was established in October 2001 to take forward an integrated approach to children's issues

- A commitment to listen to children and young people, in line with Article 12 of the CRC. Young people have been increasingly involved in developing policies and services across both national and local government over recent years; and new mechanisms are being introduced to ensure more systematic and automatic involvement of children and young people in policies and services that affect them. Further information about this is at paragraph 25–32.
- Increasing engagement with experts outside government - everyone stands to gain if the skills and experience of those who work closely with children and who promote their interests are recognised and utilised by Government. Those Government Departments which deal most closely with children's issues have for some time consulted with these partners; non-governmental organisations were involved in the development of the 1999 report; and strongly influenced the establishment of the Children and Young People's Unit. All Government Departments with a lead interest in children welcome secondments from members of the voluntary sector to inform both the direction of Government policy and the perspectives of officials; and many Government Departments also have advisory groups of external partners.

DELIVERING BETTER OUTCOMES IN THE LIVES OF ALL CHILDREN AND YOUNG PEOPLE

7. The UK Government wants to secure real and tangible improvements in the lives of all its children and young people. It is taking this objective forward in a number of ways.

Tackling child poverty

8. In March 1999 the Prime Minister made a commitment to halve child poverty by 2010 and eradicate it within a generation, by extending opportunity for all children and ensuring that people's life chances are no longer unfairly determined by their childhood circumstances. The Government's annual anti-poverty report 'Opportunity For All!', first published in 1999, includes a range of indicators that cover low income, worklessness, education, health and housing, to inform the long-term eradication target. Most recent data shows, for example, that—

- between 1996/97 and 2000/01 the number of children in Great Britain living in households with low income fell by 500,000 (on a relative measure) and by 1,400,000 (on an absolute measure)
- the proportion of 16-year-olds in England with at least one GCSE increased from 92.3% in 1997 to 94.5% in 2001; and

- the number of children admitted into hospital as a result of unintentional injury and resulting in a hospital stay of longer than 3 days fell from 1.20 per thousand in 1996/97 to 1.02 per thousand in 1999/2000.

9. As the Government makes progress towards the goals it has set itself, it wants to be sure that it is measuring poverty in a way that helps to target effective policies—and enables the Government to be held to account for progress. Following on from important debates among experts in the field on poverty measurement, the Government is considering how these can and should inform its approach to measuring child poverty in the long term. In particular, it has published "Measuring Child Poverty: a consultation document" aimed at promoting debate on how best to build on the existing indicators to measure child poverty in the long term.

10. In December 2001, HM Treasury published a paper called 'Tackling child poverty: giving every child the best possible start in life'. The document analysed the drivers behind child poverty and looked at issues ahead of the Budget and Spending Review 2002.

11. The Government has made substantial investments to reduce child poverty and social exclusion. The proportion of children living in workless households in Great Britain has fallen from 17.9% in Spring 1997 to 15.5% in Spring 2001 - a fall of around 300,000 children living in a household where no-one works. Tax and benefit changes include increased child benefit (25% real terms rise since 1997 for the first child), and the introduction of the Children's Tax Credit and Working Families Tax Credit, and the elements of income-related benefits for children under 11 have increased by 85% in real terms. From April 2003, the new Child Tax Credit will bring together all existing income-related benefits and tax credit support for children into a single source of income, providing financial support to families both in and out of work. This will be paid to the main carer, and will build on the foundation of the universal Child Benefit, with most help for those who need it most.

12. Investments in services for children include real-terms annual growth (to 2004) of over 5½ %, and extra funds have also been made available for locally targeted services such as Sure Start and the Children's Fund. The Government is also committed to improving public service outcomes for those living in the poorest neighbourhoods; floor targets mean that departments have to improve outcomes for the poorest, as well as on average. For example, in health, the Government is committed by 2010 to reduce by at least 10% the gap between the fifth of health authority areas with the lowest life expectancy at birth and the population as a whole; and in education, to increase the percentage of pupils obtaining five or more GCSEs at A*-C, with at least 38% of pupils to achieve this standard in every local education authority by 2004. Similar investment has been made in children's services by devolved administrations.

Tackling social exclusion

13. The Government has also made a clear commitment to tackle social exclusion for all ages, including children. The Government's Social Exclusion Unit has produced a number of reports with recommendations on how to improve the life chances of children at risk; of those who truant and who are excluded from school; of those at risk of becoming pregnant or parents as teenagers; and of 13 to 19 year olds who are more likely to become disengaged from education and training. The vast majority of these recommendations are now being implemented by Government and systems are in place to monitor their progress.

14. Social inclusion is also a key theme for the Scottish Executive. Milestones have been established for tackling it and are being monitored on an annual basis. The Welsh

Assembly Government has established Cymorth, a unified support fund, bringing together the existing programmes of Sure Start, the Children and Youth Partnership Fund, the National Childcare Strategy, the Youth Access Initiative and the Play Grant to provide targeted preventative intervention to improve the life chances of children and young people living in disadvantaged communities. £39m will be provided through this in 2003-04. It is also implementing "Communities First", a programme aimed at tackling social exclusion and poverty in the most deprived areas. Some £55m will be available for regenerating the most deprived communities in Wales in 2002-03 and 2003-04. The programme has a clear focus on supporting young people. New TSN is the Northern Ireland Executive's main policy for tackling social need and social exclusion. It targets efforts and resources towards people, groups and areas in greatest social need; and has a particular focus on tackling unemployment and increasing employability. It addresses other aspects of poverty and inequalities in areas such as health, housing and education and it identifies and tackles factors that can contribute to social exclusion.

Overarching strategies for children and young people

15. All four countries of the UK are developing strategic frameworks for children and young people. In England, the Government published in November 2001 a consultation document on a single, coherent strategy for children and young people against which all Government Departments will be asked to deliver. This will affect all of the 12.5 million children aged 0-19 in England (15 million in the UK). The final strategy, to be published later this year, will aim to embody a shared, collective vision of parents, carers, the voluntary sector, the statutory sector, Government—and children and young people themselves. The strategy proposes to establish indicators to measure success in a range of outcomes covering health and well-being; achievement and enjoyment; participation and citizenship; protection; responsibility; and inclusion. Our intention is that the final strategy will also signal more clearly the read across between the CRC and the outcomes we want for our children and young people. The regular publication of a State of the Nation's Children and Young People will monitor progress against these indicators and will hold the Government to account if this progress is poor.

16. In Scotland an independent Action Team on Better Integrated Children's Services published the report "For Scotland's Children" in October 2001. The Cabinet Sub-Committee, chaired by the First Minister, is considering and taking forward action on the recommendations made in the report. All local authorities in Scotland are required to prepare, consult upon and publish Children's Services Plans, covering a 3 year period, which identify and meet the needs of children, encouraging co-operation between local authorities and other providers of services. In Wales, Children and Young People's Partnerships will produce plans in each local authority area, providing a five-year strategic overview of all local service provision and setting direction and context for more detailed planning and development of services. Strategic plans will be based upon seven core aims drawn from the UN Convention on the Rights of the Child. Initial plans should be produced by October 2002. The Northern Ireland Executive will also consult formally this year on a 10 year comprehensive children's strategy, with a view to having it in place in 2003. The strategy will include strategic goals in key areas affecting children and young people; examine the scope for new ways of achieving a more joined-up approach within the Executive to children's issues; and will consider how to give children and young people, their parents and those representing them, the opportunity to put their views to key policy and decision makers.

Better services for all children and young people

17. A key aim of the overarching strategy for children and of much UK Government activity for children is to deliver high quality services for children and young people. The

attached document, "Tomorrow's Future", published by the Children and Young People's Unit in March 2001, sets out the substantial range of action that has been taken to strengthen support services targeted at vulnerable children, and mainstream services for all children. The Unit also undertook a baseline study of all expenditure on children and young people informed a crosscutting review on children being conducted this year (see also paragraph 25). Some of that action is detailed below.

AGE-RELATED SERVICES

18. 0-4 Year Olds

- Childcare: through the National Childcare Strategy, funding a sustained expansion of accessible, affordable and quality childcare provision and expanding childcare nationally —particularly in disadvantaged areas—to create new places for 1.6 million children by 2004 with a more than threefold increase in its budget.
- Early-education: guaranteeing a free early education place for all children aged 4, with every 3 year old having a guaranteed free place by September 2004; establishing a Foundation Stage to explicitly recognise this period in children's development.
- Sure Start: Sure Start will offer support to 400,000 children under 4 and their families by 2004. As part of the Sure Start programme the Government are committed to providing more antenatal support for parents through up to £60 million of extra investment in support services for mothers and partners from time of conception.

19. 5-13 Year Olds

- Education standards: the Government has given the highest possible priority to raising standards of achievements in literacy and numeracy for all primary school pupils. The national results of 7 and 11 year olds have risen significantly in recent years. Investment of £1.92m each year has been committed until 2004 on the national literacy and numeracy strategies. The Government's 2002 targets are for 80% of 11 year olds to meet the English standards for their age and 75% to meet the same for mathematics.
- Children's Fund: This is a £380 million fund over three years, targeted at preventive work for 5-13 year olds. Funding is being rolled out to local partnerships to develop increased and better co-ordinated services for children at risk of social exclusion. It is on course to reach all parts of England by 2003/04.
- The Local Network Fund for Children and Young People: This is a £70m fund over three years that channels money directly to local community groups working to improve the lives of vulnerable children and young people across the age range from 0-19.

20. 13-19 Year Olds

- Education standards: In 1989, 32.8% of 16 year olds achieved 5 or more GCSEs at grades A-C. This rose to 50% in 2001. In 2001, 33,000 young people left school without a qualification, down from 45,000 in 1997.
- Connexions: By 2003 every young person aged 13 to 19 will have access to the Connexions service, either through a Connexions Personal Adviser, drop-in centre, telephone, or internet-enabled support. Connexions will provide young people

with advice, guidance, support and personal development, differentiated according to their individual needs, to help them overcome barriers to participation in learning and work and to help them achieve a successful transition from their teenage years into adult life.

- Teenage Pregnancy: The Government's Teenage Pregnancy Strategy is joining up action nationally and locally to: halve the rate of conceptions among under 18s in England by 2010, with an interim reduction of 15% by 2004; set a firmly established downward trend in the conception rates for under 16s; and increase the participation of teenage parents in education and work. All of the 30 action points set out in the national Strategy have been progressed and almost two thirds implemented and the early signs of the impact of the Strategy are encouraging. Both the under 18 and under 16 conception rates have fallen by over 6% between 1998, the baseline year for the Strategy, and 2000. In addition, the proportion of teenage parents in education, training or work has increased from 16% in 1997 to 29% in 2001.
- Preventing youth crime: Since 1997 tackling youth crime has been a key focus for the Government. The Government is committed to halving the time from arrest to sentence for persistent young offenders, from an average of 142 days in 1996 to 71 days by March 2002, and has achieved this. In October–December 2001 the average time was 68 days. The Government has undertaken a radical overhaul of the whole youth justice system with new interventions and new structures including the Youth Justice Board and new Youth Offending Teams. The Government is also increasing further the efforts it makes to prevent youth offending and antisocial behaviour.

IMPROVING SERVICES FOR VULNERABLE CHILDREN

21. The Government is also working to improve the most vulnerable children's quality of life through a variety of non-age-related policy initiatives to improve the neighbourhoods in which they live, inform the choices they make, and improve their housing, education and health opportunities.

