



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

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# The UK's compliance with the UN Convention on the Rights of the Child

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**Eighth Report of Session 2014–15**

*Report, together with formal minutes*

*Ordered by the House of Lords*

*to be printed 18 March 2015*

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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, draft remedial orders and remedial orders.

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

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### Publications

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 <http://www.parliament.uk/jchr>

### Current Staff

The current staff of the Committee is: Mike Hennessy (Commons Clerk), Megan Conway (Lords Clerk), Murray Hunt (Legal Adviser), Michelle Owens (Committee Assistant), and Keith Pryke (Office Support Assistant).

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# 1 Purpose of the inquiry

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1. Towards the end of 2014 we decided to review our work since the 2010 Election in the area of children's rights with a view to publishing a Report before the end of the Parliament. This Report would, amongst other things, assess the progress that has been made by the Government since its December 2010 commitment to give "due regard" to the UNCRC when making new policy or legislation, explore the implications of the changes to the Office of the Children's Commissioner for England and analyse the extent to which the situation for children's rights has improved or deteriorated with regard to those areas on which we have reported over the Parliament: these include the rights of migrant children, child trafficking, children in custody, children with special educational needs ("SEN"), and children and legal aid.

2. As this Parliament is drawing to a close, the time for this inquiry was short. We acknowledge that in many areas all we have been able to do is to give a snapshot as reported to us in the evidence we received of some of the key challenges facing the full realisation of children's rights. **We very much hope that our successor Committee will use the opportunities presented to it to continue to use the UNCRC as a tool for assessing policy and legislation, and will consider taking forward one or more of the problematic policy areas we have highlighted in this Report for an inquiry at an early stage in the new Parliament. We would also commend to our successor Committee the need to recognise the different approaches of the devolved administrations and the challenges presented in achieving a coherent overarching implementation of the Convention.**

3. Our assessment of children's rights takes place against the background of the May 2014 submission of the UK Government's periodic report on the UNCRC to the UN Committee on the Rights of the Child and its May 2016 examination by that Committee. We note that the UN has recently sought to increase the role of parliaments in UN processes in general and in relation to human rights in particular, and has resolved to make a greater effort to integrate a parliamentary contribution to its reviews of states' international commitments.<sup>1</sup> **We welcome the recent moves in the UN to encourage greater parliamentary involvement in its human rights machinery, including the work of the treaty bodies that monitor states' compliance with their obligations under the UN human rights treaties. We hope that this Report will be of assistance to the UN Committee on the Rights of the Child when it examines the UK Government's periodic review report.**

4. On 4 February we took evidence from the outgoing Children's Commissioner for England, Dr Maggie Atkinson, and from the incoming Commissioner, Anne Longfield. On 11 February, we took evidence from Paola Uccellari, Director, Children's Rights Alliance for England, Natalie Williams, Policy Adviser, the Children's Society, Kate Aubrey-Johnson, Youth Justice & Strategic Litigation Fellow, Just for Kids Law, and Dragan Nastic, Senior Policy and Advocacy Advisor, Unicef UK. Finally, on 25 February we took evidence from Edward Timpson MP, Minister of State for Children and Families, the Department for Education.

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<sup>1</sup> See e.g. UN General Assembly Resolution 66/261, Interaction between the United Nations, National Parliaments and the Inter-Parliamentary Union (29 May 2012).

5. We also received eleven written submissions, from Child Soldiers International, the Howard League for Penal Reform, JustRights, the Standing Committee for Youth Justice, the United Nations High Commissioner for Refugees, Just for Kids Law, Carolyne Willow, Clan Childlaw Ltd., Together (the Scottish Alliance for Children's Rights), Children Are Unbeatable!, the Equality and Human Rights Commission, the Youth Justice Board and the Children's Society. Correspondence has been received from the Children's Commissioners for Wales, the Scottish Commissioner for Children and Young People, the Chief Executive to the Northern Ireland Commissioner for Children and Young People, and the Chair of Together (the Scottish Alliance for Children's Rights), highlighting the position of children in the devolved jurisdictions and the important devolutionary angle to the inquiry.

6. We thank all those who gave oral evidence to us, submitted written memoranda or otherwise contributed to our work during this inquiry.

## General background

7. On 23 May 2014, the Government submitted its fifth periodic report to the United Nations on its implementation of the UN Convention on the Rights of the Child (UNCRC)<sup>2</sup>. The UN Committee will hear evidence from NGOs and children (at the pre-sessional working group) in October 2015, following which the UN Committee will hear evidence from the UK Government in May 2016. Finally, the UN Committee will issue its concluding observations in the summer of 2016.

8. On publication of the Government's fifth periodic report, a joint statement was issued by a coalition of charities, which expressed disappointment at some elements of the report and stated that in many areas the Government was failing to meet its commitment to assess fully the impact of its policies on the rights of all children.<sup>3</sup> We decided as a result of this to undertake an assessment of the Government's report against our own findings over this Parliament connected with children's rights issues

9. In addition to the UNCRC reporting process, we were also mindful of the Second Universal Periodic Review (UPR) of the UK by the UN Human Rights Council (July 2012), which made a number of recommendations relating to children's rights issues, and the UK's Mid-Term Report on the UPR submitted to the UN Human Rights Council in 2014.<sup>4</sup> We had received a memorandum from three children's charities (Save the Children, UNICEF UK and Children's Rights Alliance for England) concerning the UPR Review and some of the criticisms it had contained concerning the Government's record on children's rights.

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2 *The Fifth Periodic Report to the UN Committee on the Rights of the Child*, May 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en)

3 <http://www.crae.org.uk/news/charities-challenge-government-to-assess-impact-of-its-policies-on-children's-human-rights/>

4 *United Nations Universal Periodic Review—Mid-Term Report of the United Kingdom of Great Britain and Northern Ireland, and the British Overseas Territories, and the Crown Dependencies* (2014) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398295/uk-upr-mid-term-report-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398295/uk-upr-mid-term-report-2014.pdf)

10. We have ourselves, during the current Parliament, made a number of recommendations in relation to children's rights issues that are relevant to both the UNCRC examination and UPR recommendations, for example in relation to:

- the Government's 2010 Ministerial commitment to give due consideration to the UNCRC when developing law and policy;<sup>5</sup>
- child poverty;<sup>6</sup>
- juvenile justice, including children in detention;<sup>7</sup>
- children's access to legal aid;<sup>8</sup>
- unaccompanied migrant children;<sup>9</sup>
- special educational needs ("SEN") provision;<sup>10</sup> and
- the reform of the Children's Commissioner for England.<sup>11</sup>

11. Our Reports on these subjects have contained both positive comments, welcoming a number of measures which clearly enhance children's rights and the machinery for their protection, and more critical conclusions—including recommendations as to how the rights of children could be better protected. We have used progress made against our recommendations as a yard-stick to assess some areas of the Government's record on children's rights in this Report.

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5 Joint Committee on Human Rights (JCHR), First Report of Session 2013–14, *Human Rights of unaccompanied migrant children and young people in the UK*, HL Paper 9/HC 196

6 JCHR, Twenty-first Report of Session 2010–12, *Legislative Scrutiny: Welfare Reform Bill*, HL Paper 233/HC 1704

7 JCHR, Fourteenth Report of Session 2013–14, *Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill*, HL Paper 189/HC 1293

8 JCHR, Seventh Report of Session 2013–14, *The implications for access to justice of the Government's proposals to reform legal aid*, HL Paper 100/HC 766; and First Report of Session 2014–15, *Legal aid: children and the residence test*, HL Paper 14/HC 234

9 JCHR, First Report of Session 2013–14, *Human Rights of unaccompanied migrant children and young people in the UK*, HL Paper 9/HC 196

10 JCHR, Third Report of Session 2013–14, *Legislative Scrutiny: Children and Families Bill; Energy Bill*, HL Paper 29/HC 157

11 JCHR, Sixth Report of Session 2012–13, *Reform of the Children's Commissioner: draft legislation*, HL Paper 83/HC 811; and JCHR, Third Report of Session 2013–14, *Legislative Scrutiny: Children and Families Bill; Energy Bill*, HL Paper 29/HC 157

## 2 The United Nations Convention on the Rights of the Child

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12. The United Nations Convention on the Rights of the Child (UNCRC) is the most universally accepted of all UN human rights instruments and the most comprehensive in its promotion of children's rights—civil, political, economic, social and cultural—informing other human rights standards through a framework of state responsibilities applicable to all children within signatory states' jurisdictions.

13. To assist in the interpretation of the rights under the Convention, the UN Committee on the Rights of the Child, a body of independent experts which monitors implementation of the UNCRC, issues documents known as General Comments. These have dealt with such issues as adolescent health (General Comment 4) and the right of children to be heard (General Comment 12).

14. States Parties are also required to report periodically to the Committee. After consideration of a State party's report the Committee issues observations and recommendations. Concluding observations refer both to positive aspects of a State's implementation of the UNCRC and areas where the Committee recommends that further action needs to be taken by the State. The most recent set of Concluding Observations on the UK were issued by the UN Committee in October 2008.<sup>12</sup>

### Key UNCRC Articles

Article 1 (Definition of the child): A 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood to be younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

Article 2 (Non-discrimination): The Convention applies to all children without discrimination. No child should be treated unfairly on any basis.

Article 3 (Best interests of the child): The best interests of children must be a primary concern in making decisions that may affect them. All relevant adults should do what is best for children. When decisions are made, the impact on the child must be considered. This particularly applies to budgetary authorities, policymakers and legislators.

Article 4 (Protection of rights): Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled. This includes assessing domestic legislation and practice to ensure that the minimum standards set by the Convention are being met. Article 41 of the Convention points out that when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

Article 12 (Respect for the views of the child): A child capable of forming his or her own views will be given the right to express those views freely in all matters affecting the child, with those views being given due weight in accordance with their age and maturity. In particular, a child will be provided with the opportunity to be heard in any judicial or administrative proceedings affecting

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12 CRC/C/GBR/CO/4 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

them, either directly, or through representatives.

Article 19 (Protection from all forms of violence): Children have the right to be protected from being hurt or mistreated, physically or mentally.

Article 20 (Children deprived of family environment): Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.

Article 27 (Standards of living): Children have the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 28 (Right to education): Children have the right to free primary education. Secondary education should be available to every child, and higher education should be accessible on the basis of capacity by every appropriate means.

Article 29 (Goals of education): Children's education should develop each child's personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. It should also develop respect for the child's parents and for their cultural identity and values.

Article 39 (Rehabilitation of child victims): Children who have been neglected, abused or exploited should receive special help to recover and reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

15. Perhaps most significantly, the Convention specifies (Article 3) that the best interests of the child are to be the primary consideration in all decisions concerning children; that where a child is capable of forming his or her own views, those views should be given due weight in accordance with the age and maturity of the child; and that children capable of forming their own views have the right to participate in any proceedings that concern them (Article 12).

16. Although not directly incorporated into domestic law, the principles of the UNCRC guide domestic law and practice, and are often referred to by the courts when interpreting obligations imposed by human rights and other legislation. Since November 2008, when the United Kingdom removed a reservation to allow it not to apply the Convention to decisions concerning children and young people subject to immigration control, the Government has accepted that all children, irrespective of their immigration status, must enjoy all the rights and protections of the UNCRC without discrimination, as specified under Article 2 of the Convention.

17. Indeed, in addition to its status as an international treaty which is legally binding on the UK, the Convention also has a degree of more direct legal effect in the UK's legal system, through the Human Rights Act 1998. The European Court of Human Rights has begun to take note of the Convention in the context of its interpretation of the European Convention on Human Rights.<sup>13</sup> The UK Courts are required by the Human Rights Act

13 See e.g. *Neulinger and Shuruk v Switzerland* (App. No. 41615/07, 6 July 2010) at para. 135 ('The Court notes that there is currently a broad consensus—including in international law—in support of the idea that in all decisions concerning children, their best interests must be paramount.')



1998 to take account of ECtHR jurisprudence and the Government is bound by its judgments in cases against the UK. The Supreme Court has held, for example, that “it is clear from the recent jurisprudence that the Strasbourg Court will expect national authorities to apply Article 3(1) of UNCRC and treat the best interests of a child as a ‘primary consideration.’”<sup>14</sup> When considering whether a proposed deportation is a disproportionate interference with the right to respect for private and family life under Article 8 ECHR, therefore, the best interests of the child must be considered first.

18. Moreover, while the Convention has not been incorporated into UK law and is therefore not directly justiciable in UK courts—that is to say, an individual cannot go to a UK court to complain about a breach of any of the rights in the Convention—the conclusions and recommendations of the UN Committee, while strictly speaking not legally binding, do provide an authoritative interpretation of the individual treaty obligations which are themselves legally binding on the UK.

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14 *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, para [25].

## 3 The Government's 2010 UNCRC commitment

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19. On 6 December 2010, in a Written Ministerial Statement in connection with the publication of the Independent Review of the Children's Commissioner, the then Children's Minister, Sarah Teather MP, gave a commitment on behalf of the Government that it would always give due consideration to the UNCRC in the making of new policy and legislation.

I can therefore make a clear commitment that the Government will give due consideration to the UNCRC articles when making new policy and legislation. In doing so, we will always consider the UN Committee on the Rights of the Child's recommendations but recognise that, like other state signatories, the UK Government and the UN committee may at times disagree on what compliance with certain articles entails.<sup>15</sup>

This development was widely welcomed, although it was not clear from the Statement what this would practically entail in terms of mechanisms within Government. One of the intentions behind our inquiry into children's rights was to establish what the commitment had meant within Government and to assess what the impact of this commitment had been over the course of the Parliament.

20. In evidence to us Edward Timpson MP, Minister of State for Children and Families at the Department for Education, gave some examples of what the 2010 commitment has achieved:

For example, we now have Cabinet Office guidelines that before any legislation starts on its journey through Parliament, it has to have gone through the various articles of the UNCRC to make sure that it is compliant with them.

We have the sometimes rather excruciating but important process of the Home Affairs clearance procedure whereby any piece of legislation has to go through that Committee, which is chaired by the Deputy Prime Minister, which has a remit to look at whether a child's rights are being upheld as part of that new legislation. All government departments have a role in that Committee, and a whole host of Secretaries of State sit on it. That important practical step was put in place.<sup>16</sup>

21. Dr Maggie Atkinson, the then Children's Commissioner for England, told us in evidence that "there are moments when it is clear that the Government has taken very seriously its promise in 2010, and there are moments when it hasn't". She suggested that there had been progress with regard to immigration in some—although by no means all—cases, but there were also other areas where concerns had deepened. She noted that more

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<sup>15</sup> HC Deb, 6 December 2010, col 7WS

<sup>16</sup> Q 62

positive general progress had been made with regard to special educational needs provision and children and mental health.<sup>17</sup>

22. In evidence to us, Dragan Nastic of Unicef UK referred to the 2010 commitment as “serious and significant” and noted the positive implementation of the commitment in terms of the assessments made by the Government with regard to the Modern Slavery Bill. He also noted that implementation has been patchy, citing legal aid as the most obvious example of where no children’s rights assessment was undertaken. Kate Aubrey-Johnson of Just for Kids Law told us in evidence that the treatment of 17 year-olds as adults rather than children at police stations was an instance where the Government had an opportunity to reflect on its rights under the UNCRC but had not done so.<sup>18</sup>

23. Paola Uccellari of CRAE echoed that there were “pockets of good practice”, noting that a Freedom of Information request which CRAE had made revealed some areas of awareness within Government, but also perfunctory responses and some lack of knowledge amongst Government departments. She added current proposed policy over secure colleges as another instance where the Government has clearly not undertaken a proper impact assessment upon children. She also noted that the commitment had permitted NGOs and children’s rights organisations to “start [...] conversations” with Government over its assessment of children’s rights.<sup>19</sup>

24. There was also a clearly felt view amongst those witnesses that the willingness to undertake children’s rights assessments or to consider the Articles of the Convention depended more upon political will than expertise or awareness. The Minister in evidence to us echoed this when he said that “a lot of this [moving forward on children’s rights] is about attitude and whether people really believe that this is a worthwhile exercise”.<sup>20</sup> Natalie Williams of the Children’s Society noted that there is undoubtedly a connection between the situation of migrant and refugee children having deteriorated in the last five years and the Home Office having primary responsibility for that group of children, where the political focus was on immigration policy rather than children’s rights.<sup>21</sup>

**25. We acknowledge as an important and progressive move the commitment made by the Government in December 2010 to give due regard to the United Nations Convention on the Rights of the Child when developing law and policy. We believe that such a commitment, made at the beginning of the new Parliament by an incoming Government, can help keep up the momentum for the progressive realisation of children’s rights for the next five years. It will also signal the intent of the new Government in taking international human rights treaties seriously. While such a commitment alone can only do so much, we nonetheless call on the next Government to renew the 2010 commitment. We were also very impressed by the personal commitment to children’s rights and the Convention shown by the Children’s Minister during our evidence session with him.**

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17 Q 2

18 Q 45

19 *Ibid.*

20 Q 63

21 Q 46

26. We believe that the 2010 commitment did change things for the better. However, aside from a few recent clear examples where good practice has been sustained outside the Department for Education, the momentum for spreading good practice and awareness throughout government concerning the Convention—and to encourage departments to take the articles of the Convention seriously—seems to have lessened over the course of this Parliament. There does not seem to have been any attempt made to gauge how well the commitment was being fulfilled or to monitor the extent to which the Convention was being taken substantively into account by government departments. While we believe the commitment has proved to be worth far more than just the words which made it up, it is important for governments in future to follow up such commitments more avidly and to ensure that the good intentions they signify have practical and positive effects.

