



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: Child Poverty Bill

Twenty-eighth Report of Session
2008-09

*Report, together with formal minutes and
written evidence*

*Ordered by The House of Lords to be printed 10 November
2009*

*Ordered by The House of Commons to be printed 10
November 2009*

HL Paper 183
HC 1114

Published on 26 November 2009
by authority of the House of Lords and
the House of Commons London:
The Stationery Office Limited
£0.00

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.

Current membership

HOUSE OF LORDS

Lord Bowness
Lord Dubs
Lord Lester of Herne Hill
Lord Morris of Handsworth OJ
The Earl of Onslow
Baroness Prashar

HOUSE OF COMMONS

John Austin MP (Labour, *Erith & Thamesmead*)
Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)
Dr Evan Harris MP (Liberal Democrat, *Oxford West & Abingdon*)
Mr Virendra Sharma MP (Labour, *Ealing, Southall*)
Mr Richard Shepherd MP (Conservative, *Aldridge-Brownhills*)
Mr Edward Timpson MP (Conservative, *Crewe & Nantwich*)

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

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 www.parliament.uk/commons/selcom/hrhome.htm.

Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Chloe Mawson (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), John Porter (Committee Assistant), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee's e-mail address is jchr@parliament.uk

Contents

Report	<i>Page</i>
Summary	3
Government Bills	5
1 Child Poverty Bill	5
Background	5
Giving legal effect to economic and social rights	5
Purposes and effect of the Bill	6
Explanatory Notes	7
Relevant human rights standards	8
Significant human rights issues	10
(1) <i>Effectiveness of the Bill's mechanism for progressive realisation</i>	10
(2) <i>Differential treatment of children not in "qualifying households"</i>	17
(3) <i>Duty to consult children</i>	22
(4) <i>Human rights based strategy for poverty reduction</i>	23
Conclusions and recommendations	25
Formal Minutes	29
List of written evidence	30
List of Reports from the Committee during the current Parliament	31

Summary

The Child Poverty Bill is intended to enshrine in law the Government's commitment to eradicate child poverty by 2020; to define success in eradicating child poverty; and to create a framework to monitor progress at both a national and a local level. It appears to provide a mechanism for the progressive realisation of children's right to an adequate standard of living under the UN Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. As such, we welcome the Bill as a human rights enhancing measure.

We welcome various specific aspects of the Bill, including:

- the use of targets, in this case relating to income, to bring about the realisation of a human right;
- placing the Government's commitment to tackle child poverty on a statutory footing;
- mechanisms for parliamentary accountability;
- the Government's positive engagement with guidance from the UN Committee on Economic, Social and Cultural Rights on using international human rights law as a framework for poverty reduction strategies;
- the establishment of the Child Poverty Commission; and
- the availability of judicial review in limited circumstances, for example where the Secretary of State refused to draw up a child poverty strategy or where the evidence is incontrovertible that the targets will be missed.

We recommend that the Bill should be amended to place the Secretary of State under a duty to implement the child poverty strategy, so that there is an additional mechanism for holding the Government to account by judicial review.

The income targets in the Bill will relate to children in "qualifying households". Detailed provision will be made in secondary legislation but the Government has provided sufficient information to show that children who live in communal accommodation or who live in accommodation without a postcode, such as Gypsy and Roma children, are unlikely to be encompassed by the definition of children in qualifying households. In our view, the tying of targets to qualifying households means that it is highly likely that the Bill will give rise to differential treatment in the enjoyment of Convention rights which requires justification if it is to be compatible with Article 14 of the European Convention. We are not persuaded by the justification provided by the Government – which rests on the costs and impracticality of surveying children who do not live in qualifying households – and we recommend the inclusion in the Bill of a target or targets which would apply to children not living in qualifying households.

We consider that the duties to consult children about the preparation of child poverty strategies are imprecise and recommend amendments to the Bill.

Government Bills

Bills drawn to the special attention of each House

1 Child Poverty Bill

Date introduced to first House	11 June 2009
Date introduced to second House	
Current Bill Number	HC Bill 155
Previous Reports	None

Background

1.1 This is a Government Bill which was introduced in the House of Commons on 11 June 2009. The Financial Secretary to the Treasury, the Rt Hon Stephen Timms MP, has made a statement of compatibility under s. 19(1)(a) of the Human Rights Act 1998. The Bill received its Second Reading on 20 July 2009 and completed its Committee Stage on 3 November 2009.

1.2 We called for evidence in relation to the proposed Child Poverty Bill in our Call for Evidence in our inquiry into Children's Rights. A number of organisations commented on the proposal in their written evidence which will be published in our forthcoming report on Children's Rights.¹ We issued a further call for evidence in July 2009² following publication of the Bill and received a number of further submissions which are published with this Report. We have taken into account all the evidence we received about the Bill and we are grateful to all those who submitted evidence.

1.3 We welcome the Bill as a significant human rights enhancing measure and focus in this Report on ways in which it might be improved.

Giving legal effect to economic and social rights

1.4 In our Bill of Rights Report, we sought to move the debate about economic and social rights beyond the well-worn arguments, on the one hand, that such rights should be as fully justiciable as civil and political rights and, on the other hand, that they are mere aspirations which have no place in any legal framework for the protection of human rights.³ We expressly agreed with those (including the Government) who argue that economic and social rights should not be fully justiciable and legally enforceable because that would be too subversive of the constitutional relationship between the courts and the democratic branches in this country:

¹ Children's Rights Alliance for England; Refugee Children's Consortium; Save the Children; Equality Commission for Northern Ireland; Children England; Wales UNCRC Monitoring Group; Treehouse; The Children's Society; Immigration Law Practitioners' Association ("ILPA").

² Press Notice No. 56
http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/jchrpn056_270709.cfm

³ Twenty-ninth Report of Session 2007-08, *A Bill of Rights for the UK?*, HL Paper 165-I, HC 150-I, chapter 5.

167. We agree with the Government that including fully justiciable and legally enforceable economic and social rights in any Bill of Rights carries too great a risk that the courts will interfere with legislative judgments about priority setting. Like our predecessor Committee, we recognise that the democratic branches (Government and Parliament) must retain the responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority. It would not be constitutionally appropriate, in our view, for example, for the courts to decide whether a particular standard of living was "adequate", or whether a particular patient should be given priority over another to receive life-saving treatment. Such questions are quite literally non-justiciable: there are no legal standards which make them capable of resolution by a court.

1.5 However, we went on to explore the variety of ways in which economic and social rights can be given legal effect in a way which falls short of making them fully justiciable and legally enforceable rights. We concluded that there is a viable middle way between the traditional positions in the debate about economic and social rights, in which the Government is placed under a duty to make progress towards realising those rights, and is required to report regularly on that progress to Parliament, and the courts have a very limited and closely circumscribed role in reviewing the adequacy of the measures taken to reach the target.⁴

1.6 So long as these arguments remain at a fairly abstract level, few people are persuaded away from their usual positions in the debate about economic and social rights. The Child Poverty Bill, however, provides an opportunity to test our view in the context of concrete legislative proposals.

Purposes and effect of the Bill

1.7 The main purposes of the Bill are to enshrine in law the Government's commitment to eradicate child poverty by 2020, to define success in eradicating child poverty, and to create a framework to monitor progress at both a national and a local level.

1.8 To these ends, the Bill places a duty on the Secretary of State to ensure that four UK-wide income poverty targets are met by the end of the financial year 2020-2021.⁵ The statutory duty to meet these targets is absolute: it is not qualified by any reference to affordability or available resources. Nor is there any power to amend the targets.⁶ The Bill also imposes a duty on the Secretary of State to ensure that the targets, once met, are also met in later financial years.⁷

1.9 The Bill also places a duty on the Secretary of State to publish and lay before Parliament a national child poverty strategy.⁸ The national strategy will set out the measures that the Secretary of State proposes to take for the purpose of complying with the duty to ensure

⁴ Ibid. at paras 192-197.

⁵ Clause 1. The four targets are defined in detail in clauses 2-5: they are the relative low income target, the combined low income and material deprivation target, the absolute low income target and the persistent poverty target.

⁶ Cf. the Climate Change Bill, which broadly provides the model for the current Bill, but which gives the Secretary of State the power to amend the targets.

⁷ Clause 16 and Schedule 2.

⁸ Clause 8(1). The Bill also places duties on the Scottish Ministers and the relevant Northern Ireland Department (the Office of the First Minister and Deputy First Minister) to prepare child poverty strategies through to 2020, relating only to devolved matters, also to be reviewed and revised every 3 years: clauses 10 and 11.

that the targets are met, and for the purpose of ensuring as far as possible that children in the UK do not experience socio-economic disadvantage.⁹ The Secretary of State is under a duty to review the strategy every 3 years and to publish a revised strategy.¹⁰

1.10 There is also a duty on the Secretary of State to report annually to Parliament on the progress made towards meeting the four income targets and in implementing the national strategy.¹¹ If the most recent UK strategy has not been implemented in full, the annual report must describe the respects in which it has not been implemented and the reasons for this.¹²

1.11 The Bill establishes the Child Poverty Commission,¹³ a body of experts which will provide advice to which the Secretary of State is required to have regard when preparing the national child poverty strategy.¹⁴ The Secretary of State is also required to consult, when preparing the national strategy, such children, or organisations working with or representing children, as the Secretary of State thinks fit.¹⁵

1.12 Both the Secretary of State in preparing the national strategy and the Commission in considering any advice it gives, must take into account (a) economic circumstances, in particular the likely impact of any measure on the economy and (b) fiscal circumstances, in particular the likely impact of any measure on taxation, public spending and public borrowing.¹⁶

1.13 The Bill places a duty on local authorities and their partners to co-operate to tackle child poverty in their area, to carry out an assessment of the levels of child poverty in that area, and to prepare a local child poverty strategy.¹⁷

Explanatory Notes

1.14 The Explanatory Notes to the Bill explain both the Government's view that the Bill is compatible with the ECHR¹⁸ and why the Government considers that the powers in the Bill take positive steps to meet the UK's obligations under the UN Convention on the Rights of the Child ("the UNCRC") and to give effect to recommendations of the UN Committee on the Rights of the Child.¹⁹ **The inclusion in the Explanatory Notes of a section concerning the UN Convention on the Rights of the Child is unusual and we commend this as an example of good practice.**

1.15 In addition to the material in the Explanatory Notes, the Minister responsible for the Bill in the Commons, the Rt Hon Stephen Timms MP, wrote to us on 16 June, shortly after

⁹ Clause 8(2).

¹⁰ Clause

¹¹ Clause 13(1).

¹² Clause 13(5).

¹³ Clause 7 and Schedule 1.

¹⁴ Clause 9(1) and (3).

¹⁵ Clause 9(4)(c).

¹⁶ Clause 15(1) and (2). The Scottish Ministers and the relevant Northern Ireland department are similarly required to have regard to (a) the resources that are or may be available to them and (b) the effect of the implementation of the strategy on those resources: clause 15(3).

¹⁷ Part 2, clauses 18-24.

¹⁸ Bill 112-EN, paras 135-146.

¹⁹ EN paras 147-8.

the Bill's introduction, enclosing a more detailed memorandum setting out the Government's consideration of the human rights issues relating to the Bill.²⁰ The production of this memorandum followed very constructive meetings between members of the Bill team and our Legal Adviser, as envisaged in the changes to our working practices agreed in 2008. **We welcome the Bill team's engagement with our staff prior to publication of the Bill, and its preparation of a detailed human rights memorandum, and commend them as examples of good practice.**

Relevant human rights standards

1.16 The Bill directly engages the right of the child to an adequate standard of living under Article 27 of the UNCRC, which provides, so far as relevant:

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

1.17 Article 4 of the UNCRC imposes a positive obligation on States to take all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention. In the case of economic, social and cultural rights, States are required to undertake such measures "to the maximum extent of their available resources."

1.18 In its most recent Concluding Observations on the UK's compliance with the UNCRC (October 2008),²¹ the UN Committee on the Rights of the Child said this about the UK's compliance with Article 27 UNCRC:

Standard of living

64. The Committee welcomes the Government's commitment to end child poverty by 2020 as well as the Childcare Act 2006 requirement on local authorities to reduce inequalities among young children. It also notes with appreciation the information given by the delegation that this target will be reflected and enforced through legislative measures. However, the Committee – while noting that child poverty has been reduced in the last years - is concerned that poverty is a very serious problem affecting all parts of the United Kingdom, including the Overseas Territories, and that it is a particular concern in Northern Ireland, where over 20 per cent of children reportedly live in persistent poverty. Furthermore, the Committee is concerned that

²⁰ Letter from Rt Hon Stephen Timms MP dated 16 June 2009 and accompanying human rights memorandum, Ev 1-6.

²¹ Committee on the Rights of the Child (Forty-ninth Session), *Concluding Observations on the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/4 (20 October 2008).

the Government's strategy is not sufficiently targeted at those groups of children in most severe poverty and that the standard of living of Traveller children is particularly poor.

65. The Committee would like to highlight that an adequate standard of living is essential for a child's physical, mental, spiritual, moral and social development and that child poverty also affects infant mortality rates, access to health and education as well as everyday quality of life of children. In accordance with article 27 of the Convention, the Committee recommends that the State party:

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

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

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

Reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers.

1.19 The right to an adequate standard of living is also recognised in Article 11 of the International Covenant on Economic, Social and Cultural Rights ("the ICESCR"), which provides, so far as relevant:

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right ...

1.20 In its most recent Concluding Observations on the UK, published in May this year, the UN Committee on Economic, Social and Cultural Rights expressed its concern that child poverty remains widespread in the UK, and called on the Government to develop human rights-based poverty reduction programmes.²²

28. The Committee continues to be concerned that poverty and fuel poverty, especially among children, remain wide-spread in the State party, despite the level of its economic development and the positive steps it has taken. The Committee is also concerned that poverty levels vary considerable between and within regions and cities as well as between different groups of society, with higher poverty levels among ethnic minorities, asylum-seekers and migrants, older persons, single mothers, and persons with disabilities. (art. 11)

²² *Concluding Observations of the Committee on Economic, Social and Cultural Rights on the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5 (22 May 2009).*

The Committee urges the State party to intensify its efforts to combat poverty, fuel poverty, and social exclusion, in particular with regard to the most disadvantaged and marginalized individuals and groups and in the most affected regions and city areas. It also calls upon the State party to develop human rights-based poverty reduction programs, taking into consideration the Committee's Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights of 2001 (E/C.12/2001/10). The Committee also encourages the State party to intensify its efforts aimed at achieving its target of reducing child poverty by half by 2010.

1.21 The Government's human rights memorandum which accompanied the Bill states that the Government considers that "the Bill makes progress towards the realisation of children's rights under international law."²³

1.22 By providing an unqualified duty to meet the four income targets by the end of the financial year 2020-21, and establishing a detailed framework both for driving and monitoring progress towards the achievement of those targets, the Bill does on its face appear to provide a mechanism for the progressive realisation of children's right to an adequate standard of living in Article 27 UNCRC and Article 11 ICESCR. It goes some way towards implementing the recent recommendation of the UN Committee on the Rights of the Child that the Government adopt legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for its achievement. We therefore welcome the Bill as a human rights enhancing measure.

Significant human rights issues

(1) Effectiveness of the Bill's mechanism for progressive realisation

Target-setting legislation

1.23 Legislation setting targets which there is a duty to achieve is a relatively recent phenomenon.²⁴ Precedents include the Climate Change Act 2008, the Climate Change and Sustainable Energy Act 2006 and the Warm Homes and Energy Conservation Act 2000. Such legislation is not without controversy because it seeks to impose duties on future Governments. However, where there is a strong political consensus about the aim to be achieved and that aim is the fulfilment of an important and universally recognised human right, such as the right of children not to grow up in poverty, we consider such target legislation to be appropriate. We are pleased to note that there appears to be a strong consensus amongst the political parties that child poverty should be eradicated by 2020. We also note that although the Bill imposes duties on the Secretary of State to achieve certain targets, it does not purport to tie the hands of a future Parliament, which remains free to amend or repeal the legislation imposing the duties. **We therefore welcome the use of the "target-setting legislation" model to bring about the realisation of an important**

²³ Human rights memorandum, para. 47, Ev 6.

²⁴ See the recent Court of Appeal decision in *R (Friends of the Earth) v Secretary of State for Energy and Climate Change* [2009] EWCA Civ 810 (30 July 2009), a challenge to the Secretary of State's failure to implement his Fuel Poverty Strategy under the Warm Homes and Energy Conservation Act 2000, in which the Court noted, at para. 19, "the relatively sudden upsurge of this type of target-setting, duty-creating legislation" and describing it as "a rapidly developing area of public law."

human right and the Government's willingness to introduce what it describes as "ground-breaking legislation."²⁵

1.24 We have also considered whether making the Government's policy into a statutory duty will make any practical difference. **In our view there is a very big difference between a policy, a choice by the Government to pursue a particular goal, and a statutory obligation to pursue that goal. This difference between a legal duty and a policy preference is significant even though it remains the case that Parliament can always repeal the statutory obligation and return it to the status of a mere policy, or aspiration.**

Political accountability

1.25 The accountability mechanisms provided for in the Bill itself are mainly political: they are designed to ensure that the Secretary of State is accountable to Parliament. The Secretary of State is under a duty, within 12 months of the Act being passed, to draw up and lay before Parliament a UK child poverty strategy.²⁶ The strategy must set out the measures that the Secretary of State proposes to take to comply with the duty to ensure that the targets are met, and to ensure as far as possible that children in the UK do not experience socio-economic disadvantage.²⁷ The Secretary of State is under a duty to review the strategy before the end of the three year period and lay a revised strategy before Parliament.²⁸ Significantly, the UK strategy must describe the progress that the Secretary of State considers needs to be made by the end of the strategy period if the targets are to be met: in other words, the Secretary of State must set benchmarks in the strategy in order to indicate whether the Government is on track to meet the target.²⁹ The Secretary of State is also required to monitor progress towards the targets against the benchmarks: subsequent strategies must describe the measures taken in accordance with the previous strategy and describe the effects of those measures on progress towards meeting the targets.³⁰ The Secretary of State is also under a duty to lay before Parliament an annual report on the progress made towards meeting the targets and in implementing the strategy.³¹

1.26 **We welcome the detailed mechanisms in the Bill to ensure that the Secretary of State is accountable to Parliament for the Government's performance of the new statutory duty to ensure that the child poverty targets are met. As both we and our predecessor Committee have consistently made clear in previous reports, we consider that in a parliamentary democracy it is the democratic branches of the state (the Government and Parliament) which should have primary responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority.³² In our view the scheme of the Bill ensures that primary responsibility for policy on child poverty remains with the democratic branches, by**

²⁵ Letter from Rt Hon Stephen Timms MP dated 16 June 2009, Ev 1.

²⁶ Clause 8(1).

²⁷ Clause 8(2).

²⁸ Clause 8(4).

²⁹ Clause 8(6)(a)(i).

³⁰ Clause 8(7).

³¹ Clause 13(1).

³² Twenty-first Report of Session 2003-04, *The International Covenant on Economic, Social and Cultural Rights*, HL Paper 183, HC 1188 at para. 64; Twenty-ninth Report of Session 2007-08, *A Bill of Rights for the UK?*, HL Paper 165-I, HC 150-I at para. 167.

making detailed provision for the Secretary of State’s accountability to Parliament for Government policy on how to meet the targets.

1.27 We also welcome the creation of the Child Poverty Commission as a source of independent expert advice to the Secretary of State. We welcome the duty on the Secretary of State to request the advice of the Commission when preparing a UK strategy, and the obligation on the Secretary of State to have regard to any advice given by the Commission. We also welcome the requirements on the Commission that it give the reasoning behind its advice and that it publish that advice as soon as reasonably practicable after giving it. Both of these requirements enhance the transparency of the process by which the Secretary of State draws up the UK strategy and policy on child poverty generally, and so facilitate parliamentary scrutiny of the Government’s performance of its duty.

Legal accountability

1.28 We particularly welcome the combination in the Bill of both political and legal accountability for failure to meet the child poverty targets. As we indicated above, in our Report on *A Bill of Rights for the UK?*, we concluded that there is a viable middle position which transcends the hackneyed debate about giving legal effect to economic and social rights, by recognising that political and legal accountability for the realisation of economic and social rights need not be a choice but can be complementary. We concluded that placing the Government under a duty to make progress towards realising such rights, coupled with requirements that the Government report regularly to Parliament, could exist alongside a very limited degree of legal enforceability in which courts have a closely circumscribed role in reviewing the adequacy of the measures taken to reach the target.³³

1.29 We are pleased to note that this appears to be precisely the Government’s approach in this Bill. In addition to the mechanisms for political accountability which we have described above, the Government has expressly accepted that there will also be a role for the courts in ensuring that the Secretary of State is held accountable for failing to meet the targets. On the day the Bill was published, the Secretary of State for Work and Pensions, the Rt Hon Yvette Cooper MP, was reported in the media as having said that “a government that failed to show how it was seeking to abolish child poverty could be subject to judicial review.”³⁴ The Financial Secretary to the Treasury also repeatedly stated in Public Bill Committee that the duty to meet the targets is an absolute and binding duty on the Secretary of State. It is therefore quite unlike previous “target duties” such as the qualified duty in the Warm Homes and Energy Conservation Act 2000,³⁵ which the Court of Appeal recently characterised, in the *Friends of the Earth* case, as “a duty to try” as opposed to a duty to succeed, because that Act uses the language of “effort” to achieve targets rather than the language of a guarantee that the targets will be reached.³⁶ The Court of Appeal in that case noted that “it is common ground that the Act is a source of

³³ Ibid. at para. 192.

³⁴ “Yvette Cooper plans binding legal commitment to cutting child poverty”, *The Guardian*, 11 June 2009.

³⁵ Section 2(1) of the Warm Homes and Energy Conservation Act 2000 imposes a duty on the Secretary of State to prepare and publish a strategy setting out his policies for ensuring that, as far as reasonably practicable, persons do not live in fuel poverty.

³⁶ [2009] EWCA Civ 810 at para. 15. See to similar effect para. 20: “The essential legal obligation is described in terms of effort or endeavour.”

governmental obligations”³⁷ and that “the dispute is about the extent not the fact of legal obligation.”³⁸ The extent of the legal obligation, the Court of Appeal held, was a matter of construction of the particular statutory language. It is not clear from the face of this Bill, however, at what point and on what basis judicial review of the Secretary of State could be brought. We therefore asked the Government for a more detailed explanation of the sorts of circumstances in which it is envisaged that judicial review could be brought to enforce the duty on the Secretary of State in clause 1 of the Bill to ensure that the child poverty targets are met.