- Local authority support for children in need: The Quality Protects Programme began in 1999, and improved outcomes for children in care are already beginning to be delivered including: an increase of 23% in the number of children adopted from care; children in care experiencing fewer moves; more support being given to care leavers; fewer young people inappropriately discharged from care when they reach 16; and more councils demonstrating the positive results of listening to children and young people in their care, through subsequent service improvements.
- Disabled Children: From 2001–02 to 2003–04 an additional £60 million has been earmarked for services for disabled children and their families to target: increased provision of family support services, including short-term breaks; better integration of disabled children into mainstream leisure and out-of-school services; and better information for families and the increased availability of key workers and other measures to improve co-ordination.
- Adoption: the Government's white paper 'Adoption—a new approach' builds on the early improvements under Quality Protects, and aims to put the needs of children at the heart of the adoption process. Budget 2001 announced further help with the introduction of adoption leave and pay from 2003, for the same period

and at the same flat rate as statutory maternity pay, starting when the child is first placed with the family.

- Drugs: In 1997, the Government allocated £63m for spending on drug education and prevention services for young people. The Government has allocated a further £1 52m over three years on education, prevention and treatment services which will contribute towards implementing a fully-integrated approach to drugs services, incorporated within existing children's services.
- Mental Health: The Government is investing an additional £5m each year in local authority Child and Adolescent Mental Health Services (CAMHS) for the 3 years to 2002-03. By May 2001, all local authorities were required to have an agreed CAMHS Development Strategy which sets out how they will meet local and national priorities, including 24 hour cover and outreach services and improved early intervention and prevention programmes. The 24 CAMHS Innovation Projects that began in 1998, and were designed to develop and stimulate good, innovative partnerships between health and social care, are being evaluated and monitored.

HEALTH INEQUALITIES

22. The Government is committed to tackling health inequalities. Since 1997, it has made considerable progress towards both these aims through a range of measures, including:

- The Healthy Schools Programme, which aims to make schools a healthy environment for children.
- The Health Visitor and School Nurse Development Programme, which involves new ways of working towards a family-centred public health role for health visitors and school nurses.
- The National School Fruit Scheme, will entitle every 4-6 year old in state infant school with free fruit every day.
- The Welfare Foods Scheme, which is working to ensure that vulnerable children have access to a healthy diet, and to promote increased support for breast feeding and parenting.
- Health Action Zones, which adopt a holistic approach to tackling health inequalities. A number of the Zones focus strongly on the needs of young people.
- The NHS Plan (July 2000) Tackling health inequalities is recognised in the NHS Plan as a key component supporting the modernisation and reform of the NHS. For the first time ever, local targets for reducing health inequalities will be reinforced by the creation of national health inequalities targets. These were announced in February 2001 in the areas of life expectancy and infant mortality. The Government has conducted a cross-cutting Spending Review on health inequalities enabling the whole Government to focus on health inequalities and establish priority areas for action that will deliver the targets. In addition the Government completed a public consultation in Autumn 2001 on the actions needed to tackle health inequalities and meet the targets. A delivery plan will be published in 2002.
- In Autumn 2000, the Children Taskforce was set up to drive forward implementation of all aspects of the NHS Plan as they relate to children, ensuring that reforms take account of the particular requirement of children of all ages and their families and carers.

23. Other services which support vulnerable children include those focusing on:

Sport, culture and play

- The Prime Minister announced in January 2001 an entitlement for children to a minimum of two hours, high quality, school sport and physical education per week, through the appointment of 1,000 new specialist sports co-ordinators by 2004. There is also a range of other initiatives to improve arts and sports provision in the community and which offer particular support to deprived areas.

Diversity

- Many children from ethnic minority communities have benefited from the recent rise in school standards but there is still an attainment gap which must be closed. To better reflect the diversity of pupil's backgrounds and communities, the Government is working to: bring Muslim and Sikh schools inside the state system for the first time and increase the number of Jewish schools; continue to tackle inequalities of attainment through the Ethnic Minority Achievement Grant, which is now worth over £150m a year and through the Traveller Achievement Grant.

Children with Special Needs

- The Special Educational Needs and Disability Act places a statutory requirement on schools and colleges to ensure that pupils with disabilities and special needs are treated no less favourably than their peers.

24. The Government's next spending review will build further on these actions by continuing to focus on services for children and young people at risk, and on promoting approaches to prevent children falling into risk. The spending review will be informed by a cross cutting review of expenditure priorities for children at risk being conducted by CYPU in 2002.

PUTTING THE INTERESTS OF CHILDREN AND YOUNG PEOPLE AT THE HEART OF GOVERNMENT

25. The Government recognises that it is essential to ensure that its approach is children and young people centred and that therefore their voices must be heard at the heart of Government. It has made a commitment to listen and learn from children and young people themselves and to engage with partners outside Government who know and work closely with children. It has also put in place formal structures to ensure children and young people have advocates at every level within Government and so that there is a co-ordinated approach to tackling children's issues.

26. The best services for children and young people have for some time been actively engaging with them and their families so that policies and services are designed around their individual needs. The Quality Protects Programme for improving the life chances of children in public care pioneered the involvement of children and young people in its design. The new Connexions personal adviser service for 13 to 19s has been developed in full consultation with young people. The Department for Education and Skills has consulted young people on its recent White Papers on transforming Secondary Education and on education and training for 14-19 year olds.

27. The Core Principles (see paragraph 28 below) complement the standards for children and young people's participation in local democracy set out in the National Youth Agency/Local Government Association Hear By Right campaign. At a regional level, the

CYPU and the Regional Co-ordination Unit will ensure that the Core Principles will be implemented across Government Offices in the regions.

28. The Children and Young People's Unit is taking action to make this kind of good practice the norm. In November 2001 it launched Core Principles for Involving Young People in Government. The Government has agreed to follow clear principles for engaging effectively with children and young people and the Departments responsible directly for policies and services for children and young people in England will produce annually reviewed action plans so their progress can be monitored and challenged against consistent standards. The Children and Young People's Unit will report on progress on an annual basis, to ensure a process of continuous improvement across Government. A report for young people on action being taken by Government, will be available in the Summer.

29. The action plans are the beginning of a process: while some departments used to working with young people already have in place a number of schemes involving children and young people, this is a radical way of thinking for others. What is important at this stage is the intent. In addition some departments are in the front-line of service delivery, while others are not, and action plans will be proportionate and relevant to the business of that department. Nevertheless, there is already an impressive range of activity, in addition to that set out in paragraph 26—

- With voluntary sector partners, the Department of Health has created Listening and Responding Teams who were involved in 19 local authority inspections. The teams helped the Social Services Inspectorate find out what children and young people think about the services they receive from Social Services Departments.
- The Lord Chancellor's Department has a Judges and Schools programme which organises visits both to and from schools, helping all children and young people understand the court system before they come into contact with the courts (as witnesses or victims or perpetrators of crime, or through civil law proceedings).
- Children and young people have also met directly with Ministers. For example last year a group of young people met with Environment Minister Michael Meacher to feed their views into the draft stages of the Rural White Paper.

30. The Unit has also established a Youth Advisory Forum which informs its work and supports the Minister for Young People. The Forum currently has 25 members aged between 11-18 years who reflect a good cross section of children and young people from urban, rural and coastal areas across England and a good mix of gender, ethnicity and age.

31. The Welsh Assembly Government's arrangements for developing participation include supporting—

- at national level, the development of Llais Ifanc/Young Voice as a representative body for the whole of Wales. Llais Ifanc members have been organising consultations with young people over Assembly policy for two years now and played an active part in the development of major policy initiatives.
- the development of children and young people's forums in the 22 local authorities in Wales to enable them to be heard in local decision making.
- proposals for school councils in every primary and secondary school in Wales.

32. In Northern Ireland, children have been consulted on proposals for a Commissioner for Children and Young People. A group of young people designed children and young person

friendly versions of the consultation paper; and the NI Pre-School Playgroups Association designed a version for use with early years children. Responses came in a variety of formats including sculpture, video, artwork and written comments and have helped inform policy development in relation to both the Commissioner and the children's strategy. This initial consultation will be built upon as work on the children's strategy is taken forward. A Children and Young People's Advisory Forum is being established; and mechanisms to include young people in the appointments process for the Commissioner are being considered.

HOW THE CRC INFORMS THE GOVERNMENT APPROACH TO CHILDREN AND YOUNG PEOPLE

Government approach

33. The Government's agenda for children is being constructed to support national priorities and in view of specific and detailed local circumstances. It is also being constructed in close consultation with children.

34. Within this context, the Government fully recognises its obligations under the CRC and is committed to ensuring that it complies with them. Many of the measures described in paragraphs 7- 32 above deliver against the CRC; and the CRC has informed their design and delivery. Article 12 inspires the Government's commitment to empower children to inform the development of those services by giving them accessible information at the right time, by enabling real participation in decision-making and by supporting them in getting their voices heard more widely.

35. In Wales, a Children's Commissioner has been in post since March 2001, with the principal aim of safeguarding and promoting children's rights and welfare. His wide-ranging statutory remit covers all children and young people in Wales. The Commissioner is an independent appointment, and the National Assembly for Wales has no powers to influence his actions.

36. In Scotland, the Minister for Children and Education asked the Education, Culture and Sport Committee of the Scottish Parliament in January 2000 to consider the case for a Children's Commissioner. The Committee published the Report of their Inquiry on 14 February recommending the establishment of a Commissioner for Children and Young People. Ministers have accepted that there is a good case in principle for the establishment of a Commissioner for Children and Young People. The Committee plan to publish a Second Report which will further detail the role, remit and powers of a Commissioner and the Executive looks forward to considering and commenting upon those more detailed proposals in due course. Ministers will then be in a position to take a firm view on the role, remit and powers of a Commissioner and the timing of any associated legislation.

37. In Northern Ireland, following widespread consultation on proposals for a Commissioner for Children and Young People, work is well advanced on the drafting of a Bill. It is intended that the principal aim of the Commissioner will be to safeguard and promote the rights and best interests of children and young people. It is planned to introduce the Bill into the Assembly in June; the timing of the appointment itself will depend on the progress of the Bill through its Assembly. The Human Rights Commission in Northern Ireland has indicated that it includes the Convention on the Rights of the Child in its remit, and is committed to promoting and protecting children's rights.

38. In England, the Children and Young People's Unit has responsibility for ensuring that children's welfare and rights are taken into account in all Government policy and that their views are represented at all levels of Government. Key amongst safeguards particular

to England are the Children's Rights Director (CRD) for children in care, and the National Clinical Director for Children. The CRD was appointed in 2001 as one of fifteen Directors in the new, independent National Care Standards Commission. His remit covers children who are in receipt of its services, including their rights and complaints, and monitoring and reviewing services provided. The National Clinical Director for Children was also appointed in 2001, and has been given the task of ensuring that all health and social care services are responsive to the needs of the children who use these services. His priority is to spearhead the faster development of the first-ever national standards for children's health services. The Ombudsmen system is under reform, with the aim of making sure that children can access advocacy and complaints services more easily.

39. The Government recognises, however, that there is scope for it to embed more firmly the principles of the CRC in its developing work on children and young people. A first step towards achieving this goal will be in the publication of the overarching strategy for children and young people.

40. Action has already been taken to publicise and disseminate the CRC. The 1999 Report was published and the Executive Summary was made available on the Department of Health website. The full document was circulated to a range of interested parties including NGOs. In addition, many schools include teaching about the CRC in their citizenship education programme, based on material provided by the Department for Education and Skills. Citizenship Education will become a compulsory subject for secondary schools in England from September 2002, and schools may select areas from within the broad framework, including the CRC and the domestic Human Rights Act, which are offered as a starting point and inspiration for teachers to organise whole school activities to celebrate human rights. In Wales, there is provision for schools to deliver civics and citizenship education as part of the community aspect of the Personal and Social Education Framework. The Framework is currently non-statutory but this is being reviewed by the Welsh Assembly Government. Citizenship is currently being piloted within schools in Northern Ireland with the intention of it being introduced as a statutory component of the revised curriculum, which is due to be phased in from September 2004. CRC may also be covered in citizenship education in Scotland where it is regarded as a cross-curricular issue. Learning and Teaching Scotland have produced a paper on education for citizenship for discussion and development which is due to be launched on 7th June. This will be followed by the production of support material in due course.