27. We have noted in previous Reports that Government departments do not always seem fully to take into account children's rights in the material they send to us or otherwise make available to Parliament. Since the 2010 commitment was given, the Government has produced three UNCRC memoranda for which we have commended it—in relation to the Education Bill in 2011, the Children and Families Bill in 2013, and the Modern Slavery Bill in 2014.<sup>22</sup> However, we have more often been critical of the lack of any such memorandum or analysis in relation to Bills or proposed policies which clearly have significant implications for children's rights: for example, in our reports on the Immigration Bill; the Anti-social Behaviour, Crime and Policing Bill; the Welfare Reform Bill; the changes to legal aid, including the residence test; and the Criminal Justice and Courts Bill.<sup>23</sup> Departments which appear to be particular offenders are the Home Office, the Department for Work and Pensions and the Ministry of Justice.

28. There has been some better practice this Parliament from Government departments in capturing in their human rights memoranda the impact on children of their legislative proposals—particularly with regard to the Children and Families Bill and the Modern Slavery Bill. However, departments' policies on assessing compatibility with the United Convention on the Rights of the Child and potential impacts upon children is far from consistent across Government, resulting in some surprising failures to assess the impact on children of policies which clearly affect them very significantly. This is one area where the 2010 commitment ought to have been capable of achieving significant progress. If all government departments were required to take the trouble to consider how their legislation is compliant with the UNCRC articles and to report on that assessment to Parliament, that would constitute a very necessary, and significant, step towards making those departments more aware of their duties under that Convention. The new Government should take steps to ensure that all memoranda accompanying legislation provide a detailed assessment of this sort as a matter of course, and that all departments have access to the necessary expertise in the UNCRC to help them carry out this necessary task.

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22 For example, JCHR, Third Report of Session 2014–15, *Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill*, HL Paper 62/HC 779

23 For example, JCHR, Fourth Report of Session 20–1314, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, HL Paper 56/HC 713

## Incorporation of the Convention

29. Many children's rights groups have called for incorporation of the UNCRC into UK law. They believe that this is the only way in which the Convention can be fully realised and the rights of children be as fully protected as the Convention envisages for those states which have signed up to it.<sup>24</sup>

30. We put the issue of incorporation to Dr Atkinson, the outgoing Children's Commissioner. She said that she did not necessarily favour full incorporation of the UNCRC as it would "probably take up too much parliamentary time and not necessarily be realised". She suggested an incremental process:

What you do—almost by stealth, setting precedents from the High Court and Supreme Court benches—is nibble away. You get people to recognise that the rights of the child are not a scary set of tenets or concepts, but inherent in a civilised society.<sup>25</sup>

31. The NGO witnesses who appeared before us all called for the Convention to be incorporated into UK law. They said that a piecemeal approach was too slow and that full incorporation was ultimately necessary to ensure that the UNCRC was properly adhered to. Kate Aubrey-Johnson of Just for Kids Law argued that "[...] it will take the UNCRC to be incorporated into domestic legislation to ensure children's rights are placed at the top of the agenda" as "the Government regularly argue that the UNCRC and Beijing rules are not binding on domestic courts when no Strasbourg right is in contention". Incorporation of the UNCRC into law is necessary, they argued, to ensure a comprehensive and consistent account of children's rights is taken across government.<sup>26</sup>

32. The Government has said in the past that it will not incorporate the Convention into UK law because it believes that "the UNCRC contains a mixture of rights and aspirations that are often imprecisely defined [...] [which is] why the 'must have regard to' formulation is a better approach"<sup>27</sup>.

33. Edward Timpson MP, the Minister of State for Children and Families at the Department for Education, elaborated upon this in oral evidence to us. He stated that there was no "block" upon incorporation, but rather that the position of the Government is that it was "confident that the laws and policies that [...] [the Government] [...] has in place already are strong enough to comply with the Convention." He acknowledged the complexities that would be involved in trying to incorporate the Convention and said that while the Government was "not at a stage of incorporation" it would "continue to keep it under review".<sup>28</sup>

**34. Ideally, we would like to see the United Nations Convention on the Rights of the Child incorporated into UK law in the same way that the European Convention on**

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24 See for example the Children's Rights Alliance for England report, *State of Children's Rights in England: review of Government action on United Nations' recommendations for strengthening children's rights in the UK*, [http://www.crae.org.uk/media/75135/SOCR\\_2014\\_REPORT\\_WEB.pdf](http://www.crae.org.uk/media/75135/SOCR_2014_REPORT_WEB.pdf)

25 Q 3

26 Q 45

27 [http://www.parliament.uk/documents/joint-committees/human-rights/Letter\\_from\\_E\\_Timpson\\_15\\_April.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Letter_from_E_Timpson_15_April.pdf)

28 Q 66 and Q 77

**Human Rights has been incorporated by means of the Human Rights Act. However, we are mindful that these two Conventions differ considerably in how they are framed and in the mechanisms which exist to support them internationally. In practical terms more must be done to realise the aims of the United Nations Convention on the Rights of the Child through legislation and through policy. The Modern Slavery Bill shows this can be done in a particular policy area. If such a dedicated focus on children's rights were manifest in legislation and policy across the board, much of the debate about incorporation versus non-incorporation would become an irrelevance. It would also be a better way of proceeding in terms of allowing for fruitful discussions to take place on particular areas of children's rights that were being addressed at any given time.**

## The Optional Protocol

35. The Third Optional Protocol to the UN Convention on the Rights of the Child would permit individual children to have the right of petition directly to the UN Committee on the Rights of the Child. The UK Government currently has no plans to sign up to this Optional Protocol, although it has ratified the equivalent Protocols with regard to the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the Convention for the Elimination of Discrimination Against Women (CEDAW). Its current position is that it is “still considering how this Optional Protocol [to the UNCRC] might add practical value for people in the UK” and will “keep the matter under review in light of emerging information about procedures and practice” It is also assessing the effects of the UK's ratification of the Optional Protocols to the UNCRPD and CEDAW.

36. Although we will be touching on matters relating to devolution and children's rights towards the end of the Report, it is worth noting here that while the Scottish Government has welcomed the Optional Protocol in principle and has indicated that it “would be minded to offer [...] measured support for its signature and ratification in the future”, it believes that “before doing so [...] it is important to better understand exactly how the UN Committee on the Rights of the Child intends to apply the Protocol”.

37. The NGO witnesses from whom we took oral evidence were all keen to see the Optional Protocol ratified. As Paola Uccellari of CRAE put it, “[a]ccess to justice for children is particularly important because they are particularly vulnerable to rights abuses and their impacts”. Dragan Nastic of Unicef UK endorsed this view. Children's rights NGOs feel that Government's position on this—to ‘wait and see’—feels, as Paola Uccellari of CRAE put it, “like a way of kicking the issue into the long grass”. The situation of children with regard to access to justice is not the same as that of persons with disabilities or women and “for them an independent complaints mechanism to the UN Committee is particularly important”.<sup>29</sup> The impact of the analogous Optional Protocols to CEDAW and the UNCRPD are not necessarily relevant; and the OCCE's lack of any power to investigate any individual complaints—as compared to its Scottish, Welsh and Northern Ireland counterparts—could be said only to emphasise the desirability of this extra mechanism of recourse, perhaps especially for children in England. We also note that, with the recent reforms to legal aid, there are growing concerns about the extent to which children enjoy practical and effective access to the legal remedies that do exist in domestic law.

**38. We believe that the Government should ratify the Optional Protocol to the United Nations Convention on the Rights of the Child which would give children the right of individual petition to the UN Committee on the Rights of the Child. The Government's view that it needs to wait to see how ratification of similar Optional Protocols for the UN Convention on the Rights of Persons with Disabilities and the Convention on Ending Discrimination Against Women works holds no water. Moreover, the Office of the Children's Commissioner for England lacking any power of individual investigation of complaints means that children in England are less well provided for in terms of access to possible recourse to justice than children in Northern Ireland, Scotland and Wales. This makes the need for the Optional Protocol more real and not just powerfully symbolic of the Government's commitment to the Convention.**

## 4 The place of children's rights within the machinery of Government

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39. The Government is inevitably reliant in all its work that relates to children upon the number of its officials who may have a good awareness of the UNCRC and of children's rights issues. It is similarly reliant upon the expertise of officials, and on the political will that exists across departments properly to take account of the rights of the child in all that they do.

40. As we note elsewhere in this Report, we previously faced an often uphill battle in a more general sense in trying to get thorough and detailed human rights memoranda, focussing on the European Convention on Human Rights, out of Government departments, and now we often struggle to persuade departments to incorporate within those memoranda references to other international human rights treaties, such as the UNCRC.

41. With regard to the issue of whether there is sufficient expertise within Government, Dr Atkinson told us:

I think there is a good deal of expertise in the system, not only in statutory bodies, but in well-respected charities like UNICEF and Save the Children, which offer training—and Departments of Government have taken up that training—and there are officials in the DfE who also offer to sit alongside colleagues elsewhere. The model of our civil service does not necessarily always help, in that people move around a good deal, and you end up losing institutional memory and organisational memory from teams within Departments who might be making progress in their use of the convention and its general comments, which are very good, to help them to guide Ministers in their thinking about policy.<sup>30</sup>

42. We put the issue of expertise to the Minister. He told us:

I have no reason to believe that the support and advice that I am getting is not of the standard that it needs to be. I cannot vouch for every department. It is an important question that we need to revisit: whether each department has the level of expertise that we would want and that I believe we have in the Department for Education.<sup>31</sup>

He also added that the contributions from right across Government to the 2014 report to the UN Committee on the Rights of the Child gave him “confidence that ...[the DfE is] not the only department that has the expertise to draw from the work of government and to be able to explain how that works in conjunction with the UNCRC”.<sup>32</sup>

43. The NGO witnesses from whom we heard evidence suggested to us quite strongly that the 2010 Parliament began with a lot of momentum behind spreading awareness and knowledge of the UNCRC across Government. However, as Dragan Nastic of Unicef UK

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30 Q 6

31 Q 64

32 *ibid.*



noted, “that has faded away recently”. This was echoed by Paola Uccellari from CRAE, who reiterated the fact that much of the awareness and knowledge of the Convention is restricted to the Department for Education, and other Government departments feel they have no particular responsibility in that regard and just refer inquiries to that Department.<sup>33</sup>

44. CRAE also referred to the responses they received to Freedom of Information requests to government departments asking whether they had undertaken any children’s rights impact assessments in their work over 2012–13. Although there were some good responses, they reported that many of the answers received amounted to little more than a broad statement affirming that they think about children’s rights when developing policy and stating that more information is available from the Department for Education. In some instances, there seemed to be a lack of understanding of what such an assessment might be. The Cabinet Office, the Home Office and the Ministry of Justice all gave no substantive response on the grounds that it would be too costly to find the answer.<sup>34</sup>

45. CRAE suggested to us that the priority given to children’s rights fluctuated according to political will with no consistent, rights-based approach evident across Government: “[t]here is no sense that there is an obligation under the convention to take account of these rights-based arguments and to act on the basis of them”.<sup>35</sup> The result of this has been that, in spite of the 2010 commitment, the consideration given to children’s rights has been “patchy”.

46. As a parliamentary committee with a remit that effectively covers all of the UK Government, we are aware of how difficult it can be to coordinate and communicate action across departments. The Minister in evidence to us showed his understanding of the effort that is needed to push policy objectives across departments:

[I]f you are going to ensure that both your own policy objectives, particularly those of the Minister for Children and Families, and the rights of children are not just going to be given a tokenistic or cursory look at across government but are being taken seriously, you need to get out of the department and face other Ministers across the table and ask them what they are doing to uphold the UNCRC.<sup>36</sup>

**47. We are very aware of the challenges that exist within government in terms of communication and cooperation between departments with very different policy priorities and spending constraints. It is clear that some departments are fully aware of the 2010 commitment and have made an effort to reflect upon children’s rights in terms of their own policy responsibilities. However, some are not in this position. Some departments seem to believe that children’s rights are only a matter for the Department for Education. More needs to be done across Government to spread knowledge and expertise and—more importantly—to impress upon ministers outside the Department for Education the central importance of children’s rights for a just and healthy society. Despite some good work undertaken by the Home Office in connection with Modern**

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33 Q 46

34 Q 45

35 Q 46

36 Q 63

**Slavery Bill, we are concerned that certain policy areas within that Department and the Ministry of Justice remain seemingly unaffected by the 2010 commitment, most notably with regard to the treatment of child migrants and the provision of legal aid for children.**

48. The Home Affairs clearance process within Government was identified in the evidence given to us by the Minister as the principal means by which children's rights issues are dealt with at the top level of government by Secretaries of State and the most senior departmental officials.<sup>37</sup> He believes that the "message [about the best interests of the child] should be being fed down or filtered properly to all those who are working on policy, whatever area of the department or government that they happen to be in".<sup>38</sup> He cited the discussions around the Modern Slavery Bill as a good example of how many departments of state were able to get fully engaged with provisions of the legislation, although he also acknowledged that "there is still work to do to fully embed the UNCRC right across government at any level".<sup>39</sup> A particular challenge he noted was with regard to:

pieces of legislation "that do not have the same initial or obvious relationship with children's rights [as the Modern Slavery Bill], which in itself should not dilute the need to closely scrutinise whether it is affecting children and young people and their rights under the UNCRC. That is something we need to reiterate strongly across government."<sup>40</sup>

**49. We are also concerned to hear from the Children's Minister that he does not feel party to the Home Affairs clearance process for legislation which, amongst other things, looks at whether the rights of the child are being upheld in legislative proposals. We believe that it does not reflect the importance of children's rights if the Children's Minister is not sufficiently involved in the clearance process for legislation that will impact directly on children in this country.**

50. During our recent inquiry into violence against women and girls (VAWG) we spent some time asking witnesses about the implications for the integration of VAWG policies across Government of having a Secretary of State for Education who was also Minister for Women (and Equalities). Concerns had been expressed to us in evidence that the role of Minister for Women should be a stand-alone post so that other policy responsibilities would not conflict or eat into the Minister's available time and resources.<sup>41</sup>

51. During our VAWG inquiry we put this question to the Rt Hon Nicky Morgan MP, Secretary of State for Education and Minister for Women and Equalities. She said:

that it did not matter in which department the role of Minister for Women sat but that the individual in that role held others to account and could ensure change on these issues. She believed that, as a cabinet level minister, she could do this and it was

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37 Q 62

38 Q 64

39 Q 65

40 *ibid.*

41 JCHR, Sixth Report of Session 2014–15, *Violence against women and girls*, HL Paper 106/HC 594, Chapter 2

something that a specifically created violence against women and girls junior ministerial post would not be able to do.<sup>42</sup>

52. We also put this question during this children's rights inquiry to Edward Timpson MP, the Minister for Children. He believed that the current Secretary of State for Education (and Minister for Women and Equalities) carried his Children's Minister brief with her into Cabinet and other top-level meetings and that the named brief of Children's Minister did not therefore need to be positioned at Cabinet Minister level.<sup>43</sup>

53. We note that the Secretary of State for Education feels that the position of Minister for Women needs to be held at Cabinet level, as having a lower-level named brief would not give the issues that she deals with as Minister for Women sufficient weight. As she occupies a Cabinet level position and thus has a better sense of how matters are dealt with amongst Cabinet colleagues, we believe that her view on this particular matter carries more weight than that of her Minister. **We have concerns that the role of Children's Minister is not senior enough in Government to command attention to children's rights issues at the top levels of policy-making. While the current Secretary of State for Education is no doubt aware of her responsibility for matters relating to children, she is also Minister for Women and Equalities. In giving evidence to us in our inquiry into violence against women and girls, she stressed the importance of having that portfolio at that level in order to advance women's rights issues. This only emphasises the need for someone at Cabinet level to hold the named brief for children. The new Government must give serious thought to how it arranges its portfolios and policy responsibilities better to reflect the prime importance of children's rights to a fairer future for all the people of this country. The growing focus on the impact of family breakdown and issues surrounding troubled families should also give children's rights particular prominence for the new Government.**

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42 *Ibid.*, para 23

43 Q 68

## 5 The Government's 2014 UNCRC report

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54. In November 2013, the Department for Education consulted on its draft report to the UN Committee on the Rights of the Child. External bodies—including many children's rights groups and NGOs—submitted responses to the Government's report. The Government then issued its periodic report to the UN Committee in May 2014.<sup>44</sup>

55. The Government's final report had been amended in many areas to respond to the detailed points made by external bodies. For example, some of the issues which had not featured at all in the draft report, such as changes to legal aid affecting children's access to justice, had been included. As Edward Timpson MP, the Children and Families Minister told us in evidence:

[w]e spent a lot of time working with NGOs and other interested parties to understand their views and in order for them to have some input into how we can best present in a fair way the work that has gone on over the last nearly five years.