1.30 As the Financial Secretary to the Treasury, the Rt Hon Stephen Timms MP, said in his response, it is clear that judicial review would be possible if the targets are not met by the target year, and the report relating to that year states that they have not been met.³⁹ In those circumstances judicial review would be available on the basis that the Secretary of State has breached his statutory duty to meet the targets. The more difficult question is whether judicial review would be available in anticipation of such a breach of duty, before 2020, at a point when it is clear that it is going to be impossible to meet the targets. The Government accepts in principle the possibility of such a judicial review being brought:⁴⁰

it is possible that a claimant could bring a judicial review before the report in relation to 2020 has been published, on the grounds that the Government’s actions, or decisions not to act, will not be sufficient to allow it to meet its statutory duties to meet the targets.

1.31 The Government also accepts in principle that such a judicial review could be brought by a stakeholder group involved in the campaign to eradicate child poverty (e.g. the Child Poverty Action Group), and that in principle the full range of judicial review remedies would be available in the event of a successful challenge, including a mandatory order requiring the Secretary of State to take action to meet the targets if they are not met, or it is evident that they will not be met.⁴¹ In his oral evidence to the Public Bill Committee, the Minister went even further in his statement of what a court could order on a judicial review of a failure to meet the targets:⁴²

Under the Bill, a court could, in response to a judicial review, require the Government to make substantial spending commitments in order for the targets to be met. This is a strongly binding target. ... I do not know whether, in practice, a court would want to set out the detailed policy changes that it thought were needed, although it is conceivable that it might. I suspect that it would not give instructions on quite that detailed a levy, but it certainly could require the Government to make substantial expenditure. ... There certainly could be a judicial review that in effect required the Government to spend more on tax credits or some other element of the benefit or tax credit system.

³⁷ Ibid. at para. 2.

³⁸ Ibid. at para. 17.

³⁹ Letter from Rt Hon Stephen Timms MP dated 22 September 2009, Ev 8.

⁴⁰ Ibid..

⁴¹ Ev 8-9.

⁴² PBC 20 October 2009 Qs 26-28.

1.32 However, although the possibility of judicial review before 2020 is acknowledged in principle, the Government rightly points out that in practice the likelihood of the courts ordering the Government to take action to meet the targets is extremely slim for a number of reasons. First, the claimant would need to produce clear evidence that the targets will not be met by 2020, and this will be difficult to prove until quite close to 2020. The evidence capable of supporting such a claim is not likely to exist until the years immediately preceding 2020. It is notable, for example, that even at this late stage before the date of the Government's interim target of halving child poverty by 2010, campaigners are still arguing that the target could be met if £4 billion were allocated to deal with the problem in the Pre Budget Review this autumn.⁴³ Second, the courts do not tend to interfere in matters of public spending when the Secretary of State has discretion as to how to allocate resources. And third, when deciding what remedy, if any, to award to a successful judicial review claimant, the courts would have regard to the fact that the Bill does make express provision for the event that the targets are not met by 2020: the Secretary of State must make new regulations providing for a new target date, strategy, annual reports and consultation.⁴⁴ The courts might regard this as indicative of an intention that any remedy for a breach of the duty to meet the targets should be political not legal.

1.33 The most significant limit on the court's role, however, is contained in clause 15 of the Bill, which requires the Secretary of State, when drawing up the strategy, and the Commission, when considering what advice to give the Secretary of State, to take into account economic and fiscal circumstances. Although the duty to ensure the targets are met by the financial year 2020 is absolute, the duty to have a national strategy for achieving those targets is qualified by the requirement that economic and fiscal circumstances must be taken into account by the Secretary of State when preparing that strategy. As the Chair of the Work and Pensions Committee pointed out to the Minister Stephen Timms MP in a recent evidence session, this distinction in the Bill between the targets and the strategy is artificial because if the strategy is not properly resourced the targets will not be met.⁴⁵ The Minister responded that the strategy will have to be properly resourced, in order to ensure that the targets are met. On the face of it, however, clause 15 of the Bill makes the strategy subject to budgetary constraints and if the strategy were judicially reviewed on the basis that it was insufficiently resourced to meet the targets the Secretary of State would be able to rely on clause 15. We therefore asked the Minister to clarify the intended effect of clause 15 and in particular its relationship with the duty in clause 1 to ensure that the targets are met.

1.34 The Minister's answer to this question makes clear, in our view, the very limited scope for recourse to judicial review before 2020 to challenge the adequacy of the steps being taken by the Government to reach the targets by that date. The Government says that the duty on the Secretary of State in clause 15 of the Bill, to have regard to economic and fiscal circumstances when preparing the strategy, "does not detract from the duty in clause 1 to meet the targets. The duty to meet the targets is absolute: clause 15 is about *how* the targets

⁴³ *Through Thick and Thin: Tackling Child Poverty in Hard Times*, Report of the Campaign to End Child Poverty, 2 November 2009.

⁴⁴ Schedule 2, para. 3.

⁴⁵ Minutes of Evidence taken before the House of Commons Work and Pensions Committee, 17 June 2009, uncorrected transcript HC 702-I, Q 86.

are met, not *whether* they are met.”⁴⁶ In the event that the targets are not met by 2020, clause 15 would not therefore be a defence to a judicial review on the basis that the duty in clause 1 had been breached. The Government acknowledges, however, that the effect of clause 15 is to ensure that the Government cannot be challenged for taking into account economic and fiscal circumstances when preparing the strategies, and cannot be forced to include measures in the strategy that could be detrimental to the country’s overall economic or fiscal position. So, if a claimant argues on judicial review that certain measures should have been included in the strategy in order to meet the targets, “the inclusion of clause 15 in the Bill may result in a court allowing the Secretary of State discretion in deciding how best to meet the targets rather than specifying certain measures.”⁴⁷ The effect of clause 15 of the Bill is therefore to ensure that, notwithstanding the absolute duty to meet the targets, in any legal challenge to the adequacy of his child poverty strategy, the Secretary of State will be able to invoke the case-law which recognises that the courts should generally be deferential to the executive on matters of resource allocation.⁴⁸

1.35 It follows from the above that, although judicial review of the adequacy of the steps taken by the Secretary of State to reach the child poverty targets by 2020 is theoretically possible before that date, it is likely in practice to be available only in very limited circumstances. Much of the evidence we received was critical of this feature of the Bill, and argued for stronger provisions on the legal enforceability of the duty.⁴⁹ In our view, however, the Bill is consistent with the model for giving legal effect to economic and social rights that we advocated in our Report on a Bill of Rights for the UK. **We do not believe it to be realistic, or constitutionally appropriate, to impose legally enforceable duties on ministers regardless of available resources. We therefore accept the necessity for clause 15 of the Bill, on the understanding that its effect is not to exclude the possibility of judicial review, but to make it possible for the Secretary of State to justify his strategy by reference to economic and fiscal circumstances.**

1.36 **We welcome the Government’s acceptance that judicial review is in principle available, but we also welcome the fact that it will only in practice be available in limited circumstances, such as where the Secretary of State refused to draw up a strategy, or where the evidence is incontrovertible that the targets are going to be missed so that no reasonable Secretary of State could maintain such a strategy consistently with his duty to meet the targets. As we pointed out in our Bill of Rights Report, when some possibility of judicial enforcement exists, it is more likely that rights will in practice be respected. Although under this Bill judicial review of the adequacy of the measures taken by the Government to achieve the targets is not likely to be possible until much nearer 2020, the gradually increasing possibility of such a legal challenge in the future should inform current decisions about the strategy for complying with the overarching duty, which is to ensure that the targets are met by 2020.**

⁴⁶ Letter from Rt Hon Stephen Timms MP dated 22 September 2009, Ev 9.

⁴⁷ *Ibid.*, Ev 9.

⁴⁸ See e.g. the *Friends of the Earth* case, above, at paras 30 and 35; *Holmes-Moorhouse v Richmond upon Thames LBC* [2009] UKHL 7 at para. 38 (“courts have no power to conjure up resources where none exist.”).

⁴⁹ See e.g. Child Poverty Action Group Ev 12; National Children’s Bureau Ev 21; UNICEF Ev 30.

Duty to implement the strategy

1.37 The Bill imposes a duty on the Secretary of State to publish a national strategy setting out the measures that the Secretary of State proposes to take for the purpose of ensuring that the targets are met and, as far as possible, that children in the UK do not experience socio-economic disadvantage.⁵⁰ However, unlike other comparable statutory regimes, such as that under the Warm Homes and Energy Conservation Act 2000⁵¹ and the Disability Discrimination Act 1995,⁵² there is no statutory duty to implement the strategy. We asked the Government why clause 8 of the Bill does not include a duty to implement the strategy.

1.38 The Minister offers a number of justifications for not including in the Bill a duty to implement the child poverty strategy. First, he argues that the Bill places a binding duty on the Secretary of State to meet the child poverty targets, which is “the strongest possible incentive” for the Government and their partners to deliver a strategy that over time achieves the targets.⁵³ The aim of the legislation is said to be the achievement of the targets, and the strategy is merely a means to achieving that end. This is contrasted to the disability discrimination legislation, where the aim is said to be the implementation of the accessibility strategy itself. We find this an elusive distinction. Both pieces of legislation require strategies to be drawn up as a means to an end (in the Bill, the end is to achieve the child poverty targets, in the DDA it is to achieve improved accessibility), and we fail to see a qualitative difference between the two capable of justifying the absence of a duty to implement the strategy in the case of child poverty.

1.39 The Government’s second justification is that including a duty to implement the strategy risks tying the Government to measures which subsequent evidence or analysis shows to be ineffective or inappropriate. The strategy must be revised and refreshed every three years, ensuring that new developments and evidence about the best way to tackle child poverty are taken into account.⁵⁴ The duty to implement the strategy in the Disability Discrimination Act is distinguished on the basis that in that legislation “the obligation was to compile an access strategy which would be a one-off exercise that would then need to be implemented.”⁵⁵ We are not persuaded that the inclusion of a duty to implement the strategy necessarily results in the inflexibility the Government fears. A duty to implement a strategy does not mean a duty to ignore subsequent evidence or analysis that calls into question elements of the strategy. Any public authority which shuts its eyes to such evidence or analysis and continued with measures which had been demonstrated to be ineffective or inappropriate would be most unlikely to be performing its functions rationally and would be vulnerable to legal challenge on that basis. We note that in the Disability Discrimination Act a duty to implement coexists with a duty to prepare further accessibility strategies after the first one, and similarly in the Warm Homes and Energy Conservation Act there is both a duty to implement and a duty to assess progress and revise the strategy.

⁵⁰ Clause 8(1) and (2).

⁵¹ Section 2(5) of the Warm Homes and Energy Conservation Act 2000 provides that “The appropriate authority shall take such steps as are in its opinion necessary to implement the strategy.”

⁵² Section 28D(5) of the Disability Discrimination Act imposes a duty on the responsible body to implement its accessibility strategy.

⁵³ RT Hon Stephen Timms MP, PBC 20 October 2009 col. 24; Letter from Rt Hon Stephen Timms MP dated 22 September 2009, Ev 9.

⁵⁴ *Ibid.*, Ev 10.

⁵⁵ PBC 20 October 2009 col. 23.

1.40 The Government's third reason for not including a duty to implement the strategy is that the Bill makes provision for political and public accountability for not implementing the strategy,⁵⁶ by requiring that the Secretary of State's annual reports to Parliament must state whether the strategy has been implemented in full, and, if not, the reasons for this.⁵⁷ As we have made clear above, we welcome this provision for political accountability for not implementing the strategy, but we do not consider such political accountability to be mutually exclusive with legal accountability.

1.41 **We are in favour of supplementing the political accountability for not implementing the strategy with a degree of legal accountability by including in the Bill a legally enforceable duty to implement the strategy.** Judicial review on the basis of a failure to implement a strategy, which has been adopted after receiving advice from the Child Poverty Commission and being laid before Parliament, is a far less intrusive judicial role than judicial review on the basis that the strategy contains unreasonable measures or that the omission of certain measures from the strategy was unreasonable. In the *Friends of the Earth* case, which was a legal challenge to an alleged failure to implement the Secretary of State's fuel poverty strategy, the Court of Appeal approved the High Court's view that it is open to the courts to review the Secretary of State's decision to see if there has been "a demonstrated failure to implement an identifiable part of the strategy's provisions."⁵⁸ We do not consider that a legally enforceable duty to implement the child poverty strategy which has been adopted involves the courts in a constitutionally inappropriate way in the enforcement of the duty to progressively realise children's right to an adequate standard of living. We do, however, consider that including such a duty in the Bill would go a considerable way towards addressing the concern expressed by a number of witnesses, that there are insufficient means for holding the Government accountable for a failure to make progress towards the achievement of the targets by 2020.⁵⁹

1.42 **We recommend that the Bill be amended to insert a duty to implement the child poverty strategy, as this will enhance opportunities to hold the Secretary of State accountable for failure to make progress towards the targets between now and 2020.** The following suggested amendment to the Bill would give effect to this recommendation.

Page 5, line 29, insert New Clause:

Duty to implement strategy

The Secretary of State shall take such steps as are in his reasonable opinion necessary to implement the UK strategy.

(2) Differential treatment of children not in "qualifying households"

1.43 The principal duty that the Bill imposes on the Secretary of State is to meet targets relating to four income-based indicators of poverty.⁶⁰ Those indicators all relate to children in "qualifying households". What counts as a "qualifying household" is not

⁵⁶ Clause 13(5).

⁵⁷ Letter from Rt Hon Stephen Timms MP dated 22 September 2009, Ev 10.

⁵⁸ [2009] EWCA Civ 810 at para. 38.

⁵⁹ Eg. Child Poverty Action Group Ev 13; Law Centre (NI), at para. 7,2,1, Ev 20; Save the Children, para. 4.2, Ev 27.

⁶⁰ Clause 1(1). The 4 targets are described in clauses 2-5.

defined in the Bill itself, but the Secretary of State is given power to make regulations about what is a qualifying household,⁶¹ and in doing so “must have regard to the desirability of ensuring that the targets in sections 2 to 5 have as wide an application as is reasonably practicable, having regard to the statistical surveys that are being or can reasonably be expected to be undertaken.”⁶² What is envisaged is that “qualifying households” will be defined in regulations as households which are covered by the statistical surveys used to collect the data by which the indicators are measured.⁶³ The surveys currently used are based on the Small Users Postcode Address File, which includes most addresses which have postcodes and receive less than 50 items of post a day, and exclude addresses which are “communal establishments or institutions”.

1.44 The Government acknowledges, in the Explanatory Notes to the Bill,⁶⁴ the human rights memorandum⁶⁵ and the Minister’s response to our letter,⁶⁶ that the effect of confining the duty to meet the targets to children in households that can be measured using current surveys is to exclude certain children, for example children who live in communal accommodation, such as a local authority children’s home, and children who do not live in accommodation with a postcode, such as many Gypsy and Roma children. The Government states, and we accept, that there is no direct discrimination, because no children are excluded from the surveys simply on the basis of their status. The Government accepts, however, that there could be indirect discrimination because for some groups, such as Gypsy, Roma and Traveller children, and asylum seeking children, the likelihood of their being excluded is higher than for some other groups. The Government also accepts that the groups which have a lower chance of being captured by a survey include some groups which are already disadvantaged. We note that this concern about the Bill’s differential treatment of children not in qualifying households was expressed by many of those who submitted evidence to us.⁶⁷ We also noted the same concern in our recent Report on Children’s Rights.⁶⁸ **We agree with the Government’s analysis that the use of targets which apply only to children in qualifying households is potentially indirectly discriminatory, because it necessarily excludes certain children who may well be living in poverty, including Gypsy, Roma and Traveller children, asylum-seeking children living in asylum centres or Bed and Breakfast accommodation, and looked after children living in children’s homes. Such differential treatment of children not living in qualifying households raises the question whether the Bill is compatible with Article 14 ECHR, the right not to be discriminated against in the enjoyment of Convention rights.**

1.45 The Government does not accept, however, that there is any incompatibility with Article 14 ECHR for a number of reasons. First, although it accepts that the Bill treats children differently because of the coverage of the surveys, it does not accept that Article 14 is engaged at all because, in its view, no other substantive Article of the Convention is

⁶¹ Clause 6(1)(a).

⁶² Clause 6(4).

⁶³ EN paras 17-18.

⁶⁴ EN para 137.

⁶⁵ Human rights memorandum, para. 24, Ev 3.

⁶⁶ Letter from Rt Hon Stephen Timms MP dated 22 September 2009, Ev 10.

⁶⁷ See e.g. Immigration Law Practitioners’ Association Ev 14-18; Refugee Children’s Consortium, Ev 23-25; Save the Children, Ev 27; UNICEF, Ev 29.

⁶⁸ Twenty-fifth Report of Session 2008-09, *Children’s Rights*, HL Paper 157, HC 318 at para. 146.

engaged by the subject-matter of the Bill. It considers the link with the right to respect for private and family life in Article 8 ECHR and the right to peaceful enjoyment of possessions in Article 1 Protocol 1 to be too tenuous: the “high level” nature of the Bill means that nothing in the Bill directly affects the rights of individual children.⁶⁹ The Government’s reasoning appears to be that because the Bill does not itself confer any individual entitlements or benefits, but rather provides a framework in which other concrete action may take place in the future (such as changes to social security benefits or tax), its provisions are not sufficiently determinative of any decision to allocate or focus benefits in favour of any particular group and are therefore not within the scope of Article 8 or Article 1 Protocol 1.

1.46 We are not persuaded by the Government’s argument that Article 14 is not engaged by the Bill’s differential treatment of children not living in qualifying households. For Article 14 to apply, there does not need to be differential treatment in the actual determination of any Convention rights: it is enough if there is differential treatment within “the scope of application” of other Convention rights. The Bill raises the novel and interesting question of whether Article 14 can be engaged by target-setting legislation of this kind in the absence of implementing measures. In our view it can do so. The Bill imposes a binding duty on the Secretary of State to ensure that four targets are met. Each of the four targets is income-related and will therefore require measures to boost income, such as higher tax credits or benefits, if they are to be achieved. Measures to boost income are in our view clearly within the ambit of the protection for “possessions” in Article 1 Protocol 1 ECHR, which includes benefits.⁷⁰ Performance of the duty will therefore require measures which are within the scope of Article 1 Protocol 1. By the Government’s own account, the whole premise of the duty in clause 1 is that it is possible to influence the outcome of the policy-making process by ensuring that policy-makers make the achievement of the income targets a priority. The beneficiaries of the duty to meet the income targets will apparently only be children in qualifying households. The legislation is therefore, on its face, designed to require policy-making to prioritise such children over others, including Roma children, children in children’s home and asylum-seeking children. In our view, to design a policy-making process which prioritises increasing the income of some children over others engages Article 14 ECHR, in conjunction with Article 1 Protocol 1, where the chosen targets exclude certain groups of already disadvantaged children. If the positive race equality duty were to be statutorily defined as not applying to certain ethnic groups in relation to certain functions (say, for the sake of argument, non-white people in relation to housing), in our view that would engage Article 14 ECHR and be very likely to lead to a breach of Article 14 in practice. We can see no distinction between that case and the exclusion of children not in qualifying households from the duty in the present Bill. **We consider that Article 14 therefore clearly applies in conjunction with the right to peaceful enjoyment of possessions in Article 1 Protocol 1.**

1.47 Second, the Government argues that there is nothing on the face of the Bill which could be said to be in breach of Article 14, because it leaves “qualifying households” to be defined by regulation, and therefore the Bill itself does not exclude anyone from the indicators and “it is not possible at this stage to definitively say that any children will be

⁶⁹ EN paras 138-9; Human rights memorandum, at paras 16-22 and 25, Ev 2-3.

⁷⁰ *Stec v UK*, App. No.s 65731/01 and 65900/01, (2005) 41 EHRR SE18 at para. 54 (Grand Chamber decision as to admissibility).

excluded from the targets.”⁷¹ Although strictly speaking true, because the term “qualifying households” is not defined in the Bill, we find this to be a most unattractive and technical argument. As we have pointed out above, the Government itself acknowledges that the regulations will define qualifying households by reference to current surveys which are already carried out, or such additional surveys as are reasonably practicable to carry out, and that those surveys currently exclude certain children, including some from disadvantaged groups. So the Government accepts that some children will inevitably be excluded from the targets by the regulations in due course. **As we have frequently made clear in our legislative scrutiny reports, the fact that the provisions in a Bill are likely to give rise to a breach of a Convention right in practice, for example because of a regulation making power that is likely to be exercised in a way which is incompatible with Convention rights, is of as much concern to us as a breach on the face of the Bill. Our concern about the compatibility with Article 14 ECHR of excluding children not in qualifying households from the targets is not affected by the fact that qualifying households will be defined in regulations rather than in the Bill itself.**

1.48 Third, the Government argues that it is not the intention of the Bill to discriminate against any groups of children.⁷² On the contrary, it argues, it is envisaged that the same steps will be taken in relation to all children. The child poverty strategy which the Secretary of State is under a duty to prepare will relate to all children, and not just those who are covered by the targets.⁷³ That strategy must set out not only how the targets will be met, but the measures that will be taken to ensure as far as possible that children in the UK do not experience socio-economic disadvantage.⁷⁴ **We welcome the provision in the Bill requiring the UK child poverty strategy to include measures to ensure that children do not suffer socio-economic disadvantage, and we accept that this part of the Bill will benefit all children living in poverty and not just those who are caught by the targets. However, the fact that another part of the Bill will benefit all children does not answer the concern that the targets discriminate against children not living in qualifying households. Nor does it matter in our view that it is not the Bill’s intention to discriminate between children: it is enough that it is the effect of its provisions that the children covered by the targets are prioritised over those children not caught by the data. In our view the tying of the targets to qualifying households means that the Bill necessarily gives rise to differential treatment in relation to the enjoyment of Convention rights which requires justification if it is to be compatible with Article 14 ECHR.**

1.49 Fourth, the Government argues that any discrimination against children not living in qualifying households is justifiable and proportionate, because it is simply not practical to conduct surveys which cover all children.⁷⁵ Measurable targets for reducing poverty can only relate to measurable children, and the targets set out in the Bill can only apply to children whose household income is measured by the current surveys. To improve the methodology of these surveys so that all children in the UK had an equal chance of being surveyed, the Government claims that it would need to know the whereabouts of every

⁷¹ EN para. 140; Human rights memorandum, para. 26, Ev 3.