41. However, this is also an area where we recognize we can do more. The Children and Young People's Unit will publicise the CRC on its new website (which gives users the option to enter the 'corporate' website or the children & young people's website). The website is part of the CYPU's integrated communications strategy which seeks to obtain a greater media profile for all key issues concerning children and young people while working closely with children and young people themselves, NGOs and others with an influence on and/or interest in the issues. The CYPU website will be linked to the Government Youth Portal which is due to go live by the end of the year and will be publicised in all schools.

CONCLUSION

42. This paper has set out some of the key changes in the Government's approach to children since 1999. We hope that the Committee finds it and the accompanying document "Tomorrow's Future" helpful. We look forward to providing a more comprehensive picture of the UK position in 2004.

Annex

OPTIONAL PROTOCOLS AND RESERVATIONS TO THE CRC

OPTIONAL PROTOCOLS

Young people in the armed services

The UK is committed to implementing the Optional Protocol to the CRC on the involvement of children in armed conflict. The UK signed the Optional Protocol in September 2000, and takes great care in the deployment of under 18s so as to prevent their direct involvement in hostilities. However, before we ratify we must be satisfied that we have in place the soon to be finalised detailed procedures and administrative guidelines for the Armed Forces which will give concrete form to the commitment, as clarified by the declaration made on signing, to prevent the direct involvement of under 18s in hostilities.

The sale of children, child prostitution and pornography

The UK Government strongly supports the aim of the Optional Protocol to strengthen the protection offered by Article 34 of the Convention on the Rights of the Child. We signed the Optional Protocol in September 2000 and aim to ratify soon. There is no question about the UK commitment to the spirit of the Protocol, but it has emerged that there are a number of complicated issues that need to be resolved before ratification, and work on this is underway. These issues include the criminal law on sex offences in the United Kingdom, since prostitution is not currently an illegal activity in the UK, nor is buying sex from a prostitute who has attained the age of sexual consent. The law is therefore in conflict with language in the Protocol, which requires the criminalisation of buying sex from a child (anyone under the age of 18).

RESERVATIONS

On ratification of the Convention, the United Kingdom entered a number of reservations. These have now been lifted, with two exceptions.

Immigration and citizenship

The Government has carefully reviewed the reservation in respect of Article 22 of the Convention, which deals with immigration and nationality, in the light of recent requests that it should be withdrawn. It has concluded that it should be retained. The Government believes the reservation remains necessary in order to maintain an effective immigration control. The UK Government supports the CRC in principle and does not take the view that the Reservation prevents children's best interests from being taken into account in practice. Refugee and asylum-seeking children are still entitled to the protections of the Refugee Convention, and all children in the UK are covered by the European Convention on Human Rights.

Children who fall within the Reservation are also provided with basic education and healthcare, and will often qualify for maintenance and accommodation from the state. In some cases (such as those of unaccompanied children) local authorities will assume responsibility for the child's welfare, and social services may also be provided. The level of support for children here as part of an asylum seeking family is identical to that provided for children in families on income support. The Children (Leaving Care) Act 2000 came into force on 1st October 2001. It imposes new duties on local authorities, in place of their present powers, to support children leaving care (including asylum seekers) until they are at least 18 and to assist them until they are at least 21.

It is clear from the notes of the CRC drafting group that the Convention was not intended to confer any new rights in relation to immigration. The Committee will wish to note, however, that the Government has proposed new measures to address some specific and practical issues relating to children and to ensure that the immigration and nationality service is more child centred. A White Paper published in February 2002 proposes:

- I. The phasing out of the voucher system, to be replaced with cash payments
- II. That immigration staff will be able to interview children about their asylum claims in a wider set of circumstances than at present. This will give officials a greater understanding of children's background and circumstances and help them better determine appropriate levels of care
- III. More support for local authorities, by improving information exchange, communications, partnership working and models of best practice in the care of unaccompanied minors.

Children in detention

The Government is not yet in a position to withdraw the reservation about the position of children in adult offender institutions; however progress has been made to improve the custodial arrangements for young people, and to provide for their separation from older prisoners wherever possible.

In England and Wales, in the overwhelming majority (more than 95%) of cases, juveniles are separated from older offenders.

The issue is more difficult for young women. Because numbers are low - they account for less than 5% of the juvenile population in custody—there are practical problems providing separate accommodation within reasonable distance from home that can also offer access to appropriate educational and other facilities. Maintenance of family ties has been shown to be a key factor in preventing reoffending on release. In practice, this means some juveniles will be held with 18 to 20 year olds.

There also remain at any one time a handful of individual young men and women who have to be near to courts and their solicitors during trials for further offences in areas without suitable juvenile accommodation. Although held in what are statutorily adult prisons they do not normally mix with adults unless they require access to specialist programmes or have a security classification that dictates where they are held (there is currently only one of the entire juvenile population who falls into this category).

For these reasons, the Government is not yet able to set a date for completely ending the use of adult prisons for juveniles. The number of places within juvenile establishments is being expanded under an investment programme that started in 2002, but it will take several years to develop each establishment. It will remain likely that some older and top security juveniles will still be unsuitable for those local establishments, such as local authority secure units, that cater for younger and more vulnerable children in custody.

In Scotland the position depends on the age of the child. Those aged under 21 and over 16 are classed as young offenders. On sentence they must, by law, be held in a Young Offenders Institution. Prior to sentence they may be held in an adult prison, but would normally be located in accommodation units separate from, and would not associate with, adult convicted prisoners. The proposed Criminal Justice (Scotland) Bill makes provision for such persons to be held in a Young Offenders Institution prior to sentence as this is considered a more appropriate setting for such individuals.

Children (generally those under 16 but including 16 and 17 year olds in certain circumstances) who have been sentenced to detention are normally held in secure accommodation within a residential school, usually provided by a local authority. Where, in exceptional circumstances, a child is considered unsuitable for such accommodation they may be held in a penal establishment. Such incidences are rare. Similarly, where a child is remanded in custody they are generally held in secure accommodation unless, and in exceptional circumstances, the court has certified that the child is to be held within the penal system. Again, there are provisions in the Criminal Justice Bill which, if enacted, will allow such persons to be detained in a Young Offenders Institution.

Child Labour

As the 1999 report made clear, the UK has now removed its reservation on Article 32 of the CRC. In 2000, the UK also ratified the ILO (Minimum Age) Convention 138 and ILO Convention 182 (Abolition of the Worst Forms of Child Labour). These conventions came into force in the UK in 2001.

16 and 17 year olds are exempted from the minimum wage because the Government believes that their priority should be to concentrate on their education and to acquire the skills they need to progress. The Government does not wish to see a situation where young people are encouraged to leave education early by the prospect of earning a certain guaranteed level of wages. The Government agrees with the recommendations of the independent Low Pay Commission that people below the age of 18 should not be regarded as full-time participants in the labour market but should be concentrating on their education, and thus should be exempt from the National Minimum Wage.

June 2002

Annex 3: Concluding Observations of the UN Committee on the Rights of the Child: United Kingdom, October 2002

Concluding Observations of the Committee on the Rights of the Child (Thirty-first Session):
United Kingdom of Great Britain & Northern Ireland

1. The Committee considered the second periodic report of the United Kingdom of Great Britain & Northern Ireland (CRC/C/83/Add.3), submitted on 14 September 1999, at its 811th and 812th meetings (see CRC/C/SR.811 and 812) held on 19 September 2002, and adopted the following concluding observations.

A. INTRODUCTION

2. The Committee notes with appreciation the timely submission of the State party's second periodic report. However, it regrets that the report does not follow the Committee's reporting guidelines. The Committee welcomes the written replies to its list of issues (CRC/C/RESP/UK/2) as well as the additional information provided in annexes. The Committee also notes with appreciation the presence of a delegation of senior officials from the Children and Young People's Unit and from various departments, including representatives from the devolved administrations, which contributed to an open dialogue and a better understanding of the implementation of the Convention in the State party.

B. FOLLOW-UP MEASURES UNDERTAKEN AND PROGRESS ACHIEVED BY THE STATE PARTY

3. The Committee welcomes:

The withdrawal of two reservations made to article 32 and 37 of the Convention;

The ratification of ILO Conventions No. 138 on minimum age and No. 182 on the Worst Forms of Child Labour;

The entry into force of the Human Rights Act 1998;

The peace process in Northern Ireland, pursuant to the Good Friday Agreement, the enactment of the Northern Ireland Act 1998, establishing the Northern Ireland Human Rights Commission,

The establishment of the police ombudsman for Northern Ireland, and the Race Relations (NI) Order 1997;

The establishment of the Children and Young People's Unit and the development of new child-focused structures in the Government throughout the State party;

The promotion of children's rights within the State party's international aid;

The adoption of Children (Leaving Care) Act 2000, and Homelessness Act 2000;

The adoption of the Protection from Harassment Act 1997; the Sex Offenders Act 1997; the Family Home and Domestic Violence (NI) Order 1998;

The completion of abolition of school corporal punishment in England, Wales and Scotland; and

The adoption of the Standards in Scotland's Schools etc. Act 2000.

C. PRINCIPAL SUBJECTS OF CONCERN AND RECOMMENDATIONS

1. General measures of implementation

Previous recommendations of the Committee

4. The Committee regrets that notwithstanding the legal obligation inherent to the ratification of the Convention, many of the concerns and recommendations (CRC/C/15/Add.34) it made upon consideration of the State party's initial report (CRC/C/I 1/Add.1) have been insufficiently addressed, particularly those contained in paragraphs 22 to 27, 29 to 36, and 39, 40 and 42. Those concerns and recommendations are reiterated in the present document.

5. The Committee urges the State party to make every effort to address its recommendations contained in the concluding observations on the initial report that have not yet been implemented or insufficiently and to address them and the list of concerns contained in the present concluding observations on the second periodic report.

Reservations and declarations

6. While welcoming the State party's withdrawal of its reservations made to article 37(d) and to article 32, the Committee remains concerned that the State party does not intend

to withdraw its wide-ranging reservation on immigration and citizenship, which is against the object and purpose of the Convention. In addition the Committee is concerned that the State party is not in a position to withdraw its reservation to article 37 (c) due to the fact that children are still detained with adults in the State party. In that regard, the Committee is concerned that, while the State party has made efforts to reduce the numbers of children detained with adults, it appears that only resource considerations now prevent the withdrawal of the reservation.

7. The Committee in line with its previous recommendation (*ibid.*, paras. 22 & 29), and in light of the Vienna Declaration and Programme of Action (1993), recommends the State party to take all necessary measures to end the detention of children in the same facilities as adults and to withdraw its reservation to article 37(c). The Committee furthermore recommends that the State party reconsider its reservation to article 22 with a view to withdraw it. (given the State party's observation that this reservation is formally not necessary because the State party's law is in accordance with article 22 of the Convention)

Legislation

8. While noting the entry into force of the Human Rights Act 1998 which incorporates the rights enshrined in the European Convention on Human Rights into domestic law, the Committee is concerned that the provisions and principles of the Convention on the Rights of the Child—which are much broader than those contained in the European Convention—have not yet been incorporated into domestic law, nor is there any formal process to ensure that new legislation fully complies with the Convention. The Committee notes that the devolved administrations have introduced some legal reforms to ensure compatibility with the Convention—e.g. to ensure compliance with article 12 in the education system in Scotland and to prohibit corporal punishment in the day-care system in Wales—but is concerned that the State party does not ensure compatibility of the legislation with the Convention throughout the State party.