56. However, the report nevertheless met with criticisms from children's rights organisations upon its publication. CRAE said at the time in a press release:

the Government's report to the Committee on the Rights of the Child shows it is in denial about the devastating impact its policies are having on children's human rights. The Government needs to acknowledge evidence about the poor state of children's rights in the UK and take concerted action if they are going to make rights real for children.<sup>45</sup>

The NSPCC said:

We are disappointed that the Government's report does not take the opportunity to provide analysis of how children in the United Kingdom are faring and the impact of policies on their human rights for better or worse.<sup>46</sup>

57. The report did include some analysis of Government policies for their impact on children. However, concern was expressed in the evidence we received—echoing the earlier criticisms of the text—that certain issues affecting children were not accurately dealt with in the Government's report. With regard to the Government's 2014 report to the UN Committee on the Rights of the Child, Dr Atkinson in evidence to the Committee said:

“I think there are parts of it that are strong descriptors of how far things have moved [...] Inevitably, what it paints is a picture of things all generally moving in a glorious direction towards a rosy sunset.”<sup>47</sup>

Dr Atkinson also questioned:

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44 *The Fifth Periodic Report to the UN Committee on the Rights of the Child*, May 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en)

45 <http://www.crae.org.uk/news/charities-challenge-government-to-assess-impact-of-its-policies-on-children's-human-rights/>

46 <http://www.nspcc.org.uk/fighting-for-childhood/news-opinion/>

47 Q 10

“[t]he claims that there was no alternative to doing what has been done in terms of the cutbacks in public spending in central and local government, and that the changes are beneficial for children and young people. It is less than explicitly stated in the report, but the direction of the report is very much that the changes are beneficial.”<sup>48</sup>

58. Dragan Nastic of Unicef UK considered the 2014 report to be “the best [...] yet” while acknowledging it was not analytical enough and was weakened by the contributions from the four countries of the UK not being synthesised coherently. He said the report also tended to talk about policy intentions rather than practical effects: he cited as an example the fact that it states without further comment the fact that in 2010 the Government adopted a policy not to detain migrant children, although the situation on the ground in 2014 was that children were still being detained.<sup>49</sup>

59. Natalie Williams from the Children’s Society mentioned the fact that the report said that the Government had consulted NGOs about the residence test (with regard to legal aid) and they had said that it was compliant with the UNCRC—which latter was not the case. The report also did not mention that the Government is, on its current policy trajectory, going to miss its 2020 child poverty target.<sup>50</sup> A report from the OCCE, *A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the cumulative impact of tax-benefit reforms and reductions in spending on public services 2010 – 2015*, published in June 2103 states that “[o]verall, the evidence [...] suggests that the best interests of children are not being treated as a primary consideration (Article 3) in the design of fiscal measures relating to welfare benefits, tax credits and taxes.”<sup>51</sup>

60. Paola Uccellari of CRAE said the report was a disappointment, providing no identification of the key outstanding issues for children’s rights, in failing to mention, for example, the physical punishment of children, the minimum age of criminal responsibility, or the detention of children with mental health issues in adult wards. Kate Aubrey-Johnson of Just for Kids Law reiterated the point that the report “failed to analyse in depth what was happening in practice” and added that it did not “acknowledge the disproportionate impact that legal aid cuts would have on children”.<sup>52</sup>

61. Interestingly, in the context of devolution, the Scottish Alliance for Children’s Rights, Together, notes that the Government report contains misrepresentations of matters specific to England and Wales being UK-wide, and affecting Scotland which do not in reality relate to countries outside England and Wales—such as consultations by the Department of Transport and the Department for Education involving children, and the establishment of an independent Children and Young People’s Health Outcomes Forum.<sup>53</sup>

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48 Q 11

49 Q 47

50 *ibid.*

51 The Office of the Children’s; Commissioner for England, *A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the cumulative impact of tax-benefit reforms and reductions in spending on public services 2010–2015*, June 2013, [http://www.childrenscommissioner.gov.uk/content/publications/content\\_676](http://www.childrenscommissioner.gov.uk/content/publications/content_676)

52 Q 47

53 Written evidence from Together, the Scottish Alliance for Children’s Rights (ROC 021).

62. Particular concern was expressed in evidence to us about the way the report dealt with the impact of austerity on children's rights. In the report, the Government reiterated its "firm commitment" to the implementation of the UNCRC. Acknowledging the current constraints on public spending, the report noted that spending in areas central to children's lives, such as education and health, had been maintained and claimed that the UNCRC had been "a key reference for the government in approaching the challenges created by the economic crisis".<sup>54</sup>

63. The UN Committee on the Rights of the Child notes that "w]hatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups".<sup>55</sup> The Government acknowledged this in its submission to the UN's Universal Periodic Review by the Human Rights Council which stated that it had tried to protect the most vulnerable in public spending decisions.<sup>56</sup>

64. Yet there appear to us to be examples where this has not been the case. We had already in two Reports at the end of 2013 and the beginning of 2014 expressed our concerns about the compliance of the Government's changes to legal aid with the UNCRC, for example.<sup>57</sup> We have also raised similar concerns in respect of the human rights of unaccompanied migrant children and young people in the UK.<sup>58</sup> A report from the Children's Commissioner for England suggests that the cumulative effect of fiscal policy over this Parliament has been regressive.<sup>59</sup> A NIESR/Landman Economics analysis indicates that the cumulative impact of tax and benefit changes has hit families with children the hardest. Recent analysis by the Institute for Fiscal Studies has also reported that poor families with children have been hardest hit.<sup>60</sup> We shall deal with these particular issues in more detail later in this Report.

65. Policy in other areas has also been criticised (including by us in some cases) for contravening the UNCRC—the use of force against children in custody, secure colleges or in schools; the right to privacy and property with regard to personal searches and the confiscation of electronic devices; the lack of safeguards in relation to children within the judicial system.<sup>61</sup> Some of these issues we will also deal with later in this Report.

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54 *The Fifth Periodic Report to the UN Committee on the Rights of the Child*, May 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en)

55 UN Committee on Rights of the Child (2003), *General Comment No. 5 on General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, para. 8. [http://www.unicef-irc.org/portfolios/general\\_comments/GC5\\_en.doc.html](http://www.unicef-irc.org/portfolios/general_comments/GC5_en.doc.html)

56 UN Human Rights Council *Draft report of the Working Group on the Universal Periodic Review of United Kingdom of Great Britain and Northern Ireland*, A/HRC/WG.6/13/L.7, Para. 6,

57 JCHR, Seventh Report of Session 2013–4, *The implications for access to justice of the Government's proposals to reform legal aid*, HL Paper 100/HC 766; and JCHR, First Report of Session 2014–15, *Legal aid: children and the residence test*, HL Paper 14/HC 234

58 JCHR, First Report of Session 2013–14, *Human Rights of unaccompanied migrant children and young people in the UK*, HL Paper 9/HC 196

59 Reed, H. and Elson, D (2014). *An Adequate Standard of Living: A child rights based quantitative analysis of tax and benefit changes in Autumn Statement 2013 and Budget 2014* London: Office of the Children's Commissioner.p.39 [http://www.childrenscommissioner.gov.uk/force\\_download.php?fp=%2Fclient\\_assets%2Fcp%2Fpublication%2F901%2FCRIA\\_final.pdf](http://www.childrenscommissioner.gov.uk/force_download.php?fp=%2Fclient_assets%2Fcp%2Fpublication%2F901%2FCRIA_final.pdf)

60 Phillip Inman, 'Tax and benefit changes cost UK households £1,127 a year—study', *Guardian*, 23 January 2015 [n.b. full report not available yet] <http://www.theguardian.com/society/2015/jan/23/tax-benefits-changes-uk-households-cost-1000-pounds-a-year>

61 For example, JCHR, Thirteenth Report of Session 2010–12, *Legislative Scrutiny: Education Bill*, HL Paper 154/HC 1140

66. In addition we note that the Government's 2014 report states:

All legislation introduced to Parliament is assessed to ensure it is compatible with individuals' human rights, as set out in the European Convention on Human Rights (ECHR); and compatible with our obligations under the UN Convention on the Rights of the Child, and child rights impact assessments undertaken where appropriate for the key legislative proposals affecting children.<sup>62</sup>

We have already commented on, in paragraph 27 above, those areas of policy significantly affecting children where such children's rights impact assessments do not appear to have been undertaken.

**67. The Government should be commended for aspects of its May 2014 report to the UN Committee on the Rights of the Child, since it represents a considerable improvement on previous reports. However, whether because of the process by which it was put together, or whether by intention, the report is too abstract, its analysis too patchy, and there are some significant omissions from its content. It also fails to recognise those areas where there is still considerable disagreement outside government about whether its policy has indeed been compatible with the Convention, presenting a somewhat optimistic picture in places. Perhaps more importantly, the report does not adequately reflect the 'grass roots' contact which the Government helpfully facilitated during the consultation on its report; nor does it represent the practical reality for many children, particularly the disadvantaged, in areas where policy may have been misjudged or good policies perhaps not properly implemented.**

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62 *The Fifth Periodic Report to the UN Committee on the Rights of the Child, May 2014*, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en)

## 6 The reform of the Office of the Children's Commissioner for England

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68. The post of Children's Commissioner for England was established by the Children's Act 2004, following the creation of equivalent posts in Wales (2000), Scotland and Northern Ireland (both 2003). In July 2010, the then Secretary of State for Education, the Rt Hon Michael Gove MP, commissioned the Dunford Review into: the powers, remit and functions; the relationship with other government functions; and the value for money of the post of Children's Commissioner. The Dunford Report was published in December 2010 and, amongst other things, recommended:

- a strengthened, rights-based remit for the Children's Commissioner;
- increased independence through reporting directly to Parliament;
- increased powers to advise the government on new policy, to conduct Children's Rights Impact Assessments (CRIAs) on them, and a duty on the part of government and local services to respond formally to concerns raised by the Commissioner; and
- the merger with the Ofsted's Office of Children's Rights Director to create Office of the Children's Commissioner for England (OCCE).<sup>63</sup>

69. We undertook pre-legislative scrutiny of the draft clauses of the subsequent Children and Families Bill which related to the reform of the post of Children's Commissioner. In our Report we recommended a more explicit reference to the UNCRC (including optional protocols) in defining the duties of the reformed post.<sup>64</sup> The Government rejected this because:

- the UNCRC has not been formally incorporated into UK law;
- the UNCRC contains a mixture of 'rights and aspirations [...] often imprecisely defined'; and
- UK law may have stronger protections than those guaranteed under the UNCRC.

We also recommended that the Commissioner should 'have regard' to other international human rights conventions that protect children's rights. The Government response did not specifically address this.<sup>65</sup>

70. We also examined issues surrounding the independence of the post. The Paris Principles— which relate to the status and functioning of national human rights institutions (NHRIs)—state that human rights bodies should be independent from government. This

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63 *Review of the Office of Children's Commissioner (England)*, Department for Education, December 2010, <https://www.gov.uk/government/publications/review-of-the-office-of-the-childrens-commissioner-england>

64 JCHR, Sixth Report of Session 2012–13, *Reform of the Children's Commissioner: draft legislation*, HL Paper 83/HC 811

65 JCHR, Third Report of Session 2013–14, *Legislative Scrutiny: Children and Families Bill; Energy Bill*, HL Paper 29/HC 157



should include financial independence.<sup>66</sup> In our work on the proposed reform of the Office of the Children's Commissioner for England, we acknowledged the difficulty of balancing independence with the accountability expected of any public body, funded with public money. However, we also expressed concern about the potential for government interference, particularly through financial controls, in the work of the Children's Commissioner. In addition we questioned the appropriateness of the non-departmental public body (NDPB) model for the Office and argued that there were other models that did a better job of balancing independence and accountability—for example, that of the Scottish Commissioner for Children and Young People, whose budget is set by the corporate body of the Scottish Parliament. The Government however did not accept that the independence of the OCCE could be compromised as an NDPB.<sup>67</sup>

71. We welcomed the change of the OCCE's remit—made from the draft clauses to the Children and Families Bill as introduced—from “promoting awareness of the views and interests of children in England” to a seemingly more robust “promoting and protecting the rights of children in England”, in line with the UNCRC's General Comment No.2 (2002).<sup>68</sup> The General Comment also notes that Children's Commissioners should be mandated to receive and investigate individual complaints and petitions, something the OCCE was not empowered or resourced to do.<sup>69</sup> Indeed, it is notable that while the Children's Commissioner for England could not play this ombudsman-style role, the devolved Commissioners were empowered to investigate individual cases (although in the case of Scotland, the power is not to come into effect until 2016). The NGOs raised this concern in their evidence to us.<sup>70</sup> However, the outgoing Commissioner, Dr Atkinson, advised us that this was an issue of resources and also suggested that having to deal with casework could make having a “big strategic policy” overview more difficult.<sup>71</sup>

72. The OCCE was also expressly empowered to conduct Children's Rights Impact Assessments (CRIAs), not on all Bills but at the initiative of the Commissioner. Thus far, CRIAs have covered not only narrow compliance with the letter of UNCRC but have taken a broader perspective, sometimes including economic analysis, and have employed focus groups with children and young people. We made clear in our legislative scrutiny Reports on the draft clauses on the reform of the post of Children's Commissioner and again on the Children and Families Bill that the OCCE's CRIAs should not be intended as a substitute for the Government's own assessment of its laws for UNCRC compatibility.<sup>72</sup>

73. The outgoing Children's Commissioner made this point in oral evidence to us:

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66 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

67 JCHR, Sixth Report of Session 2012–13, *Reform of the Children's Commissioner: draft legislation*, HL Paper 83/HC 811

68 JCHR, Third Report of Session 2013–14, *Legislative Scrutiny: Children and Families Bill; Energy Bill*, HL Paper 29/HC 157

69 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en)

70 Q 49

71 Q 23

72 JCHR, Third Report of Session 2013–14, *Legislative Scrutiny: Children and Families Bill; Energy Bill*, HL Paper 29/HC 157, and Sixth Report of Session 2012–13, *Reform of the Children's Commissioner: draft legislation*, HL Paper 83/HC 811