⁷² Human rights memorandum, para. 27, Ev 3-4.

⁷³ EN para. 140; Letter from Rt Hon Stephen Timms MP dated 22 September 2009, Ev 11.

⁷⁴ Clause 8(2)(b).

⁷⁵ EN para. 141; Human rights memorandum, para. 28, Ev 4; Letter from Rt Hon Stephen Timms MP dated 22 September 2009, Ev 11.

household in the UK, which, it says, would require an annual survey more comprehensive than the existing census, which would be impracticable. Such an effort, the Government says, would not be proportionate, when the targets will assess 99.5% of children in the UK, and any differential treatment is therefore justifiable in the economic interests of the country and the need to make the best use of public funds.

1.50 We are sceptical of the Government's claim that to survey children not in qualifying households for the purposes of measuring child poverty "would require an annual survey more comprehensive than the existing census." On the Government's own figures the numbers of children it would be necessary to survey is relatively small (0.5% of children in the UK if the Government's estimate of the coverage of its targets is correct). The whereabouts of many of those children will already be known because of other responsibilities public authorities have in relation to them (e.g. the duty on local education authorities to keep a record of school age children in their area to encourage school attendance).⁷⁶ We would need convincing that it is such a disproportionate task to ensure that data is available so that all children can be measured against the child poverty targets and not merely those in qualifying households captured by current surveys. We also note that "comprehensive data collection" is one of the general measures of implementation of the UN Convention on the Rights of the Child which States are obliged to take,⁷⁷ and that "collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, is an essential part of implementation."⁷⁸

1.51 We are also unimpressed by the argument that the setting of targets by reference to "qualifying households" excludes only "a very small minority of children" – 0.5%. That very small minority includes many children who are particularly poor and vulnerable. ILPA, for example, highlight the situation of children subject to immigration control,⁷⁹ and in its evidence to our Children's Rights inquiry, commented that "the poverty of certain children under immigration control is not being eradicated, it is being written out of the picture."⁸⁰ The Refugee Children's Consortium makes similar points in relation to children seeking asylum.⁸¹ The UN Committee on the Rights of the Child in its October 2008 report expressed its concern that the Government strategy on child poverty "is not sufficiently targeted at those groups of children in most severe poverty and that the standard of living of Traveller children is particularly poor."⁸² The Economic and Social Rights Committee similarly urged the Government to intensify its efforts to combat poverty "in particular with regard to the most disadvantaged and marginalised individuals and groups."⁸³ We specifically asked the Government how it proposes to focus in particular on children living in severe poverty, as recommended by the Committee on the

⁷⁶ Section 436A(1) Education Act 1996, inserted by s. 4(1) Education and Inspections Act 2006.

⁷⁷ UNCRC General Comment No. 5 (2003) on General Measures of Implementation of the Convention on the Rights of the Child, at para. 9.

⁷⁸ *Ibid.* at para. 48.

⁷⁹ Ev 14-18.

⁸⁰ Above, n. xx at para. 146.

⁸¹ Ev 23-25.

⁸² Above, n. 21 at para. 64. See also *ibid.* at para. 24, recommending that the UK strengthen its awareness-raising and other preventive activities against discrimination and, if necessary, take affirmative actions for the benefit of vulnerable groups of children, such as Roma and Irish Travellers' children, migrant, asylum-seeking and refugee children and other vulnerable groups.

⁸³ Above, n. 22 at para. 28.

Rights of the Child and the Committee on Economic, Social and Cultural Rights. The Government's response was that its approach in the Bill is designed to incentivise policy which is focused on all children in poverty, "including the very poor".⁸⁴ An approach which includes the very poor is not the same as an approach which *focuses* on the very poor, which is what the monitoring bodies recommended that the UK should do. For the reasons we have explained above, we are concerned not only that the Bill does not focus on children living in the most severe poverty, but also that those poorest children are effectively excluded from the benefit of the measures to achieve the child poverty targets because they are not children in qualifying households.

1.52 We therefore disagree with the Government's argument that the exclusion of certain groups of children from the targets which the Secretary of State is under a duty to meet does not amount to unjustified differential treatment contrary to Article 14 ECHR. In our view, Article 14 clearly applies, there is differential treatment of children not living in qualifying households, that differential treatment calls for justification, and the onus is on the Government to show that there are no other measurable targets for the groups currently excluded from the targets because of the way those targets are defined. In our view that onus is all the heavier because the excluded groups include some of those children who are particularly poor. We do not consider the Government to have discharged the heavy onus of justification by relying solely on the cost and impracticality of surveying children who do not live in qualifying households. We therefore conclude that it is highly likely that, as presently drafted, the Bill will give rise to a serious risk of future breaches of Article 14 in conjunction with Article 1 Protocol 1, because policy-makers will prioritise raising the income of children only in qualifying households, in a discriminatory way.

1.53 To remedy this incompatibility we recommend the inclusion in the Bill of a target or targets which would apply to children not living in qualifying households.

(3) Duty to consult children

1.54 The Bill imposes a duty on the Secretary of State, when preparing a national strategy on child poverty, to consult "such children, or organisations working with or representing children, as the Secretary of State thinks fit."⁸⁵ The Explanatory Notes to the Bill state that this duty is "consistent with the obligation arising under Article 12 of the UN Convention on the Rights of the Child."⁸⁶

1.55 Article 12 UNCRC requires States to "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." The international monitoring bodies have often stressed the importance of

⁸⁴ Letter from Rt Hon Stephen Timms MP dated 22 September 2009, Ev 11.

⁸⁵ Clause 9(4).

⁸⁶ EN para. 148.

participation as an essential element of anti-poverty strategies,⁸⁷ particularly for children for whom poverty is a major obstacle to participation in a number of contexts.⁸⁸

1.56 The obligation to consult children in the Bill, although couched as a duty, leaves the Secretary of State with a great deal of discretion as to who he consults, and also permits him to consult organisations working with or representing children instead of children themselves. The Government does not think it appropriate to prescribe in legislation the detailed methods for consulting children and young people and opposes any mandatory requirement to consult the relevant Children’s Commissioner on the basis that requiring this in legislation may be overly prescriptive and lead to the extent of the consultation being limited.

1.57 In our view the duties to consult children in the preparation of child poverty strategies are insufficiently precise, because they leave it to the discretion of the Secretary of State (or Scottish Ministers/Northern Ireland department) as to whether or not to consult children directly at all: they could choose to consult organisations working with or representing children instead. We recommend that the duty to consult be amended to give better effect to the right recognised in international human rights law to participate in the relevant decision-making process, by requiring consultation with both children and organisations working with or representing them, and by requiring consultation with the relevant Children’s Commissioner. The following suggested amendment to the Bill would give effect to this recommendation.

Page 5, line 24,

Insert new sub-paragraph “(ba) must consult the Children’s Commissioners for England, Wales, Scotland and Northern Ireland.”

In sub-paragraph (c), leave out “or” and insert “and”

(4) Human rights based strategy for poverty reduction

1.58 We asked whether the Secretary of State will have regard to the guidance of the UN Committee on Economic, Social and Cultural Rights on human rights-based poverty reduction strategies⁸⁹ when drawing up the national strategy, as recommended in that Committee’s recent Concluding Observations on the UK, and how the Government proposes to give effect to that guidance.

1.59 The Minister responded that in preparing the child poverty strategy the Government will take into account the guidance issued by the UN Committee, “particularly with regard to addressing inequality and encouraging a participatory approach.” He also pointed to the requirement for annual reporting on progress as evidence that the Government’s approach is sensitive to the UN Committee’s recommendation is that Governments should be held to account for the effectiveness of their poverty reduction strategies.

⁸⁷ See e.g. Poverty and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee to the Third UN Conference on the Least Developed Countries (twenty-fifth session), E/2002/22-E/C.12/2001/17, annex VII at paras 9 and 12.

⁸⁸ UNCRC General Comment No. 12 on the Right of the Child to be Heard (2009) CRC/C/GC/12.

⁸⁹ Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights of 2001 (E/C.12/2001/10).

1.60 We welcome the Government's positive engagement with the UNCESCR's guidance on using international human rights law as a framework for poverty reduction strategies and look forward to seeing in more detail precisely how the Government proposes to give effect to that guidance.

Conclusions and recommendations

1. We welcome the Bill as a significant human rights enhancing measure and focus in this Report on ways in which it might be improved. (Paragraph 1.3)
2. The inclusion in the Explanatory Notes of a section concerning the UN Convention on the Rights of the Child is unusual and we commend this as an example of good practice. (Paragraph 1.14)
3. We welcome the Bill team's engagement with our staff prior to publication of the Bill, and its preparation of a detailed human rights memorandum, and commend them as examples of good practice. (Paragraph 1.15)
4. By providing an unqualified duty to meet the four income targets by the end of the financial year 2020-21, and establishing a detailed framework both for driving and monitoring progress towards the achievement of those targets, the Bill does on its face appear to provide a mechanism for the progressive realisation of children's right to an adequate standard of living in Article 27 UNCRC and Article 11 ICESCR. It goes some way towards implementing the recent recommendation of the UN Committee on the Rights of the Child that the Government adopt legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for its achievement. We therefore welcome the Bill as a human rights enhancing measure. (Paragraph 1.22)
5. We therefore welcome the use of the "target-setting legislation" model to bring about the realisation of an important human right and the Government's willingness to introduce what it describes as "ground-breaking legislation." (Paragraph 1.23)
6. In our view there is a very big difference between a policy, a choice by the Government to pursue a particular goal, and a statutory obligation to pursue that goal. This difference between a legal duty and a policy preference is significant even though it remains the case that Parliament can always repeal the statutory obligation and return it to the status of a mere policy, or aspiration. (Paragraph 1.24)
7. We welcome the detailed mechanisms in the Bill to ensure that the Secretary of State is accountable to Parliament for the Government's performance of the new statutory duty to ensure that the child poverty targets are met. As both we and our predecessor Committee have consistently made clear in previous reports, we consider that in a parliamentary democracy it is the democratic branches of the state (the Government and Parliament) which should have primary responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority. (Paragraph 1.26)
8. In our view the scheme of the Bill ensures that primary responsibility for policy on child poverty remains with the democratic branches, by making detailed provision for the Secretary of State's accountability to Parliament for Government policy on how to meet the targets. (Paragraph 1.26)

9. We also welcome the creation of the Child Poverty Commission as a source of independent expert advice to the Secretary of State. We welcome the duty on the Secretary of State to request the advice of the Commission when preparing a UK strategy, and the obligation on the Secretary of State to have regard to any advice given by the Commission. We also welcome the requirements on the Commission that it give the reasoning behind its advice and that it publish that advice as soon as reasonably practicable after giving it. Both of these requirements enhance the transparency of the process by which the Secretary of State draws up the UK strategy and policy on child poverty generally, and so facilitate parliamentary scrutiny of the Government's performance of its duty. (Paragraph 1.27)
10. We do not believe it to be realistic, or constitutionally appropriate, to impose legally enforceable duties on ministers regardless of available resources. We therefore accept the necessity for clause 15 of the Bill, on the understanding that its effect is not to exclude the possibility of judicial review, but to make it possible for the Secretary of State to justify his strategy by reference to economic and fiscal circumstances. (Paragraph 1.35)
11. We welcome the Government's acceptance that judicial review is in principle available, but we also welcome the fact that it will only in practice be available in limited circumstances, such as where the Secretary of State refused to draw up a strategy, or where the evidence is incontrovertible that the targets are going to be missed so that no reasonable Secretary of State could maintain such a strategy consistently with his duty to meet the targets. As we pointed out in our Bill of Rights Report, when some possibility of judicial enforcement exists, it is more likely that rights will in practice be respected. Although under this Bill judicial review of the adequacy of the measures taken by the Government to achieve the targets is not likely to be possible until much nearer 2020, the gradually increasing possibility of such a legal challenge in the future should inform current decisions about the strategy for complying with the overarching duty, which is to ensure that the targets are met by 2020. (Paragraph 1.36)
12. We are in favour of supplementing the political accountability for not implementing the strategy with a degree of legal accountability by including in the Bill a legally enforceable duty to implement the strategy. (Paragraph 1.41)
13. We recommend that the Bill be amended to insert a duty to implement the child poverty strategy, as this will enhance opportunities to hold the Secretary of State accountable for failure to make progress towards the targets between now and 2020. (Paragraph 1.42)
14. We agree with the Government's analysis that the use of targets which apply only to children in qualifying households is potentially indirectly discriminatory, because it necessarily excludes certain children who may well be living in poverty, including Gypsy, Roma and Traveller children, asylum-seeking children living in asylum centres or Bed and Breakfast accommodation, and looked after children living in children's homes. Such differential treatment of children not living in qualifying households raises the question whether the Bill is compatible with Article 14 ECHR,

the right not to be discriminated against in the enjoyment of Convention rights (Paragraph 1.44)

15. We consider that Article 14 therefore clearly applies in conjunction with the right to peaceful enjoyment of possessions in Article 1 Protocol 1. (Paragraph 1.46)
16. As we have frequently made clear in our legislative scrutiny reports, the fact that the provisions in a Bill are likely to give rise to a breach of a Convention right in practice, for example because of a regulation making power that is likely to be exercised in a way which is incompatible with Convention rights, is of as much concern to us as a breach on the face of the Bill. Our concern about the compatibility with Article 14 ECHR of excluding children not in qualifying households from the targets is not affected by the fact that qualifying households will be defined in regulations rather than in the Bill itself. (Paragraph 1.47)
17. We welcome the provision in the Bill requiring the UK child poverty strategy to include measures to ensure that children do not suffer socio-economic disadvantage, and we accept that this part of the Bill will benefit all children living in poverty and not just those who are caught by the targets. However, the fact that another part of the Bill will benefit all children does not answer the concern that the targets discriminate against children not living in qualifying households. Nor does it matter in our view that it is not the Bill's intention to discriminate between children: it is enough that it is the effect of its provisions that the children covered by the targets are prioritised over those children not caught by the data. In our view the tying of the targets to qualifying households means that the Bill necessarily gives rise to differential treatment in relation to the enjoyment of Convention rights which requires justification if it is to be compatible with Article 14 ECHR. (Paragraph 1.48)
18. We therefore disagree with the Government's argument that the exclusion of certain groups of children from the targets which the Secretary of State is under a duty to meet does not amount to unjustified differential treatment contrary to Article 14 ECHR. In our view, Article 14 clearly applies, there is differential treatment of children not living in qualifying households, that differential treatment calls for justification, and the onus is on the Government to show that there are no other measurable targets for the groups currently excluded from the targets because of the way those targets are defined. In our view that onus is all the heavier because the excluded groups include some of those children who are particularly poor. We do not consider the Government to have discharged the heavy onus of justification by relying solely on the cost and impracticality of surveying children who do not live in qualifying households. We therefore conclude that it is highly likely that, as presently drafted, the Bill will give rise to a serious risk of future breaches of Article 14 in conjunction with Article 1 Protocol 1, because policy-makers will prioritise raising the income of children only in qualifying households, in a discriminatory way (Paragraph 1.52)
19. To remedy this incompatibility we recommend the inclusion in the Bill of a target or targets which would apply to children not living in qualifying households. (Paragraph 1.53)

20. In our view the duties to consult children in the preparation of child poverty strategies are insufficiently precise, because they leave it to the discretion of the Secretary of State (or Scottish Ministers/Northern Ireland department) as to whether or not to consult children directly at all: they could choose to consult organisations working with or representing children instead. We recommend that the duty to consult be amended to give better effect to the right recognised in international human rights law to participate in the relevant decision-making process, by requiring consultation with both children and organisations working with or representing them, and by requiring consultation with the relevant Children's Commissioner. The following suggested amendment to the Bill would give effect to this recommendation. (Paragraph 1.57)
21. We welcome the Government's positive engagement with the UNCESCR's guidance on using international human rights law as a framework for poverty reduction strategies and look forward to seeing in more detail precisely how the Government proposes to give effect to that guidance. (Paragraph 1.60)

Formal Minutes

Tuesday 10 November 2009

Members present:

Mr Andrew Dismore, in the Chair

Lord Bowness

Dr Evan Harris

Lord Dubs

Mr Virendra Sharma

Lord Lester of Herne Hill

Mr Edward Timpson

Lord Morris of Handsworth

Earl of Onslow

Draft Report (*Legislative Scrutiny: Child Poverty Bill*), proposed by the Chairman, brought up and read.

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

Paragraphs 1 and 160 read and agreed to.

Several papers were appended to the Report together with papers reported and ordered to be published on 21 July and 13 and 20 October.

Resolved, That the Report be the Twenty-eighth Report of the Committee to each House.

Ordered, That the Chairman make the Report to the House of Commons and that Lord Dubs make the Report to the House of Lords.

[Adjourned till Tuesday 24 November at 1.30 pm

List of written evidence

1	Letter from Rt Hon Stephen Timms MP, Financial Secretary to the Treasury, dated 16 June 2009	Ev 1
2	Memorandum submitted by the Government	Ev 1
3	Letter from the Chair to the Rt Hon Stephen Timms MP, dated 14 July 2009	Ev 6
4	Letter from Rt Hon Stephen Timms MP, dated 22 September 2009	Ev 8
5	Child Poverty Action Group (CPAG)	Ev 12
6	Immigration Law Practitioners Association (ILPA)	Ev 14
7	Law Centre (NI)	Ev 18
8	National Children's Bureau	Ev 21
9	Refugee Children's Consortium	Ev 23
10	Salvation Army	Ev 25
11	Save the Children	Ev 26
12	UNICEF	Ev 28

Written evidence

Letter from Rt Hon Stephen Timms MP, Financial Secretary to the Treasury

I am pleased to inform you that the Child Poverty Bill was introduced to the House of Commons on 11 June.

The Bill aims to break the cycle of poverty for future generations by enshrining in legislation the commitment to eradicate child poverty by 2020. We want to make sure this ground-breaking legislation makes ending child poverty a priority for everybody in our society.

I am confident that this Bill will be an effective mechanism for delivering our 2020 goal and am delighted to be the Minister in charge of steering it through the House.

I understand you have requested that a letter is sent to you on introduction, setting out the human rights issues arising from the Bill. I enclose a memorandum setting out the Government's consideration of the human rights issues relating to the Bill.

16 June 2009

Memorandum submitted by the Government

1. We write further to our letter of 20 March 2009 and to Murray Hunt's meetings with Emily Manton, Sheila Johnson and Natalie Abbott on 23 March and with Catherine Davidson on 12 May. The Bill was introduced on 11 June 2009 and we now write in order to highlight to the Joint Committee on Human Rights the positive human rights aspects of the Bill, as well as potential human rights issues that have been raised and our reasons for concluding that the Bill is compliant.

2. The Bill sets out four income based indicators of poverty and places a duty on the Secretary of State to meet targets relating to each indicator. The indicators relate to children in qualifying households, these being households that can be measured using current surveys. The Bill also places a duty on the Secretary of State and the devolved administrations to publish strategies setting out measures for the purpose of meeting the targets and to ensure children do not experience socio-economic disadvantage. The Bill also places duties on local authorities in England.

3. We set out below a discussion of the Articles of the UN Convention on the Rights of a Child and the European Convention on Human Rights that may be considered relevant to this legislation.

UN CONVENTION ON THE RIGHTS OF A CHILD

4. Clauses throughout the Bill take positive steps to meet the UK's obligations under the UN Convention on the Rights of the Child, which was ratified by the UK in 1989. This Convention sets standards in health care, education, and legal, civil and social services. The Committee on the Rights of the Child published a report on 20 October 2008, considering reports submitted by States Parties under Article 44 of the UN Convention on the Rights of the Child. Commenting on the UK Government's policy on child poverty and the standard of living for children, the Committee welcomed the Government's commitment to end child poverty by 2020. It recommended that the Government adequately adopt and implement legislation aimed at achieving the target of ending child poverty by 2020, including establishing measurable indicators for its achievement.

Article 3

5. Article 3 of the UN Convention requires States Parties to have the "best interests of the child" as a primary consideration when undertaking any action concerning children. Further, States Parties are required to take all appropriate legislative and administrative measures to ensure the protection and care as is necessary for a child's wellbeing.

6. The purpose of the Bill is to aid the reduction of child poverty throughout the UK and to create a framework to drive and monitor progress on the commitment to eradicate child poverty by 2020. As a whole the Bill itself seeks to promote Article 3 and individual clauses seek to take measures which have the best interests of the child at their core. Duties are imposed on the Secretary of State to prepare and publish a child poverty strategy to set out measures to be taken to meet the targets and to ensure that as far as possible children in the UK do not experience socio-economic disadvantage. Furthermore the Bill sets duties on local authorities to mitigate and reduce the effects of child poverty on children in their local area. These provisions advance the requirements of Article 3 of the Convention.

Article 4

7. Article 4 requires States Parties to undertake all appropriate legislative, administrative, and other measures to implement the Convention rights. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources.

8. The Bill in itself represents an appropriate legislative measure designed to implement Convention rights. In implementing the Bill and, perhaps more importantly, taking the steps envisaged by it to achieve the reduction of child poverty by 2020, the Government will progressively realise many of the Convention rights

Article 6

9. The strategy provisions also promote Article 6, which states that States Parties must ensure to the maximum extent possible the survival and development of the child. As noted above, the Bill includes a duty to meet income related targets as well as a wider duty to prepare a strategy setting out measures in relation to skills, employment, financial support, health, education, social services and housing. It also places duties on local authorities to tackle child poverty. Therefore the Bill can be said to put in place a framework within which the survival and development of the child will be enhanced.

Article 12

10. In preparing the strategies the Secretary of State, the Northern Ireland Department and the Scottish Minister must consult children or organisations working with or representing children. Furthermore, local authorities in England must consult children or organisations working with or representing children when preparing or modifying their joint child poverty strategies. These provisions promote Article 12 of the Convention, which states that States Parties must allow children who are capable of forming their views the right to express those views in all matters affecting them.

Article 26

11. Article 26 requires States Parties to recognise every child's right to benefit from social security and to take the necessary measures to achieve the full realisation of this right in accordance with their national law.

12. Existing legislation already makes provision for benefits to be paid to parents in respect of the child, for example Child Benefit and Child Tax Credits. Any social security measures taken to ensure that the targets are met will further ensure the realisation of this Article.