9. The Committee encourages the State party to incorporate into domestic law the rights, principles and provisions of the Convention to ensure compliance of all legislation with the Convention, a more widespread application of the provisions and principles of the Convention in legal and administrative proceedings, and a better dissemination and training of the Convention.

Resources

10. While noting the increased resources for the implementation of the Convention and some positive moves towards analysing budgets to reveal the expenditures on children; the national objective to halve child poverty by 2010 and eradicate it within a generation; and the strategies and policies tackling child poverty and social exclusion through locally targeted services for children, the Committee is still concerned that the Convention is not implemented to the “maximum extent of available resources” according to article 4 of the Convention.

11. The Committee recommends that the State party ensure transparent analysis of sectoral and total budgets across the State party and in the devolved administrations to show the proportion spent on children, to identify priorities and to allocate resources to the “maximum extent of available resources”. The Committee also recommends that the State party apply this principle in the activities of the Department for International Development.

Coordination

12. The Committee welcomes the establishment of the Children and Young People's Unit in 2001 in addition to other bodies created in the devolved administrations, but it remains concerned that the absence of a central mechanism to co-ordinate the implementation of the Convention across the State party makes it difficult to achieve a comprehensive and coherent child rights policy. The process of devolution of powers to the devolved administrations intensifies the need for effective coordination of implementation of the Convention across the State party as among the various levels of governments in Northern Ireland, Scotland, England and Wales, as well as between Governments and local authorities.

13. The Committee, in line with its previous recommendation (*ibid.*, para. 23), recommends that the State party assign coordination of the implementation of the Convention to a highly visible and easily identifiable permanent body with an adequate mandate and adequate resources. Coordination should be across the State party as among the various levels of governments in Northern Ireland, Scotland, England and Wales, as well as between Governments and local authorities.

Plan of Action

14. The Committee welcomes that the Convention has been used as a framework in the Strategy for Children and Young People developed by the National Assembly of Wales but it remains concerned that this has not been the case throughout the State party. The Committee notes with satisfaction the statement of commitment made in the written replies and by the head of the State party's delegation to publish and implement an overarching strategy plan to be applied all through the State party and which will be based on the Convention. However, the Committee remains concerned at the lack of a rights-based approach to policy development and that the Convention has not been recognised as the appropriate framework for the development of strategies at all levels of the government throughout the State party. The Committee is also concerned at the absence of a global vision of children's rights and its translation onto national plan of action.

15. The Committee encourages the State party to expedite the adoption and implementation of a comprehensive plan of action for the implementation of the Convention in all parts of the State party, taking into account the WFFC and paying special attention to children belonging to the most vulnerable groups (e.g. poor households, minority groups, disabled children, homeless children, out of care children and children between 16 and 18 years, Irish and Roma travellers, asylum seekers), through an open, consultative and participatory process.

Independent monitoring structures

16. The Committee welcomes the establishment of an independent Children's Commissioner in Wales but is concerned at the limited powers of this Commissioner, in particular in relation to non-devolved matters. The Committee welcomes the plans for the establishment of an independent human rights institution for children in Northern Ireland and in Scotland. The Committee is however deeply concerned that the State party has not yet established an independent human rights institution for children in England.

17. The Committee, in line with its previous recommendation (*ibid.*, para. 23) recommends that the State party:

- a) establish independent human rights institutions with broad mandate and appropriate powers and resources all across the State party and at the national level, in accordance with the Paris Principles (General Assembly resolution 48/134), to monitor protect and promote all the rights of the Convention for all children. They should be easily accessible to children; able to determine their own agenda; empowered to investigate violations of children's rights in a child-sensitive manner; and ensure that children have an effective remedy for violation of their rights;**
- b) ensure that all the human rights institutions have formal advisory functions with the respective legislative bodies and that they establish formal links, including of cooperation, with each other;**
- c) provide national human rights institutions with adequate resources and appropriate staff; and**
- d) ensure that children and children's organisations are effectively involved in their establishment and activities.**

Data collection

18. The Committee welcomes the statistical data provided in the written replies to the list of issues the recently published statistics on children and young people; and the intention of the Children and Young People's Unit to publish an annual State of Children's Report. Nevertheless, the Committee is still concerned at the absence of a nation-wide mechanism to collect and analyse data on the areas covered by the Convention.

19. The Committee recommends that the State party establish a nation-wide system such that disaggregated data are collected on all persons under 18 years for all areas covered by the Convention, including the most vulnerable groups, and that these data are used to assess progress and design policies to implement the Convention. The Committee encourages the development of regular reports in England, Northern Ireland, Scotland and Wales and for the whole State party and the promotion of wide public and parliamentary debate on them in the United Kingdom and Scottish Parliaments and Northern Ireland and Wales Assemblies.

Training/dissemination of the Convention

20. The Committee welcomes that a rights-based approach to education has been adopted in Scotland. However, the Committee is particularly concerned that, according to recent studies, most children are not aware of their rights included in the Convention. The Committee is therefore concerned that the State party is not undertaking adequate dissemination, awareness-raising and training activities concerning the Convention in a systematic and targeted manner.

21. In line with its previous recommendations (*ibid.*, paras. 26 and 32) and article 42 of the Convention, the Committee recommends that the State party:

- a) Substantially expand dissemination of information on the Convention and its implementation among children and parents, civil society and all sectors and levels of government, including initiatives to reach vulnerable groups;**

- b) develop systematic and ongoing training programmes on human rights, including children's rights, for all professional groups working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel).**

2. General principles

The right to non-discrimination

22. While welcoming the adoption of the Race Relations (NI) Order 1997 and the State party's commitment to end discrimination in the State party's nationality law between children born in or out of wedlock, the Committee is concerned that the principle of non-discrimination is not fully implemented for all children in all parts of the State party and that unequal enjoyment of economic, social, cultural, civil and political rights still exist, in particular for children with disabilities, children from poor families, Irish and Roma travellers' children, asylum and refugee children, children of minority groups, children in the care system, detained children, and children aged between 16 and 18 years.

23. The Committee recommends that the State party:

- a) monitor the situation of children, in particular those belonging to the above-mentioned vulnerable groups, who are exposed to discrimination;**
- b) monitor in a comparative way the enjoyment by children of their rights in England, Scotland, Northern Ireland and Wales;**
- c) develop on the basis of the results of this monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination; and**
- d) amend the nationality law to allow transmission of nationality through unmarried as well as married fathers.**

24. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29, paragraph 1 of the Convention (aims of education).

Best interests of the child

25. While noting that the "welfare" of the child is included in child care and protection legislation, the Committee is concerned that the principle of primary consideration for the best interests of the child is not consistently reflected in legislation and policies affecting children throughout the State party, notably in the juvenile justice system or immigration practices.

26. The Committee, in line with its previous recommendations (*ibid.*, para. 24) recommends the State party establish throughout the State party the best interests of the child as a paramount consideration in all legislation and policy affecting children, notably within the above-mentioned systems.

Right to life

27. The Committee is concerned at the continued use of plastic baton rounds as a means of riot control in Northern Ireland as it causes injuries to children and may jeopardise their life.

28. Following the recommendations of the Committee against Torture (A/54/44, para. 77(d)), the Committee urges the State party to abolish the use of plastic baton rounds as a means of riot control.

Respect for the views of the child

29. The Committee welcomes the increasing encouragement of participation of and consultation with children in government, local authorities and civil society throughout the State party, the establishment of consultative process with children in local authorities service planning, the establishment of youth advisory forum in the Children' and Young People's Unit and other platforms for children and young people in all parts of the State party, such as the Scottish Youth Parliament. However, the Committee is concerned that, there has been no consistent incorporation of the obligations of article 12 in legislation for example in private law procedures concerning divorce, in adoption, in education, and in protection throughout the State party. In addition, the Committee is concerned that the right of the child to independent representation in legal proceedings as lay down in the Children's Act 1989 is not systematically used. The Committee is also concerned that in education, school children are not systematically consulted in matters that affect them. The Committee notes that groups of children in the State party expressed their feelings that their views are duly taken into consideration.

30. The Committee recommends that the State party, in accordance with articles 12 to 17, take further steps to promote, facilitate and monitor systematic, meaningful and effective participation of all groups of children in society, including in schools, like school councils. Furthermore, it recommends that the State party take further steps to consistently reflect the obligations of both paragraphs of article 12 in legislation, and that legislation governing procedure in courts and administrative proceedings (including divorce and separation proceedings and divorce) ensure that a child capable of forming his/her own views has the right to express those views and that they are given due weight. The Committee further recommends that procedures be formed to acknowledge publicly the views expressed by children and the impact they have on developing programmes and policies, and reflect how they were taken into consideration.

3. Civil rights and freedoms

Name and nationality and preservation of identity

31. While noting the recent Adoption and Children Bill (2002), the Committee is concerned that children born out of wedlock, adopted children or children born in the context of a medically assisted fertilisation have not the right, as far as possible, to know the identity of their biological parents.

32. In light of articles 3 and 7 of the Convention, the Committee recommends the State party to undertake all necessary measures to allow all children irrespective of the circumstances of their birth or adoptive children to obtain information on the identity of their parents as far as possible.

Torture or other cruel, inhuman or degrading treatment

33. The Committee is particularly concerned at the recent figures according to which between April 2000 and February 2002, 296 children sustained injuries following restraints and control in prison. In addition, the Committee is concerned at the frequent use of physical restraint in residential institutions and in custody as well as at the placement of children in juvenile detention and in solitary confinement in prisons.

34. The Committee urges the State party to review the use of restraint and solitary confinement in custody, education, health and welfare institutions throughout the State party to ensure compliance with the Convention, in particular articles 37 and 25.

Corporal punishment

35. The Committee welcomes the abolition of corporal punishment in all schools in England, Wales and Scotland, following its 1995 recommendations (*ibid.*, para. 32) but is concerned that this abolition has not yet been extended to cover all private schools in Northern Ireland. It welcomes the adoption by the national Assembly for Wales of regulations prohibiting corporal punishment in all forms of day-care, including childminding, but is very concerned that legislation prohibiting all corporal punishment in this context is not yet in place in England, Scotland or Northern Ireland.

In light of its previous recommendation (*ibid.*, para. 31), the Committee deeply regrets that the State party persists in retaining the defence of "reasonable chastisement" and has taken no significant action towards prohibiting all corporal punishment of children in the family.

The Committee is of the opinion that governmental proposals to limit rather than to remove the "reasonable chastisement" defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child. [see similar observations of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.79, para 36]. Moreover, they suggest that some forms of corporal punishment are acceptable and therefore undermine educational measures to promote positive and non-violent discipline.

36. The Committee recommends that the State party:

- a) with urgency adopt legislation throughout the State party to remove the "reasonable chastisement" defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;**
- b) promote positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, engaging with children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.**

4. Family environment and alternative care

Violence/abuse/neglect/maltreatment

37. The Committee notes the initiatives taken in the area of child abuse, such as the Family Homes and Domestic Violence (NI) Order 1998; the Circular 10/95 Protecting children from abuse: the role of the education service; the Scotland's School etc. Act 2000; and the establishment of a UK Child Protection in Sport Unit in 2001. Nevertheless, the Committee

is deeply concerned that between one and two children die every week as a result of violence and neglect in the home. It is also concerned at the high prevalence of violence, including sexual violence, throughout the State party, against children within families, in schools, in institutions, in the care system and in detention. It also notes with deep concern growing levels of child neglect. The Committee is alarmed at the lack of coordinated strategy to reduce the rate of these phenomena. It particularly notes the absence of a adequate systematic follow-up of child deaths and that crimes committed against children below the age of 16 years are not recorded. In the care system, the Committee notes a lack of consistent safeguards for children who are privately fostered. The Committee welcomes the steps taken by the Government to support child witnesses in court but notes the lack of public education on the role of the child protection system.