[t]he power given to the office to do them [...] should actually be something that is a duty on Government Departments. In the absence of that, however, you can expect the Children's Commissioner to continue to do them.<sup>73</sup>

In evidence to us, Dragan Nastic of Unicef UK expressed regret at the Government's decision to empower the OCCE to carry out CRIAs since he felt that the Government has thereby set aside the duty on it to carry out these assessments, a duty which the UN Committee on the Rights of the Child has been calling for repeatedly.<sup>74</sup>

**74. The reforms to the Office of the Children's Commissioner for England represent a progressive move towards strengthening the power and independence of the Commissioner and, although they have only been in place for a short time, have already begun to have an impact on a number of children's rights issues. In particular the redefinition of the mandate explicitly to incorporate children's rights, which we believe must be seen to lie at the centre of all that the Commissioner does, has been of signal importance.**

**75. However, we do have concerns that, unlike her counterparts in Northern Ireland, Scotland and Wales, the Commissioner is not empowered to take up individual cases on behalf of children. We accept that granting these powers to the Children's Commissioner for England would need to go hand-in-hand with a possibly significant increase in resources, but we believe that this would be a good use of public funds, especially since it would give children in England the same recourse as children have currently—or, in the case of Scotland, from next year—elsewhere in the UK. It would also respond positively to criticisms made of the current limit on the Commissioner's powers made by the UN Committee. The next Government should undertake assessments of how the Children's Commissioner could be given such powers, without impacting upon the strategic overview required of the Office, and of the quantum of new funding that would be required.**

**76. We remain concerned that the power the Children's Commissioner has to undertake Children's Rights assessments—and which has been effectively used—is not an acceptable alternative to the Government carrying out such assessments itself more comprehensively across all departments, and in particular for policies or spending decisions that are cross-departmental. The Government should be engaging more proactively with the recommendations from the UN Committee on the Rights of the Child to carry out such assessments itself.**

**77. We welcome Anne Longfield to her new position as Children's Commissioner for England. We also thank the last Commissioner, Dr Maggie Atkinson, for all that she has done to further the promotion and protection of children's rights in England over the last five years. Her powerful evidence to us showed the capacity of the role of Children's Commissioner for England to communicate very effectively to parliamentarians, and to others, the importance of children's rights and the need for policy and legislative action. We hope that the links between that Office and Parliament – and in particular this Committee – will be strengthened over the next five years. We**

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73 Q 8

74 Q 50

**also reiterate what we said in our earlier Reports on the reforms to the Children's Commissioner's role, that our Committee is best placed to undertake the pre-appointment hearing for that position.**

## Independence of the Children's Commissioner

78. In its 2008 Concluding Observations on the UK,<sup>75</sup> the UN Committee on the Rights of the Child welcomed the establishment of Children's Commissioners in each of the component parts of the UK but was concerned that their independence and powers were limited and that they were not established in full compliance with the Paris Principles. It recommended that the UK ensure that the Commissioners are independent and in compliance with the Paris Principles.

79. Unicef UK, the Children's Society and CRAE (in their capacity as the Children's Commissioner Review NGO Co-ordinating Group) all submitted written evidence to our inquiry into the draft clauses reforming the Children's Commissioner for England. They all expressed concern at the nature of the pre-reform role – in terms of its inhibited independence, its unclear remit and its lack of powers and resources.<sup>76</sup>

80. As we have already noted, during the passage of the Children And Families Act 2014 the Government did make very significant improvements to the Office of the Children's Commissioner in all these respects, and also made a number of improvements in response to some of the recommendations in our pre-legislative scrutiny Report on the draft clauses concerning the Commissioner's role.<sup>77</sup>

81. There are however some outstanding issues relating to independence—or the appearance of the Commissioner's independence in children's eyes—which were left unresolved at the time of the passage of the Act. We put the issue of independence to the outgoing Commissioner, Dr Atkinson. She said: "I think the independence of the office is far better understood by officials in the DfE than it was when I first came into post."<sup>78</sup> She also, however added: "There is a golden opportunity for my successor to help to frame a framework agreement that is even more solidly affirming of the independence of the office."<sup>79</sup>

82. The NGO witnesses we heard from were in agreement that the changes to the OCCE represented a great step forward. CRAE described the reforms as "positive", noting the greater independence from Government, the rights-based remit and greater powers. However, CRAE also highlighted continuing reservations about the independence of the role of Children's Commissioner, particularly regarding the way the OCCE's budget is set and how Commissioners are appointed.<sup>80</sup>

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75 Para 16–17

76 [http://www.parliament.uk/documents/joint-committees/human-rights/Submission\\_reform\\_of\\_the\\_Office\\_of\\_the\\_Children.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Submission_reform_of_the_Office_of_the_Children.pdf)

77 See paragraphs 69–72

78 Q 16

79 Q 22

80 Q 49

83. In our Report on the reform of the OCCE we also expressed concern about the perception of the Office's independence. In particular, we recommended that the OCCE should not have a gov.uk web domain as this gave the impression that it was a Government agency rather than an independent body: the Equality and Human Rights Commission does not have a gov.uk web domain for that reason.

84. Similarly, the OCCE is now located in an annex of the Department of Education. In the Government's response to our pre-legislative scrutiny Report on the draft clauses reforming the Office of the Children's Commissioner, the Minister said "I share the Committee's view that the OCC[E] should have its own premises".<sup>81</sup> However subsequent to this response, the Commissioner moved into the Department for Education's premises. Whilst the outgoing Commissioner, Dr Atkinson, stressed that this had not impacted on the independence of the Office and emphasised the savings this had made and the advantages of proximity to Westminster it gave, nonetheless it would appear to constitute the sort of blurring of important boundaries that we warned about in our Report.<sup>82</sup>

**85. We still have a few concerns about the independence of the Office—and the appearance of its independence to external bodies or individuals, particularly children. Clearly, through appointment and funding any government potentially has some influence over the capacity of the Office to undertake the sort of work that might be critical of Government policy. We also feel that the Commissioner should be able to establish a non-governmental web-site, and to locate her premises somewhere outside Government premises, although we accept that this latter might have resource implications which the Government should attempt to mitigate.**

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81 Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny, Cm 8540 (February 2013)

82 Q 18 and Q 19

## 7 Children's rights in a time of austerity

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86. One area we were keen to explore in our short inquiry into the UK's compliance with the UNCRC was the impact of austerity on the protection and promotion of children's rights. CRAE, in the press release accompanying the November 2014 publication of its report, *State of Children's Rights in England*, stated in connection with this

Children in England are experiencing the hard edge of austerity, with mounting threats to their basic human rights. The cumulative impact of cuts to services, the cost of living crisis, and changes to the welfare system, means some children in England are not having their basic needs for shelter and food met and can't access the services which are supposed to support families, while many more are not able to enjoy a fulfilled and happy childhood.<sup>83</sup>

Concerns about the effect of the Government's austerity measures on funding for children's services had also been raised with us in connection with our inquiries into the human rights of unaccompanied migrant children and young people and the Government's proposed reforms to legal aid.<sup>84</sup>

87. In its May 2014 report to the UN Committee on the Rights of the Child, the Government said:

Despite having to make difficult choices about public spending, the UNCRC has been a key point of reference for the Government in determining how it will approach these challenges. In particular, despite the significant funding pressures that have existed, the Government has protected levels of funding on areas of spending that are central to children's lives, including education and health.<sup>85</sup>

88. The Office of the Children's Commissioner undertook a CRIA of the 2013 Autumn Statement and 2014 Budget which it published in November 2014. In her Foreword to it, the then Children's Commissioner, Dr Maggie Atkinson stated that:

the Autumn Statement 2013 and Budget 2014 were a missed opportunity for the Government to undo the cumulative damage of tax and spending decisions since 2010 which made life harder for the poorest and most vulnerable children. Many of the measures have been of most benefit to wealthier households; others have hit lone parents the hardest.<sup>86</sup>

89. Dr Atkinson in her oral evidence to us also repeatedly stressed the impacts of austerity on children as being of particular concern, and an area where the Government did not always seem willing to take action.

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83 The Children's Rights Alliance for England report, *State of Children's Rights in England: review of Government action on United Nations' recommendations for strengthening children's rights in the UK*, [http://www.crae.org.uk/media/75135/SOCR\\_2014\\_REPORT\\_WEB.pdf](http://www.crae.org.uk/media/75135/SOCR_2014_REPORT_WEB.pdf)

84 JCHR, First Report of Session 2013–14, *Human Rights of unaccompanied migrant children and young people in the UK*, HL Paper 9/HC 196, and Seventh Report of Session 2013–14, *The implications for access to justice of the Government's proposals to reform legal aid*, HL Paper 100/HC 766

85 *The Fifth Periodic Report to the UN Committee on the Rights of the Child*, May 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en)

86 [http://www.childrenscommissioner.gov.uk/content/publications/content\\_901](http://www.childrenscommissioner.gov.uk/content/publications/content_901)

Another issue, which is a concern for all four commissioners in the UK, is the continuing stubborn disbelief that austerity worst affects the children and young people who can do least about it. We are in a nation where more children will be poor, hungry and cold, not fewer, by 2016–17 if something is not done.<sup>87</sup>

90. There is evidence that specific pieces of Government legislation run directly counter to the principle of protecting the most disadvantaged. The Welfare Benefits Up-rating Bill, introduced in late December 2012, gave effect to a Government commitment to limit rises in most working age benefit to one per cent per annum until 2016. The aim was to make savings of £1.1 billion in 2014–15 and £1.9 billion in 2015–16 through equivalent cuts to benefits. Rises in others, such as pensions and disability benefit, would rise in line with the Consumer Price Index (CPI). The Government's Regulatory Impact Assessment suggested that, in conjunction with other changes, the Bill would not negatively impact children. However, the Child Poverty Action Group claimed that it would increase child poverty. Research by the Institute for Fiscal Studies suggested a regressive impact, even taking into account other measures.<sup>88</sup>

91. The Bill's Second Reading took place on the 8 January 2013, and it completed its last parliamentary stages on 20 January 2013. No human rights memorandum accompanied the Bill's publication and its RIA had no specific human rights content. Nor was there any assessment of the impact of the Bill on children's rights accompanying the measure.<sup>89</sup>

92. Given the haste with which the Bill was passed into legislation, we were unable to scrutinise it fully. We did however query the Bill's compliance with a child's rights to an adequate standard of living under Article 27 of the UNCRC and Article 11 of the International Covenant on Economic and Social Rights (ICESR) and the statutory target to eliminate child poverty contained in the Child Poverty Act 2010. In correspondence with us, the Secretary of State claimed the provisions were compatible, noting a lone parent with two children would be around £4 per week better off over the period.<sup>90</sup>

93. In evidence to us, Dragan Nastic of Unicef UK noted research that suggested the UK had been "good at weathering the storm and the impact of austerity" in terms of children's standards of living.<sup>91</sup> The Unicef report, *Children of the Recession*, showed that the UK experienced a small increase of 1.6% in child income poverty between 2008 and 2012, placing it in the middle tier of countries surveyed.<sup>92</sup> The report also noted that UK Government support had effectively targeted support for children over the same period.<sup>93</sup> However, this time period does not cover the impact on child poverty of cuts contained in legislation such as the Welfare Reform Act and Welfare Benefits Up-rating Act about which we expressed concern during their passage through Parliament.

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87 Q 2

88 <http://www.ifs.org.uk/comms/comm121.pdf>

89 JCHR, Ninth Report of Session 2012–13, *Legislative Scrutiny Update*, HL Paper 157/HC 1077

90 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/legislative-scrutiny-2012-13/welfare-benefits-up-rating-bill/>

91 Q 51

92 UNICEF, *Innocenti Report Card 14—Children of the Recession: The Impact of the Recession on Child Well-being in Rich Countries*, <http://www.unicef-irc.org/publications/pdf/rc12-eng-web.pdf> p. 7–9

93 *Ibid.* p. 30–31

94. In its written submission to us, the Equality and Human Rights Commission noted its recent research which “found that the impacts of tax and welfare reforms have been more negative for families containing at least one disabled person, particularly a disabled child, and that these negative impacts are particularly strong for low income families”.<sup>94</sup> Paola Uccellari of CRAE told us that the impact on families across the board had been disproportionately negative.<sup>95</sup>

95. In oral evidence to us, Natalie Williams of the Children’s Society stressed that the latest IFS projection suggested that 700,000 more children will be in poverty by 2020. She and Dragan Nastic explained that, while some areas of society had been protected from the impact of austerity, low-income families and migrant families had been particularly badly affected. Natalie Williams further explained that 6 in every 10 children in poverty are in low income working families.<sup>96</sup>

96. Some particular impacts cited in oral evidence to us were: cuts to local welfare assistance grants (for local authorities to provide emergency and community support to families in times of real crisis) which replaced the national statutory fund; cuts to the early intervention grants that provide funding for children centres, and cuts to virtually all specialist teams for migrant children in local authorities across the country. Kate Aubrey-Johnson of Just for Kids Law expressed concerns that local authority social services were often not complying with their statutory duties to children due to budget constraints and budget cuts.<sup>97</sup>

97. A recent report published by Save the Children also finds that the number of children living in relative poverty in the UK may increase to 5 million by 2020 despite the cross-party commitment to eradicate child poverty by that year.<sup>98</sup> Together, the Scottish Alliance for Children’s Rights, noted in its submission to us that forecast trends for Scotland suggest “around 65,000 more children will be pushed into poverty by 2020”, as a direct result of the current UK Government’s tax and benefit policies.<sup>99</sup>

98. There was general concern expressed by our NGO witnesses about the projected trajectory of increasing child poverty which seems clearly to threaten the cross-party political commitment to eradicating child poverty by 2020. Natalie Williams in evidence to us said that the Government is very likely to “to miss that target”.<sup>100</sup> The Minister was however “happy to reiterate [...] [the Government’s] commitment of eradicating child poverty by 2020”. He believed that the projections being made by bodies such as the Institute for Fiscal Studies might not be as robust as some think, citing their projections for numbers of unemployed which were not in reality met; and he added that he does not “accept the policies of the Government are leading to the inevitability that [...] [it] will miss the target”.<sup>101</sup>

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94 Written evidence from the Equality and Human Rights Commission (ROC 004)

95 Q 51

96 Q 51

97 Q 52

98 [http://www.savethechildren.org.uk/sites/default/files/images/A\\_Fair\\_Start\\_for\\_Every\\_Child.pdf](http://www.savethechildren.org.uk/sites/default/files/images/A_Fair_Start_for_Every_Child.pdf)

99 Written evidence from Together, the Scottish Alliance for Children’s Rights (ROC 021)

100 Q 51

101 Q 72

99. The Minister acknowledged the reduction to local authority budgets (which is where the responsibility lies for the provision of children's services at a local level) had been "challenging" for many local authorities, but stressed that as much was spent on child protection services in early 2015 as in 2010. He also remarked that some of the local authorities which spend the most on children's services were the worst-performing, and that some financial stringency can lead to money being spent more effectively. He further mentioned the pupil premium, free school meals and free entitlement to childcare for 3 and 4 year olds.<sup>102</sup>

100. All the evidence with which we have been presented during this short inquiry points to the fact that the impact on children of this current period of austerity has been greater than for many other groups. Certain categories of children may have been protected from the worst impacts of austerity, but other groups—in particular migrant children, whether unaccompanied or not, and children in low-income families—have been hits by cuts in benefits and in the provision of services. Inasmuch as austerity was a necessary response to the financial problems besetting the country—and it is not our role to take a view on this—some proportionate impact may have been inevitable. However, we are disappointed that children—in particular, disadvantaged children—have in certain areas suffered disproportionately.

101. Child poverty, along with the statutory duty on the government to eliminate it by 2020, must be seen as a phenomenon which impacts very considerably on children's rights, as is reflected in the child poverty strategies adopted by the governments of Northern Ireland and Wales. As such it should be regarded as a human rights issue, and the Government should undertake an assessment of any new policy or law in terms of its impact on child poverty, integrated within or alongside its assessment of the compatibility of that policy or law with the United Nation Convention on the Rights of the Child. The Government needs to work harder to minimise as much of the effect on children of cuts to funding as possible. The Government should also have monitored more closely the impacts of these cuts with a view to modifying its policy in those areas where children were clearly suffering more than other groups.