Article 27

13. Article 27 requires States Parties to recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Those responsible for the child have the primary responsibility for this though States Parties are required to take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

14. The Bill takes steps to realise this aim. In preparing the UK strategy, the SoS must consider what, if any, measures to take for the promotion and facilitation of the employment and skills of parents, the provision of financial support for children and their parents, health, education and social services, and housing and social inclusion. Further, duties are placed on local authorities to mitigate and reduce the effects of child poverty on children in their local area; these are positive steps in furtherance of meeting the UK's obligations under the UN Convention.

EUROPEAN CONVENTION ON HUMAN RIGHTS

15. We have previously discussed the possible engagement of relevant Articles of the ECHR with Murray Hunt, and have noted his concerns about aspects of the Bill. We hope that the discussion below addresses these concerns.

Part 1: National targets, strategies and reports

Targets

16. There are no individual entitlements or benefits granted by the Bill itself. Rather the Bill provides the framework by which existing and future individual policies across government which offer entitlements and benefits are to be driven and assessed.

17. To the extent there are specific policies which form part of the wider policy of alleviating child poverty by providing individual entitlements, Article 1 Protocol 1 might be engaged (*Stec v UK* (2005) 4 EHRR 2 and *R (on the application of RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63). The situation is less certain in respect of Article 8, but allocation of benefits may be said to affect private and family life under Article 8 (*R v Secretary of State for Work and Pensions* [2003] EWCA Civ 797 and *Secretary of State for Work and Pensions v M* [2006] UKHL 11).

18. However we consider that the Bill does not engage these Articles because of the high level nature of the Bill provisions. The Bill will inform future policy and provide a framework on which other concrete action, for example, changes in relation to social security benefits or tax, may take place and be assessed. Any legislation taken to implement the wider policy, for example changes to benefits or tax, would itself need to be human rights compliant, and analysis of the Articles engaged would therefore more appropriately be considered in that context and not in this.

19. In the event that it was considered that the high level nature of the provisions could be sufficiently determinative of a decision to allocate or focus benefits in a particular way we do not consider that a decision which allocated benefits in favour of a particular group would engage substantive rights under either Article 8 or Article 1 Protocol 1.

20. In *Secretary of State for Work and Pensions v M* [2006] UKHL 11, the House of Lords considered whether paying higher contributions of child support could be within the scope of Article 8 or Article 1 Protocol 1. Lord Bingham held at paragraph 5:

“I do not think the enhanced contribution required of Ms M impairs in any material way her family life with her children and former husband, or her family life with her children and her current partner, or her private life. No doubt Ms M has less money to spend than if she were required to contribute less...But this does not impair the love, trust, confidence, mutual dependence and unconstrained social intercourse which are the essence of family life, nor does it invade the sphere of personal and sexual autonomy which are the essence of private life.”

21. It could be argued in the same way that a specific policy allocating benefits for the alleviation of child poverty is not within the ambit of a person’s right to a private and family life because it is too far removed from the sort of abuse at which the Article is directed.

22. Similarly, Article 1 Protocol 1 is unlikely to be engaged since it only applies to existing possessions (see *Marckx v Belgium* 1972 2 EHRR 330 and *Van der Musselle v Belgium* 1983 6 EHRR 163) and there is no question of the Bill empowering the government to re-allocate resources so that money is taken away from families without children and given to those with children. Article 1 Protocol 1 does not afford a right to have food or shelter, whatever the level of destitution of the claimant.

23. It could also be argued that Article 14 ECHR is engaged. The proposed duty to meet the targets applies to children in “qualifying households”. This is wider than the previously used “private households”, discussed with Murray Hunt. “Qualifying households” will be defined in regulations and will be based on the criteria used to collect the best available data by which the indicators are measured. This data is collected using a set of procedures and instructions which allow the greatest coverage of the target population within practical constraints. The surveys are based on the Small Users Postcode Address File (SUPAF), which includes most addresses which have postcodes and receive less than 50 items of post per day. The surveys also exclude addresses which are classed as “communal establishments or institutions”, because the concept of household income is not relevant for these addresses.

24. Therefore the surveys necessarily exclude certain persons, for example children living in Gypsy/Roma/traveller accommodation without a postcode, and children living in local authority care homes. It is arguable that some of these children are members of groups which have status under Article 14, for example Gypsies and Roma children are classed as ethnic groups (*Anguelova v Bulgaria* 38361/97, 13/6/02; *Somerset County Council v Isaacs and Secretary of State for Transport* [2002] EWHC 1014 Admin). We note Murray Hunt’s previous concerns about differential treatment of these groups in light of comments by the Committee on the Rights of the Child in its report of 20th October 2008, in which it stated that “the Government’s strategy is not sufficiently targeted at those groups of children in most severe poverty and that the standard of living of Traveller children is particularly poor”. (paragraph 64).

25. Having considered the position fully we have concluded that there is no breach of Article 14. First, we do not consider that any other substantive Article is engaged by the Bill for the reasons set out above. As a claimant must, before claiming breach of Article 14, show that he or she falls within the ambit of another Article (although he or she does not need to show a violation of that other Article), there are, technically, no grounds for an Article 14 claim.

26. Even if a claimant could show that provisions of the Bill are within the scope of Article 8 or Article 1 Protocol 1, it is arguable that Clauses 1–5 do not in themselves breach Article 14, because they simply state that the targets relate to children in “qualifying households”, and do not in themselves exclude anyone. “Qualifying households” is to be defined in regulations under clause 6(1)(a), which will have to comply with Article 14. If the basis of the surveys change so that more children can be captured by the data, the regulations defining “qualifying households” will mirror this change, so it is not possible at this stage to definitively say that any children will be excluded from the targets.

27. Furthermore, there is nothing in the Bill that legally requires any entitlement policies undertaken as a result of the Bill to be skewed towards children who are covered by the targets. The strategies to be published under the Bill will require that wider child poverty outcomes are kept in view. It is not the intention

of the Bill to discriminate against any groups of children, and the same steps will be taken, as far as possible, in relation to all children. In order to set out the government's commitment to alleviate child poverty in legislation it is necessary to set measurable targets, and these can only relate to measurable children. By including a duty to prepare and publish a strategy in relation to all children this demonstrates that the intention of the Bill is to address poverty experienced by all children, and not to discriminate against any groups.

28. It is also arguable that any discrimination is indirect and justifiable. As mentioned above, households without postcodes are excluded from the surveys, so certain Gypsy, Roma and traveller families who do not have postcodes are likely to be excluded from the targets. However it cannot be said that any of these ethnic groups is wholly excluded because some do have postcodes, so are captured by the survey. It is possible that these groups could argue indirect discrimination because they have a lower probability of being surveyed, and therefore of coming within the targets. However we consider that this can be justified because practical constraints are required to enable the survey to work. To ensure that every household had an equal chance of being surveyed the Government would need to know the whereabouts of every household in the UK, which would require an annual survey more comprehensive than the existing census. It seems to us that this would not be proportionate.

29. As noted above, children living in local authority care will be excluded from the definition of "qualifying households". We would argue that these children are not in a group which has "status" for the purposes of Article 14. Even if they could be said to have status, it would not be appropriate to include these children in targets relating to household income, because this concept does not apply to them. Therefore their situation is not analogous to children living in qualifying households and there is no basis for an Article 14 claim. As already noted above, these children in local authority care will be covered by the Secretary of State's and Devolved Administrations' strategies to ensure as far as possible that children do not experience socio-economic disadvantage, and also in England by the local authorities duties to reduce and mitigate the effects of poverty in the local area.

30. Even if the Bill were seen as engaging substantive Convention rights we are of the view that any interference with Article 14 rights would be justified in the circumstances. The Bill has a legitimate policy aim of committing government to pursuing policies to alleviate child poverty. The Bill creates targets as a means of assessing government's policies in achieving this aim, and these targets will assess 99.5% of children in the UK. Whilst certain children will be excluded from the targets, the targets that are to be used are a proportionate means of pursuing a legitimate policy aim, particularly given the impracticalities of the alternatives. Any difference in treatment can therefore be justified in the economic interests of the country and the need to make the best use of public funds.

31. Therefore we would argue that the provisions relating to the targets do not breach any Articles of the ECHR and, if any breach is arguable, that they are intended to achieve a legitimate objective, are justified and proportionate, and in accordance with the law.

Strategies and reports

32. Clause 8 provides that, in preparing the UK strategy, the Secretary of State must consider what, if any, measures to take for the promotion and facilitation of the employment and skills of parents, the provision of financial support for children and their parents, health, education and social services and housing and social inclusion.

33. As these measures might include matters having a bearing on benefits payments or similar, it is arguable that Article 8 and Article 1 Protocol 1 are engaged. However we would argue that Article 8 and Article 1 Protocol 1 are not engaged for the reasons set out in paragraphs 20–22. Furthermore, clause 8(2) itself gives the Secretary of State discretion to include such measures, so the Bill does not require any of the measures to be set out in the strategy.

34. It may also be argued that clause 8(2), in requiring the Secretary of State to consider measures relating to children and parents, provides for a difference in treatment between children who have relatively low living standards and adults, particularly childless adults, with similar living standards. A person might therefore argue discrimination on grounds of age or "other status", namely childlessness.

35. In addition to the arguments cited above in relation to Article 14, we would argue that it is the desire of the government that for all groups of people, including childless adults and older people, who live in relative low income or have low living standards, the income level should be raised and living standards improved. There are many other measures designed to improve the income levels, living standards or socio-economic wellbeing of groups other than children and adults with children. For example the *Local Government Act 2000* c 22 s 4 imposes a duty for every local authority to prepare a sustainable community strategy for promoting or improving the economic, social and environmental well-being of their area and contributing to the achievement of sustainable development in the United Kingdom. The *Local Government and Public Involvement in Health Act 2007* c 28 requires local authorities to prepare a local area agreement specifying local improvement targets for improvement in the economic, social or environmental well-being of the area (s 105, 106).

36. It is also expected that some of the measures taken under the Child Poverty Bill with regard to children in qualifying households or children generally will have the effect of improving relative low income or low living standards of adults generally.

37. However if the Bill does constitute a difference in treatment and therefore disadvantage childless and elderly adults, we would argue that this policy is justified because it is proportionate and in pursuance of a legitimate policy aim. The policy of the Government is to give priority to raising income levels which affect children living in low income households and raising the living standards of children who have relatively low standards of living. The Government's limited resources can be most efficiently employed by targeting the reduction of poverty in children, as this will feed through and have a long lasting beneficial impact on society and lead to the increased wellbeing of future generations.

38. It can also be argued that clause 8 is proportionate because the Bill provides a safeguard in the form of a requirement on the Secretary of State to report annually to parliament, describing the measures taken in accordance with the most recent strategy (clause 13). We consider that the reports will provide adequate safeguards, meaning that measures taken in respect of the targets or under the strategy are not taken in an arbitrary or disproportionate manner.

Part 2: Duties of Local Authorities and Other Bodies in England

39. Clauses 18–24 provide for arrangements to be made by local authorities and other bodies in England designed to reduce and mitigate the effects of child poverty.

40. It is arguable that policies which concentrate on reducing or mitigating the effects of child poverty could be within the ambit of Article 8 because they affect private and family life. However we would argue, similarly to arguments set out above in relation to the targets, that the provisions themselves do not interfere with anyone's rights, even if arrangements under them might in principle do so. Any arrangements made under the Bill provisions would need to be compliant with human rights. We would therefore argue that the provisions cannot be said to engage Article 8.

41. If the provisions could be said to be within the ambit of Article 8, it is arguable that Article 14 is engaged because the provisions refer only to children, so adults may argue that they were being discriminated against, particularly vulnerable adults such as the elderly. In response to this we would argue that the measures must be seen in the context of other more generally applicable measures required to be taken at a local level and that any difference in treatment has a legitimate objective, as it is the policy of HM Government to reduce the number of children living in poverty, and the measures are justified and proportionate because this objective must be achieved within the limits of public funds.

42. Therefore we consider that this Bill does not raise any substantive issues in terms of human rights and that it is unlikely that any Articles are engaged. If any ECHR rights are engaged, this can be justified because the provisions of the Bill are intended to achieve a legitimate objective—the economic interests of the country and the need to make the best use of public funds—and are proportionate and in accordance with the law. If Article 14 could be said to be engaged, which we would refute, any interference as a result of the operation of the Bill is justified on the basis of it being a proportionate response to a legitimate policy aim. Measuring child poverty indicators in any other way would be wholly impractical and to not measure them would stifle the policy to tackle child poverty.

GENERAL DUTY TO END CHILD POVERTY

43. Murray Hunt suggested that arguments about Article 14 discrimination might be overcome if the Bill included a wide duty on the Secretary of State to end child poverty or to improve the living standards of children.

44. Ministers have rejected the possibility of including a wider duty in the Bill for a number of reasons. A wide duty would create uncertainty, as it would be unclear what is meant by 'poverty'. The Bill is framed in terms of a duty to meet targets as a way of defining what is meant by 'child poverty'. In fact the intention of the Bill is to go further than a definition of poverty based on income and address wider outcomes for children, for example in relation to education and health. These wider outcomes cannot be included in the poverty targets because of measurement issues. However the wider outcomes are dealt with by the strategy provisions. It is therefore arguable that the Bill addresses a wide concept of poverty whilst retaining legal certainty.

45. A wide duty would also create uncertainty about how far the Secretary of State is expected to go in meeting the duty. We consider that the imposition of any wider duty, particularly one which confers a right to an adequate standard of living, appears to be a first step towards general legislation of the kind envisaged in Schedule 3 to the JCHR draft Bill of Rights. It is not the intention of Ministers to include such a provision in the Bill and we consider that such a duty would be more appropriately addressed in legislation of general application.

46. For the reasons set out above we do not consider that the Bill breaches Article 14 in any event, and even if it could be argued that there is a breach, this can be objectively justified.

47. We hope that the above analysis addresses any concerns that the JCHR might have in relation to the Child Poverty Bill, but we would welcome the Joint Committee's comments on any aspect of the Bill relating to human rights. Overall we consider that the Bill makes progress towards the realisation of children's rights under international law and any potential breaches of other rights can be objectively justified.

June 2009

Letter from Chairman to the Rt Hon Stephen Timms MP, Financial Secretary to the Treasury

CHILD POVERTY BILL

The Joint Committee on Human Rights is considering the compatibility of the Child Poverty Bill with the requirements of human rights law. I am grateful to you for the detailed memorandum you sent to the Committee on 16 June, setting out in detail the Government's consideration of the human rights issues relating to the Bill. This is of considerable assistance to the Committee when it is scrutinising the Bill. I am also grateful to the officials in the Bill team who have met with the Committee's Legal Adviser to discuss some of those issues. This has also been of great assistance to the Committee.

The Committee welcomes the Bill as a human rights enhancing measure. By providing an unqualified duty to meet the four income targets by the end of the financial year 2020–21, and establishing a detailed framework both for driving and monitoring progress towards the achievement of those targets, the Bill provides a mechanism for the progressive realisation of children's right to an adequate standard of living in Article 27 of the UN Convention on the Rights of the Child and Article 11 of the International Covenant on Economic, Social and Cultural Rights.

However, the Committee still has some questions it would like to ask to assist it further with its scrutiny of the Bill's human rights compatibility and I would therefore be grateful if you could provide me with the answers to the following questions.

1. EFFECTIVENESS OF THE MECHANISM FOR PROGRESSIVE REALISATION

Although the Committee welcomes the commitment in the Bill to the progressive realisation of children's right to an adequate standard of living by 2020, it has a number of questions about the likely effectiveness of the mechanism in achieving that goal. One uncertainty in the Bill is the legal enforceability of the new statutory duty to meet the targets. On the day the Bill was published, the Secretary of State for Work and Pensions, the Rt Hon Yvette Cooper MP, was reported in the media as having said that "a government that failed to show how it was seeking to abolish child poverty could be subject to judicial review."¹ It is not clear from the Bill, however, at what point and on what basis judicial review of the Secretary of State could be brought. The duty is to ensure that the targets are met by the end of the financial year 2020–21.

Q1. Please provide a more detailed explanation of the sorts of circumstances in which it is envisaged that judicial review could be brought to enforce the duty on the Secretary of State in clause 1 of the Bill to ensure that the child poverty targets are met. In particular:

- *Would judicial review be available before the target date (end of 2020–21) arrives on the basis that it is already clear that the targets will not be met?*
- *If so, when could such a challenge be brought and what would be the remedy available on a judicial review of a breach of the duty to ensure that the targets are met?*
- *Who would be able to bring such a challenge?*
- *Would the courts have the power to order that the necessary resources should be made available?*

The second question about the likely effectiveness of the Bill concerns the precise effect of the "economic and fiscal circumstances" qualification in clause 15 of the Bill. Although the duty to ensure the targets are met by the financial year 2020 is absolute, the duty to have a national strategy for achieving those targets is qualified by the requirement that economic and fiscal circumstances must be taken into account by the Secretary of State when preparing the strategy.

As the Chair of the Work and Pensions Committee pointed out to you in a recent evidence session (17 June 2009), the distinction in the Bill between the targets and the strategy is artificial because if the strategy is not properly resourced the targets will not be met. You responded that the strategy will have to be properly resourced, in order to ensure that the targets are met, but on the face of it clause 15 of the Bill makes the strategy subject to budgetary constraints and if the strategy were judicially reviewed on the basis that it was insufficiently resourced to meet the targets the Secretary of State would be able to rely on clause 15.

¹ "Yvette Cooper plans binding legal commitment to cutting child poverty", *The Guardian*, 11 June 2009.

Q2. Please clarify the intended effect of clause 15 of the Bill, concerning the relevance of economic and fiscal circumstances, and in particular its relationship with the duty in clause 1 to ensure the targets are met. Is it intended that the Secretary of State should be amenable to judicial review on the basis that the strategy for achieving the targets is not sufficiently resourced?

The third question concerning the effectiveness of the mechanism is the lack of a duty to implement the strategy. The Bill imposes a duty on the Secretary of State to publish a national strategy setting out the measures that the Secretary of State proposes to take for the purpose of ensuring that the targets are met and, as far as possible, that children in the UK do not experience socio-economic disadvantage.² However, unlike other comparable statutory regimes, such as that under the Disability Discrimination Act, there is no statutory duty to implement the strategy.

Q3. Why does clause 8 of the Bill not include a duty to implement the strategy, equivalent to that in the Disability Discrimination Act?

2. DIFFERENTIAL TREATMENT OF CHILDREN NOT IN “QUALIFYING HOUSEHOLDS”

The duty on the Secretary of State is to meet targets relating to four income-based indicators of poverty.³ Those indicators all relate to children in “qualifying households”. What counts as a “qualifying household” is not defined in the Bill itself, but the Secretary of State is given power to make regulations about what is a qualifying household,⁴ and in doing so “must have regard to the desirability of ensuring that the targets in sections 2 to 5 have as wide an application as is reasonably practicable, having regard to the statistical surveys that are being or can reasonably be expected to be undertaken.”⁵ What is envisaged is that the definition of “qualifying households” in regulations will be based on the criteria used to collect the best available data by which the indicators are measured. The surveys currently used are based on the Small Users Postcode Address File, which includes most addresses which have postcodes and receive less than 50 items of post a day, and exclude addresses which are “communal establishments or institutions”.

As both the Explanatory Notes to the Bill⁶ and the human rights memorandum⁷ acknowledge, the effect of confining the duty to meet the targets to children in households that can be measured using current surveys is to exclude certain children, for example children who live in communal accommodation, such as a local authority children’s home, and children who do not live in accommodation with a postcode, such as many Gypsy and Roma children. While there is no direct discrimination, because no children are excluded from the surveys simply on the basis of their status, the Government accepts that there could be indirect discrimination because for some groups, such as Gypsy and Roma children, the likelihood of their being excluded is higher than for some other groups.

I understand that the Government does not accept that there is any incompatibility with Article 14 ECHR, the right not to be discriminated against in the enjoyment of Convention rights, for a number of reasons which are set out in the explanatory material.

Q4. Leaving aside the question of the applicability of Article 14 ECHR, what is the Government doing to make sure that data is available so that all children can be measured against the targets, and in particular those, such as Gypsy or Roma children, or asylum seeking children, who are excluded from the targets but are the poorest groups which the Government ought to be specifically targeting?

The excluded groups include some of those children who are particularly poor. ILPA, in its evidence to the Committee’s Children’s Rights inquiry, commented that “the poverty of certain children under immigration control is not being eradicated, it is being written out of the picture.” The UN Committee on the Rights of the Child in its October 2008 report expressed its concern that the Government strategy on child poverty “is not sufficiently targeted at those groups of children in most severe poverty and that the standard of living of Traveller children is particularly poor.”⁸ The Economic and Social Rights Committee similarly urged the Government to intensify its efforts to combat poverty “in particular with regard to the most disadvantaged and marginalised individuals and groups.”

Q5. How does the Government propose to focus in particular on children living in severe and persistent poverty, as recommended by the relevant monitoring bodies?

3. DUTY TO CONSULT CHILDREN

The Bill imposes a duty on the Secretary of State, when preparing a national strategy on child poverty, to consult “such children, or organisations working with or representing children, as the Secretary of State thinks fit.”⁹ The Explanatory Notes to the Bill state that this duty is “consistent with the obligation arising under Article 12 of the UN Convention on the Rights of the Child.”¹⁰ Article 12 UNCRC requires States

² Clause 8(1) and (2).

³ Clauses 2–5.

⁴ Clause 6(1)(a).

⁵ Clause 6(4).

⁶ EN para 137.

⁷ Memorandum, para 24.

⁸ UNCRC Concluding Observations on the UK, 2008, at para. 64.

⁹ Clause 9(4).

¹⁰ EN para 148.

to assure to the child the right to express their views freely in all matters affecting the child. The obligation to consult in the Bill, however, although couched as a duty, leaves the Secretary of State with a great deal of discretion as to who he consults.

Q6. *What is the objection to reducing the Secretary of State's discretion as to who he consults when drawing up the national strategy, and strengthening the duty to consult by, for example, requiring that the relevant Children's Commissioners be consulted?*

4. HUMAN RIGHTS BASED STRATEGY FOR POVERTY REDUCTION

Q7. *Will the Secretary of State will have regard to the guidance of the UN Committee on Economic, Social and Cultural Rights on human rights-based poverty reduction strategies¹¹ when drawing up the national strategy, as recommended in that Committee's recent Concluding Observations on the UK?*

Q8. *How does the Government propose to give effect to that guidance?*

14 July 2009

Letter from Rt Hon Stephen Timms MP, Financial Secretary to the Treasury

Thank you for your letter of 14 July regarding the human rights compatibility of the Child Poverty Bill. I am pleased that you welcome the Bill as a mechanism for the progressive realisation of children's right to an adequate standard of living. I have sought to answer below the queries raised in your letter and provide further information where possible.