38. In line with its previous recommendations (*ibid.*, para. 31) and in light of articles 3, 6, 12, 19, and 37 of the Convention, the Committee recommends that the State party:

- (a) introduce a system of statutory child death inquiries;**
- (b) develop a coordinated strategy for the reduction of child deaths as a result of violence and the reduction of all forms of violence against children;**
- (c) ensure consistent legislative safeguards for all children in alternative care, including those who are privately fostered;**
- (d) carry out large scale public education campaigns and programmes (including through schools) on reducing child death and child abuse with information on the role of statutory and other services in protecting children;**
- (e) establish effective procedures and mechanisms to receive, monitor and investigate and prosecute instances of abuses, ill treatment and neglect, ensuring the abused child is not victimised in legal proceedings and that her/his privacy is protected;**
- (f) record in the British Crime Survey all crimes committed against children;**
- (g) provide for the care, recovery and integration for victims; and**
- (h) strengthen the reporting system, through full support of the confidential centres for abused children, and train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill-treatment.**

5. Basic health and welfare

39. While welcoming the reduction of infant mortality rates and the new focus on children in the planning of the national health service, the Committee remains concerned at persisting inequalities in health and access to health services, including mental health services across the State party linked to socio-economical status and ethnicity (like high rate of infant mortality among the Irish and Roma travellers), at the relatively low rate of breastfeeding and at the persistence of female genital mutilation despite its illegality.

40. The Committee recommends that the State party takes all appropriate measures to reduce inequalities in health and access to health services; to promote breastfeeding and adopt of the International Code for Marketing of Breast-milk Substitutes; and to enforce through educational and other measures the prohibition of female genital mutilations.

Adolescent health

41. While noting efforts undertaken by the State party to reduce the numbers of teenage pregnancies, the Committee remains concerned at the high rate of teenage pregnancies in the State party. The Committee welcomes the one to one mentoring system and the multidisciplinary approach to detecting and managing mental health problems and notes that mental health for children has been introduced under the National Priorities Guidance 1999/2002, but remains concerned that many children suffer from mental health problems, and that the rates of suicide among young people are still high. The Committee is concerned that homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation. The Committee is furthermore concerned at the rising incidence of STDs among young persons.

42. In line with its previous recommendations (*ibid.*, para. 30), the Committee recommends that the State party:

- a) undertake further necessary measures to reduce the rate of teenage pregnancies, through, *inter alia*, making health education part of the school curricula, ensuring the inclusion of sex education to all children and the availability of free protection measures; and improving access to confidential and adolescent-sensitive advice and information and other appropriate support (as recommended by the independent Advisory Group on Teenage Pregnancy);
- b) review its differential policies for young mothers under the age of 16 years with regard to allowance entitlements and parenting courses; and
- c) take all necessary measures to strengthen its mental health and counselling services, ensuring that these are accessible and sensitive to adolescent, and undertake studies on the causes and backgrounds of suicides;
- d) provide adequate information and support to homosexual and transsexual young people and encourages the State party, further to the statement of intention given by the delegation, to repeal Section 28 of the Local Government Act 1986, where it applies.

Standard of living

43. The Committee is extremely concerned at the high proportion of children living in poverty in the State party which limits their enjoyment of many rights under the Convention and leads to higher incidence among those children of mortality, accidents, teenage pregnancy, poor housing and homelessness, malnutrition, educational failures, or suicide. The Committee welcomes the State party's commitment to end child poverty and the initiative taken in this regard, but notes the lack of an effective and coordinated poverty eradication strategy across the State party.

44. The Committee urges the State party to:

- a) undertake all necessary measures to the "maximum extent of available resources" to accelerate the elimination of child poverty;
- b) better co-ordinate and reinforce its efforts to address the causes of youth homelessness and its consequences; and
- c) review its legislations and policies concerning benefits and social security allowances for 16 to 18-year-olds.

6. Education, leisure and cultural activities

Education

45. The Committee welcomes the increase of the budget devoted to education and the measures adopted by the State party to raise standards of literacy and numeracy through initiatives such as the Education Action Zones programme as well as the development of broad citizenship programmes. Furthermore, the Committee welcomes the development of legislation in Scotland to reflect article 12 of the Convention, but notes that similar legislation is required throughout the State party and that guidelines are insufficient measures to implement article 12 of the Convention. The Committee is concerned at the still high rate of temporary and permanent exclusions affecting mainly children from specific groups (ethnic minorities *inter alia* black children, Irish and Roma travellers, children with disabilities, asylum seekers etc.), the sharp differences in outcomes for children according to their socio-economic background and to other factors such as gender, disability, ethnic origin or care status. Moreover, the Committee is concerned at the widespread bullying in schools. The Committee is particularly concerned that children deprived of their liberty in prisons and juvenile detention centres do not have a statutory right to education and that their education is not under the responsibility of the Departments responsible for education and that they do not enjoy support for special education needs. The Committee is further concerned that the majority of children in the care system do not attain basic qualifications and so are teenage mothers. The Committee welcomes the development of integrated schools in Northern Ireland, but remains concerned that only about 4 per cent of the schools are integrated and that education continues to be heavily segregated.

46. In light of articles 2, 12, 28 and 29 of the Convention, and in line with its previous recommendations (*ibid.*, para. 32), the Committee recommends that the State party:

- a) ensure that legislation throughout the State party reflects article 12 and respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline;
- b) take appropriate measures to reduce temporary or permanent exclusions; ensure that children throughout the State party have the right to be heard before exclusion and have the right to appeal against temporary and permanent exclusion, and ensure that children who are excluded do continue to have access to full time education;
- c) undertake all necessary measures to remove the inequalities in educational achievement and in exclusion rates between children from different groups and to guarantee all children an appropriate quality education;
- d) ensure that children in detention have equal statutory right to education and improve education in care;
- e) take measures and adequate mechanisms and structures to prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies, in light of the Committee's recommendations adopted at its day of general discussion on "violence against children within the family and in schools";
- f) taking into consideration the Committee's general comment on the aims of education, include the Convention and human rights education in the curricula in all primary and secondary schools and teacher's training;

- g) increase budget and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents;
- h) develop educational programmes for teenage mothers to facilitate and encourage their further education; and
- i) evaluate the impact of privatization of schools on the right of children to education.

7. Special protection measures

Asylum-seeker/refugee children

47. The Committee welcomes the establishment in 1994 of Children's Panel of Advisers and is aware of the increasing numbers of children claiming asylum either with their families or on their own. The Committee is concerned that detention of these children is not compatible with the principles and provisions of the Convention. The Committee is further concerned that the dispersal system may impede a better integration and lead to an escalation in racially related incidents; placement in temporary accommodation of children seeking asylum may infringe their basic rights such as access to health or education; processing applications may take several years; Children's Panel of Advisers are not always adequately funded; and that the ongoing reform of the asylum and immigration system fails to address the particular needs and rights of asylum seeking children.

48. In accordance with the principles and provision of the Convention, especially articles 2, 3, 22 and 37, and with respect to children, whether seeking asylum or not, the Committee recommends that the State party:

- a) Refrain as a matter of policy from detaining unaccompanied minors and ensure the right to speedily challenge the legality of the detention in compliance with article 37 of the Convention. In any case detention must always be a measure of last resort and for the shortest appropriate period of time;
- b) ensure that refugee and asylum-seeker children have access to basic services, such as education and health and that there is no discrimination in benefit entitlements for asylum seeking families which could affect children;
- c) consider the appointment of guardians to unaccompanied asylum seekers and refugee children;
- d) take all necessary measures to prevent the dispersal of children who have settled in a particular area when they reach 18 years;
- e) undertake efforts to expedite the procedure for asylum applications and to avoid the placement of children in temporary accommodation which are not foreseen for such children and rather accommodate them as "children in need" under the child care legislation;
- f) carry out a review of the availability and effectiveness of legal representation and other forms of independent advocacy to unaccompanied minors and other children in the immigration and asylum systems; and
- g) address thoroughly the particular situation of children in the ongoing reform of the immigration and asylum system to bring it into line with the principles and provisions of the Convention.

Irish and Roma travellers

49. The Committee is concerned at the discrimination against children belonging to the Irish and Roma Travellers which is reflected among others by the higher rate of mortality among these children, their segregated education, the conditions of their accommodation, and racial attitudes towards them. The Committee is also concerned at the existing gap between policies and effective delivery of services.

50. In line with its previous recommendations (*ibid.*, para. 40), the Committee recommends that the State party devise—in a consultative and participatory process with these groups and their children—a comprehensive and constructive plan of action to effectively target the obstacles in the enjoyment of rights by children belonging to these groups.

Children in armed conflicts

51. The Committee is deeply concerned that about one third of the annual intake of recruits into the armed forces are below the age of 18 years, that the armed services target young people and that those recruited are required to serve for a minimum period of 4 years raising to six years in the case of very young recruits. The Committee is also concerned at the widespread allegations that young recruits have been the victims of bullying and at the fact that children below the age of 18 years take direct part in hostilities overseas. The Committee remains concerned at the negative impact of the conflict situation in Northern Ireland on children, including the use of emergency and other legislation in force in Northern Ireland.

52. The Committee recommends that the State party:

- a) ratify the Optional Protocol on the Involvement of Children in Armed Conflict and take all necessary measures to prevent the deployment of persons below the age of 18 years in the circumstances referred to in the declaration made upon signature by the State party keeping in mind the object and purpose of the Optional Protocol;
- b) while it recruits persons who have attained the age of 16 years but who have not attained the age of 18 years, shall endeavour to give priority to those who are the oldest in light of article 38, para. 3 of the Convention and strengthen and increase its efforts to recruit persons of 18 years and older;
- c) in line with its previous recommendations (*ibid.*, para. 34), review the emergency and other legislation, including in relation to the system of administration of juvenile justice, at present in operation in Northern Ireland to ensure its consistency with the principles and provisions of the Convention.

Economic exploitation, including child labour

53. The Committee is concerned that the national minimum wage does not apply to young workers above the minimum age of employment, and therefore they can be at risk to be economically exploited. The Committee notes that policies with regard to minimum wage reflect programmes of the State party aimed at encouraging young people to study and improve their skills. Nevertheless, the Committee is concerned that these policies may discriminate against children who must work.

54. The Committee recommends that the State party reconsider its policies regarding the minimum wage for young workers with a view not to discriminate against most vulnerable children.

Sexual exploitation and trafficking

55. The Committee welcomes the 2001 National plan for safeguarding children from commercial sexual exploitation and the 1997 memorandum of understanding signed between the State party and the Philippines Government to combat the sexual exploitation of children. It is nevertheless concerned that trafficking for sexual exploitation or other exploitation is still a problem and that children sexually exploited are still criminalised by law.

56. The Committee recommends that the State party:

- a) undertake a study on the scope, causes, and background of child prostitution;
- b) review its legislation not to criminalise children who are sexually exploited;
- c) continue to implement policies and programmes in accordance with the Declaration and Agenda for Action, and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;
- d) ensure that adequate resources (human and financial) are allocated to policies and programmes in this area.