## 8 Children's rights: ongoing policy challenges

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### Legal Aid and access to justice

103. The plan to undertake a wholesale review of the legal aid system was included in the Coalition Agreement of May 2010. During this Parliament we first considered legal aid reform as part of our legislative scrutiny of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill.<sup>103</sup> We then considered it in two consecutive inquiries—the first on the implications for access to justice of the Government's proposals to reform of legal aid, and the second on the impact on children of the residence test for legal aid.

104. The LASPO Act came into force in April 2012. Its aim was to cut £350 million from the £2.1 billion legal aid budget for England and Wales.<sup>104</sup> It led to a reduction in funding in the following areas: asylum support; debt (except when home is threatened); employment; housing (except when home is threatened); immigration; private family law (except in instances of domestic violence and abuse); and most welfare cases. It also abolished the Legal Services Commission, with responsibility for administering legal aid moving to the Lord Chancellor. Our Report on the Bill as it passed through both Houses argued that the Government had paid insufficient attention to the potential impact of the reforms on a number of vulnerable groups, including children. No specific ECHR memorandum had accompanied the LASPO Bill, although human rights issues were touched on in the Explanatory Notes.

105. The LASPO Act appears to have had a noticeable impact on children. The response to a Freedom of Information request from CRAE to the Ministry of Justice showed that the number of children granted legal aid for education has fallen by 84 percent, and the number granted legal aid where their parents have divorced or separated has fallen by 69 per cent. In her report on the legal aid changes, the Children's Commissioner noted figures which indicated a significant rise in litigants in person in private family law cases following LASPO.<sup>105</sup> An NAO report on the impact of LASPO on civil legal aid changes found a 22 per cent rise in the number of private family law cases involving children where neither party was represented and a corresponding fall in those where both were represented.<sup>106</sup> In our Report on the Bill we had expressed concern that the Government had failed to take into account the increased costs from lengthier proceedings resulting from an increase in litigants in person.<sup>107</sup> The NAO report provides some evidence of this. On the basis that cases involving litigants in person take an average of 50% longer, it estimates an additional £3 million cost in family court cases had resulted from the LASPO Act.

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103 JCHR, Twenty-second Report of Session 2010–12, *Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill*, HL Paper 237/HC 1717

104 House of Lords Constitution Committee, *Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Bill*, 21<sup>st</sup> Report of Session 2010–12, HL Paper 222, para. 3

105 Case in which both parties represented fell from 46 to 30 per cent; neither party represented rose from 12 to 22 per cent; and one party unrepresented rose from 42 to 48 per cent. Children's Commissioner, 2014, *Legal Aid Changes since April 2013*, p.8

106 National Audit Office, *Implementing reforms to civil legal aid* HC 784 Session 2014–15 20 November 2014, para. 1.27

107 JCHR, *Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill*, 22<sup>nd</sup> Report of Session 2010–12, Para. 1.8

106. The Government responded to the criticism which stemmed from some of these statistics with increased support to facilitate litigants in person in order to reduce costs: it announced £2 million over two years to support litigants in person in family and civil courts. It also launched a helpline for parents in disputes.<sup>108</sup> The NAO concluded that overall the changes to legal aid for civil cases had the potential to save £300 million per annum but that there were costs, both legal and others that had not been taken into account.<sup>109</sup>

107. Applications to the scheme to cover exceptional cases where an absence of funding would constitute a clear breach of human rights have been considerably lower than planned. Where up to 7000 applications were anticipated, only 1520 were received and, of those, only 70 (five per cent) were funded. Legal Aid providers said that the application process created strong disincentives to apply.<sup>110</sup> While it is unclear whether this has been the result of non-essential cases dropping or whether significant cases are omitted by the changes, the then Children's Commissioner for England claimed it was the latter.<sup>111</sup>

108. With regard to children in particular, JustRights in its submission to us points out that the numbers of children and young people receiving Special Welfare legal aid and Immigration and Asylum legal aid have fallen by nearly two-thirds to below even the post-LASPO levels anticipated by the Government. It also reports that only 3 children were granted legal aid under the Exceptional Case Funding scheme in the first twelve months for which figures are available.<sup>112</sup>

109. Although we touch upon matters relating to devolution at the end of this Report, it is worth noting here that the submission we received from Clan Childlaw Ltd., an outreach centre delivering free, holistic legal advice and representation to children, and young people in Edinburgh, the Lothians and Glasgow, states that children in Scotland face particular barriers in accessing justice because of the legal aid rules that apply there. The requirement to take into account the resources of parents (or those liable to support children) in assessing the child's financial eligibility for legal aid means that many children "find it impossible to access confidential and independent legal advice and representation".<sup>113</sup>

### **The Residence Test**

110. Shortly after the LASPO Act was passed, the Government introduced the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014. This further restricted access to legal aid on the basis of a residence test. To be eligible, applicants would have to demonstrate a 'strong connection' to the UK. Specifically, applicants would need:

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108 National Audit Office, *Implementing reforms to civil legal aid* HC 784 Session 2014–15 20 November 2014, para. 1. 28–1.30

109 Footnotes "have served mainly, and sometimes merely, for ritual adornment and terror" (H Belloc)

110 National Audit Office, *Implementing reforms to civil legal aid* HC 784 Session 2014–15 20 November 2014, paras 3.5–3.8

111 Owen Bowcott, 'Children being denied justice by legal cuts, says children's commissioner', *Guardian*, 14 September 2014

112 Written evidence from JustRights (ROC 12)

113 Written evidence from Clan childlaw Ltd (ROC 18)

1. to be lawfully resident in the UK at the time of their application for legal aid; and
2. to have resided lawfully in the UK for 12 months continuously prior to that.<sup>114</sup>

111. The justification was nominally financial, although the Lord Chancellor admitted that no specific figure for savings had been targeted as it was unclear what the expenditure was on those categories of applicants who would now be excluded. Instead, the Lord Chancellor argued that it was a matter of principle: that only those with a strong connection to the UK should be able to access its legal aid system. There were a number of exemptions such as military service overseas but there was no specific exemption for children. The Children's Society argued that the residence test would leave significant numbers of children ineligible for legal aid, including unaccompanied migrant children, refused asylum seekers unable to return to their country of origin, age-disputed children, children abandoned by parents or carers, undocumented migrant children, and children legally resident for less than 12 months.<sup>115</sup> The Government suggested that there was provision for exceptional cases that might cover these categories.

112. This instrument, laid on 31 March 2014, was scrutinised by other Parliamentary committees. The House of Lords Secondary Legislation Scrutiny Committee reported on this instrument; and the Joint Committee on Statutory Instruments concluded:

The Committee draws the special attention of both Houses to this draft Order on the grounds that, if it is approved and made, there will be a doubt whether it is *intra vires*, and that it would in any event make an unexpected use of the power conferred by the enabling Act.<sup>116</sup>

That Committee argued that the residence test, in omitting a class of people rather than varying services, should have been introduced *via* primary legislation and was consequently beyond the powers Lord Chancellor has under the Act.

113. A number of witnesses to our inquiry into access to justice argued that the residence test contravened the Government's obligations under the UNCRC. Specifically it was argued that the residence test breached the following UNCRC provisions

- Article 2: obliges state parties to ensure rights of any child within its jurisdiction without discrimination. Amongst others, this explicitly includes national and ethnic origin.
- Article 3: Requires decisions to be taken with the interests of the child as primary consideration
- Article 12: a child capable of forming a view has the right to express it. This means an opportunity to be heard in any judicial or administrative process.<sup>117</sup>

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114 This need not have been immediately prior to the application for legal aid.

115 JCHR, *The Implications for Access to Justice of the Government's Proposals to Reform Legal Aid*, 7<sup>th</sup> Report of Session 2013–14, HL100/HC 766, Para. 80

116 Joint Committee on Statutory Instruments, First Report of Session 2014–15, HL Paper 4/HC 332-i

117 [http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC\\_PRESS200910web.pdf](http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf)

In our Report we concluded that “[w]e cannot see any way in which [the residence test] can be compatible with the UK’s obligations” under the UNCRC. It did not seem possible to us for the Government to realise its obligations under Articles 3 and 12, without discrimination (Article 2).<sup>118</sup>

114. The legality of the means by which the residence test was introduced was also tested in the Courts.<sup>119</sup> In 15 July 2014, the High Court struck down the residence test as both illegal and discriminatory. It judged that the Lord Chancellor had acted *ultra vires* in introducing the residence test through secondary legislation and that the test was unjustifiably discriminatory in excluding access to legal aid on grounds that did not pertain to need.<sup>120</sup> The Lord Chancellor indicated his intention to press on with the introduction of the residence test. However, this affirmative instrument, which would have given effect to this test, was withdrawn by the Government and there is no sign that it will be re-laid before the end of this Parliament.

115. Legal aid, and the proposal to introduce the residence test in particular, was cited by all the NGO witnesses from whom we heard, and from the outgoing Children’s Commissioner, as being one of the areas of policy development most flagrantly in contravention of the UNCRC.<sup>121</sup> One of the groups most affected was trafficked children. Natalie Williams of the Children’s Society suggested that one of the main reasons was that the Home Office, a department that does not have a good record for promoting the best interests of children in this policy area, was sole decision-maker in making claims for trafficked children.<sup>122</sup>

116. Natalie Williams also added that the residence test would affect all children who are bringing judicial reviews against a local authority, which is sometimes the only way to challenge local authorities in order for them to adhere to their duties towards children. It would also affect particularly those children whose age is disputed and those who do not have the right documents.<sup>123</sup>

117. In this context, Kate Aubrey-Johnson of Just for Kids Law cited the case of teenagers who discover, when invited to go on an overseas school trip, for example, that they do not have regularised immigration status—which means that they cannot access work and welfare benefits and are excluded from further education and from accessing education to do A-levels and apprenticeships. She added that as a more general result of the legal aid reforms, small local organisations that provide free legal advice are now shutting down, and there is much less oversight of the quality and accessibility of local authorities’ services to children.<sup>124</sup>

**118. The Government’s reforms to legal aid have been a significant black mark on its human rights record during the second half of this Parliament. The two Reports we**

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118 JCHR, First Report of Session 2014–15, *Legal aid: children and the residence test*, HL Paper 14/HC 234

119 JCHR, The Implications for Access to Justice of the Government’s Proposals to Reform Legal Aid, 7<sup>th</sup> Report of Session 2013–14, HL100/HC 766, Para. 48–59

120 <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2365.html>

121 Q 9 and Q 56

122 Q 46

123 Q 56

124 *ibid.*

agreed on the subject, at the end of 2013 and early in 2014, set out our concerns and what we feared might be the outcome of some of those reforms in terms of reducing access to justice for children. We acknowledge the few discrete areas in which the Government helpfully accepted our concerns and reviewed elements of its reforms. However, the evidence we heard from the outgoing Children's Commissioner for England and from all the NGOs we took oral evidence from provides firm grounds for a new Government of whatever make-up to look again at these reforms and to undo some of the harm they have caused to children.

## Other justice issues

### *Children in custody*

119. The number of children formally involved in the youth justice system in England and Wales has reduced quite markedly over recent years. As the Howard League set out in its evidence to us, the number of first time entrants to the youth justice system in 2013/14 had fallen by 75% compared to 10 years ago, and indeed has fallen 20% compared to 2012/13, although this was against the background of the number of children in prison having increased by a startling 795% between 1989 and 2009. As the Howard League again pointed out in its submission to us, the UK “still has the highest level of child incarceration in Western Europe”.<sup>125</sup> Perhaps as an unsurprising consequence of the number of children in custody having reduced—as different ways have been found for dealing with those in particular who have committed less serious offences—the average length of time spent in prison by each child has increased.

120. As part of its inquiry into children's rights, our predecessor Committee raised a number of concerns relating to the rights of children in custody. Amongst the issues it raised was the issue of the legitimate use of force on children in custody. Our predecessor Committee reiterated concerns from an earlier inquiry undertaken by its predecessor that “[t]he 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” and that recorded levels of use did not provide “reassurance that the Prison Service is implementing fully its responsibilities to respect the rights of children in custody”.<sup>126</sup>

121. The Criminal Justice and Courts Act 2014 contains measures for the establishment of secure colleges as a form of youth detention. In considering the provisions of this Act relating to secure colleges before it became law, we raised the issue of the use of force on children in custody. The Criminal Justice and Courts Bill made provision for secure college officers to restrain by force “if authorised to do so by secure college rules”, to use reasonable force where necessary to ensure good order and discipline on the part of persons detained in a secure college. We were concerned that ensuring “good order and discipline” was far

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<sup>125</sup> Written evidence from the Howard League for Penal Reform (ROC 11)

<sup>126</sup> JCHR, Twenty-fifth Report from Session 2008–09, *Children's Rights*, HL Paper 157/HC 318

too broad and vague a justification and that force should only be used to prevent harm to the child or to others and only the minimum force necessary should be used.<sup>127</sup>

122. The Government accepted the principle of the concerns (adding the prevention of escape to the justification for the use of force) but did not agree to amend the Bill at the time. CRAE also expressed its concern about the overly permissive nature of the Bill's provisions, adding that Ministry of Justice had paid out £96,000 in compensation to children who were unlawfully restrained in children's prisons in the past. Unfortunately, the Government did not accept our view, shared by CRAE and the Equality and Human Rights Commission, that the authorisation of use of force in the Bill would constitute a breach of UNCRC articles 3 and 8.<sup>128</sup>

123. Education for children in custody was one key justification for the introduction of secure colleges. The Deputy Prime Minister announced that the introduction of secure colleges was part of a process of "putting education at the heart of detention" which would reduce reoffending and see the current 12 hours a week that children in custody spend in education double. Our predecessor Committee noted the lack of special educational needs (SEN) provision for children in custody.<sup>129</sup> We note that the reforms to Special Educational Needs provision in the Children and Families Act 2014 do not apply to children in custody.

124. Our NGO witnesses reiterated to us their opposition to the secure college provisions, stressing that, since 2012, when a new system of restraint was introduced for use in custody, "there is now a move backwards in relation to the particular point around authorising force to maintain good order and discipline".<sup>130</sup>

125. Access to justice for children in prisons is also a significant concern, particularly in the light of the reforms to legal aid discussed above. In December 2013 we reported our concerns about the difficulties that children in prison might face in the absence of legal aid for the problems they encounter:

We do not agree that advocacy services and internal prison complaints systems will be able to deal with these cases effectively. This could leave young people vulnerable and deny them their rights. The issues concerning young people may involve matters of housing law, social care law and public law of such complexity that they require access to legal advice and assistance in order to investigate and formulate their case. The availability of such funding in appropriate cases would be in accordance with the UNCRC.<sup>131</sup>

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127 JCHR, Fourteenth Report of Session 2013–14, *Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill*, HL Paper 189/HC 1293

128 JCHR, Second Report of Session 2014–15, *Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill*, HL Paper 62/HC 779

129 JCHR, Twenty-fifth Report from Session 2008–09, *Children's Rights*, HL Paper 157/HC 318

130 Q 55

131 JCHR, *The Implications for Access to Justice of the Government's Proposals to Reform Legal Aid*, 7<sup>th</sup> Report of Session 2013–14, HL100/HC 766, Para. 48–59

Evidence mentioned in the submission to us made by the Howard League for Penal Reform indicates that, in 2014—following implementation of the reforms—calls to its helpline by or on behalf of children in prison increased by one third.<sup>132</sup>

126. The Howard League also raised concerns in its evidence surrounding the deaths of children in custody—three children have taken their own lives while in prison since 2010—and the use on children of what is effectively solitary confinement. It also notes that children appear to be more likely to be deprived of access to activities than adults as a result of what are termed “restrictive regimes” in the children’s secure estate.<sup>133</sup> We also received written submissions raising concerns about the lack of anonymity for children in legal proceedings. This was touched on also in oral evidence during the course of the inquiry.<sup>134</sup>

**127. We remain very concerned about the use of force on children in custody and believe that the recent provisions with regard to secure colleges in the Criminal Justice and Courts Act cannot be considered compatible with the UN Convention on the Rights of the Child. The progress that has been made in this area over the last few years is in danger of being lost. The Government must consider not only the circumstances in which force can be used but revisit the methods of restraint which can be employed.**

**128. We welcome the fact that the Government has committed itself to dealing with the issue of children with mental health problems in custody. We are also concerned the Special Educational Needs reforms put in place by the Children and Families Act do not extend to children in custody despite education being seen as key element of the secure college system. We call for this to be addressed as a matter of urgency by the next Government. In addition, a number of other justice issues relating to children have been raised with us, such as the lack of anonymity for children in legal proceedings, which we think our successor Committee may want to examine in greater detail.**

### ***Criminal age for prosecution***

129. Amongst the other children’s rights issues we have raised in our Reports over the Parliament, we expressed concerns with regard to the Anti-social Behaviour, Crime and Policing Bill—now Act—about whether the best interests of the child were taken into account when imposing Injunctions to Prevent Nuisance and Annoyance (IPNAs) upon children, and also over the use of detention as a sanction for breaches of an injunction for children aged 14 and over.<sup>135</sup>

130. Also, with regard to the Serious Crime Bill and the issue of the Government not extending the protection of the child cruelty offence to those aged 16 and 17, in our Report on that Bill we expressed concern:

This appears out of line with the UNCRC definition of a child and domestic child protection guidance, which both define a child as anyone under 18 [...]