DUTY TO MEET THE CHILD POVERTY TARGETS AND JUDICIAL REVIEW

Please provide a more detailed explanation of the sorts of circumstances in which it is envisaged that judicial review could be brought to enforce the duty on the Secretary of State in clause 1 of the Bill to ensure that the child poverty targets are met. In particular:

Would judicial review be available before the target date (end of 2020–21) arrives on the basis that it is already clear that the targets will not be met?

Clearly judicial review would be possible if the targets are not met, and the report relating to the target year (required by clause 14) states that they have not been met. This would be on the basis that the Secretary of State has breached his statutory duty to meet the targets. The same would apply in years subsequent to 2020 if the Secretary of State had a duty to meet the targets under paragraph 3 of Schedule 2, and failed to meet them.

It may also be possible for a claimant to bring a judicial review before the target date. In *Friends of the Earth and Help the Aged v Secretary of State for Business Enterprise and Regulatory Reform and Secretary of State for Environment, Food and Rural Affairs* [2008] EWHC 2518 the claimants brought a judicial review on the basis that the target in s.2(1) of the Warm Homes and Energy Conservation Act 2000 was not going to be achieved. The target was to ensure that, as far as reasonably practicable, persons do not live in fuel poverty. The strategy published under the Act stated that the target must be met by 2010 for vulnerable households and by 2016 for all other households. The claimants' evidence was in the form of a Government report which stated that the targets would not be met. (The claimants were in fact applying for judicial review of the failure to implement the strategy rather than the failure to meet the targets themselves.)

Therefore it is possible that a claimant could bring a judicial review before the report in relation to 2020 has been published, on the grounds that the Government's actions, or decisions not to act will not be sufficient to allow it to meet its statutory duties to meet the targets.

However the claimants would need to produce clear evidence to this effect and in the case of child poverty there will not be a Government report before 2020 stating whether or not the targets will be met. Moreover, it would always be open to the Government to show evidence that they can still take measures to meet the targets, right up to 2020.

If so, when could such a challenge be brought and what would be the remedy available on a judicial review of a breach of the duty to ensure that the targets are met?

A claimant can apply for judicial review of the Government on the basis that the targets will not be met at any time before 2020. However, the evidence to support such a claim is more likely to exist in the years immediately preceding 2020 (for example 2018 and 2019), when there is less scope to argue that the targets can still be met. A successful claimant would have the full range of judicial review remedies available to him. All judicial review remedies are at the discretion of the court. As a minimum the court might grant a declaration. So, if the targets were not met in 2020, the court could declare that the Secretary of State had

¹¹ Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights of 2001 (E/C.12/2001/10).

acted in breach of the requirement in the Bill to meet them. The court might also grant an order quashing a particular policy decision or make a mandatory order, requiring the Secretary of State to take a particular course of action.

Who would be able to bring such a challenge?

A claimant would need to show sufficient standing, meaning that they have a direct, personal interest. However in general if a claimant can say that he is affected by the decision or policy and there is no more appropriate challenger, and there is substance in his challenge, the court will usually allow the challenge. Groups which represent persons who may be affected by the decision or policy, or groups campaigning for a particular public interest may also bring a challenge (*R v DPP ex parte Bull and Another* [1998] 2 All ER 755 QB). We would therefore envisage likely challengers to be stakeholder groups closely aligned with the campaign to eradicate child poverty.

Would the courts have the power to order that the necessary resources should be made available?

As mentioned above, the full range of judicial review remedies would be available to the court. This might include a mandatory order, requiring the Government to take action to meet the targets if they are not met, or it is evident that they will not be met. The courts do not tend to interfere in matters of public spending when the Secretary of State has discretion as to how to allocate resources. However as the duty in the Bill is absolute, it is difficult to predict what remedies the court would prescribe and it is not appropriate for the Government to attempt to do so.

It is also worth mentioning that the Bill provides that if the targets are not met by 2020, the Secretary of State must make regulations providing for a new target date, strategy, annual reports and consultation (Schedule 2 paragraph 3). As the Bill provides a remedy in the event that the 2020 target is not met, the courts would be expected to have regard to this in deciding what remedy, if any, to award.

ECONOMIC AND FISCAL CIRCUMSTANCES

Please clarify the intended effect of clause 15 of the Bill, concerning the relevance of economic and fiscal circumstances, and in particular its relationship with the duty in clause 1 to ensure the targets are met. Is it intended that the Secretary of State should be amenable to judicial review on the basis that the strategy for achieving the targets is not sufficiently resourced?

The duty on the Secretary of State in clause 15 to have regard to economic and fiscal circumstances when preparing the strategies does not detract from the duty in clause 1 to meet the targets. The duty to meet the targets is absolute: clause 15 is about how the targets are met, not whether they are met. The aim of clause 15 is to ensure that the Government is not obliged to set measures which are economically unviable or would be detrimental to the taxpayer, even if those measures would almost certainly lead to the targets being met. In effect clause 15 ensures that the strategies set out measures which are cost-efficient and sustainable, but which still have the effect of meeting the targets.

You ask whether it is intended that the Secretary of State should be amenable to judicial review on the basis that the strategy for achieving the targets is not sufficiently resourced. There is of course a possibility that the Government's strategy might be challenged on the basis of any of the established grounds for judicial review. Although there is no statutory duty to include particular measures, or to implement the strategy, a claimant could argue that the strategy contains unreasonable measures, or that the omission of particular measures in the strategy was unreasonable.

As you point out in your letter, the effect of clause 15 is to ensure that the Government cannot be challenged for taking into account economic and fiscal circumstances when preparing the strategies. This is to ensure that the Government has flexibility in the measures it chooses to set out in the strategy and that it cannot be forced to include measures that could be detrimental to the country's overall economic position.

In the event that the targets are not met, we do not consider that clause 15 would necessarily be a defence to a claim that the duty in clause 1 had been breached. This is an absolute duty and if the report relating to 2020 states that the targets have not been met, these would be clear grounds for judicial review. However if a claimant argues that certain measures should have been included in the strategy, and that this led to the targets being missed, the inclusion of clause 15 in the Bill may result in a court allowing the Secretary of State discretion in deciding how best to meet the targets rather than specifying certain measures.

DUTY TO IMPLEMENT THE STRATEGY

Why does clause 8 of the Bill not include a duty to implement the strategy, equivalent to that in the Disability Discrimination Act?

One of the aims of the Child Poverty Bill is to place a duty on the Secretary of State to meet the targets. This is supported by the duty in clause 8(2)(a) to prepare a strategy setting out the measures the Secretary of State proposes to take in order to meet the targets. The duty is on the main object—meeting the targets—not the means to achieve that object. If the targets were met in some other way, it would not matter whether clause 8(2)(a) was satisfied. In reality the targets are unlikely to be achieved unless the Secretary of State has an effective strategy to do so over the next 11 years, and so he has a duty to prepare such a strategy.

By contrast, section 28D(1) of the Disability Discrimination Act requires a local authority to prepare, in relation to schools for which they are the responsible body, an accessibility strategy and further such strategies if prescribed. Subsection (5) imposes a duty on the responsible body to implement its accessibility strategy. Therefore the aim of the legislation is to implement the accessibility strategy itself.

Furthermore, the strategy must be revised and refreshed every three years, ensuring new developments and evidence on the best way to tackle child poverty are taken into account. Including in the Bill a duty to implement the strategy risks tying the Government to measures which, due to subsequent evidence/analysis, are ineffective or inappropriate. For example if the focus of a strategy is on a particular group / characteristic and an exogenous factor reduces the risk of poverty for that group, we would want to have the flexibility to focus attention elsewhere and reprioritise as necessary in order to achieve the goal of eradicating child poverty.

If the Secretary of State fails to prepare a reasonable strategy and as a result the targets are not met, then one of the sanctions for the failure to have an effective strategy is the risk of a judicial review complaint for not meeting the targets. Alternatively there may be grounds for a judicial review for failing to prepare strategies in compliance with clause 8, or preparing unreasonable strategies, as discussed above.

A further sanction for not implementing the strategy which applies to both clause 8(2)(a) (requirement to set out measures to ensure the targets are met) and 8(2)(b) (requirement to ensure as far as possible that children do not experience socio-economic disadvantage), is that the annual reports made to Parliament must state whether the strategy has been implemented in full, and if not the reasons for this (clause 13(5)). Therefore there is political and public accountability for not implementing the strategy.

CHILDREN NOT IN “QUALIFYING HOUSEHOLDS”

Leaving aside the question of the applicability of Article 14 ECHR, what is the Government doing to make sure that data is available so that all children can be measured against the targets, and in particular those, such as Gypsy or Roma children, or asylum seeking children, who are excluded from the targets but are the poorest groups which the Government ought to be specifically targeting?

The Government’s goal is to eradicate poverty for all children. Measures to eliminate poverty, as set out in the child poverty strategy, will aim to meet the needs of all children, regardless of whether or not they can be picked up by surveys.

However, the Committee will appreciate that the targets as set out in clauses 2–5 can only apply to children for whom we can measure household income. The surveys used to produce the statistics which will measure progress are the best instruments available for measuring household income of children across the UK (see paragraphs below). As your letter acknowledges, no children are excluded from the surveys on the basis of their status, although some groups have a lower chance of being captured by a survey, including some disadvantaged groups such as Gypsy, Roma and Traveller children and asylum seeking children.

The targets will cover many of the children that you mention in your letter. For example, Gypsy, Roma and Traveller families living in permanent addresses and those living on sites with postcodes would be covered by the survey and hence included in the targets. Similarly, asylum seeking children will be covered by the survey unless, as is the case with all children, they are living in communal establishments such as asylum centres or temporary accommodation such as Bed and Breakfast accommodation.

Some asylum seeking children may be in local authority care, for example living in residential care. For these children the concept of household income does not apply because they are looked after by the state. However, other measures are in place to ensure children living in children’s homes and other residential settings have suitable standards of living including statutory minimum standards such as healthy meals, clothes of their choosing, and sufficient financial resources to fund leisure activities and trips.

I would like to reassure the Committee that the following steps are taken to ensure that the coverage of the survey is as wide as possible:

- the list from which addresses are chosen is the Small User Postcode Address File, which is considered by ONS to provide the best coverage of private addresses in Britain;
- there is a “Multi-household” procedure for dealing with addresses where more than one private household resides, to ensure households in shared accommodation are not excluded; and
- the methodology for the survey is in line with ONS best practice.

In addition, a process of ‘sample stratification’ is used to ensure that households from a range of geographical areas are represented in the survey (including areas that are likely to have higher levels of deprivation). This process considers the following characteristics of areas:

- UK Region.
- Distribution of social class.
- Proportion of economically active adults.
- Proportion of unemployed adults.
- A measure of whether the areas are urban or rural.

The survey data is also weighted before child poverty rates are calculated, to make sure that the data is representative of the population in terms of characteristics such as age, sex and housing tenure.

To improve the methodology of these surveys so that all children in the UK had an equal chance of being surveyed, the Government would need to know the whereabouts of every household in the UK, which would require an annual survey more comprehensive than the existing census. The Government has to balance this requirement against the need for the survey to be practicable and affordable.

Furthermore, we have been careful to ensure that the Bill requires the strategy to set out not only how the targets will be met, but measures that will be taken to ensure children do not experience socio-economic disadvantage. This will ensure that the strategy will cover all children not just those captured by the targets.

The Committee may also wish to be aware that the Government already monitors success against this wider objective in a number of ways, including by setting the following targets for children in certain at-risk groups:

- Looked after children and Gypsy, Roma and Traveller children are covered by Public Service Agreement 11 which aims to narrow the gap in educational achievement between children from disadvantaged backgrounds and their peers.
- Looked after children are also covered by Public Service Agreement 16 which aims to increase the proportion of care leavers in employment, education or training, and the proportion of care leavers in suitable accommodation.
- The Department for Children, Schools and Families monitor and publish a range of indicators for looked after children, which measure stability of placements, health indicators and employment outcomes.
- Children in temporary Bed and Breakfast accommodation are covered by the Government target to halve the number of households in temporary accommodation to 50,500 households by 2010.
- The use of a “Gypsy or Irish Traveller” ethnicity category is being considered for inclusion in the 2011 Census, improving our ability to assess and help meet the needs of Gypsy and Traveller children.

How does the Government propose to focus in particular on children living in severe and persistent poverty, as recommended by the relevant monitoring bodies?

The Bill defines targets for four different measures of poverty designed to reflect the different aspects of poverty (poor living standards, low income, material deprivation etc). The four measures are: persistent poverty, absolute low income poverty, relative low income poverty and combined low income and material deprivation. Together these targets should ensure that children in the UK are lifted out of poverty. We believe the ambitious target levels and the range of four different measures will incentivise policy which is focused on all children in poverty, including the very poor, and not only those living just below the income poverty line.

The Committee may also wish to note that research commissioned by the Child Poverty Unit and carried out by the Institute of Fiscal Studies¹² recently found that amongst families with children who report low incomes in surveys, there is considerable variation in their living standards. The research found that there were significant numbers of children in families with higher living standards than their reported incomes suggest, as well as some children with genuinely low living standards. The Government’s decisions to focus on those with less than 60% median income therefore ensures that we provide for those in greatest need.

The child poverty strategy, required by clause of the Bill and to be published within 12 months of Royal Assent, is in the early stages of development. However, we intend that the strategy will identify those groups of children most at risk of being in poverty, including harder to reach and disadvantaged groups, and will consider what measures are needed to ensure that these groups are lifted out of poverty in a sustainable way.

DUTY TO CONSULT CHILDREN

What is the objection to reducing the Secretary of State’s discretion as to who he consults when drawing up the national strategy, and strengthening the duty to consult by, for example, requiring that the relevant Children’s Commissioners be consulted?

Your letter notes that the Bill imposes a duty on the Secretary of State to consult children, or organisations working with or representing children, when preparing child poverty strategies but questions how much discretion he should have in exercising this duty. We do not think it is appropriate to prescribe in legislation the detailed methods for consulting children and young people. With regard to consultation with the Children’s Commissioner, whilst in practice we may welcome his views on the child poverty strategy, requiring this in legislation may, in practice, be overly prescriptive and lead to the extent of the consultation being limited.

I wish to reassure the Committee that I would expect any consultation with children and young people on the child poverty strategy to be carried out in line with established good practice. As an example of our approach, the Committee may wish to be aware of the recent focus groups to gather children and young

¹² “The living standards of families with children reporting low incomes”, DWP research report 577.

people's views on the proposals in the Ending Child Poverty: Making It Happen consultation paper, carried out on behalf by Save the Children UK. A summary of these consultation events can be found at Annex B of the Government's consultation response, available at <http://www.dcsf.gov.uk/everychildmatters/strategy/parents/childpoverty/childpoverty/>

HUMAN RIGHTS BASED STRATEGY FOR POVERTY REDUCTION

Will the Secretary of State have regard to the guidance of the UN Committee on Economic, Social and Cultural Rights on human rights based poverty reduction strategies when drawing up the national strategy, as recommended in that Committee's recent Concluding Observations on the UK?

How does the Government propose to give effect to that guidance?

As noted above the child poverty strategy envisaged by the Bill is in the early stages of development. In preparing the strategy we will take into account the guidance issued by the UN Committee on Economic, Social and Cultural Rights and the contribution of human rights to poverty eradication, particularly with regard to addressing inequality and encouraging a participatory approach. One of the recommendations made by the UNESCR is that Governments should be held to account for the effectiveness of their poverty reduction strategies. On this point I again draw the Committee's attention to the requirement in the Bill for the annual reports setting out progress towards the targets in the Bill and in implementing the child poverty strategies.

I trust that this response addresses the points raised in your letter. I hope the information provided is helpful to the Committee in their consideration of the Bill and that Committee members will join me in supporting the passage of a Bill that seeks to ensure children in the UK do not live in poverty.

22 September 2009

Memorandum submitted by the Child Poverty Action Group

The Child Poverty Action Group welcomes the Committee inquiry and is pleased to respond to it. This response is intentionally short and framed only around the specific questions asked by the Committee, we have published a fuller briefing on the Bill elsewhere.⁽ⁱ⁾ CPAG welcomes the Child Poverty Bill and agrees with the Committee's assessment that this is a human rights enhancing measure. However, we are concerned that the Bill does not, in places, go as far as we would wish and, since it provides a population level target, that it does not provide for individual rights to (say) an adequate income, though we urge that this should be part of the strategy.

1. *Whether the new duty to meet the target will be legally enforceable and, if so, how and by whom?*

The existence of justiciable statutory targets which bind future governments is a new and developing area of law. The Bill impact statement states enforceability will be through Parliament and through the courts, a sentiment reiterated by Ministers. We are of the view that the main mechanism for enforcement of the duty in Clause 1 is Parliament, but that the duty could also be enforced through the courts by organisations and by individuals.

The test of the quality of this legislation is the extent to which it can create a framework for policy development. CPAG would like to see the Committee press Government for evidence of how its pursuance of duties will be judged. In particular we would like to see:

- How it will be clear how the Government uses independent advice from the statutory Child Poverty Commission; and
- How progressive steps towards the target will be shown before the target date (for example through the setting of milestones).

2. *What is the intended effect of clause 15 of the Bill, concerning the relevance of economic and fiscal circumstances, and in particular its relationship with the duty in clause 1 to ensure the targets are met?*

It appears from the bill that clause 15 does not bear on clause 1 but rather on strategy development and the activities of the Child Poverty Commission. However, we remain concerned clause 15 may be used to prey-in-aid a delayed or missed target, or that by allowing action to be delayed Government could leave action until it is too late to meet the 2020 objective.

CPAG has criticised the inclusion of the clause, although we accept the Government's intention is that it should not undermine the duty to meet the 2020 target. Ministers have argued that clause 15 is intended to ensure policy is cost-effective but this ought to be an implicit aim of all activity and it is unclear why it is so explicitly stated (the converse logic that if it is not stated Government has no interest in cost effectiveness is perverse).

Furthermore, to emphasize the costs of tackling poverty over the benefits is unbalanced and we would appreciate the Committee pushing the Government on how it will balance any costs with the large savings identified in the impact statement.

3. *Why is there no duty to implement the child poverty strategy?*

We do not see the justification for this duty being absent and would like to see it included as it is in some related examples, for instance the Warm Homes and Energy Conservation Act 2000 (the Committee quotes the Disability Discrimination Act). Whilst there is an end target in this bill, there is a concern about whether the Government can be held sufficiently accountable for failure to make progress in the interim. This risks leaving children behind, when in our view the need to end poverty is urgent.

If milestones are missed along the way, this will have an adverse impact on the children growing up in poverty between now and 2020. This in turn will have a negative impact on the next generation of children. This will make reaching the 2020 target more difficult—and more costly. We are keen to see a follow through between strategy development and policy, and a clause would ensure the Secretary of State could be challenged for a failure to implement a stated objective. We believe this will help to achieve the Government's stated intention of ensuring the Bill "provides a mechanism for the progressive realisation of children's right to an adequate standard of living in Article 27 of the UN Convention on the Rights of the Child".

4. *What is the Government doing to make sure that data is available so that all children can be measured against the targets, and in particular those, such as Gypsy or Roma children, or asylum seeking children, who are excluded from the targets but are the poorest groups which the Government ought to be specifically targeting?*

Our understanding of who is and is not excluded from the target is similar to that laid out in the Committee's letter of 14 July, the Committee could usefully press for an estimation of how many and which children are undercounted by this mechanism.

On the second issue, the *Households Below Average Incomes* report contains an analysis for many groups of children. The limitation of this approach is it is unlikely to encourage focus on relatively small groups: even if these families are interviewed as part of the survey they may not show up in the analysis. For example though there is a breakdown by tenure, geography, household make up, employment status and some ethnic groups there is no analysis covering Children of Gypsy or Roma origin or by migration status. Given that success is judged by a set percentage level of child poverty, some children could remain poor despite the target being met.

There are a series of ways of improving the framework which would help to gear it better to meet the needs of all children:

- Greater urgency should be given to ensuring that safety net benefits for all children (including migrant children) are paid at or above the level of the poverty line (providing a right not to be poor for those in receipt of entitlements).
- A 10% measure of success on the central measure of child poverty (on the relative low income measure) is too high and should be reduced to 5%.
- To help address inherent weaknesses in survey measures, the Child Poverty Commission should also be tasked with separately investigating the position of particularly poor groups of children (and defining these) and the Secretary of State then required to report (qualitatively as well as quantitatively) on the position of these groups and of the impact of policy.
- The analysis on disabled children is skewed as the income measure counts disability benefits with discounting costs. The effect of this is to underestimate the impact of disability on poverty. A practical improvement here would be to exclude disability benefits from income estimates or to include an estimation of disability related need.
- An additional way of ensuring that statistically insignificant groups are incorporated within the 10% plus target, is to include categories of disadvantage that tend to span all such groups (see *At Greatest Risk of Poverty: the children most likely to be poor* (CPAG, 2005), including: ill-health and disability (parents and children); low educational attainment levels; poor housing; some black and minority groups; larger families.

5. *How does the Government propose to focus in particular on children living in severe and persistent poverty?*

CPAG believes that all children experiencing poverty should be targeted by policy and that the poorest families should receive the greatest attention but we do not agree with the implication that there is poverty which is not "severe".

Within the set of measures there is an absolute measure (60% of median incomes in 2010–11), a combined measure of material standards and relative low income and a new and particularly welcome persistent income measure. These measures can be triangulated to direct policy to improve the life chances of all children but we would be concerned if policy were to be deflected to a lower standard than 60% of current

median incomes and we caution that lower income thresholds can give a misleading impression of living standards. The legislation itself allows for the absolute measure to be updated if it becomes irrelevant following income growth showing Government appreciates there are limitations to absolute measures.

6. *Could the duty to consult children be strengthened by leaving less discretion to the Secretary of State?*

Although a duty to consult children is stated, this is to be interpreted as the Secretary of State (or other body) sees fit. Although we approve that consulting with children is mentioned, presumably if the Secretary of State, Scottish or Northern Irish Governments or the proposed Commission (which each have a duty in this regard under the Bill) feel this is not necessary then there would be little redress. In considering the force of this duty, we urge the Committee to concentrate on the Secretary of State but not to neglect the responsibilities of other bodies.