The administration of juvenile justice

57. The Committee welcomes the State party initiatives to introduce restorative justice and other constructive community based disposals for juvenile offenders; the almost complete inclusion of 17-year-olds in the juvenile justice system and the creation of multidisciplinary teams to respond to child offenders behaviours, but the Committee notes with serious concern that the situation of children in conflict with the law has worsened since the consideration of the initial report. The Committee is particularly concerned that the age at which children enter the criminal justice system is low with the age of criminal responsibility still set at 8 years in Scotland to 10 years in the rest of the State party and the abolition of the principle of *doli incapax*. The Committee welcomes the different approach reflected in the Children's Hearings in Scotland and the debate on including young people of 16 to 18 years of age in the Children's hearings. The Committee is particularly concerned that since the State party's initial report, children between 12 and 14 years of age are now being deprived of their liberty. More generally, the Committee is deeply concerned at the high increasing numbers of children in custody, at earlier ages for lesser offences, and for longer custodial sentences imposed by the recent increased court powers to give detention and training orders. Therefore, it is the concern of the Committee that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37 (b) of the convention. The Committee is also extremely concerned at the conditions that children experienced in detention and that children do not receive adequate protection or help in young offender's institutions (for 15- to 17-year-olds), noting the very poor staff-child ratio, high levels of violence, bullying, self harm ad suicide, the inadequate rehabilitative opportunities, the solitary confinement in inappropriate conditions for long time as a disciplinary measure or for protection, and the fact that girls and some boys in prisons are still not separated from adults.

In addition the Committee notes with concern that:

- a) the Crime and Disorder Act 1998 introduced in England and Wales measures that may violate the principles and provisions of the Convention;

- b) children can be tried in adult courts in certain circumstances;
- c) children in custody do not always have access to independent advocacy services and to basic services such as education adequate health care, etc.;
- d) the privacy of children involved in the criminal justice system is not always protected and their names are in cases of serious offences often published; and that
- e) young people of 17 years of age are considered as adults for the purpose of remand.

58. In line with its previous recommendations (*ibid.*, paras. 35 & 36), the Committee recommends that the State party:

- a) establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular articles 3, 37, 40 and 39, and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.

In particular, the Committee recommends that the State party:

- b) considerably raise the minimum age for criminal responsibility;
- c) review the new Orders introduced by the Crime and Disorder Act 1998 and make them compatible with the principles and provision of the Convention;
- d) ensure that no child can be tried as an adult irrespective of the circumstances or the gravity of his/her offence;
- e) ensure the privacy of all children in conflict with the law is fully protected in line with article 40 (2)(b)(vii) of the Convention;
- f) ensure that detention of children is used as a measure of last resort and for the shortest appropriate period of time and that children are separated from adults in detention, and encourage the use of alternative measures to the deprivation of liberty;
- g) ensure that every child deprived of liberty have access to independent advocacy services and an independent child sensitive and accessible complaint procedure;
- h) take all necessary measures, as a matter of urgency, to review the conditions of detention and ensure that all children deprived of their liberty have an equal statutory right to education, health, and child protection as other children;
- i) review the status of young people of 17 years of age for the purpose pf remand with the view of giving special protection to all children under the age of 18 years;
- j) allocate appropriate resources in Children's Hearings in Scotland to substantively increase disposals and allow young offenders of 16 to 18 years of age to be also included in the Children's Hearings system.

8. Optional Protocols

59. The Committee notes that the State party has not ratified the two Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.

60. The Committee encourages the State party to ratify the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict. [as recommended above, para. 52(a)]

9. Dissemination of documentation

61. The Committee recommends that in light of article 44, paragraph 6, of the Convention, the second periodic report and written replies presented by the State party be made widely available to the public at large and that the publication of the relevant summary records and the concluding observations adopted by the Committee be considered.

Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the parliament and the general public, including concerned non-governmental organizations, and children's groups.

10. Periodicity for submission of reports

62. The Committee invites the State party to submit its next periodic report before the due date established under the Convention for the fourth periodic report, on 14 September 2009. This report will combine the third and fourth periodic reports. However, due to the important number of reports received by the Committee every year, and the related significant delay between the date of submission of a State party report and its consideration by the Committee, the Committee invites the State party, in order to reduce such delay, to submit its consolidated third and fourth report 18 months before its due date on 14 March 2008.

63. Finally, the Committee expects the next periodic report of the State party to include information from all the Overseas Dependent Territories and Crown Dependencies of the United Kingdom of Great Britain and Northern Ireland.

Annex 4: Children and Young People's Unit: Briefing on the Concluding Observations of the UN Committee on the Rights of the Child, October 2002

OVERALL

The UK Government is fully committed to the principles of the United Nations Convention on the Rights of the Child.

The Government has made strenuous efforts to put the interests of children and young people at the heart of government, and will continue to work towards this aim.

In recent years, we have made significant progress to protect and promote the wellbeing of children and young people and we welcome the recognition by the UN Committee of

the Steps we have taken. But we recognise that there is still more work that needs to be done.

We will consider the Committee's Concluding Observations carefully as we develop our overarching strategy for children and young people.

JUVENILE JUSTICE

The Government has made the reform of the youth justice system central to its policy agenda. That includes ensuring the system addresses the particular challenges of dealing with children and young people. Reducing and preventing youth crime and delinquency, and reforming the youth justice system are a major part of the Government's effort to build safer communities and tackle social exclusion. It also wants to prevent young people offending in the first place. The programmes it has introduced begin a long way before contact with the youth justice system. They work with the Government's wider efforts to combat social exclusion.

The Crime and Disorder Act 1998 established preventing offending as the principal aim of the youth justice system and placed a statutory duty on all those working in the youth justice system to have regard to that aim.

There is a downward trend in male juvenile offenders being held in custody with over 18s. A very small number of girls are held in over 18 prison service accommodation and we are looking to address this.

CHILDREN'S COMMISSIONER

There are already a range of mechanisms in place to promote and protect children's interests in England and we need to be convinced that any new structures will make a real difference to the lives of children & young people. That's why we are monitoring closely developments in the Devolved Administrations to see what lessons their experiences have for us.

SMACKING

The Government is absolutely opposed to violence and abuse against children. The law only allows what is reasonable in terms of the physical punishment of children—it does not permit child abuse. We recognise that parenting can be difficult, but we must avoid heavy-handed intrusion into family life. The Convention refers to the protection of children from physical violence and maltreatment. The Government is satisfied that UK law is in line with these provisions.

We believe our policy reflects common sense views of the vast majority of people. It is not only wrong but dangerous to link smacking and child abuse deaths. It diverts attention from those children most at risk.

We have recently announced preventive measures to be put in place next year to support children at risk by local services joining up and sharing information.

CHILD POVERTY

We agree that the levels of child poverty in the UK are unacceptable. That's why the Prime Minister made his central commitment to abolish child poverty in a generation. And we are making progress. Not on every front, but in important ways. We are beginning to reverse the legacy we found when we came to office of one of the worst records of child poverty in the industrialised world.

Today a quarter of a million fewer children are growing up in homes where no one has a job than in 1997

1.4 million fewer children are living in absolute poverty than in 1996/97

Over half a million fewer children are living in relative poverty than in 1996/7

We have ensured record increases in Child Benefit, up over 25% in real terms since 1997

As a result of personal tax and employment measures all families with children are on average £1,200 a year better off. All increases are targeted with the result that families in the poorest 20% are on average £2,400 a year better off.

Significantly more children are achieving level 4 in Key Stage 2 tests in literacy and numeracy

Teenage pregnancy is down and there are more teenage mothers in education, training or work—up from 16% in 1997 to 33% in 2001.

ASYLUM SEEKERS

The interests of asylum seeking children and young people are fully respected. The basic human rights of children are protected under the Human Rights Act, which applies to the protection of all children in the UK without exception.

The Government remains of the opinion that the Reservation is justified in the interests of effective immigration control. However, this does not prevent the UK from having regard to the Convention in its care and treatment of children. Moreover, the basic human rights of children are protected under the Human Rights Act, which applies to all children in the UK without exception.

It does not think that, given its commitment to the welfare of children, having the Reservation should lead to neglect of their care and welfare. It considers that, notwithstanding the Reservation, there are sufficient social and legal mechanisms in place to ensure that children receive a generous level of protection and care whilst they are in the UK.

ARMED CONFLICT

The UK is fully committed to the Convention's provisions on Child Soldiers. Indeed, we intend to ratify the Convention's Optional Protocol on the involvement of children in armed conflict. The ratification process will begin in November 2002.

Annex 5: List of Concerns raised by UN Committee on the Rights of the Child, 2002

Prepared by Frances Butler

GENERAL, PROCEDURAL AND STRUCTURAL

1. Failure to follow guidelines (para 2)
2. Failure to address 17 of the concerns raised in 1995 (para 4)
3. CRC not incorporated to maximum extent of available resources (para 10)

4. Absence of central mechanism for co-ordinating implementation (para 12)
5. Lack of use of CRC as framework (apart from in Wales) (para 14)
6. Lack of rights-based approach to policy development and absence of a global vision for children's rights (para 14)
7. Limited powers of children's commissioner in Wales (para 16)
8. Failure to establish independent human rights institution for children in England (para 16)
9. Absence of nationwide data collection on areas covered by CRC (para 18)
10. Most children are not aware of their CRC rights (para 20)
11. Inadequate dissemination, awareness-raising and training on CRC (para 20)
12. Discrimination against marginalized groups persists (para 22)
13. Best interests of the child not consistently reflected in legislation and policies, notably in juvenile justice system or immigration (para 25)
14. Participation by children inconsistently adopted, e.g. in divorce & adoption (para 29)
15. Right to independent representation in legal proceedings not systematically used (para 29)
16. Certain children are excluded from knowing the identity of their biological parents (para 31)

ASYLUM-SEEKER/REFUGEE CHILDREN

17. Failure to withdraw reservation (immigration) (para 6)
18. Detention is not compatible with the UNCRC (para 47)
19. Dispersal system may impede better integration and escalate racial incidents (para 47)
20. Placement in temporary accommodation may infringe basic rights (access to health or education) (para 47)
21. Processing applications may take several years (para 47)
22. Children's Panel of Advisers not always adequately funded (para 47)
23. Ongoing reform of asylum and immigration system fails to address needs and rights of asylum seeking children (para 47)

VIOLENCE/ABUSE/NEGLECT/MALTREATMENT

24. High prevalence of violence, sexual violence and neglect within families (1 to 2 children die per week) (para 37)
25. Absence of adequate systematic follow-up of child deaths (para 37)
26. Crimes committed against children under 16 are not recorded (para 37)

CORPORAL PUNISHMENT

27. Retention of defence of "reasonable chastisement" (para 35)
28. Proposals to limit the defence do not comply with CRC (para 35)
29. Absence of legislation prohibiting corporal punishment (para 35)

JUVENILE JUSTICE AND PRISONS

30. Situation of children in conflict with the law worse than in 1995 (para 57)
31. Age at which children enter the criminal justice system is low (8 in Scotland, 10 for England, Wales and NI) (para 57)

- 32. Abolition of principle of doli incapax (para 57)
- 33. Crime and Disorder Act 1998 may violate UNCRC (para 57 (a))
- 34. Children can be tried in adult courts in certain circumstances (para 57 (b))
- 35. Privacy is not always protected and in the case of serious offences, children's names are often published (para 57 (d))
- 36. Young people of 17 are considered as adults for the purpose of remand (para 57 (e))
- 37. Children between 12 and 14 years are now being deprived of their liberty (para 57)
- 38. High and increasing numbers of children in custody, at earlier ages for lesser offences and for longer custodial sentences (caused by use of DTOs) (para 57)
- 39. Conditions, inadequate protection or help, very poor staff-child ratios, inadequate rehabilitative opportunities (para 57)
- 40. Frequent use of physical restraint in prisons; solitary confinement in inappropriate conditions for long time (paras 33, 57)
- 41. High prevalence of violence in prisons (paras 37, 57), bullying, self harm and suicide (para 57)
- 42. Girls and some boys still not separated from adults (failure to withdraw reservation) (paras 6, 57)
- 43. No statutory right to education in prisons; education is the responsibility of the Home Office when it should be the DfES; no SEN support (paras 45, 57 (c))
- 44. Children in custody do not always have access to independent advocacy services and adequate health care (para 57 (c))