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132 Written evidence from the Howard League for Penal Reform (ROC 11)

133 *ibid.*

134 For example, written evidence from the Standing Committee for Youth Justice (ROC 13)

135 JCHR, Fourth Report of Session 2013–14, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, HL Paper 56/HC 713

We are not persuaded by the Government's justification for continuing to exclude 16 and 17 year olds from the protection of the child cruelty offence. The fact that a criminal offence protects those under the age of 18 does not mean that the offence cannot be committed by a person who is also under 18. In our view, it would be possible in principle to extend the scope of protection provided by the offence to those under 18 whilst preserving the possibility that those over 16 can commit the offence.<sup>136</sup>

Natalie Williams of the Children's Society, in her evidence to us, focussed on these definitions of neglect and child cruelty, stressing that, while neglect did not cover 16 and 17 year olds, children in that age group were actually more likely to be recorded as children in need because of neglect. She also added that there were still other serious outstanding issues surrounding how children were treated as adults in the legal system while still under the age of 18.<sup>137</sup>

131. On a more general point, our witnesses noted that the number of children in contact with the criminal justice system had dropped massively since the last UN process in 2008, but that this had been accompanied by a very significant increase in the number of children placed into the child protection system.<sup>138</sup> While the former phenomenon was a positive, the child protection system obviously posed its own challenges to children's rights. Moreover, Paola Uccellari of CRAE suggested that the experience of those children entering custody was arguably worse than before, with the rate of the use of tasers on children and the strip-searching of children both seemingly on the increase.<sup>139</sup>

**132. We reiterate the point that we made in our Report on the Serious Crime Bill that we have come across a “series of issues which have arisen in different contexts raising the wider question of the lack of a consistent legal definition of the age of a child in the UK”. We again call on the Government to review this whole area of law. We understand that this will necessarily be a complex and occasionally controversial question, but children and young people deserve greater clarity from the law than it currently gives. The start of a new Parliament would be an opportune time to tackle a complex issue of this kind.**

## Special Educational Needs

133. Article 23 of the UNCRC states that “[c]hildren who have any kind of disability have the right to special care and support, as well as all the rights of the Convention, so that they can live full and independent lives”.<sup>140</sup> In addition, the Convention on the Rights of Persons with Disabilities, which the UK Government ratified in 2009, amongst other things commits signatory countries to ensure that children with Special Educational Needs (SEN) are entitled to the ‘full enjoyment of their human rights and fundamental freedoms on an equal basis with other children’ (Article 2).<sup>141</sup> The UK Government's Interpretative

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136 JCHR, Second Report of Session 2014–15, *Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (Second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill*, HL Paper 62/HC 779

137 Q 57

138 Q 58

139 Q 59

140 <http://www.un.org/disabilities/convention/conventionfull.shtml>

141 *ibid.*



Declaration to the Convention on the Rights of Persons with Disabilities (2009) stated its commitment to “continue to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children”.<sup>142</sup>

134. Following several critical reviews initially launched under the then Labour government, the Coalition Government launched a formal consultation on initial proposals in a green paper followed by a series of Pathfinder trials, before finally announcing a major reform of SEN provision in the Queen’s Speech of May 2012.

135. In addition to the general principles contained in the Equality Act 2010, the statutory framework for SEN was overhauled with the introduction of the Children and Families Act 2014. We broadly welcomed the SEN provisions during our scrutiny of the then Children’s and Families Bill as “positive human rights enhancing” measures.<sup>143</sup>

136. The Act’s commitment to educating SEN children in mainstream schools is in line with Article 24 of the UN Disabilities Convention. Section 33 of the Act maintains this except where the commitment would interfere with the “provision of efficient education of others” and where there are “no reasonable steps” that can be taken to avoid this. We were concerned that this might provide a convenient mechanism for schools to evade their SEN responsibilities under the Act. In spite of the Minister’s assurance that the final decision on “reasonable steps” lay with local authorities and not schools, the end result would ultimately be strongly dependent on the school’s opinion. We therefore recommended that a stronger statement of the principle of inclusion be added.<sup>144</sup>

137. Oral evidence to us both from NGOs and from the outgoing Children’s Commissioner raised the concerns noted by us in our Report that Section 33 of the Education Act allows “schools to say that to educate a child with disabilities or special educational needs would undermine the effective education of other children”, and that this poses a barrier to a really inclusive educational system. Paola Uccellari of CRAE said:

The huge disproportionality and exclusion of children with special educational needs illustrates that clearly something is going wrong and that support and adaptation are not happening in practice, which is why these children end up excluded.<sup>145</sup>

138. We have also dealt with the issue of SEN appeals during this Parliament. In response to the UNCRC 2008 Concluding Observation that SEN children had an insufficient voice in the appeals process, the Children and Families Bill allowed them to appeal directly to the First Tier Tribunal about the education component of their Education Health Care plan, a development we welcomed.<sup>146</sup>

**139. We acknowledge the considerable improvements that the Government has made in the area of special educational needs, particularly in the Children and Families Act**

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142 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=iv-15&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&lang=en#EndDec)

143 JCHR, Third Report of Session 2013–14, *Legislative Scrutiny: Children and Families Bill; Energy Bill*, HL Paper 29/HC 157

144 *ibid.*

145 Q 53

146 JCHR, Third Report of Session 2013–14, *Legislative Scrutiny: Children and Families Bill; Energy Bill*, HL Paper 29/HC 157

2014. However, we do remain concerned at the potential effect of section 33 of the Education Act which could be used significantly to dilute the benefit of the Government's reforms in this area. The high proportion of children excluded from schools who have special educational needs points to the fact that more needs to be done. The Government must monitor the impact of section 33 on the fair and equitable provision of education in schools and take steps to remedy any harmful impact of this section of the Act.

## Migrant children and child trafficking

140. From the autumn of 2012 through to the summer of 2013, we conducted a substantial inquiry into the treatment of unaccompanied migrant children. This area of policy engages a number of UNCRC Articles. Nonetheless, one of the key concerns which emerged from the inquiry was the tendency for immigration considerations to override the commitments to put the interests of the child first (in keeping with UNCRC Article 3, as well as both s11 of the Children Act 2004 and s55 of the Borders, Citizenship and Immigration Act 2009). The UN High Commissioner for Refugees, the Refugee Children's Consortium, the Coram Children's Legal Centre, and the Children's Commissioner, all of whom gave evidence to us during that inquiry, were amongst those who felt that, to a greater or lesser extent, the best interests of the child were subordinated to a wider concern with restricting immigration. This was apparent in a variety of areas, including the age assessments where the committee was told of a "culture of disbelief".<sup>147</sup>

141. During our inquiry we also found a tendency to grant unaccompanied children lower forms of leave to remain rather than full asylum, meaning they could be removed at the age of seventeen and half. This served administrative convenience rather than the best interests of children. The Government said in its submission to the UN Committee on the Rights of the Child that, in case of disputed age, applicants were treated as children whilst their actual age was established.<sup>148</sup>

142. In our 2013 Report on the human rights of unaccompanied migrant children and young people in the UK, we made a considerable number of recommendations concerning:

- the determination of the age of unaccompanied migrant children
- delays to decisions on children's futures, leaving children uncertain about what their futures will hold;
- the lack of a clear cross-Government strategy to safeguard and support unaccompanied migrant children;
- a more prominent role for the Department for Education in overseeing the welfare of unaccompanied migrant children;

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<sup>147</sup> JCHR, First Report of Session 2013–14, *Human Rights of unaccompanied migrant children and young people in the UK*, HL Paper 9/HC 196

<sup>148</sup> *Ibid.*

- the development of a training programme to enable frontline staff in asylum and immigration better to understand the needs of children,
- more effective support for trafficked children and great awareness of child tracking in the safeguarding workforce, the police and the Crown Prosecution Service;
- a trial of a system of guardianship for unaccompanied migrant or trafficked children; and
- an assessment of the quality and availability of legal services for unaccompanied migrant children in England and Wales.<sup>149</sup>

The Government did not accept most of these recommendations. We also raised concerns about the impact on children of provisions in the Immigration Bill—namely, access to residential tenancies and health services; and the impact on children of decisions relating to the deprivation of UK citizenship.<sup>150</sup> Witnesses before us during this inquiry also made mention of the detrimental impact of the Immigration Act upon migrant children's access to free health-care (affecting up to an estimated 120,000 migrant children in the UK).<sup>151</sup>

143. Aside from issues relating to migrant and trafficked children relating to legal aid which we have touched on in the section on legal aid and the residence test above,<sup>152</sup> witnesses before us also expressed particular concerns about the continuing failure of the Government to provide guardians with legal powers for all migrant children (the Modern Slavery Bill will provide independent advocates just for child victims of trafficking).<sup>153</sup>

144. Some areas of progress in rights for children within the immigration system over the length of this Parliament were acknowledged by witnesses.<sup>154</sup> The United Nations High Commission for Refugees (UNHCR) in its written submission to us pointed to the following as welcome initiatives undertaken by the UK Government:

- the introduction of a duty to ensure that functions undertaken by the Secretary of State for the Home Department in relation to immigration, asylum or nationality are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom as reflected in section 55 of the Borders, Citizenship and Immigration Act 2009 and its accompanying guidance;
- the issuance of statutory guidance for local authorities regarding the particular care of unaccompanied and trafficked children;
- efforts made to improve the asylum process for unaccompanied asylum seeking children, including the introduction in 2007 of a distinct and separate asylum process for children, a screening unit for children, specific guidance for case owners

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149 JCHR, First Report of Session 2013–14, *Human Rights of unaccompanied migrant children and young people in the UK*, HL Paper 9/HC 196

150 JCHR, Eighth Report of Session 2013–14, *Legislative Scrutiny: Immigration Bill*, HL Paper 102/HC 935

151 Q 60

152 See paragraphs 110–118

153 Q 60

154 Q 2 and Q 60

handling asylum applications from unaccompanied children and training for all UK Visas and Immigration (UKVI) staff:

- the establishment of a 'Children's Champion' in UKVI; and
- a commitment to ending the detention of children for immigration purposes.<sup>155</sup>

145. The outgoing Children's Commissioner for England noted the Government's commitment to end the detention of children for immigration purposes in her oral evidence to us.<sup>156</sup> Dragan Nastic of Unicef UK and Natalie Williams of the Children's Society pointed out that there were however children of migrant families in detention.<sup>157</sup> The written evidence for the Children's Society also notes this commitment as a positive step by Government although it also points out that the Home Office does not "publish full statistics on where children are being held under immigration powers".<sup>158</sup> Home Office statistics do however show an overall significant decline in the numbers of children entering immigration detention since the beginning of 2010 although the exact quantum of that decline is not easy to establish.<sup>159</sup>

146. However, the UNHCR also pointed out the areas of concern. Its written submission states that "evidence suggests that, in practice, children's best interests are not always being considered or given appropriate weight". It points to some ambiguity in UKVI operational guidance over the primacy of the child's best interests as opposed to the need to control immigration for example.<sup>160</sup> This point was echoed by Dr Atkinson in evidence to us who said in particular as children become older "their cases are judged entirely on the basis of immigration law, not the best interests of the child".<sup>161</sup>

147. The UNHCR's audit findings also have revealed that the guidance available to decision-makers in the UK in "not sufficient" and that greater support is required for UKVI staff. Moreover, training given to asylum decision-makers on the principle of best interests is "very brief and [...] provided only to those decision-makers who handle claims from unaccompanied children (failing to appreciate the duty to consider the best interests of children who are with their families)".<sup>162</sup>

148. Indeed other witnesses also alluded to the continuing failure of the UK Government to provide a best-interests determination, providing a durable solution for migrant children (rather than their current temporary status).<sup>163</sup> While she noted some improvements to the situation for migrant and trafficked children, the outgoing Children's Commissioner in her evidence to us highlighted the case of a child born in the UK to a

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155 Written evidence from the United Nations High Commissioner for Refugees (ROC 16)

156 Q 2

157 Q 47

158 Written evidence from the Children's Society (ROC 024)

159 <https://www.gov.uk/government/statistics/immigration-statistics-october-to-december-2014>

160 Written evidence from the United Nations High Commissioner for Refugees (ROC 16)

161 Q 2

162 Written evidence from the United Nations High Commissioner for Refugees (ROC 16)

163 Q 60

mother whose asylum request has been rejected being deported to a country he has never been to and whose language he cannot speak.<sup>164</sup>

149. As we have noted above in more general terms in relation to children's rights across Government, the UNHCR also points out in its submission the need for close cooperation and communication across Government in this particular policy area:

In the UK, as in other States, the issues facing unaccompanied and separated children who are seeking international protection fall under the jurisdiction of several authorities; different government agencies work together to discharge their respective statutory duties to “safeguard and promote the welfare of children” in carrying out their work. [...] In practice, however, there remains scope for improved collaboration and coordination across UK government and between agencies to ensure that children's best interests are given primary consideration as they move through procedures that identify their international protection needs and durable solutions for their situation of separation and displacement.<sup>165</sup>

150. The UNHCR has called on the Government to:

create new, and strengthen existing, mechanisms to ensure that assessments and determinations of an individual child's best interests:

- are undertaken objectively, independently of the asylum process, and in coordination with other relevant government bodies responsible for child protection; and
- respect confidentiality and data protection arrangements allow for the collection of an increased amount of information relevant and specific to each individual child.

151. In addition, the UNHCR has told us that, in the cases that it had reviewed, no dependent children had been interviewed at any stage of the asylum process, which seemed to take no account of the Government's own guidance to listen to and respect the views of the children in question. It had concluded that “the principle of respect for the views of the child” does not appear to be being “met in the context of the assessment of family asylum claims”.<sup>166</sup>

**152. While we welcome the reduction in the number of migrant children held in immigration detention, we are disappointed that so little other progress appears to have been made by the Government since we reported on the human rights of unaccompanied migrant children and young people in the UK back in June 2013. All the evidence we have received suggests that the treatment of child migrants is an area where, despite some improvements, if anything the situation has grown worse overall during this Parliament. The Home Office seems still to prioritise the need to control immigration over the best interests of the child. This is unsatisfactory. The Government must ensure that the best interests of the child are paramount in**

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164 Q 2

165 Written evidence from the United Nations High Commissioner for Refugees (ROC 16)

166 *Ibid.*

**immigration matters and work with other departments to ensure that the needs such children are met and their rights safeguarded. The UNHCR evidence that guidance for Home Office and UKVI staff is not good enough and training patchy must be acted upon.**

## Other issues

153. We received submissions during this short inquiry that also touched upon other issues connected to children's rights.