As the Committee noted in its letter of 14 July, consulting with children is clearly within the spirit of the United Nations Convention on the Rights of the Child. Although the levels of child poverty in the UK are dreadful, having legislation in place to support getting our act in order is something the UK should be proud of. Similarly the UK ought to be an exemplar in implementing effective consultation with children.

We would like to see the Committee press Government about how consultation will be achieved, and the weight given to children's views. Effective consultation is not only an important part of valuing children as rights holders but should lead to better policy. CPAG would like to see the clause strengthened to specifically refer to consulting with those who have direct experience of poverty.

7. *How does the Government propose to give effect to the guidance of the UN Committee on Economic and Social and Cultural Rights on human rights-based poverty reduction strategies when drawing up the national strategy?*

CPAG believes human rights legislation and thinking is an important part of anti-poverty activity and is keen to see the Committee pursue this line with Government.

REFERENCE

⁽ⁱ⁾ For example "Child Poverty Bill, 2nd reading debate briefing", Child Poverty Action Group, June 2009. *September 2009*

Memorandum submitted by the Immigration Law Practitioners' Association

INTRODUCTION

1. The Immigration Law Practitioners' Association (ILPA) is a professional association with over 900 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups.

2. In this submission, we are concerned to highlight the situation of children who are subject to immigration control, including separated children and children in families, or whose parents or primary carers are subject to immigration control or who are A8 or A2 accession State nationals with limitations on their entitlements to social assistance.

3. Our submission is in two main parts. Firstly, we explore specific concerns regarding the Bill and its relation to the children we highlight. Secondly, we briefly note, by reference to earlier ILPA briefings and submissions where applicable, examples of how poverty and socio-economic disadvantage may be and is caused to these children. Thereafter, we include a short conclusion. All the ILPA briefings and submissions referred to in this submission remain available on our website at www.ilpa.org.uk in the "Briefings" and "Submissions" sections respectively.

PART ONE: CONTENT OF THE BILL—UNEQUAL APPLICATION OR EXCLUSION

4. It is not clear to what extent the duties, which would be established by the Bill, will extend to the group of children we highlight. What is clear is that the measures in the Bill, as currently drafted, would not extend equally to all these children as to other children in the UK; and while some measures certainly would apply to these children others may not. We note that the current HM Treasury (October 2007) PSA Delivery Agreement 9 to "Halve the number of children in poverty by 2010–11, on the way to eradicating child poverty by 2020" does not include children of asylum-seekers.¹³ We consider this to be contrary to the UK's obligations under Article 2 of the 1989 UN Convention on the Rights of the Child ("the UN Convention"), which requires States Parties to respect and ensure the rights set forth in the Convention to each child

¹³ See fn. 3 on page 3 of PSA Delivery Agreement 9.

without discrimination. We are mindful that the UN Committee on the Rights of the Child in its 20 October 2008 Concluding Observations¹⁴ expressed concerns that asylum-seeking and refugee children experience discrimination¹⁵ and would emphasise that these concerns extend beyond that group to children in families subject to immigration control or of A8 or A2 nationals. These children should be protected by the legislation.

5. Clauses 2 to 5 of the Bill set out specific targets relating to child poverty. These targets relate to “children who live in qualifying households”. As to what is to be a qualifying household and the circumstances in which a child is to be treated as living in a qualifying household, clause 6(1)(a) and (b) provides that this is to be determined by regulations. The Explanatory Notes indicate that these regulations will found relevant definitions upon the Family Resources Survey and Understanding Society survey. ILPA shares concerns expressed at Second Reading¹⁶ that the group of children we highlight may be excluded or largely excluded from these surveys and hence from the intended targets.

6. If these concerns are realised, the UK and devolved administrations’ strategies would still, on the face of the Bill, be required to have regard to these children but solely in respect of the second of the two limbs of clause 8(2):

“(b) for the purpose of ensuring as far as possible that children in the United Kingdom do not experience socio-economic disadvantage.”¹⁷

7. Clause 13(1)(b) would still require the Secretary of State to report to Parliament on the progress made to implement the strategy, including as to progress in relation to the second of the two limbs. Nonetheless, there would seem to be a risk that poverty affecting children to whom the specified targets did not apply received less attention because the key measures for assessing progress towards the eradication of child poverty may be taken to be those targets.

8. Moreover, the Committee highlights clause 15, which requires that the Secretary of State and the Child Poverty Commission have regard to economic and fiscal circumstances. There is a related requirement upon the Scottish Ministers and relevant Northern Ireland department. During the passage of the Bill, Stephen Timms MP, Financial Secretary to the Treasury, observed:

“Clause 15 is not, as one or two Members have suggested, a get-out clause. The only way of avoiding the duty to meet the targets under the Bill would be to repeal the legislation. Clause 15 is about how, not whether, the Government meet the targets, in a value-for-money way that is consistent with the needs of the wider economy.”¹⁸

9. But this response is inadequate if the targets do not apply equally to all children. If some children, eg children among those we highlight, do not fall within the targets, the UK (and Scottish and Northern Ireland) strategy will only apply insofar as the second limb. Yet this limb only requires measures to ensure “as far as possible that children . . . do not experience socio-economic disadvantage”; and hence the reach of this limb may more readily be constrained by the requirements in clause 15. This underlines the need for the targets to cover all children within the jurisdiction.

10. The Committee raises the question of strengthening the duty in clause 9(4)(c) by reducing the discretion left to the Secretary of State to consult with children and organisations working with or representing children. A similar question may be asked in relation to the duty upon responsible local authorities at clause 22(6)(a). Given the concerns that the targets to be established by the Bill may not apply equally, or at all, to all children in the UK, we would recommend that this duty is strengthened so as to ensure that the strategy is informed by the needs and situations of all children, including those we highlight. This should be addressed by requiring that consultation include consultation with children, in accordance with the UK’s obligations under Article 12 of the UN Convention, and organisational representatives of particular groups of children, including these children.

11. As regards the responsibilities of local authorities and “partner authorities” toward reducing child poverty in local areas, we are discouraged that, as was the case when the duty to safeguard and promote the welfare of children was introduced by the Children Act 2004,¹⁹ the UK Border Agency is not included among the individuals and agencies listed in clause 19(2). Whereas clause 20(1)(c) requires a local authority to make arrangements to promote co-operation with “such other persons or bodies as the authority thinks fit”, the UK Border Agency (like the “partner authorities” listed in the Bill) has a UK-wide remit and, by reason of its policies and operations, clearly affects the socio-economic experiences of children within the

¹⁴ UN Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/4.

¹⁵ *Ibid* para 24.

¹⁶ *Hansard* HC, Second Reading, 20 July 2009 : Column 628 (per Sally Keeble MP), Column 642 (per Julie Morgan MP) and Column 662–3 (per Steve Drew MP).

¹⁷ This terminology is replicated in respect of Scottish and Northern Irish strategies, see clauses 10(2)(b) and 11(2)(b).

¹⁸ *Hansard* HC Second Reading, 20 July 2009 : Column 678.

¹⁹ Only belatedly is the UK Border Agency to be brought within the family of agencies required to safeguard and promote the welfare of children, and the means towards this still leaves the UK Border Agency in some respects on the outside by establishing a separate duty under section 55 of the Borders, Citizenship and Immigration Act 2009. Though Ministers have emphasised the close relationship between this and the duty under the Children Act 2004, it remains to be seen how effective creating a separate duty will prove—ie whether the meaning and effect of the duty, and the guidance that is to be produced under it, will have the same meaning and effect as the duty and guidance under section 11 of the Children Act 2004.

meaning of “child poverty” as described at clause 24 (eg in providing for housing and financial support to asylum-seekers, including asylum-seeking families; through dispersal of asylum-seekers; and through its handling and determination of immigration applications which will determine children’s and families’ access to various services and benefits). The UK Border Agency should be included in the list of agencies in clause 19(2).

PART TWO: CHILD POVERTY AFFECTED OR CAUSED BY IMMIGRATION CONTROL

12. This Part of our submission highlights circumstances where children who are affected by immigration control may experience particular socio-economic disadvantage as compared to other children in the UK. It does not seek to be exhaustive. The key purpose is to highlight the breadth of circumstances in which these children may face poverty, and hence the need to address concerns as to the unequal application of the Bill to them.

13. Underlying the examples given is the legislative and policy position that generally excludes persons in the UK who are subject to immigration control, as well as certain A8 and A2 nationals,²⁰ from a range of social and welfare provisions, and which in relation to specific groups of migrants restricts or denies permission to work.²¹ This position is compounded by difficulties some migrants face in accessing provisions to which they are entitled, demonstrating their entitlements, moving from one immigration status to another (where the type and/or source of available support may change), facing delays in decision-making on their immigration applications and securing fair and safe decisions on such applications.²²

14. In March 2007, the Committee published a report following an inquiry into the Treatment of Asylum Seekers.²³ The Committee there highlighted several concerns related to socio-economic disadvantage facing children seeking asylum, alone or in families. We note that the Committee made several findings and recommendations in relation to access to the asylum system (and therefore asylum support), access to asylum support, the provision of asylum support and the refusal of permission to work to asylum-seekers and refused asylum-seekers. The concerns of the Committee have not in the meantime been ameliorated, let alone removed. Recent developments accentuate concerns:

- The UK Border Agency’s position on permission to work for asylum-seekers and refused asylum-seekers has not altered since its response to the Committee’s report.²⁴ The Government’s intention not to opt-in to the revised Reception Directive²⁵ is in part determined by unwillingness to accede to the proposed improved reception arrangements for permission to work for asylum-seekers waiting for six months or more for decisions on their initial claims.²⁶ The Agency’s response to the recent judgment of the Court of Appeal requiring that permission to work be considered on application by any refused asylum-seeker who has waited for 12 months or more for a decision on his or her fresh asylum claim²⁷ has been to decline to deal with applications for permission to work by those who fall within the scope of the judgment while the Secretary of State seeks to appeal to the Supreme Court.
- Decisions taken on the levels for asylum support for 2009–10 highlight a general risk to the support provided to all, including families on asylum support or in receipt of section 4 support.²⁸ Asylum support has not generally been increased in line with inflation,²⁹ and the reasons given by the UK Border Agency for these decisions indicate that this is a response to pressure on the UK Border Agency budget.³⁰ Not only do these decisions put real pressure on the financial circumstances of families now seeking asylum, they evidence the ongoing insecurities facing families reliant on asylum support in the future.

²⁰ Family members of A8 and A2 workers are held not to satisfy the habitual residence test for the purposes of access to welfare entitlements during the first year of the worker’s employment.

²¹ The relevant provisions are not described here in full. In our October 2007 submission to the Committee for its inquiry into Treatment of Asylum Seekers (para 3 *et seq*) we highlighted something of the legislative background.

²² Such difficulties were highlighted in our October 2007 submission (para 5) to the Joint Committee in response to the Joint Committee on Human Rights, *Government Response to the Committee’s Tenth Report of this Session: The Treatment of Asylum Seekers*, Seventeenth Report of Session 2006–07, HL Paper 134, HC 790.

²³ Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, Tenth Report of Session 2006–07, HL Paper 81-I HC 60-I.

²⁴ See Joint Committee on Human Rights, *Government Response to the Committee’s Tenth Report of this Session: The Treatment of Asylum Seekers*, Seventeenth Report of Session 2006–07, HL Paper 134, HC 790.

²⁵ Council Directive 2003/9/EC, 27 January 2003.

²⁶ Letter of Lin Homer, Chief Executive of the UK Border Agency to UNHCR of 6 March 2009, made available to members of the National Asylum Stakeholder Forum, includes: “The further additional rights that the draft [Reception] Directive would grant asylum seekers—particularly on employment and material support—would in our view encourage unfounded claims because people would be more likely to come to the EU and claim asylum in order to benefit from their rights, and not because they need protection.”

²⁷ *R(ZO(Somalia) & Anor) v Secretary of State for the Home Department* [2009] EWCA Civ 442.

²⁸ Families seeking asylum are generally entitled to support under section 95 of the Immigration and Asylum Act 1999. However, some families are supported under section 4 of the Immigration and Asylum Act 1999, generally where the child was born or otherwise joined the family unit after the asylum claim and appeal has been finally determined.

²⁹ There has not been a uniform response in relation to the levels of asylum support. However, eg, freezing the level of asylum support for single parent families seeking asylum constitutes a cut in real terms for these family units.

³⁰ See minutes of the National Asylum Stakeholder Forum meeting of 22 July 2009, available at <http://www.bia.homeoffice.gov.uk/aboutus/workingwithus/stakeholders/nationalasylumstakeholderforum/>

- In a joint Memorandum to the Committee in respect of its inquiry, the Home Office and Department of Health asserted that case-ownership, procedures and targets under the New Asylum Model (NAM) would lead to “faster and higher quality processes”.³¹ It might have been hoped, therefore, that some of the problems with delays, poor decision-making and poor administration of the asylum system would be addressed by the NAM. However, several problems have emerged which indicate that this hope has not been realised. The relevant targets at no time have applied or been intended to apply to 100% of asylum claimants,³² and there appears to be a growing backlog of cases under the NAM which do not fall within the targets. There are no resolution targets covering 100% of claimants. Case-ownership has to date failed to provide reliable end-to-end ownership in all cases. The concerns, including as to quality of decision-making, which ILPA highlighted to the Committee in respect of the legacy cases³³ in response to Government’s response to the Committee’s report³⁴ generally remain pertinent to NAM cases.

15. A specific socio-economic disadvantage faced by some refugee children is denial of family reunification.³⁵

16. Separated children seeking asylum are not supported directly by the UK Border Agency. However, support is provided under the Children Act 1989. Local authorities receive funding by way of grant from the UK Border Agency in respect of these children. Whereas the entitlement of these children is established in children’s legislation, we are concerned that there is potential for the security of that support and commitment of local authorities to be influenced by decisions taken by the UK Border Agency in respect of the grant. Moreover, age assessment practices in the UK asylum system continue to deprive some children of their entitlements as children and mean that they risk the poverty to which adults seeking asylum, or whose applications for asylum have been refused, are subjected.³⁶

17. Children, who or whose parent or parents are subjected to the special immigration status (if this is brought into force³⁷), will suffer particular socio-economic disadvantage by reason of the indefinite denial of employment opportunities and access to mainstream support.³⁸

18. Generally, migrant families are excluded from welfare provisions in the UK unless and until indefinite leave to remain is granted.³⁹ Whereas the Immigration Rules generally require migrants to the UK (eg migrants coming to study, work or join family members) to demonstrate their capacity to support themselves, migrant families are no less susceptible than others to such events as family breakdown or unemployment.⁴⁰ The period during which migrant families may be precluded from access to welfare benefits will be significantly extended by the naturalisation regime to be introduced under the Borders, Citizenship and Immigration Act 2009.⁴¹ No recourse to public funds provisions also apply in certain cases where children are seeking to join, accompany or be joined by, his or her parent and hence may impinge on rights under the UN Convention not to be separated and to family reunification.⁴²

19. Children of irregular or undocumented migrants are also at particular risk of poverty and deprivation on account of exclusion from welfare support and the parents not having permission to work. This group includes where migrants have entered the UK unlawfully and where they have overstayed. Changes to the Immigration Rules, and the prospect of further changes in the years ahead inspired by the Government’s proposal that a points test be introduced for the naturalisation route,⁴³ which could be levered up or down, indicate a risk that this group may continue to grow.

20. A further aspect of poverty and deprivation arises from charges that may be imposed on those who are not “ordinarily resident” in the UK,⁴⁴ which engages the UK’s obligations under Articles 24 and 39 of the UN Convention. Those particularly at risk include:

³¹ Appendix 69 to the Committee’s Tenth Report *op cit* (para 2.6).

³² The target to resolve, whether by way of grant of status or voluntary or enforced departure, NAM cases within 6 months has risen to 75% of claims by the end of 2009, and is to peak at 90% of claims by the end of 2010: see *Hansard* HC, 25 July 2006 : Column 736 (*per* John Reid MP, then Home Secretary).

³³ That is the backlog of cases unresolved prior to the introduction of the NAM: see *Hansard* HC, 19 July 2006 : Column 338 & 25 July 2006 : Column 736 (*per* John Reid MP, then Home Secretary).

³⁴ ILPA September 2007 submission: Memorandum to the Joint Committee on Human Rights following publication of the Government’s response to the Committee’s Tenth Report of session 2006–07, *The Treatment of Asylum Seekers* (para 5).

³⁵ See ILPA February 2009 submission to the Joint Committee on Human Rights’ inquiry on Children’s Rights, para 45.

³⁶ ILPA February 2009 submission to the Joint Committee on Human Rights’ inquiry on Children’s Rights, section G.

³⁷ Provision for the special immigration status is set out in sections 130 *et seq* of the Criminal Justice and Immigration Act 2008, which received Royal Assent on 8 May 2008. These sections have not been commenced.

³⁸ See ILPA February 2009 submission to the Joint Committee *op cit*, para 35.

³⁹ No recourse of public funds provisions are included at section 115, Immigration and Asylum Act 1999 and paras 6-6B of the Immigration Rules (HC 395).

⁴⁰ ILPA September 2009 submission to the Ministry of Justice request for views on European Union Justice and Home Affairs Future Work Programme 2009 (Stockholm Programme) highlights groups at risk, including Accession State nationals and victims of domestic violence. We would also refer the Committee to the Statement on No Recourse, which relates to domestic violence and to which ILPA is a signatory, available at: http://www.wrc.org.uk/includes/documents/cm_docs/2009/0/6_0904_nrpf_statement_final.pdf

⁴¹ Sections 39–41 of the Act establish the basis for the new naturalisation route. Further information is available from ILPA briefings on the UK Borders Bill, including January 2009 initial briefing, February 2009 House of Lords Second Reading briefing, May 2009 House of Commons Second Reading briefing and July 2009 briefing on Part 2 (naturalisation); and see ILPA May 2008 submission on the Path to Citizenship consultation.

⁴² Article 9 & 10.

⁴³ UK Border Agency consultation: *Earning the Right to Stay, A new points test for citizenship*.

⁴⁴ See National Health Service (Charges to Overseas Visitors) Regulations 1989, SI 1989/306 as amended.

- dependant children aged 16 to 18 of workers and certain students where those children are not in full-time education;
- children of workers who are temporarily unemployed;
- children of certain persons in the UK with an outstanding settlement application;
- children of families whose asylum claims have been refused; and
- children of undocumented migrants.

These concerns extend to situations of pregnant women and women giving or who have just given birth since they may not be entitled to free health care thereby placing the child at risk.⁴⁵

CONCLUSION

21. The children we highlight face the risk or reality of socio-economic disadvantage by reason of their and/or their parents' immigration status. If the Government's aim to eradicate child poverty in the UK is to be realised, it is plain that these children must be included in the targets and strategies that are implemented in order to achieve that aim. Moreover, as we have argued elsewhere,⁴⁶ the Department for Children, Schools and Families needs to take responsibility for ensuring that generally accepted standards regarding the safety and welfare of children are applied to all children in the UK including those highlighted in this submission.

22. Moreover, since the UK Border Agency, through its practices, policies and the legislation it implements, has a profound potential and real effect upon the socio-economic status of a significant number of children in the UK, the inclusion of that agency among those, to whom duties such as those referred to in this submission are to apply, is necessary—both to ensure that eradication of poverty is achieved for all children; and to ensure that the culture change in that agency, to which Government has committed itself, is neither hindered nor precluded by the development of wider policy and practice from which that agency is exempted.⁴⁷

September 2009

Memorandum submitted by Law Centre (NI)

1. ABOUT LAW CENTRE (NI)

1.1 Law Centre (NI) is a public interest law non-governmental organisation. We work to promote social justice and provide specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. It provides a specialist legal service (advice, representation, training, information and policy comment) in five areas of law: social security, mental health, immigration, community care and employment. Law Centre services are provided to over 450 member agencies in Northern Ireland. In this paper we outline our concerns regarding the implementation of the draft Bill, drawing attention to the Northern Ireland specific issues.

2. INTRODUCTION

2.1 The development of the Child Poverty Bill is a welcome initiative but the Bill provides limited information on how the new legislation will be used to improve everyday life for children and families in poverty. The document sets out a number of specific targets with little detail on how these targets should be implemented and met. We welcome the opportunity to respond to this call for evidence on the Child Poverty Bill. We have made some general comments in response and address some of the questions which were posed for consultation.

3. KEY RECOMMENDATIONS

3.1 We comment in more detail on each of these concerns within the body of the paper and have highlighted the appropriate paragraphs for ease of reference. In summary, we recommend that:

- The Bill should make more specific reference to Northern Ireland and the other devolved governments (4.1).
- Northern Ireland's local strategy under the Bill should be based upon its anti-poverty strategy *Lifetime Opportunities* (5.1 & 5.2).
- UK wide targets should be monitored in each jurisdiction (6.1).

⁴⁵ See Refugee Council: *First do no harm: denying healthcare to people whose claims for asylum have failed*, June 2006 which provides a useful introduction to the subject as well as information on how this affects the specific group in question.

⁴⁶ See, eg, ILPA February 2009 submission to the Joint Committee *op cit*, para 36.

⁴⁷ See further ILPA August 2009 submission on draft statutory guidance on section 55, Borders, Citizenship and Immigration Act 2009.

- The Bill include a mechanism for reporting to the devolved administrations as well as to Westminster (6.2).
- Annual reports specify how much has been spent on tackling child poverty and how many children have been lifted out of poverty (6.2).
- The Bill should include provisions to formalise duties on public bodies in Northern Ireland (7.2.1).
- Full statistical information on the numbers of asylum seeking and trafficked children in Northern Ireland be made publicly available (7.3.1 & 7.3.2).
- The Bill should define what constitutes persistent poverty (7.4.1).
- The NI Executive 2012 target for the elimination of severe child poverty be included in the NI provisions of the Bill (7.4.2).

4. THE NORTHERN IRELAND CONTEXT

4.1 There are approximately 100,000⁴⁸ children in Northern Ireland living in poverty with around 44,000⁴⁹ children living in severe poverty. Northern Ireland has an additional target for the elimination of severe child poverty by 2012. This is the first target of its kind in the United Kingdom. Given this commitment and the differing needs within Northern Ireland we believe the Bill should make more specific reference to Northern Ireland and the other devolved governments.