CILDREN IN CARE

- 45. Frequent use of physical restraint in residential institutions (para 33)
- 46. High prevalence of violence in the care system (para 37)
- 47. Lack of consistent safeguards for privately fostered children (para 37)
- 48. Lack of public education on the role of the child protection system (para 37)
- 49. Majority of children in care do not attain basic qualifications (para 45)

HEALTH

- 50. Persisting inequalities in health and access to health services, including mental health (para 39)
- 51. Relatively low rate of breastfeeding (para 39)
- 52. Persistence of female genital mutilation (para 39)
- 53. High rate of teenage pregnancies (para 41)
- 54. Many children suffer from mental health problems (para 41)
- 55. Rates of suicide among young people are still high (para 41)
- 56. Lack of appropriate information, support and protection for homosexual and transsexual young people (para 41)
- 57. Rising incidence of STDs among young persons (para 41)

POVERTY

- 58. High proportion of children living in poverty (para 43)
- 59. Lack of effective and co-ordinated poverty eradication strategy across UK (para 43)

EDUCATION

- 60. High prevalence of violence in schools (para 37)
- 61. Widespread bullying in schools (para 45)
- 62. Participation by children is inconsistent in education; school children not systematically consulted on decisions that affect them (paras 29, 45)
- 63. High rate of temporary and permanent exclusions affecting children from specific groups (para 45)
- 64. Sharp difference in outcomes for children according to their socio-economic background and other factors (para 45)

IRISH AND ROMA TRAVELLERS

- 65. Discrimination and racial attitudes (para 49)
- 66. High rate of infant mortality among Irish and Roma travellers (paras 39, 49)
- 67. Segregated education (para 49)
- 68. Conditions of their accommodation (para 49)
- 69. Gap between policies and effective delivery of services (para 49)

ARMED FORCES

- 70. One third of the annual intake of recruits into the armed forces are under 18 (para 51)
- 71. Armed services target young people (para 51)
- 72. Recruits are required to serve a minimum of 4 years (6 years for very young recruits) (para 51)
- 73. Widespread allegations that young recruits are victims of bullying (para 51)
- 74. Children take direct part in hostilities overseas (para 51)
- 75. UK has not ratified the Optional Protocol on the involvement of children in armed conflict (para 59)

ECONOMIC EXPLOITATION/CHILD LABOUR

- 76. National minimum wage does not apply to young workers above the minimum age of employment (para 53)
- 77. Policies may discriminate against children who must work (para 53)

SEXUAL EXPLOITATION AND TRAFFICKING

- 78. Trafficking for sexual exploitation is still a problem (para 55)
- 79. Children sexually exploited are still criminalized by law (para 55)
- 80. UK has not ratified the Optional Protocol on sale of children, child prostitution and child pornography (para 59)

NORTHERN IRELAND

- 81. Continued use of plastic baton rounds (para 27)
- 82. Corporal punishment not abolished in private schools (para 35)
- 83. Education continues to be highly segregated (only 4% integrated) (para 45)

84. Negative impact of the conflict situation, including the use of emergency and other legislation (para 51)

Annex 6: Concluding Observations of the Committee on the Rights of the Child: United Kingdom, February 1995.

1. The Committee considered the initial report of the United Kingdom of Great Britain and Northern Ireland (CRC/C/I/Add.1) at its 204th, 205th and 206th meetings (CRC/C/SR.204-206), held on 24 and 25 January 1995, and adopted* the following concluding observations.

A. INTRODUCTION

2. The Committee appreciates the opportunity to engage in a constructive dialogue with the State party and welcomes the timely submission by the Government of the written responses to the Committee's list of issues (see CRC/C.7/WP.1). The Committee welcomes the additional oral information provided by the delegation of the State party which greatly assisted in clarifying many of the issues raised by the Committee. The additional oral information was particularly useful, in view of the Committee's observation that the initial report of the State party lacked sufficient information on the factors and difficulties impeding the implementation of various rights provided for in the Convention.

B. POSITIVE ASPECTS

3. The Committee takes note of the adoption by the State party of a Children's Act applicable to England and Wales. The Committee also observes that the State party has extended the application of the Convention to many of its dependent territories. The Committee welcomes the intention of the State party to consider withdrawing the reservation it made to article 37 of the Convention as it relates to the procedures governing children's hearings in Scotland.

4. Moreover, the Committee welcomes the initiatives being taken by the State party to reduce the incidence of Sudden Infant Death Syndrome and to combat the problem of bullying in school. In addition, the Committee is encouraged by the steps taken to address the issue of the sexual abuse of children, including through the development of the "Working Together" initiative which advocates and promotes an interdisciplinary approach to addressing this serious problem.

5. The Committee welcomes the information it received concerning the commitment of the Government to review its legislation in the area of the employment of children and to present new legislation in matters relating to the family, domestic violence and disability. Likewise, the Committee welcomes the measures being taken to pass further legislation in the area of adoption, including the intention of the Government to ratify the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. The Committee takes note of the Code of Practice for Children with Special Educational Needs which has statutory force and has been developed within the framework of the 1993 Education Act.

6. The Committee takes note of the Government's commitment to extend the provision of preschool education. The Committee is equally appreciative of the recent initiative taken by the State party to require local authorities, in conjunction with health authorities and non-governmental organizations, to draw up Children's Service Plans.

C. PRINCIPAL SUBJECTS OF CONCERN

7. The Committee is concerned about the broad nature of the reservations made to the Convention by the State party which raise concern as to their compatibility with the object and purpose of the Convention. In particular, the reservation relating to the application of the Nationality and Immigration Act does not appear to be compatible with the principles and provisions of the Convention, including those of its articles 2, 3, 9 and 10.

8. The Committee remains unclear about the extent to which an effective coordinating mechanism exists for the implementation of the Convention on the Rights of the Child. It is concerned whether sufficient consideration has been given to the establishment of mechanisms, including of an independent nature, to coordinate and monitor the implementation of the rights of the child.

9. With respect to article 4 of the Convention, the Committee is concerned about the adequacy of measures taken to ensure the implementation of economic, social and cultural rights to the maximum extent of available resources. It appears to the Committee that insufficient expenditure is allocated to the social sector both within the State party and within the context of international development aid; the Committee wonders whether sufficient consideration has been given to the enjoyment of fundamental rights by children belonging to the most vulnerable groups in society.

10. The Committee notes that the initial report of the State party contains little information on the difficulties experienced by children living in Northern Ireland and the effect on children of the operation of emergency legislation there. The Committee is concerned about the absence of effective safeguards to prevent the ill-treatment of children under the emergency legislation. In this connection, the Committee observes that under the same legislation it is possible to hold children as young as 10 for 7 days without charge. It is also noted that the emergency legislation which gives the police and the army the power to stop, question and search people on the street has led to complaints of children being badly treated. The Committee is concerned about this situation which may lead to a lack of confidence in the system of investigation and action on such complaints.

11. The Committee is concerned about the apparent insufficiency of measures taken to ensure the implementation of the general principles of the Convention, namely the provisions of its articles 2, 3, 6 and 12. In this connection, the Committee observes in particular that the principle of the best interests of the child appears not to be reflected in legislation in such areas as health, education and social security which have a bearing on the respect for the rights of the child.

12. With regard to article 2 of the Convention relating to non-discrimination, the Committee expresses its concern at the insufficient measures undertaken to ensure its implementation. In particular, it is concerned about the possible adverse effects on children of the restrictions applied to unmarried fathers in transmitting citizenship to their children, in contradiction of the provisions of articles 7 and 8 of the Convention. In addition, the Committee is concerned that children of certain ethnic minorities appear to be more likely to be placed in care.

13. Furthermore, in the light of article 6 of the Convention, the Committee expresses its concern at the health status of children of different socio-economic groups and those belonging to ethnic minorities.

14. In relation to the implementation of article 12, the Committee is concerned that insufficient attention has been given to the right of the child to express his/her opinion, including in cases where parents in England and Wales have the possibility of withdrawing

their children from parts of the sex education programmes in schools. In this as in other decisions, including exclusion from school, the child is not systematically invited to express his/her opinion and those opinions may not be given due weight, as required under article 12 of the Convention.

15. The Committee notes with concern the increasing number of children living in poverty. The Committee is aware that the phenomenon of children begging and sleeping on the streets has become more visible. The Committee is concerned that the changed regulations regarding benefit entitlements to young people may have contributed to the increase in the number of young homeless people. The rate of divorce and the number of single-parent families and teenage pregnancies in the State party are noted with concern. These phenomena raise a number of issues, including as regards the adequacy of benefit allowances and the availability and effectiveness of family education.

16. The Committee is disturbed about the reports it has received on the physical and sexual abuse of children. In this connection, the Committee is worried about the national legal provisions dealing with reasonable chastisement within the family. The imprecise nature of the expression of reasonable chastisement as contained in these legal provisions may pave the way for it to be interpreted in a subjective and arbitrary manner. Thus, the Committee is concerned that legislative and other measures relating to the physical integrity of children do not appear to be compatible with the provisions and principles of the Convention, including those of its articles 3, 19 and 37. The Committee is equally concerned that privately funded and managed schools are still permitted to administer corporal punishment to children in attendance there which does not appear to be compatible with the provisions of the Convention, including those of its article 28, paragraph 2.

17. The administration of the juvenile justice system in the State party is a matter of general concern to the Committee. The low age of criminal responsibility and the national legislation relating to the administration of juvenile justice seem not to be compatible with the provisions of the Convention, namely articles 37 and 40.

18. The Committee remains concerned about certain of the provisions of the Criminal Justice and Public Order Act 1994. The Committee notes that its provisions provide, inter alia, for the possibility of applying "secure training orders" on children aged 12 to 14 in England and Wales. The Committee is concerned about the compatibility of the application of such secure training orders on young children with the principles and provisions of the Convention in relation to the administration of juvenile justice, particularly its articles 3, 37, 39 and 40. In particular, the Committee is concerned that the ethos of the guidelines for the administration and establishment of Secure Training Centres in England and Wales and the Training Schools in Northern Ireland appears to lay emphasis on imprisonment and punishment.

19. The Committee is equally concerned that children placed in care under the social welfare system may be held in Training Schools in Northern Ireland and may be placed in the future in Secure Training Centres in England and Wales.

20. The Committee is also concerned that The Criminal Evidence (N.I.) Order 1988 appears to be incompatible with article 40 of the Convention, in particular with the right to presumption of innocence and the right not to be compelled to give testimony or confess guilt. It is noted that silence in response to police questioning can be used to support a finding of guilt against a child over 10 years of age in Northern Ireland. Silence at trial can be similarly used against children over 14 years of age.

21. The situation of Gypsy and Traveller children is a matter of concern to the Committee, especially with regard to their access to basic services and the provision of caravan sites.

D. SUGGESTIONS AND RECOMMENDATIONS

22. The Committee wishes to encourage the State party to consider reviewing its reservations to the Convention with a view to withdrawing them, particularly in light of the agreements made in this regard at the World Conference on Human Rights and incorporated in the Vienna Declaration and Programme of Action.

23. The Committee would like to suggest that the State party consider establishing a national mechanism for the purpose of coordinating the implementation of the Convention, including between governmental departments and between central and local governmental authorities. Furthermore, the Committee suggests that the State party establish a permanent mechanism for the monitoring of the Children's Act and the Convention on the Rights of the Child throughout the United Kingdom. It is further suggested that ways and means be established to facilitate regular and closer cooperation between the Government and the non-governmental community, particularly with those non-governmental organizations closely involved in monitoring the respect for the rights of the child in the State party.

24. With regard to the implementation of article 4 of the Convention, the Committee would like to suggest that the general principles of the Convention, particularly the provisions of its article 3, relating to the best interests of the child, should guide the determination of policy-making at both the central and local levels of government. This approach is of relevance to decisions taken about the allocation of resources to the social sector at the central and local governmental levels, including with regard to the allocation of benefits to children who have completed compulsory schooling and have no full-time employment. The Committee notes the importance of additional efforts to overcome the problems of growing social and economic inequality and increased poverty.