### *Reasonable punishment*

154. Children Are Unbeatable! (CAU!) submitted a memorandum to us concerning the defence of "reasonable punishment" under section 58 of the Children Act 2004 (or "justifiable assault" under Scottish law) and the promotion of positive non-violent forms of parenting. It points to the failure of the current and previous Governments to implement the recommendations of the UN Committee on the Rights of the Child to "prohibit as a matter of priority all corporal punishment in the family, including the repeal of all legal defences".<sup>167</sup>

155. Our predecessor Committee in the 2001-2005 Parliament concluded by a majority vote that the defence of "reasonable punishment" for common assault on children, whilst probably compatible with the ECHR, was incompatible with children's rights under various other human rights treaties and recommended that it be replaced by a provision drafted so as to remove that defence and give children the same protection from battery as adults.<sup>168</sup> Paola Uccellari of CRAE also raised this issue briefly in oral evidence. She told us:

We know there is a clear link between smacking children and a fall-off in other forms of child abuse. In other jurisdictions where they have banned smacking it has changed attitudes and cultures around violence towards children, and you see a reduction in more serious abuse against children.<sup>169</sup>

**156. We hope that our successor Committee will have an opportunity to scrutinise this issue, which we know is a controversial one in the UK, in the light of the UN Committee's Concluding Observations which will be delivered in 2016.**

### *Children in armed conflict*

157. We also received a submission from Child Soldiers International concerning the failure of the UK Government to implement the recommendations of the UN Committee on the Rights of the Child regarding the UK's compliance with the Optional Protocol to the UNCRC on the involvement of children in armed conflict (OPAC). Child Soldiers International is particularly concerned about the legally-binding obligations and terms of employment which accompany the recruitment of under-18s to the armed forces in the

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167 Written evidence from Children Are Unbeatable! (ROC 003)

168 JCHR, Nineteenth Report of Session 2003-04, *Children Bill*, HL Paper 161/HC 537

169 Q 59

UK. It also notes that some soldiers under the age of 18 have also served overseas in conflict zones in contravention of OPAC.<sup>170</sup>

158. In addition, Child Soldiers International expressed concerns in its submission about detention of soldiers under the age of 18 in a military prison, namely the Military Corrective Training Centre (MCTC) in Colchester. Under MCTC jurisdiction, 17 year old children can be placed with adults in contravention of Article 37(c) of the UNCRC and General Comment No. 10 (2007) of that Committee. It also raises issues concerning the terms of service for under-18s in the UK armed forces, and their rights of discharge<sup>171</sup>—all issues we had raised with the Government in our legislative scrutiny Report on the Armed Forces Bill in May 2011.<sup>172</sup>

**Again, we hope that our successor Committee will have an opportunity to scrutinise the issue of children serving in the armed forces in the light of the UN Committee's Concluding Observations which will be delivered in 2016.**

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170 Written evidence from Child Soldiers International (ROC 10)

171 *ibid.*

172 JCHR, Twelfth Report of Session 2010–12, *Legislative Scrutiny: Armed Forces Bill*, HL Paper 145/HC 1037

## 9 Children's rights and devolution

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159. During this Parliament we have become increasingly conscious of the implications of the UK's still-shifting devolutionary settlement for the promotion and protection of human rights across the UK. In our inquiry into the right of independent living for persons with disabilities under Article 19 of the UN Convention on the Rights of Persons with Disabilities (“UNCRPD”), we expressed some concern at the very different speeds at which the four countries of the UK were moving in terms of working to realise this right to independent living.<sup>173</sup> In our Report on the human rights of unaccompanied migrant children and young people in the UK, we noted the different approaches to incorporation or paying due regard to the UNCRC that were current in the four countries of the UK.<sup>174</sup> Recently in our Report in human rights judgments, we noted that implementation of judgments often falls to the devolved governments in the UK and we expressed some concerns at the slow pace of implementation of a number of judgments in Northern Ireland.<sup>175</sup>

160. We had intended towards the end of the Parliament to undertake an inquiry into human rights and devolution, but the need to complete other inquiries and the continuing demands of our legislative scrutiny work has not permitted us to do so. We did visit Belfast in March 2014 and we are grateful to those who assisted us during that visit in getting a better understanding of the human rights situation in Northern Ireland.

161. Children's rights as reflected in the UNCRC cover a very great number of different policy areas for which a number of different Government departments are responsible. Moreover, some of these policy areas have been devolved and are the responsibility of the devolved governments while others, still reserved, fall to the UK Government to act on. Non-devolved areas include immigration and asylum, child poverty, welfare and children in the military. It is the UK Government that is ultimately responsible for the implementation of international human rights treaties across the UK, as the state signatory to these treaties, but the devolution settlement through the Human Rights Act has also placed duties with regard to those human rights treaties which the UK has ratified on the devolved governments.

162. This has led to a patchwork of responsibilities and duties which sometimes overlap and in which there is also inevitably the possibility of gaps emerging in human rights protection. It is therefore clearly important that all those across the UK with a national or UK-wide remit to maintain good lines of communication and remain aware of their differing, and often complementary, responsibilities and powers.

163. The importance of communications and good relationships was echoed in the evidence given to us by Edward Timpson MP. He explained that he had “two levels of relationship” with his counterparts in the other nations. One concerned the “overarching principles” and was involved in coordinating such as the 2014 report to the UN Committee

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173 JCHR, Twenty-third Report of Session 2010–12, *Implementation of the Right of Disabled People to Independent Living*, HL Paper 257/HC 1074

174 JCHR, First Report of Session 2013–14, *Human Rights of unaccompanied migrant children and young people in the UK*, HL Paper 9/HC 196

175 JCHR, Seventh Report of Session 2014–15, *Human Rights Judgments*, HL Paper 130/HC 1088



on the Rights of the Child. The second concerned general communication so that when one nation made some policy or legislative change the other nations were kept in the loop. He explained that there was “fairly consistent dialogue” between him and his counterparts. He noted that while the four nations were “always going to move at different speeds because that is the nature of devolution” it was still important to try and find some harmony by agreeing to things that “meet[s] the needs of each of those nations individually”, and that, for this, regular communication was of paramount importance.<sup>176</sup>

164. This can be seen in relation to the four Children's Commissioners (two are Commissioners for Children and Young People) within the UK. While responsibility for implementation of much of the UNCRC falls within policy areas which are devolved, significant areas are non-devolved and therefore remain across the UK within the remit of the Office of the Children's Commissioner for England (OCCE). The Dunford report argued that this created confusion, inconsistencies and gaps in coverage. One of the concerns identified by the report was that the UK-wide role of the Children's Commissioner for England in respect of non-devolved matters meant that there were concerns about how effectively the Commissioners in the devolved administrations were able to respond to non-devolved issues that are raised by children living in Scotland, Wales and Northern Ireland. Such children had to be referred to the Children's Commissioner for England where the issue they raised related to a non-devolved matter.<sup>177</sup>

165. In its draft Children and Families Bill, the Government made clear that it wanted to remove this confusion and enable the devolved Commissioners to deal with an issue raised by a child in their area, even if it concerns a non-devolved matter. It was proposed that this would be done by providing for the Children's Commissioner for England to delegate the exercise of functions to the devolved Commissioners. The devolved Commissioners themselves, however, and the English Commissioner, made clear in joint correspondence with us that the proposed solution in the draft clauses would have made matters worse than they currently were. They all saw the Memorandum of Understanding which they had in place within the then current legislative framework as preferable since the draft clauses would introduce significant complications to their relationships.

166. We therefore recommended that the draft clauses allowing the Children's Commissioner for England to delegate the exercise of functions to the devolved Commissioners be left out of the Bill. We also recommended that the four Commissioners consider whether their existing Memorandum of Understanding could be improved and make that document publicly available.<sup>178</sup> The Government agreed with our recommendation and deleted the clauses. However, we remain aware that the operation of the Memorandum of Understanding requires good will and will need to be monitored especially as the devolution settlement continues to evolve.<sup>179</sup>

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176 Q 76

177 *Review of the Office of Children's Commissioner (England)*, Department for Education, December 2010, <https://www.gov.uk/government/publications/review-of-the-office-of-the-childrens-commissioner-england>

178 JCHR, Sixth Report of Session 2012–13, *Reform of the Children's Commissioner: draft legislation*, HL Paper 83/HC 811

179 JCHR, Third Report of Session 2013–14, *Legislative Scrutiny: Children and Families Bill; Energy Bill*, HL Paper 29/HC 157

167. We raised this issue of the four Children's Commissioners having different roles, remits and powers and a different relationship with their parliaments and governments with our witnesses during this inquiry. Edward Timpson MP, explained to us:

a combination of devolution and organic evolution of the various Children's Commissioner roles across the United Kingdom has led to some differences in the remit and the powers of each Children's Commissioner.<sup>180</sup>

He acknowledged that there had been concerns about how well the four Commissioners worked with each other given their different responsibilities and powers, and the sometimes complex situation with regard to what were reserved and what were devolved matters. He noted that the Commissioners themselves had "recognised that there needed to be better cut-across between each nation".<sup>181</sup>

168. Dr Atkinson acknowledged that:

the Dunford review, and the Shooter review in Wales, have said that the commissioners in each of the four jurisdictions should be responsible for the children in their jurisdictions without exception and that the devolution settlement should be rewritten to echo that.<sup>182</sup>

Dr Atkinson described the likelihood of further changes to the devolution settlement as a "golden opportunity" to strengthen "differently" the roles of the Commissioners and thereby the protection and promotion of children's rights in each country.<sup>183</sup>

169. However, in terms of the UNCRC, devolution does not solely impact upon the varying roles, responsibilities and powers of the Children's Commissioners. Dragan Nastic of Unicef UK said that the UN Committee on the Rights of the Child is "very much concerned with the problem of differences between the four parts of the UK, because the UN Committee is very much concerned with the lack of strong coordination amongst the four UK nations and the fact that there is not enough synergy to ensure that children enjoy the same level of rights in all parts of the UK". The absence in some areas of coordination and synergy he felt was reflected in the UK Government's May 2014 report to the UN Committee on the Rights of the Child, which incorporated contributions from the four countries of the UK but which as a result lacked a coherent overall view.<sup>184</sup>

170. We received correspondence from the Chief Executive of the Northern Ireland Commissioner for Children and Young People, the Scottish Commissioner for Children and Young People and the Welsh Commissioner for Children which stressed the complexities and sensitivities which operate in this area.<sup>185</sup> Perhaps reflecting this, Together, the Scottish Alliance for Children's Rights, suggested in its submission to us that our successor Committee give consideration to how the UK Government's exercise of its reserved powers could better be assessed for its impact on the human rights of children in

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180 Q 70

181 *ibid.*

182 Q 21

183 Q 22

184 Q 61

185 ROC 008

the devolved countries of the UK.<sup>186</sup> This particular area appears to be a growing lacuna that has developed to some extent because human rights issues have been in large part devolved so successfully. As we have seen, areas where the decisions and policies of the UK Government impact strongly on devolved countries include benefits and social security, immigration and employment. Some of these areas require scrutiny at a UK-wide level, to assess how they impact on the different countries, as the national human rights institutions in those countries are not able to undertake that UK-wide assessment.

**171. We are aware of the complexity of the devolution settlement which will no doubt continue to evolve over the next Parliament. We are likewise aware of the sensitivities surrounding which areas are appropriate for a Committee such as ours to examine; and we are rightly respectful of the special relationships the devolved human rights institutions have with their legislatures and executives, and indeed with the people of each of their countries. Nonetheless, we do believe that a UK-wide examination of the impacts of devolution on the protection and promotion of human rights is required after the Election. Such a review is in our view necessary to provide reassurance that there is consistency across the four countries of the UK in those areas where that is required and that the different arrangements which very properly have been adopted in those countries do not reduce the level of protection for children but, where they have increased that protection, rather provide useful best practice for the rest of the UK to follow.**

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186 Written evidence from Together, the Scottish Alliance for Children's Rights (ROC 021).

# Conclusions and recommendations

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## Purpose of the inquiry

1. We very much hope that our successor Committee will use the opportunities presented to it to continue to use the UNCRC as a tool for assessing policy and legislation, and will consider taking forward one or more of the problematic policy areas we have highlighted in this Report for an inquiry at an early stage in the new Parliament. We would also commend to our successor Committee the need to recognise the different approaches of the devolved administrations and the challenges presented in achieving a coherent overarching implementation of the Convention. (Paragraph 2)
2. We welcome the recent moves in the UN to encourage greater parliamentary involvement in its human rights machinery, including the work of the treaty bodies that monitor states' compliance with their obligations under the UN human rights treaties. We hope that this Report will be of assistance to the UN Committee on the Rights of the Child when it examines the UK Government's periodic review report. (Paragraph 3)

## The Government's 2010 UNCRC Commitment

3. We acknowledge as an important and progressive move the commitment made by the Government in December 2010 to give due regard to the United Nations Convention on the Rights of the Child when developing law and policy. We believe that such a commitment, made at the beginning of the new Parliament by an incoming Government, can help keep up the momentum for the progressive realisation of children's rights for the next five years. It will also signal the intent of the new Government in taking international human rights treaties seriously. While such a commitment alone can only do so much, we nonetheless call on the next Government to renew the 2010 commitment. We were also very impressed by the personal commitment to children's rights and the Convention shown by the Children's Minister during our evidence session with him. (Paragraph 25)
4. We believe that the 2010 commitment did change things for the better. However, aside from a few recent clear examples where good practice has been sustained outside the Department for Education, the momentum for spreading good practice and awareness throughout government concerning the Convention—and to encourage departments to take the articles of the Convention seriously—seems to have lessened over the course of this Parliament. There does not seem to have been any attempt made to gauge how well the commitment was being fulfilled or to monitor the extent to which the Convention was being taken substantively into account by government departments. While we believe the commitment has proved to be worth far more than just the words which made it up, it is important for governments in future to follow up such commitments more avidly and to ensure that the good intentions they signify have practical and positive effects. (Paragraph 26)

5. There has been some better practice this Parliament from Government departments in capturing in their human rights memoranda the impact on children of their legislative proposals particularly with regard to the Children and Families Bill and the Modern Slavery Bill. However, departments' policies on assessing compatibility with the United Convention on the Rights of the Child and potential impacts upon children is far from consistent across Government, resulting in some surprising failures to assess the impact on children of policies which clearly affect them very significantly. This is one area where the 2010 commitment ought to have been capable of achieving significant progress. If all government departments were required to take the trouble to consider how their legislation is compliant with the UNCRC articles and to report on that assessment to Parliament, that would constitute a very necessary, and significant, step towards making those departments more aware of their duties under that Convention. The new Government should take steps to ensure that all memoranda accompanying legislation provide a detailed assessment of this sort as a matter of course, and that all departments have access to the necessary expertise in the UNCRC to help them carry out this necessary task. (Paragraph 28)
6. Ideally, we would like to see the United Nations Convention on the Rights of the Child incorporated into UK law in the same way that the European Convention on Human Rights has been incorporated by means of the Human Rights Act. However, we are mindful that these two Conventions differ considerably in how they are framed and in the mechanisms which exist to support them internationally. In practical terms more must be done to realise the aims of the United Nations Convention on the Rights of the Child through legislation and through policy. The Modern Slavery Bill shows this can be done in a particular policy area. If such a dedicated focus on children's rights were manifest in legislation and policy across the board, much of the debate about incorporation versus non-incorporation would become an irrelevance. It would also be a better way of proceeding in terms of allowing for fruitful discussions to take place on particular areas of children's rights that were being addressed at any given time. (Paragraph 34)
7. We believe that the Government should ratify the Optional Protocol to the United Nations Convention on the Rights of the Child which would give children the right of individual petition to the UN Committee on the Rights of the Child. The Government's view that it needs to wait to see how ratification of similar Optional Protocols for the UN Convention on the Rights of Persons with Disabilities and the Convention on Ending Discrimination Against Women works holds no water. Moreover, the Office of the Children's Commissioner for England lacking any power of individual investigation of complaints means that children in England are less well provided for in terms of access to possible recourse to justice than children in Northern Ireland, Scotland and Wales. This makes the need for the Optional Protocol more real and not just powerfully symbolic of the Government's commitment to the Convention. (Paragraph 38)