4.2 We were disappointed that there was no separate Northern Ireland consultation on the proposals within the Bill. The Northern Ireland Government has stated that it is committed to “proactively change the existing patterns of social disadvantage by using increased prosperity and economic growth to tackle ongoing poverty.”⁵⁰ Now we are facing a time of economic downturn this commitment should not be reneged upon rather it should be preserved in a Child Poverty Bill and a Child Poverty Strategy that will ensure the immediate protection for the most vulnerable and marginalised children who are living in poverty. Article 27 of the UN Convention on the Rights of the Child states that “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development” and that “State Parties . . . shall take appropriate measures to assist parents and others responsible for the child to implement this right.” The implementation of a robust Child Poverty Bill would go some way to meeting this obligation.

5. CHILD POVERTY STRATEGY

5.1 Once enacted, the legislation will place an obligation on the Northern Ireland Assembly to develop a local strategy, within 12 months from the day the Act is passed, to set out the measures it will take to meet the child poverty targets set out in the Bill.

5.2 In November 2006 the Northern Ireland Executive developed an anti-poverty strategy *Lifetime Opportunities*, but it was not agreed by the Executive until November 2008. Given that the *Lifetime Opportunities* strategy is already in place, the development of a further discrete strategy on child poverty may not be necessary or appropriate. What is needed is the inclusion of specific and costed child poverty actions and targets to ensure that this strategy meets its existing targets for the elimination of severe child poverty and the anticipated new legislative requirement to counteract child poverty in Northern Ireland. This will require capitalising on the work undertaken in the development of *Lifetime Opportunities*.

6. REPORTING AND MONITORING

6.1 The Westminster Bill has UK-wide application. We support the UK wide targets set within the Bill. These targets however should be monitored in each jurisdiction so as to provide a comprehensive picture of overall progress. Given the difference in population in each jurisdiction it would be possible for the targets set in the Bill to be met by only one jurisdiction but not met in the other jurisdictions.

6.2 We welcome the duty on the Northern Ireland Executive to place a Strategy before the Northern Ireland Assembly and the duty on the UK government to lay a UK strategy before Parliament every three years. We note, however, that the Bill only requires that annual reports on progress in each jurisdiction towards the targets in the Bill be submitted by the Westminster Government to Parliament. A mechanism for reporting to the devolved administrations as well as to Westminster on the targets in the Bill needs to be developed. This will ensure that the Northern Ireland Assembly is also held accountable for the ongoing implementation of the Bill in a transparent manner. We also believe that the annual reports need to specify how much has been spent on tackling child poverty and how many children have been lifted out of poverty as a result of the actions within the strategy.

⁴⁸ Kenway et al, *Monitoring Poverty and Social Exclusion in Northern Ireland 2006*.

⁴⁹ Magadi P and Middleton P, *Measuring Severe Child Poverty in the UK*, Save the Children, London.

⁵⁰ Programme for Government 2008–11 (2007), Northern Ireland Executive, Belfast, pg 7.

7. SPECIFIC QUESTIONS

7.1 *What is the intended effect of clause 15 of the Bill, concerning the relevance of economic and fiscal circumstances, and in particular its relationship with the duty in clause 1 to ensure the targets are met?*

7.1.1 We are pleased that the Bill does not include the initial consultation proposals that meeting the 2020 target should be subject to overall affordability, so that in adverse economic circumstances the Government could be exempt from the legal commitment to meet the target. The inclusion of clause 15 and the requirement that Government and the devolved administrations must take into account the impact of measures to tackle child poverty on the economy and on taxation, spending and borrowing can be either a positive or negative requirement.

7.1.2 Child poverty is estimated to cost the UK at least £25 billion each year, and yet the long-term improvement in the fiscal position which tackling child poverty would bring about is not mentioned here.⁵¹ We are concerned that this clause could be interpreted in such a way as to weaken the legislation and strategy development process. Alternatively this clause could be used to an advantage. By requiring Government to consider the economic circumstances it will also have to consider the positive economic impact tackling child poverty now will have on future expenditure.

7.2 *Why is there no duty to implement the child poverty strategy?*

7.2.1 We share the Committee's concerns about the distinct lack of a duty within the Bill to implement the child poverty strategy. While the Bill introduces proposals to formalise duties on local authorities in England, local authorities in Northern Ireland will not be covered by the Bill. This leaves children in Northern Ireland in a more vulnerable position, with lesser protection for their rights. The Bill should include provisions to formalise duties on public bodies in Northern Ireland or place an obligation on Northern Ireland elected representatives to consider how meeting child poverty targets can be effectively contributed to by regional agencies and local government structures.

7.3 *What is the Government doing to make sure that data is available so that all children can be measured against the targets, and in particular those, such as Gypsy or Roma children, or asylum seeking children, who are excluded from the targets but are the poorest groups which the Government ought to be specifically targeting?*

7.3.1 There are significant concerns in Northern Ireland regarding the lack of statistical information on the number of asylum seeking children residing in Northern Ireland. Law Centre (NI) has been unable to obtain statistics on asylum seekers in Northern Ireland that are broken down to include the age of dependents.⁵² It is vital for ongoing work in this area that full statistical information on the numbers of asylum seeking children in Northern Ireland and the UK as a whole are available.

7.3.2 Consideration should also be given to the number of children who are the victims of trafficking. These children are a further vulnerable group at considerable risk of exploitation and exposure to child poverty. Again, Law Centre (NI) has been unable to obtain comprehensive statistics to ascertain the exact number of trafficked children in Northern Ireland. The Bill does not refer to how the Government or devolved administrations should act to protect these very vulnerable groups of children.

7.4 *How does the Government propose to focus in particular on children living in severe and persistent poverty?*

Persistent Poverty

7.4.1 We welcome the inclusion of a measure of persistent poverty. The Bill does not define what constitutes persistent poverty and this measure should be defined as soon as is practicable. In Northern Ireland joint research by Save the Children and Queen's University Belfast shows that at 21%, persistent poverty is more than double the GB level—making it of particular importance for Northern Ireland that a target is set to eradicate persistent poverty by 2020.⁵³

Severe Poverty

7.4.2 As stated above the NI Executive has already adopted a 2012 target for the elimination of severe child poverty. This earlier target should be included in the NI provisions of the Bill. Further, consideration should be given to the inclusion of this target within the Bill for the UK as a whole. The number of children living in severe poverty has not reduced in recent years. In fact, recent research suggests that the recession will lead to an increase in severe child poverty.⁵⁴ In their most recent Concluding Observations, the UN Committee on the Rights of the Child recommended that the legislation and strategy for tackling child poverty should focus attention on those living in the most severe poverty.⁵⁵ Further, the Work and Pensions

⁵¹ Save the Children, *Briefing Paper—The Child Poverty Bill*, June 2009.

⁵² Home Office, *Control of Immigration: Quarterly Statistical Summary, UK, Jan to March 2009* at <http://www.homeoffice.gov.uk/rds/pdfs09/imm1q109.pdf>. Correct as of 26/08/09. This confirms that in Northern Ireland in the first quarter of 2009 there were 20 asylum seekers in receipt of subsistence only support including dependents.

⁵³ Monteith M, Lloyd K and McKee P, *Persistent Child Poverty in Northern Ireland*, Save the Children & ARK, 2008.

⁵⁴ JRF (2009) *Ending child poverty in a changing economy*.

⁵⁵ See <http://www2.ohchr.org/english/bodies/crc/> Correct as of 26/08/09.

Select Committee recommended the creation of an “explicit indicator” to measure progress on severe and persistent poverty in its enquiry on child poverty.⁵⁶ It is vital to have a strong focus on severe and persistent poverty to ensure that the most disadvantaged are not left behind.

8. CONCLUSION

8.1 Law Centre (NI) welcomes the opportunity to provide evidence to the Committee. We trust you will find our comments helpful. If there is any further way in which we could contribute to this process we would welcome the opportunity to do so.

September 2009

Memorandum submitted by the National Children’s Bureau

1. GENERAL COMMENTS

NCB welcomes the introduction of legislation that provides the framework for government, both local and national, to work towards the eradication of child poverty in the UK by 2020. We also support the Bill’s overall compatibility with human rights obligations, in particular the child’s right to an adequate standard of living under Article 27 of the UN Convention on the Rights of the Child (UNCRC) and Article 11 of the International Covenant on Economic, Social and Cultural Rights. However, we have a number of concerns about the Bill’s alignment with human rights principles.

2. DEFINING “ERADICATION”

We would question whether the Bill’s definition of the eradication of child poverty is fully in accordance with the Articles cited above. Clause 2 (the relative low income target) defines eradication as less than 10% of children living in poverty.⁽ⁱ⁾ Even if this ambitious target is achieved, it could still leave one in 10 children in poverty, seriously undermining their right to a standard of living adequate for their physical and social development. The government upholds that a zero target is not achievable in practice. Therefore, NCB and its ECP partners are calling for the target threshold to be no higher than 5% as this is the lowest that has been achieved in Europe.⁽ⁱⁱ⁾

3. “ECONOMIC AND FISCAL CIRCUMSTANCES”

NCB and its ECP partners also have concerns around the intended consequences of clause 15, that requires economic and fiscal circumstances to be taken into account when preparing the strategy. There is a risk that unfavourable economic and fiscal circumstances could be used as a legally acceptable justification for not meeting the targets by 2020, and that the fiscal benefits of tackling child poverty will not sufficiently be taken into account. Article 27 of the UNCRC asserts that all children have the right to an adequate standard of living and this is not tempered by considerations of the impact this could have on the economy. This right should be realised regardless of economic and fiscal circumstances.

4. LIMITATIONS OF THE DATA USED

The Households Below Average Income (HBAI) survey, from which child poverty data is taken, defines “child” as a person under the age of 16, or a 16–19 year-old who is unmarried, living with parents and in full-time non-advanced education or unwaged government training.⁽ⁱⁱⁱ⁾ So, in addition to Gypsy and Roma children and asylum seeking children, the measure of child poverty could exclude looked after children in residential childcare, care leavers in supported housing, and 16–17 year-olds living away from their parents or those not in education, employment or training. These particularly vulnerable groups must be included in the data collection to ensure that the target is a comprehensive mechanism for realising the right of all children to have an adequate standard of living.

5. DEFINITION OF “CHILD”

Like the HBAI, clause 25 defines “child” as a person under the age of 16 or qualifying for child benefit. This could exclude 16–17 year-olds not in education, employment or training (NEET) or those living apart from their families from benefiting from provisions in the Bill to measure and tackle child poverty. This contravenes Article 1 of the UNCRC that defines a child as “every human being below the age of 18 years”, and thereby also disregards Article 27. This omission is of particular concern as these 16–17 year-olds may be at a higher risk of experiencing financial hardship as they are only eligible for limited benefits and have a lower national minimum wage.^(iv) To ensure compatibility with human rights obligations, the definition of “child” in the Bill must be extended to include all 16–17 year olds.

⁵⁶ Work and Pensions Committee, *The best start in life? Alleviating deprivation, improving social mobility, and eradicating child poverty, 2008*.

At <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmworpen/42/4202.htm> Correct as of 26/08/09.

6. VULNERABLE GROUPS

The Bill does not include any requirement for specific approaches in the UK strategies to target groups vulnerable to living in poverty. This is vital for ensuring these children and young people do not fall into the “acceptable” 10% still living in poverty in 2020. For example, families with disabled children are at greater risk of living in poverty than the average household (26% risk, compared to 20% in 2007–08).^(v) Article 23 of the UNCRC states that every disabled child “should enjoy a full and decent life”. Looked after children are similarly vulnerable to living in low income households, with 75% of UK foster carers earning less than the minimum wage from fostering, and 88% not working full-time outside the home.^(vi) Under Article 20 of the UNCRC, children who are temporarily or permanently deprived of the “family environment” are entitled to special protection and assistance from the state. For *all* children to have the right to an adequate standard of living, and to ensure compliance with Articles 23 and 20, additional support and resources have to be directed at the most vulnerable.

7. CONSULTATION

NCB welcomes the inclusion in the Bill of provisions requiring consultation with children and young people in the development of the UK and local strategies (clauses 9(4), 12(3), 22(6)). However, the omission of consultation with parents and carers is a concern. Article 27 of the UNCRC states that parents (or others carers) are primarily responsible for securing “the conditions of living necessary for the child’s development”. It also requires States Parties to take appropriate measures to assist parents to secure an adequate standard of living for their child. It is therefore vital that parents and carers are given a voice to identify the support, resources and services they consider most important in aiding them to fulfil these responsibilities.

8. THE “BUILDING BLOCKS”

NCB is concerned that the “building blocks” (Clause 8 (5)) that will inform the development of the UK strategy do not take account of some significant services that would help to tackle and mitigate the effects of child poverty.

- Poverty has a significant impact on children and young people’s opportunities for play and recreation, as 24% of children in the poorest fifth of households (compared to 4% in the richest fifth) do not have outdoor space or facilities to play.^(vii) The government’s strategy for positive activities^(viii) recognised the beneficial impact of positive recreational pursuits on young people’s resilience and outcomes. Article 31 of the UNCRC affords children the right to engage in play and recreational activities and says that States Parties should encourage the provision of opportunities for these leisure activities.
- The delivery of integrated early childhood services can have a range of positive impacts on disadvantaged families. For example, the evaluation of Sure Start Local Programmes (now Sure Start Children’s Centres) has shown a number of improvements including positive parenting and better social development among young children.^(ix) Under Article 18 of the UNCRC, States Parties are expected to secure institutions, facilities and services for the care of children. Although the provision of affordable childcare may be considered under clause 8(5)(a) (“promotion and facilitation of the employment of parents”), there needs to be further provision in the Bill for considering a wider range of early childhood services.
- The barriers to using public transport that all children and young people face can be accentuated for those living in poverty, and this lack of independent mobility can in turn reinforce their social exclusion.^(x) Travel and transport provision facilitates access to a range of services, including education, health care, advice and information and cultural and recreational activities, services to which children are entitled under the UNCRC (Articles 24, 28, 17 and 31). Thus, transport measures should be considered to ensure a coherent, integrated and effective strategy.

REFERENCES

- ⁽ⁱ⁾ Children living in households with incomes below 60% of the national median income, before housing costs, Clause 2.
- ⁽ⁱⁱ⁾ Denmark, Sweden, Norway and Finland, UNICEF (2007) *Child poverty in perspective: An overview of child well-being in rich countries* <http://www.unicef.org/media/files/ChildPovertyReport.pdf>
- ⁽ⁱⁱⁱ⁾ DWP (2009) *Households Below Average Income An analysis of the income distribution 1994–95 to 2007–08*.
- ^(iv) £3.53 per hour for workers aged 16–17, compared to £4.77 for 18–21s and £5.73 for persons aged 22 and over.
- ^(v) Department for Work and Pensions (2009), *Households Below Average Income Survey 1994–95 to 2007–08*.
- ^(vi) Swain V (2007) *Can’t Afford to Foster: a survey of fee payments to foster carers in the UK* The Fostering Network.

- (vii) Department for Work and Pensions (2009), *Households Below Average Income Survey 1994–95 to 2007–08*.
- (viii) HM Government (2007) *Aiming high for young people: a 10 year strategy for positive activities*.
- (ix) The National Evaluation of Sure Start Research Team (2008) *The Impact of Sure Start Local Programmes on Three Year Olds and Their Families*.
- (x) Social Exclusion Unit (2003) *Making the Connections: Final report on transport and social exclusion*.
September 2009

Memorandum submitted by the Refugee Children’s Consortium

Members of the Refugee Children’s Consortium work collaboratively to ensure that the rights and needs of refugee children are promoted, respected and met in accordance with the relevant domestic, regional and international standards.

The Refugee Children’s Consortium shares concerns expressed by Members of Parliament at Second Reading,⁵⁷ and highlighted by the Committee in its Press Notice,⁵⁸ that the Child Poverty Bill is inadequate for the task of eradicating child poverty because its provisions, as currently designed and drafted, fail to equally and fully address the socio-economic circumstances of all children in the United Kingdom. In particular, we are concerned to highlight the circumstances of separated children, and children in families, seeking asylum.

In this submission, we briefly highlight:

- specific inadequacies in the Bill’s provisions;
- incompatibilities with international human rights standards; and
- poverty and deprivation facing children seeking asylum in the United Kingdom.

INADEQUACIES IN THE BILL

The targets relating to child poverty set out at clauses 2 to 5 constitute the cornerstone of the Bill’s provisions. Critical to the meaning and effect of these targets will be the regulations, under clause 6, defining which children and which households will count for the purposes of these targets. The Explanatory Notes indicate that the regulations will provide that the relevant definitions will essentially adopt the coverage of specified statistical surveys;⁵⁹ and confirm the greater prospect of certain groups being excluded,⁶⁰ as feared by Members of Parliament.

The UK, Scottish and Northern Ireland strategies⁶¹ are to address two purposes. Firstly, these must address the targets. Secondly, these must set out measures for:

“... ensuring as far as possible that children in [the respective geographical areas] do not experience socio-economic disadvantage.”

Clause 15 requires that economic and fiscal circumstances must be taken into account when setting the strategies. At Second Reading, the Financial Secretary to the Treasury sought to quell concerns that clause 15 may interfere with the aim of eradicating child poverty by tempering the reach and ambition of the strategies. He did so by emphasising the absolute nature of the duty to meet the targets.⁶² However, this is of no comfort in respect of groups who may be excluded from those targets. Poverty among those groups would only be addressed by the second limb of the strategies, and the reach and ambition of that limb could be put at risk by clause 15 because it is made contingent by the term “as far as possible”.

The Committee asks whether the duty to consult in clause 9 could be strengthened. If the targets do not apply fully and equally to all children, it is all the more important that the duty is strengthened so as to ensure that the strategies may be informed by the needs and experiences of those children to whom the targets do not apply. Clause 9, and indeed clause 22, should be strengthened by requiring consultation with children and organisational representatives of specified groups of children, including such children as will or are likely to be underrepresented or not represented within the targets such as separated children, and children in families, seeking asylum.

Part 2 of the Bill provides for co-operation of local authorities and partner agencies to reduce child poverty. Clause 19(2) is inadequate by reason of the omission of the UK Border Agency from the list of partner agencies with whom local authorities must work to reduce child poverty. The jurisdiction of the UK Border Agency extends throughout the United Kingdom, and it has an immediate impact upon the socio-economic experiences of children by reason of its responsibilities in providing for financial support and

⁵⁷ *Hansard* HC, 20 July 2009: Columns 628 (Sally Keeble MP), 642 (Julie Morgan MP) and 662–3 (Steve Drew MP).

⁵⁸ Press Notice No 56 calling for evidence on the Bill.

⁵⁹ Paragraphs 17 and 18.

⁶⁰ Paragraph 137.

⁶¹ Clauses 8, 10 and 11 respectively.

⁶² *Hansard* HC, 20 July 2009: Column 678 (Stephen Timms MP).

accommodation to families seeking asylum, providing financial support to local authorities supporting separated children seeking asylum and in handling and deciding upon the immigration status of asylum-seekers.

INTERNATIONAL HUMAN RIGHTS STANDARDS

The Explanatory Notes acknowledge the potential for discrimination within the provisions of the Bill, in particular in respect of the targets.⁶³ The Government does not consider there to be any incompatibility with Article 14 of the European Convention on Human Rights because that non-discrimination article does not stand alone. It requires that the other rights and freedoms set out in the Convention are to “be secured without discrimination”, and the “Government considers that the link to Article 8 and Article 1 of Protocol 1 is too tenuous [and the] high level nature of its provisions means that nothing in the Bill directly affects the rights of individuals . . .”.⁶⁴

The Government does not suggest that poverty and deprivation do not engage children’s rights to respect for their private and family life⁶⁵ and the peaceful enjoyment of their possessions.⁶⁶ Moreover, these conditions may also engage children’s rights not to be subjected to degrading or inhuman treatment.⁶⁷

We question whether the Government’s analysis is correct. The Bill sets out to achieve the eradication of poverty and deprivation of all children in the United Kingdom, and through targets, duties, strategies and inter-agency co-operation requires specific measures toward that goal. If specific groups of children, such as those seeking asylum, are excluded, largely or completely, from these measures, it is foreseeable that this will have the direct effect of prolonging their socio-economic disadvantage, poverty and deprivation.

The UN Committee on the Rights of the Child recommended that the United Kingdom “adopt comprehensive plans of action for the implementation of the Convention”.⁶⁸ The Explanatory Notes⁶⁹ indicate the Government’s intention that the Bill should contribute to the realisation of Article 6 of the UN Convention.⁷⁰ The UN Committee also recommended that such plans “should pay special attention to children belonging to the most vulnerable groups”,⁷¹ and highlighted “asylum-seeking and refugee children” as among those groups it considered to be particularly vulnerable.⁷² For the reasons explained above, we are concerned that the measures to be adopted by the Bill do not pay special attention to the most vulnerable, including children seeking asylum; and indeed may achieve the reverse by excluding, whether in part or in full, such children from the key measures whereby child poverty and deprivation is to be monitored and measured.

We are surprised to note that the Explanatory Notes do not make reference to either Article 26⁷³ or Article 27⁷⁴ of the UN Convention, particularly given the reference to the UN Committee’s welcoming of “the Government’s commitment to end child poverty by 2020”,⁷⁵ which is an express reference to paragraphs 64 and 65 of the UN Committee’s report, which in turn constitute the UN Committee’s consideration of those articles. We recall Article 2 of the UN Convention that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination”. Children seeking asylum do not receive equal access to social security or recognition of their right to an adequate standard of living in that they and their families are expressly excluded from mainstream welfare,⁷⁶ and are provided support at reduced levels⁷⁷ which may, in certain circumstances, be withdrawn despite the inability of the family to support itself.⁷⁸ In the circumstances, it is all the more striking that this group of children may be wholly or partially excluded from the Bill’s cornerstone provisions for monitoring and measuring poverty.

Similar observations may be made in respect of Articles 2(1), 2(2) and 11 of the 1966 UN International Covenant on Economic, Social and Cultural Rights; and the Joint Committee may also wish to consider rights which further relate to poverty and deprivation such as those in respect: Articles 23 and 24 of the UN Convention and Article 12 of the International Covenant.

⁶³ Paragraph 137.

⁶⁴ Paragraphs 138–9, Explanatory Notes.

⁶⁵ Article 8.

⁶⁶ Article 1 of Protocol 1.