25. With regard to matters relating to the health, welfare and standard of living of children in the United Kingdom, the Committee recommends additional measures to address, as a matter of priority, problems affecting the health status of children of different socio-economic groups and of children belonging to ethnic minorities and to the problems of homelessness affecting children and their families.

26. The Committee recommends that in line with the provisions of article 42 of the Convention, the State party should undertake measures to make the provisions and principles of the Convention widely known to adults and children alike. It is also suggested that teaching about children's rights should be incorporated into the training curricula of professionals working with or for children, such as teachers, the police, judges, social workers, health workers and personnel in care and detention institutions.

27. The Committee would like to suggest that greater priority be given to incorporating the general principles of the Convention, especially the provisions of its article 3, relating to the best interests of the child, and article 12, concerning the child's right to make their views known and to have these views given due weight, in the legislative and administrative measures and in policies undertaken to implement the rights of the child. It is suggested that the State party consider the possibility of establishing further mechanisms to facilitate the participation of children in decisions affecting them, including within the family and the community.

28. The Committee recommends that race relations legislation be introduced in Northern Ireland as a matter of urgency and is encouraged by the information presented by the

delegation of the State party regarding the Government's intention to follow up on this matter.

29. The Committee would also like to suggest that a review be undertaken of the nationality and immigration laws and procedures to ensure their conformity with the principles and provisions of the Convention.

30. The Committee recommends that further measures be undertaken to educate parents about their responsibilities towards their children, including through the provision of family education which should emphasize the equal responsibilities of both parents. While recognizing that the Government views the problem of teenage pregnancies as a serious one, the Committee suggests that additional efforts, in the form of prevention-oriented programmes which could be part of an educational campaign, are required to reduce the number of teenage pregnancies.

31. The Committee is also of the opinion that additional efforts are required to overcome the problem of violence in society. The Committee recommends that physical punishment of children in families be prohibited in the light of the provisions set out in articles 3 and 19 of the Convention. In connection with the child's right to physical integrity, as recognized by the Convention, namely in its articles 19, 28, 29 and 37, and in the light of the best interests of the child, the Committee suggests that the State party consider the possibility of undertaking additional education campaigns. Such measures would help to change societal attitudes towards the use of physical punishment in the family and foster the acceptance of the legal prohibition of the physical punishment of children.

32. With regard to matters relating to education, the Committee suggests that children's right to appeal against expulsion from school be effectively ensured. It is also suggested that procedures be introduced to ensure that children are provided with the opportunity to express their views on the running of the schools in matters of concern to them. Further, the Committee recommends that the training curricula of teachers should incorporate education about the Convention on the Rights of the Child. It is recommended that teaching methods should be inspired by and reflect the spirit and philosophy of the Convention, in the light of the general principles of the Convention and the provisions of its article 29. The Committee would also like to suggest that the State party consider the possibility of introducing education about the Convention on the Rights of the Child into school curricula. Legislative measures are recommended to prohibit the use of corporal punishment in privately funded and managed schools.

33. The Committee also suggests that the State party provide further support to the teaching of the Irish language in schools in Northern Ireland and to integrated education schooling.

34. The Committee recommends that the emergency and other legislation, including in relation to the system of administration of juvenile justice, at present in operation in Northern Ireland should be reviewed to ensure its consistency with the principles and provisions of the Convention.

35. The Committee recommends that law reform be pursued in order to ensure that the system of the administration of juvenile justice is child-oriented. The Committee also wishes to recommend that the State party take the necessary measures to prevent juvenile delinquency as set down in the Convention and complemented by the Riyadh Guidelines.

36. More specifically, the Committee recommends that serious consideration be given to raising the age of criminal responsibility throughout the areas of the United Kingdom. The Committee also recommends the introduction of careful monitoring of the new Criminal

Justice and Public Order Act 1994 with a view to ensuring full respect for the Convention on the Rights of the Child. In particular, the provisions of the Act which allow for, inter alia, placement of secure training orders on children aged between 12 and 14, indeterminate detention, and the doubling of sentences which may be imposed on 15- to 17-year-old children should be reviewed with respect to their compatibility with the principles and provisions of the Convention.

37. Within the context of the law reform being considered with regard to matters relating to the employment of children, the Committee expresses the hope that the State party will consider reviewing its reservation with a view to its withdrawal. Similarly, the Committee expresses the hope that the Government may consider the possibility of becoming a party to ILO Convention No. 138.

38. The issues of sexual exploitation and drug abuse as they affect children should also be addressed on an urgent basis, including with regard to the undertaking of further measures to prevent them.

39. The Committee is of the view that the implementation of the provisions of article 39 of the Convention deserves greater attention. Programmes and strategies should be developed to ensure that measures are in place to promote the physical and psychological recovery and social reintegration of a child victim of, Inter alia, neglect, sexual exploitation, abuse, family conflict, violence, drug abuse, as well as of children in the system of administration of justice. Such measures should be applied within the national context but also within the framework of international cooperation.

40. In addition, the Committee recommends pro-active measures for the rights of children belonging to Gypsy and Traveller communities, including their right to education, and that a sufficient number of adequately appointed caravan sites for these communities be secured.

41. The Committee also recommends that information on the implementation of the Convention in the dependent territory of Hong Kong be submitted to the Committee by 1996.

42. The Committee encourages the State party to disseminate widely the State party report, summary records of the discussion of the report within the Committee and the concluding observations adopted by the Committee following its consideration of the report. The Committee would like to suggest that these documents be brought to the attention of Parliament and that the suggestions and recommendations for action contained therein be followed up. In this regard, the Committee suggests that closer cooperation with non-governmental organizations be pursued.

* At the 208th meeting, held on 26 January 1995.

Formal Minutes

Monday 9 June 2003

Members present:

Jean Corston MP, in the Chair

Lord Bowness

Mr David Chidgey MP

Lord Lester of Herne Hill

Mr Kevin McNamara MP

Lord Parekh

Mr Shaun Woodward MP

Baroness Whitaker

The Committee deliberated.

* * * * *

Draft Report [United Nations Convention on the Rights of the Child], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 116 read and agreed to.

Resolved, That the Report be the Tenth Report of the Committee to each House.

Summary agreed to.

Ordered, That certain papers be appended to the Report.

Ordered, That the provisions of Standing Order No. 134 of the House of Commons be applied to the Report.

Ordered, That the Chairman do make the Report to the House of Commons and that Baroness Whitaker do make the Report to the House of Lords.

* * * * *

[Adjourned till Monday 16 June 2003 at half past Four o'clock.]

Witnesses

Monday 15 July 2002

Ms Carolyne Willow, Co-ordinator, Children's Rights Alliance for England;
Ms Jennifer Turpie, Co-ordinator, Scottish Alliance for Children's Rights;
Ms Catriona Williams, Chief Executive, Children in Wales;
Ms Sheri Chamberlain, Northern Ireland Programme Director, Save the Children, Ev 1
and

Ms Mary Marsh, Director and Chief Executive, NSPCC;
Ms Judy Lister, Regional Director for UK/Europe, Save the Children;
Ms Kathy Evans, Head of Social Policy, Children's Society. Ev 8

Monday 18 November 2002

Rt Hon John Denham, MP, Minister of State for Young People, Home Office and
Ms Althea Efunshile, Director, Children and Young People's Unit,
Department for Education and Skills Ev 13

List of written evidence

- 1 Memorandum from Rt Hon John Denham MP, Minister of State, Home Office Ev 29
- 2 Memorandum from Dr Lewis Moonie MP, Parliamentary Under-Secretary of State for Defence, Ministry of Defence Ev 31
- 3 Memorandum from the Society for the Protection of Unborn Children Ev 32
- 4 Memorandum from Young Minds, National Children's Mental Health Charity Ev 32
- 5 Memorandum from Shelter Ev 34
- 6 Memorandum from the British Humanist Association Ev 36
- 7 Memorandum from Children's Rights Alliance for England Ev 41
- 8 Memorandum from Global Initiative to End All Corporal Punishment of Children Ev 48
- 9 Memorandum from Friends, Families and Travellers Advice and Information Unit Ev 55
- 10 Memorandum from the Refugee Council Children's Section Ev 56

Reports from the Joint Committee on Human Rights since 2001

The following reports have been produced

Session 2002–03

First Report	Scrutiny of Bills: Progress Report	HL Paper 24/HC 191
Second Report	Criminal Justice Bill	HL Paper 40/HC 374
Third Report	Scrutiny of Bills: Further Progress Report	HL Paper 41/HC 375
Fourth Report	Scrutiny of Bills: Further Progress Report	HL Paper 50/HC 397
Fifth Report	Continuance in force of sections 21 to 23 of the Anti-terrorism, Crime and Security Act 2001	HL Paper 59/HC 462
Sixth Report	The Case for a Human Rights Commission: Volume I Report	HL Paper 67-I HC 489-I
Seventh Report	Scrutiny of Bills: Further Progress Report	HL Paper 74/HC 547
Eighth Report	Scrutiny of Bills: Further Progress Report	HL Paper 90/HC 634
Ninth Report	The Case for a Children's Commissioner for England	HL Paper 96/HC 666

Session 2001–02

First Report	Homelessness Bill	HL Paper 30/HC 314
Second Report	Anti-terrorism, Crime and Security Bill	HL Paper 37/HC 372
Third Report	Proceeds of Crime Bill	HL Paper 43/HC 405
Fourth Report	Sex Discrimination (Election Candidates) Bill	HL Paper 44/HC 406
Fifth Report	Anti-terrorism, Crime and Security Bill: Further Report	HL Paper 51/HC 420
Sixth Report	The Mental Health Act 1983 (Remedial) Order 2001	HL Paper 57/HC 472
Seventh Report	Making of Remedial Orders	HL Paper 58/HC 473
Eighth Report	Tobacco Advertising and Promotion Bill	HL Paper 59/HC 474
Ninth Report	Scrutiny of Bills: Progress Report	HL Paper 60/HC 475
Tenth Report	Animal Health Bill	HL Paper 67/HC 542
Eleventh Report	Proceeds of Crime: Further Report	HL Paper 75/HC 596
Twelfth Report	Employment Bill	HL Paper 85/HC 645

Thirteenth Report	Police Reform Bill	HL Paper 86/HC 646
Fourteenth Report	Scrutiny of Bills: Private Members' Bills and Private Bills	HL Paper 93/HC 674
Fifteenth Report	Police Reform Bill: Further Report	HL Paper 98/HC 706
Sixteenth Report	Scrutiny of Bills: Further Progress Report	HL Paper 113/ HC 805
Seventeenth Report	Nationality, Immigration and Asylum Bill	HL Paper 132/ HC 961
Eighteenth Report	Scrutiny of Bills: Further Progress Report	HL Paper 133/ HC 962
Nineteenth Report	Draft Communications Bill	HL Paper 149 HC 1102
Twentieth Report	Draft Extradition Bill	HL Paper 158/ HC 1140
Twenty-first Report	Scrutiny of Bills: Further Progress Report	HL Paper 159/ HC 1141
Twenty-second Report	The Case for a Human Rights Commission	HL Paper 160/ HC 1142
Twenty-third Report	Nationality, Immigration and Asylum Bill: Further Report	HL Paper 176/ HC 1255
Twenty-fourth Report	Adoption and children Bill: As amended by the House of Lords on Report	HL Paper 177/ HC 979
Twenty-fifth Report	Draft Mental Health Bill	HL Paper 181/ HC 1294
Twenty-sixth Report	Scrutiny of Bills: Final Progress Report	HL Paper 182/ HC 1295