## The place of children's rights within the machinery of Government

8. We are very aware of the challenges that exist within government in terms of communication and cooperation between departments with very different policy priorities and spending constraints. It is clear that some departments are fully aware of the 2010 commitment and have made an effort to reflect upon children's rights in terms of their own policy responsibilities. However, some are not in this position. Some departments seem to believe that children's rights are only a matter for the Department for Education. More needs to be done across Government to spread knowledge and expertise and more importantly to impress upon ministers outside the Department for Education the central importance of children's rights for a just and healthy society. Despite some good work undertaken by the Home Office in connection with Modern Slavery Bill, we are concerned that certain policy areas within that Department and the Ministry of Justice remain seemingly unaffected by the 2010 commitment, most notably with regard to the treatment of child migrants and the provision of legal aid for children. (Paragraph 47)
9. We are also concerned to hear from the Children's Minister that he does not feel party to the Home Affairs clearance process for legislation which, amongst other things, looks at whether the rights of the child are being upheld in legislative proposals. We believe that it does not reflect the importance of children's rights if the Children's Minister is not sufficiently involved in the clearance process for legislation that will impact directly on children in this country. (Paragraph 49)
10. We have concerns that the role of Children's Minister is not senior enough in Government to command attention to children's rights issues at the top levels of policy-making. While the current Secretary of State for Education is no doubt aware of her responsibility for matters relating to children, she is also Minister for Women and Equalities. In giving evidence to us in our inquiry into violence against women and girls, she stressed the importance of having that portfolio at that level in order to advance women's rights issues. This only emphasises the need for someone at Cabinet level to hold the named brief for children. The new Government must give serious thought to how it arranges its portfolios and policy responsibilities better to reflect the prime importance of children's rights to a fairer future for all the people of this country. The growing focus on the impact of family breakdown and issues surrounding troubled families should also give children's rights particular prominence for the new Government. (Paragraph 53)

## The Government's 2014 UNCRC report

11. The Government should be commended for aspects of its May 2014 report to the UN Committee on the Rights of the Child, since it represents a considerable improvement on previous reports. However, whether because of the process by which it was put together, or whether by intention, the report is too abstract, its analysis too patchy, and there are some significant omissions from its content. It also fails to recognise those areas where there is still considerable disagreement outside government about whether its policy has indeed been compatible with the Convention, presenting a somewhat optimistic picture in places. Perhaps more importantly, the report does not adequately reflect the 'grass roots' contact which the

Government helpfully facilitated during the consultation on its report; nor does it represent the practical reality for many children, particularly the disadvantaged, in areas where policy may have been misjudged or good policies perhaps not properly implemented. (Paragraph 67)

### The reform of the Office of the Children's Commissioner for England

12. The reforms to the Office of the Children's Commissioner for England represent a progressive move towards strengthening the power and independence of the Commissioner and, although they have only been in place for a short time, have already begin to have an impact on a number of children's rights issues. In particular the redefinition of the mandate explicitly to incorporate children's rights, which we believe must be seen to lie at the centre of all that the Commissioner does, has been of signal importance. (Paragraph 74)
13. However, we do have concerns that, unlike her counterparts in Northern Ireland, Scotland and Wales, the Commissioner is not empowered to take up individual cases on behalf of children. We accept that granting these powers to the Children's Commissioner for England would need to go hand-in-hand with a possibly significant increase in resources, but we believe that this would be a good use of public funds, especially since it would give children in England the same recourse as children have currently—or, in the case of Scotland, from next year—elsewhere in the UK. It would also respond positively to criticisms made of the current limit on the Commissioner's powers made by the UN Committee. The next Government should undertake assessments of how the Children's Commissioner could be given such powers, without impacting upon the strategic overview required of the Office, and of the quantum of new funding that would be required. (Paragraph 75)
14. We remain concerned that the power the Children's Commissioner has to undertake Children's Rights assessments—and which has been effectively used—is not an acceptable alternative to the Government carrying out such assessments itself more comprehensively across all departments, and in particular for policies or spending decisions that are cross-departmental. The Government should be engaging more proactively with the recommendations from the UN Committee on the Rights of the Child to carry out such assessments itself. (Paragraph 76)
15. We welcome Anne Longfield to her new position as Children's Commissioner for England. We also thank the last Commissioner, Dr Maggie Atkinson, for all that she has done to further the promotion and protection of children's rights in England over the last five years. Her powerful evidence to us showed the capacity of the role of Children's Commissioner for England to communicate very effectively to parliamentarians, and to others, the importance of children's rights and the need for policy and legislative action. We hope that the links between that Office and Parliament—and in particular this Committee—will be strengthened over the next five years. We also reiterate what we said in our earlier Reports on the reforms to the Children's Commissioner's role, that our Committee is best placed to undertake the pre-appointment hearing for that position. (Paragraph 77)

16. We still have a few concerns about the independence of the Office—and the appearance of its independence to external bodies or individuals, particularly children. Clearly, through appointment and funding any government potentially has some influence over the capacity of the Office to undertake the sort of work that might be critical of Government policy. We also feel that the Commissioner should be able to establish a non-governmental web-site, and to locate her premises somewhere outside Government premises, although we accept that this latter might have resource implications which the Government should attempt to mitigate. (Paragraph 85)

### Children's rights in a time of austerity

17. All the evidence with which we have been presented during this short inquiry points to the fact that the impact on children of this current period of austerity has been greater than for many other groups. Certain categories of children may have been protected from the worst impacts of austerity, but other groups—in particular migrant children, whether unaccompanied or not, and children in low-income families—have been hit by cuts in benefits and in the provision of services. Inasmuch as austerity was a necessary response to the financial problems besetting the country—and it is not our role to take a view on this—some proportionate impact may have been inevitable. However, we are disappointed that children—in particular, disadvantaged children—have in certain areas suffered disproportionately. (Paragraph 100)
18. Child poverty, along with the statutory duty on the government to eliminate it by 2020, must be seen as a phenomenon which impacts very considerably on children's rights, as is reflected in the child poverty strategies adopted by the governments of Northern Ireland and Wales. As such it should be regarded as a human rights issue, and the Government should undertake an assessment of any new policy or law in terms of its impact on child poverty, integrated within or alongside its assessment of the compatibility of that policy or law with the United Nation Convention on the Rights of the Child. The Government needs to work harder to minimise as much of the effect on children of cuts to funding as possible. The Government should also have monitored more closely the impacts of these cuts with a view to modifying its policy in those areas where children were clearly suffering more than other groups. (Paragraph 101)

### Children's rights: ongoing policy changes

19. The Government's reforms to legal aid have been a significant black mark on its human rights record during the second half of this Parliament. The two Reports we agreed on the subject, at the end of 2013 and early in 2014, set out our concerns and what we feared might be the outcome of some of those reforms in terms of reducing access to justice for children. We acknowledge the few discrete areas in which the Government helpfully accepted our concerns and reviewed elements of its reforms. However, the evidence we heard from the outgoing Children's Commissioner for England and from all the NGOs we took oral evidence from provides firm grounds



for a new Government of whatever make-up to look again at these reforms and to undo some of the harm they have caused to children. (Paragraph 118)

20. We remain very concerned about the use of force on children in custody and believe that the recent provisions with regard to secure colleges in the Criminal Justice and Courts Act cannot be considered compatible with the UN Convention on the Rights of the Child. The progress that has been made in this area over the last few years is in danger of being lost. The Government must consider not only the circumstances in which force can be used but revisit the methods of restraint which can be employed. (Paragraph 127)
21. We welcome the fact that the Government has committed itself to dealing with the issue of children with mental health problems in custody. We are also concerned the Special Educational Needs reforms put in place by the Children and Families Act do not extend to children in custody despite education being seen as key element of the secure college system. We call for this to be addressed as a matter of urgency by the next Government. In addition, a number of other justice issues relating to children have been raised with us, such as the lack of anonymity for children in legal proceedings, which we think our successor Committee may want to examine in greater detail. (Paragraph 128)
22. We reiterate the point that we made in our Report on the Serious Crime Bill that we have come across a “series of issues which have arisen in different contexts raising the wider question of the lack of a consistent legal definition of the age of a child in the UK”. We again call on the Government to review this whole area of law. We understand that this will necessarily be a complex and occasionally controversial question, but children and young people deserve greater clarity from the law than it currently gives. The start of a new Parliament would be an opportune time to tackle a complex issue of this kind. (Paragraph 132)
23. We acknowledge the considerable improvements that the Government has made in the area of special educational needs, particularly in the Children and Families Act 2014. However, we do remain concerned at the potential effect of section 33 of the Education Act which could be used significantly to dilute the benefit of the Government’s reforms in this area. The high proportion of children excluded from schools who have special educational needs points to the fact that more needs to be done. The Government must monitor the impact of section 33 on the fair and equitable provision of education in schools and take steps to remedy any harmful impact of this section of the Act. (Paragraph 139)
24. While we welcome the reduction in the number of migrant children held in immigration detention, we are disappointed that so little other progress appears to have been made by the Government since we reported on the human rights of unaccompanied migrant children and young people in the UK back in June 2013. All the evidence we have received suggests that the treatment of child migrants is an area where, despite some improvements, if anything the situation has grown worse overall during this Parliament. The Home Office seems still to prioritise the need to control immigration over the best interests of the child. This is unsatisfactory. The Government must ensure that the best interests of the child are paramount in

immigration matters and work with other departments to ensure that the needs such children are met and their rights safeguarded. The UNHCR evidence that guidance for Home Office and UKVI staff is not good enough and training patchy must be acted upon. (Paragraph 152)

25. We hope that our successor Committee will have an opportunity to scrutinise this issue, which we know is a controversial one in the UK, in the light of the UN Committee's Concluding Observations which will be delivered in 2016. (Paragraph 156)

### **Children's rights and devolution**

26. We are aware of the complexity of the devolution settlement which will no doubt continue to evolve over the next Parliament. We are likewise aware of the sensitivities surrounding which areas are appropriate for a Committee such as ours to examine; and we are rightly respectful of the special relationships the devolved human rights institutions have with their legislatures and executives, and indeed with the people of each of their countries. Nonetheless, we do believe that a UK-wide examination of the impacts of devolution on the protection and promotion of human rights is required after the Election. Such a review is in our view necessary to provide reassurance that there is consistency across the four countries of the UK in those areas where that is required and that the different arrangements which very properly have been adopted in those countries do not reduce the level of protection for children but, where they have increased that protection, rather provide useful best practice for the rest of the UK to follow. (Paragraph 171)

## Declaration of Lords' Interests

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### **Baroness Lister of Burtersett**

Honorary President, Child Poverty Action Group

A full list of members' interests can be found in the Register of Lords' Interests:  
<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

# Formal Minutes

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**Wednesday 18 March 2015**

Members present:

Dr Hywel Francis, in the Chair

Sarah Teather  
Mr Virendra Sharma

Baroness Berridge  
Baroness O'Loan

Draft Report (The UK's compliance with the UN Convention on the Rights of the Child), proposed by the Chair, brought up and read.

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 171 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Eighth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[The Committee adjourned.]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the UK's compliance with the UN Convention on the Rights of the Child inquiry page on the [Committee's website](#).

### Wednesday 2 February 2015

**Dr Maggie Atkinson**, Children's Commissioner for England

**Anne Longfield OBE**, the Government's appointee for Children's Commissioner for England

### Wednesday 11 February 2015

**Paola Uccellari**, Director, Children's Rights Alliance for England; **Natalie Williams**, Policy Adviser, the Children's Society; **Dragan Nastic**, Senior Policy Adviser, UNICEF UK; and **Kate Aubrey-Johnson**, Youth Justice and Strategic Litigation Fellow, Just for Kids Law

### Wednesday 25 February 2015

**Edward Timpson MP**, Parliamentary Under Secretary of State for Children and Families, Department for Education

## Published written evidence

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The following written evidence was received and can be viewed on the violence against women and girls inquiry page on the [Committee's website](#). ROC numbers are generated by the evidence processing system and may not be complete.

- 1 Carolyne Willow ([ROC 020](#))
- 2 Children Are Unbeatable! ([ROC 003](#))
- 3 Children's Rights Alliance for England ([ROC 005](#)) ([ROC 006](#))
- 4 Children's Society ([ROC 024](#))
- 5 Child Soldiers International ([ROC 010](#))
- 6 Clan childlaw ([ROC 018](#))
- 7 Department for Education ([ROC 022](#))
- 8 Equality and Human Rights Commission ([ROC 004](#))
- 9 Howard League for Penal Reform ([ROC 011](#))
- 10 Just for Kids Law ([ROC 019](#))
- 11 JustRights ([ROC 012](#))
- 12 Scottish, Northern Irish and Welsh Children's Commissioners ([ROC 008](#))
- 13 Standing Committee for Youth Justice ([ROC 013](#))
- 14 Together (Scottish Alliance for Children's Rights) ([ROC 009](#)) ([ROC 021](#))
- 15 United Nations High Commissioner for Refugees ([ROC 016](#))
- 16 Youth Justice Board ([ROC 023](#))

## List of Reports from the Committee during the current Parliament

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### Session 2014–15

First Report	Legal aid: children and the residence test	HL Paper 14/HC 234
Second Report	Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill	HL Paper 49/HC 746
Third Report	Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill	HL Paper 62/HC 779
Fourth Report	Protocol 15 to the European Convention on Human Rights	HL Paper 71/HC 837
Fifth Report	Legislative Scrutiny: Counter-Terrorism and Security Bill	HL Paper 86/HC 859
Sixth	Violence against women and girls	HL Paper 106/HC 594
Seventh	Human Rights Judgments	HL Paper 130/HC 1088
Eighth	The UK's compliance with the UN Convention on the Rights of the Child	HL Paper 144/HC 1016

### Session 2013–14

First Report	Human Rights of unaccompanied migrant children and young people in the UK	HL Paper 9/HC 196
Second Report	Legislative Scrutiny: Marriage (Same Sex Couples) Bill	HL Paper 24/HC 157
Third Report	Legislative Scrutiny: Children and Families Bill; Energy Bill	HL Paper 29/HC 452
Fourth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill	HL Paper 56/HC 713
Fifth Report	Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning, and Trade Union Administration Bill	HL Paper 61/HC 755
Sixth Report	Legislative Scrutiny: Offender Rehabilitation Bill	HL Paper 80/HC 829
Seventh Report	The implications for access to justice of the Government's proposals to reform legal aid	HL Paper 100/HC 766
Eighth Report	Legislative Scrutiny: Immigration Bill	HL Paper 102/HC 935
Ninth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill (second Report)	HL Paper 108/HC 951
Tenth Report	Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011	HL Paper 113/HC 1014
Eleventh Report	Legislative Scrutiny: Care Bill	HL Paper 121/HC 1027
Twelfth Report	Legislative Scrutiny: Immigration Bill (second Report)	HL Paper 142/HC 1120
Thirteenth Report	The implications for access to justice of the	HL Paper 174/ HC 868

	Government's proposals to reform judicial review	
Fourteenth Report	Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill	HL Paper 189/HC 1293

### Session 2012–13

First Report	Draft Sexual Offences Act 2003 (Remedial) Order 2012: second Report	HL Paper 8/HC 166
Second Report	Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty-third Report of Session 2010–12	HL Paper 23/HC 429
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HL Paper 48/HC 634
Fourth Report	Legislative Scrutiny: Justice and Security Bill	HL Paper 59/HC 370
Fifth Report	Legislative Scrutiny: Crime and Courts Bill	HL Paper 67/HC 771
Sixth Report	Reform of the Office of the Children's Commissioner: draft legislation	HL Paper 83/HC 811
Seventh Report	Legislative Scrutiny: Defamation Bill	HL Paper 84/HC 810
Eighth Report	Legislative Scrutiny: Justice and Security Bill (second Report)	HL Paper 128/HC 1014
Ninth Report	Legislative Scrutiny Update	HL Paper 157/HC 1077

### Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037



Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549
Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704
Twenty-second Report	Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill	HL Paper 237/HC 1717
Twenty-third Report	Implementation of the Right of Disabled People to Independent Living	HL Paper 257/HC 1074
Twenty-fourth Report	The Justice and Security Green Paper	HL Paper 286/HC 1777