⁶⁷ Article 3 (and see *R (Limbuella & Ors) v Secretary of State for the Home Department* [2005] UKHL 56).

⁶⁸ UN Committee on the Rights of the Child: Concluding observations on United Kingdom and Northern Ireland, Forty-ninth Session, 20 October 2008, paragraph 15.

⁶⁹ Paragraphs 147–8.

⁷⁰ UN Convention on the Rights of the Child—in particular Article 6.2, that “*State Parties shall ensure to the maximum extent possible the survival and development of the child.*”

⁷¹ Paragraph 15 *op cit.*

⁷² Paragraph 25(b) *op cit.*

⁷³ The right to benefit from social security.

⁷⁴ The right to an adequate standard of living.

⁷⁵ Paragraph 147, Explanatory Notes.

⁷⁶ Eg Schedule 3, Nationality, Immigration and Asylum Act 2002; and section 115, Immigration and Asylum Act 1999.

⁷⁷ Under sections 4 and 95, Immigration and Asylum Act 1999.

⁷⁸ Section 9, Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

POVERTY AND DEPRIVATION FACING CHILDREN SEEKING ASYLUM

Several members of the Refugee Children's Consortium have previously highlighted poverty and deprivation facing children seeking asylum in evidence to the Joint Committee for its report on *The Treatment of Asylum Seekers*.⁷⁹ Barnardo's and The Children's Society, both of whom are members of the Consortium, published reports revealing shameful and shocking examples of poverty affecting children seeking asylum in the UK in 2008.⁸⁰ These revealed examples of children seeking asylum who were living in appalling conditions or homeless, and examples of children and their families who were not receiving welfare support to which they were entitled. More Token Gestures (2008), the Refugee Council's report into the experiences of people living on vouchers⁸¹ because of barriers to their removal, revealed concerns about the lack of adequate diet for children leading to poor development.

The legal and policy position has not changed since the publication of these reports. More recent reports, while not focusing exclusively on the situation of children seeking asylum, reveal that the socio-economic situation of this group of children has also not improved.⁸² We are happy to provide case examples to illustrate some of the issues highlighted within this submission.

CONCLUSION

The inadequacies in this Bill, which are highlighted in this submission, are profound. They raise significant questions of compatibility with the United Kingdom's international human rights obligations, and a substantial body of research into destitution in the asylum system reveals that children in that system are suffering profoundly from poverty and deprivation. Fundamental improvements to the Bill are, therefore, necessary to ensure that it fully addresses poverty among children and families seeking asylum, including:

- revisiting the intended application of the targets;
- specifically requiring consultation with children seeking asylum and organisations representing this group of children; and
- adding the UK Border Agency to the list of partner agencies with whom local authorities are to co-operating in reducing child poverty.

September 2009

Memorandum submitted by The Salvation Army

The Salvation Army welcomes the Joint Committee on Human Rights desire to encourage more input from civil society into its legislative scrutiny work.

As a Christian Church and registered charity, The Salvation Army in the United Kingdom and Republic of Ireland experiences the realities of child poverty both at community level through our churches and through our social service centres which provide accommodation and support for those who are homeless and in need.

The Salvation Army welcomes the introduction of The Child Poverty Bill and the recognition it offers to enshrine in law the Government's commitment to eradicating child poverty by 2020.

The key goals of the Bill include:

- Enshrining in law the Government's commitment to eradicate child poverty by 2020.
- Reducing the proportion of children who are poor compared to the rest of society.
- Ensuring that no child experiences poverty for long periods of time. Families can often cope with a temporary period when their incomes fall, but research shows that long periods of poverty have a damaging effect on a child's life chances.
- Measuring whether the poorest families see their real incomes increase over time to ensure that no family lives in absolute poverty.
- Improving living standards to ensure that all families are able to afford the necessities that others may take for granted, such as adequate housing or a space to play or study.

⁷⁹ Tenth Report of Session 2006–07, HL Paper 81 HC 60.

⁸⁰ Barnardo's *Like any other child: Children and families in the asylum system*, January 2008; and The Children's Society *living on the edge of despair: destitution amongst asylum seeking and refugee children*, February 2008.

⁸¹ "More Token Gestures": A Refugee Council report into the use of vouchers for asylum seekers claiming Section 4 support [October 2008].

⁸² Various reports are available on the website of the Still Human Still Here campaign, including Global Health Advocacy Project *Four years later: Charging vulnerable migrants for NHS primary medical services*, June 2009; Leicester Refugees and Asylum Seekers Voluntary Sector Forum *Destitution in the asylum system*, June 2009; The Asylum Support Partnership *Second Destitution Tally*, May 2009; and Refugee Survival Trust and The British Red Cross *Destitution and the Asylum System: 21 days later*, January 2009.

- Establishing an accountability framework to drive progress at national and local level through requiring the Government to publish a child poverty strategy every three years until 2020, setting out the steps it will take to end child poverty. The Bill would also ensure that the Government is held to account by Parliament and the public for progress made, through an annual report.
- Creating a commission of experts in the field of child poverty to provide advice to the Government to inform the child poverty strategy.

While The Salvation Army supports the aims of the Bill, we are concerned that previous targets in this area have not been met. In the second reading of the Bill, on 20 July, Sammy Wilson MP claimed that there are now 200,000 more UK children in child poverty than in 2004 and, according to the Institute for Fiscal Studies, it is likely that the UK Government's policies will lead to the target for 2010–2011 being missed by some 600,000 children. We urge the provision of adequate financial resources and cross-departmental support, paying long-term and serious attention to these challenges at a local level.

The Financial Secretary to the Treasury, Stephen Timms, MP, who is the Government minister in charge of the Bill said:

“The goal is that no child’s life prospects should be limited by an upbringing in poverty . . . it remains the case that the likelihood of poverty is twice as high in one-parent households as in two-parent households, which needs to be borne in mind as we set about tackling the problem. Too many families are still on the edge of coping. There should not be, but there are, families who cannot afford to eat properly, keep their home warm or pay for basics such as school uniform or outings, let alone buy presents for birthday parties . . .”

The Salvation Army supports the Bill’s aim to improve living standards and to ensure that all families are able to afford the necessities that others may take for granted, such as adequate housing or a space to play or study. Many of the families with whom we come into contact find themselves on the edge of coping financially, many are struggling to provide the daily necessities of living, while others require support in managing their finances and assistance in accessing support (both statutory and voluntary/faith sector) which is currently available to them.

We welcome Gary Streeter MP’s commendation of the work of faith communities and charitable organisations, saying they have a huge part to play in supporting and underpinning families and children and encouraging the Bill to further encourage their work.

Secretary of State for Work and Pensions Yvette Cooper has commented “The Bill must set clear targets to cut the number of children growing up in low-income and material deprivation”. Furthermore, The Salvation Army urges the Bill to give due consideration to the multiple causes of poverty in both single and two parent households, households where children have disabilities or where additional costs of caring and supporting families are incurred.

The Salvation Army welcomes the Bill’s commitment to creating a commission of experts in the field of child poverty to provide advice to the Government and inform the child poverty strategy. As a charity we cannot work in isolation from statutory and other service providers.

We urge the Joint Committee on Human Rights to consider the Child Poverty Bill carefully in order that the Government might to take account of all children in all circumstances and, through the Bill, give a full commitment to eliminating child poverty in the UK.

September 2009

Memorandum submitted by Save the Children

1. LEGAL ADVICE

1.1 Save the Children works to ensure that the rights of children are protected, promoted and respected in line with the UN Convention on the Rights of the Child and other international human rights instruments. The main focus of our work across the UK is tackling child poverty. Children growing up in poverty are denied their right to a decent standard of living and evidence shows that poverty has a negative impact on many other children’s rights.

1.2 In preparing this evidence, we asked Paul Bowen, a senior public law barrister at Doughty Street Chambers, to assist us in understanding the legal implications of the Child Poverty Bill. He, along with Stephen Broach and Alex Gask have produced a very thorough opinion which is attached to this evidence. We ask that the Committee direct their attention to that advice in addition to this short evidence.

2. *Is the duty to meet the targets legally enforceable, and if so, by whom?*

2.1 Save the Children UK is of the firm belief that clause 1 of the Child Poverty Bill creates a duty whereby the Secretary of State must meet the targets as laid out in clauses 2 to 5 of the Bill by the financial year beginning 1 April 2020. The duty is clearly expressed, specific and enforceable. The Government could not be clearer in expressing its legislative intention to hold itself and future administrations to the child poverty targets. Government ministers have expressed their clear intention that the duty be one which is legally enforceable.

2.2 Anyone with “sufficient interest” can be a claimant in judicial review proceedings. We direct the Committee’s attention to paragraph 97 of the legal opinion attached, but in short any NGO with an obvious interest and focus on child poverty would be able to act as a claimant in proceedings.

2.3 The question of how judicial review proceedings would be brought is more complicated. Given that there are no interim targets it will be difficult to prove that the Government is incapable of meeting the targets in advance of the 2020 deadline. Nevertheless, clause 8 of the Bill requires the Secretary of State to publish a strategy which sets out the measures that will be taken to meet the targets. If in the lead up to 2020 it is patently clear that the measures detailed in the strategy are not sufficient to meet the targets then legal proceedings could be brought in anticipation of the failure to meet the duty as laid out in clause 1. For further information on this point we direct the Committee’s attention to paragraph 38 of the advice attached.

3. *What is the intended effect of clause 15 of the Bill, concerning the relevance of economic and fiscal circumstances, and in particular its relationship with the duty in clause 1 to ensure the targets are met?*

3.1 Clause 15 requires the Secretary of State to take into account economic and fiscal circumstances and the impact of any measure on taxation, public spending and public borrowing. We direct the Committee’s attention to paragraph 74 of the advice attached to this evidence and the four options discussed there. It is our view that that the effect of clause 15 is to require the Secretary of State to consider the affordability of such measures. It does not in anyway obviate the requirement to meet the duty laid out in clause 1, merely affects the way in which that duty operates. The Secretary of State will be perfectly entitled to chose the cheapest measure, but that measure must be sufficient to meet targets in clause 1.

4. *Why is there no duty to implement the child poverty strategy?*

4.1 A duty to implement the strategy as laid out in clause 8 would make the Bill stronger, and would make it easier to bring legal challenge before the 2020 target date. *The Warm Home and Energy Conservation Act 2000* gave the Secretary of State the duty to adopt a package of measures that would eliminate fuel poverty as far as was reasonably practicable. There was also a subsequent duty to implement those measures.

4.2 The Child Poverty Bill is quite different, in that, although there is no duty to implement the strategy, there is an explicit duty to meet the targets as laid out in clauses 2 to 5. Whilst a duty to implement the strategy would assist in holding Government to account along the road to 2020, its absence does not diminish the impact of the overall duty in clause 1. We again direct the Committee’s attention to paragraph 47 of the legal opinion.

5. *What is the Government doing to make sure that data is available so that all children can be measured against the targets?*

5.1 Save the Children has grave concerns that the most vulnerable children in society will not be covered by the Child Poverty Bill as they do not live in “qualifying households”. Looked after children and asylum seekers are often those children most likely to experience poverty.

5.2 We propose that a specific duty be placed on Government to take into account how measures taken in each of the building blocks as detailed in clause 8 of the Bill will impact on these most vulnerable children. The UN Convention on the Rights of the Child is clear in its requirement that the child is protected from all forms of discrimination (article 2) and that, in respect of implementing the rights of children, governments should undertake measures to the maximum extent of their available resources (article 4).

5.3 Children who are most vulnerable and who most require protection from poverty should be at the forefront of the Government and Local Authority agenda. The Guidance that accompanies this Bill should be flexible enough to ensure that those children who are the most vulnerable and who may not fit under the “qualifying household” are still covered by the legislation.

6. *How does the Government propose to focus in particular on children living in severe and persistent poverty?*

6.1 The Child Poverty Bill states (clause 5) that a target for the elimination of persistent child poverty (children living in relative poverty for three out of four years) must be set by 2015. However there is no mention of children living in severe poverty. Save the Children defines severe poverty as households with an income of 50% of the median, and where both adults and children lack at least one basic necessity, and either adults or children or both groups lack at least two basic necessities.

6.2 The targets aim to reduce the rate of child poverty to below 10% (on the relative income measure). This would still leave a huge number of children in the UK living in poverty. Indeed recent research demonstrates that the current economic circumstances mean there will be a significant increase in the numbers of children living in severe and persistent poverty.⁸³

6.3 The Government has been urged to make those children living in the most extreme poverty their legislative priority. The UN Committee on the Rights of the Child recommended that those “in most need of support” be the focus of Government’s poverty agenda and the Work and Pensions Committee recommended the creation of an explicit indicator to measure progress on severe and persistent poverty.

7. *Could the duty to consult with children be strengthened by leaving less discretion to the Secretary of State?*

7.1 Save the Children warmly welcomes the duties on the Secretary of State, Devolved Administrations and local authorities to consult with children when preparing their child poverty strategies. Under the UN Convention on the Rights of the Child, article 12, children have the right to be consulted in matters affecting them and it is positive that the Government is recognising that right within this critical piece of legislation.

7.2 However, currently the Secretary of State, Devolved Administrations and local authorities are required to consult with children or organisations working with or representing children. This leaves them with the option of not consulting with children directly. Save the Children is proposing that the word “or” is substituted with “and” so that the Secretary of State is compelled to consult with children in the preparation of the strategy.

7.3 Save the Children also recommends families are required to be consulted as well as children that the Secretary of State, Devolved Administrations and Local Authorities must consult with those children and families who are affected by the legislation, ie those living in poverty.

8. *How does the Government propose to give effect to the guidance of the UN Committee on economic, social and cultural rights on human rights based poverty reduction strategies when drawing up a national strategy?*

8.1 Save the Children believes that in order to give effect to the United Kingdom’s international obligations, the Government should integrate the International Covenant of Economic, Social and Cultural Rights. In the last reporting session on the UK, there were several clear recommendations relating to child poverty in the UK. By making Government legally responsible for the targets to end child poverty, the UK is taking a step in the right direction in integrating a human rights approach to poverty.

8.2 Human rights demand accountability, and child poverty is the key child rights violation in the UK. Strengthening the Bill and making it a clear requirement to consult with children would increase that accountability and promote a human rights approach to child poverty.

September 2009

Memorandum submitted by UNICEF

UNICEF is present in over 190 countries helping governments to improve the lives of children by embedding the Convention on the Rights of the Child (UNCRC) in policies and practice. UNICEF UK is the UK National Committee of UNICEF.

2009 marks the 20th anniversary of the UNCRC, the most widely supported and ratified international human rights convention and the only one to include civil, political, economic, social and cultural rights. The UNCRC upholds that regardless of context and challenging circumstances children have the right to a voice, that they are by virtue of their status entitled to special protection, an identity, health, education and to live life free from burdens such as conflict and poverty.

UNICEF’s Report Card 7 ranked the UK lowest of 21 OECD countries for child wellbeing.⁸⁴ This was partly due to the UK having one of the worst rates of child poverty in the industrialised world. Action must therefore be taken on this issue in order to meet the rights of children in the UK. Furthermore, UNICEF Report Card 8, which focused on the crucial early years of a child’s life, included a benchmark measurement of child poverty, at a rate of less than 10%. In failing to meet this measure of “minimum standards for protecting the rights of children in their most vulnerable and formative years”,⁸⁵ the UK trailed behind other European nations.

UNICEF UK agrees that the Child Poverty Bill presents a vital opportunity to enhance human rights, and specifically child rights, in the UK. These are rights to health, education, protection and development as an individual. Poverty is a barrier to the realisation of these rights.

⁸³ JRF (2009) *Ending Child Poverty in a changing economy*.

⁸⁴ UNICEF Innocenti Research Centre, Florence, 2007.

⁸⁵ UNICEF Innocenti Research Centre, Florence, 2008.

However UNICEF UK believes that in its current form the Bill does not go far enough; firstly in terms of setting ambitious targets which will ensure that every UK child can access their rights and live free from the burden of poverty; and secondly, in failing to explicitly acknowledge the duty of the UK Government under Article 4 of the UNCRC to commit the “*maximum extent of their available resources*” to reduce income inequality and eradicate child poverty.⁸⁶

Additionally, as this Bill deals mainly with targets, it is vital that the strategy reaches out to the most vulnerable and excluded children.

Having ratified the UNCRC the UK Government committed itself to protecting and ensuring children’s rights by all means available to them. This means ensuring and facilitating the development of children to meet their full potential.⁸⁷ The Bill presents an opportunity to set a framework for delivering this entitlement, and ensuring that child rights realisation in the UK is not conditional on familial financial status or macro economic circumstance. In October 2008 the UN Committee on the Rights of the Child expressed concern about the high level of UK child poverty and manifest economic inequality, which have serious implications for children’s life chances and negatively impact society and the economy. The Committee’s analysis was that the Government could be doing more, through targeted financial investment, to further the rights of children in the UK; the Child Poverty Bill should therefore make explicit reference to this duty, and the Government should be scrutinised accordingly.

KEY RECOMMENDATIONS

Definition of the term “Eradicate”

Clause 2 of the Bill addresses reducing the proportion of children living in relative low income poverty and defines “eradication” as no more than 10% of children in poverty at one time. UNICEF UK is concerned that this will mean one in 10 children will remain in poverty, disadvantaged by inequality. By ratifying the UNCRC the Government has a duty to every child. The Government has previously asserted that they are committed to making the UK “the best place in the world for children to grow up”; yet they must acknowledge that this goal will not be realised until the UK is a trailblazer in setting high standards for eradicating poverty. A poverty rate of no more than 5%⁸⁸ on this measure would be needed for the UK to be in line with the best in Europe.⁸⁹ UNICEF UK therefore calls for the definition of successful eradication to be set at no more than 5% of children living in relative low income poverty.

Definition of “Child”

Article 1 of the UNCRC states that: “a child means every human being below the age of 18”.⁹⁰ UNICEF UK is therefore concerned that Clause 25 of the Bill defines “child” (for the purpose of the Bill) as persons under the age of 16 or qualifying for child benefit. UNICEF UK calls for an amendment to the Bill to ensure that the definition of “child” is, in accordance with the UNCRC, extended to include all persons under the age of 18.

Child Poverty Commission

UNICEF welcomes the plans to establish a Child Poverty Commission and the profile and opportunity for scrutiny it will bring to this issue. UNICEF UK stresses that for this Commission to be most effective it should be independent, and the membership should include those with direct experience of living in poverty.

Measuring impact

Given that every child is entitled to the same rights regardless of circumstance, UNICEF UK calls for the Bill and strategy to measure the impact of investment, policy and service provision on all children including those in vulnerable and challenging circumstances—for example those who may not be covered by data surveys on household income.

Consultation

In the consultation response to *Ending Child Poverty: Making it Happen* UNICEF UK asked that:

“the voices of children and young people be heard at local, devolved and national levels, as part of the reporting process on delivery of the 2020 vision. This will provide insight on the impact of policies on subjective perceptions of well-being”.⁹¹

UNICEF UK therefore welcomes the Bill clauses that, in line with Article 12 of the UNCRC, place a duty on developing national and local strategies to consult with children when developing a child poverty eradication strategy.

⁸⁶ The United Nations Convention on the Rights of the Child.

⁸⁷ UNCRC Articles 6, 29.

⁸⁸ ??????

⁸⁹ The Child Poverty rate is below 5% in Denmark, Finland, Norway and Sweden—OECD Family Database, 2008.

⁹⁰ The United Nations Convention on the Rights of the Child.

⁹¹ UNICEF consultation response to *Ending Child Poverty: Making it Happen*, 2009.

The child in a family context

Article 27 of the UNCRC places a duty on parents or guardians of children as having “primary responsibility to secure within their abilities and financial capacities, the conditions of living necessary for the child’s development”. In accordance with Article 42 of the UNCRC the Government should make this responsibility known to adults. This should be done whilst raising the level of public knowledge about child poverty in the UK and should be presented in such a way as to encourage and support parents to access services as entitlements, rather than stigmatise poor families. It is important to note that the mentioned clause of Article 27 is qualified in terms of the financial contribution that parents or guardians can make, not in terms of the level of support to which every child is entitled. When parents are unable to provide for their child, the child should not suffer as a result—it is essential that the State steps up to this responsibility, to listen to parents and carers, and to work alongside them to deliver positive outcomes for the child.

Article 27 goes on to say that States Parties should “take appropriate measures to assist parents and others responsible for the child to implement this right”, “to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development . . . and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.” This clearly mandates the Government to prioritise investment in children through financial support paid to parents, but also encourages spending in a more holistic way that is targeted to directly take into account the needs of the individual child. This allows for nationally and locally sensitive/responsive budgetary innovation which could include interventions such as free school meals or school uniform grants, as well as support with meeting housing, heating, caring and facilities costs. Article 27 should also be taken into account, alongside Article 4, when evaluating the impact of interventions; this should include subjective well-being reports from children living in poverty, but also take into account the views of carers and parents on the extent to which they feel they are supported and able to deliver their obligations under Article 27.

Economic and Fiscal Circumstances

In our response to the Consultation on the Child Poverty legislation UNICEF UK stressed the importance of investment even in difficult economic times, particularly in light of the fact that child poverty costs the exchequer £25 billion a year.⁹² UNICEF UK would like the Bill to reflect this.

The negative impact of income inequality affects society as a whole and the UN has called on Governments to “ensure to the greatest possible extent, that expenditures that benefit children are protected and prioritised during both short-term and long-term economic and financial crises”.⁹³

The UN Committee on the Rights of the Child recently recommended to the UK Government that: “the State party, in accordance with Article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children’s rights, with a special focus on eradicating poverty and that it reduce inequalities across all jurisdictions . . . Child rights impact assessments should be regularly conducted to evaluate how the allocation of budget is proportionate to the realization of policy developments and the implementation of legislation.”⁹⁴

Given that the UK is one of the world’s richest nations the Bill must be clear that a challenging economic climate is not an adequate reason for failing to commit adequate financial investment in children; or to renege on previous pledges. When the economic climate is at its most challenging the poorest are hit the hardest—it is therefore essential that the Government acts quickly to protect the rights of UK children and prevent them from suffering lifelong disadvantage as a result of a childhood burdened by poverty.

⁹² Joseph Rowntree Foundation 2008.

⁹³ United Nations Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session on the Geneva Assembly in 2002.

⁹⁴ Paragraph 19, The UN Committee on the Rights of the Child, Concluding Observations and Recommendations to the UK Government, October 2008.