

UK Children's Commissioners' response to the Replies of the United Kingdom of Great Britain and Northern Ireland to the List of Issues of the UN Committee on the Rights of the Child.

This briefing provides further evidence from the four UK Children's Commissioners in response to the Replies of the United Kingdom of Great Britain and Northern Ireland to the List of Issues.

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Bill of Rights

1.1 England

During the State opening of the UK Parliament in 2015, the Queen's speech¹ set out that the UK Government will bring forth proposals for a British Bill of Rights. The Conservative Party manifesto (2015)² states that the Bill of Rights is intended to replace the Human Rights Act (HRA) 'breaking the formal link between British courts and the European Court of Human Rights'.³

The Human Rights Act 1998 is the strongest mechanism by which children's rights are currently protected in UK law and it enables children to enforce some of their UNCRC rights. If diluted, it will reduce protection for vulnerable groups of children. For example:

- The HRA was instrumental in ensuring that children staying in hospital for a long period of time still receive Disability Living Allowance;⁴ in a second case it was used to overturn rules in privately run child prisons that allowed staff to use force to make children comply with instructions.⁵
- Judicial decisions under the Human Rights Act 1998 which have used Article 3 UNCRC in the interpretation of Article 8 European Convention on Human Rights (ECHR) (e.g. ZH (Tanzania) v SSHD [2011] UKSC 4, R (HH) v Westminster City Magistrates Court [2012] UKSC 25) have progressed the incorporation of Article 3 into UK law. The Human Rights Act should therefore be retained.

1.2 Northern Ireland

A commitment to ECHR incorporation and to providing access to the courts to overrule legislation which is incompatible with the ECHR⁶ is contained in the Good Friday Agreement (GFA) 1998.⁷ The UK and Irish Governments, as part of the GFA signed a legally binding international treaty, where both committed to implement the GFA obligations. NICCY believes that repeal of the Human Rights Act, which incorporated the ECHR, will violate this treaty, undermine human rights protections and potentially the Northern Ireland peace settlement.

Despite the commitment to implementation of a separate Bill of Rights for NI,⁸ the UK Government has made no progress on this. NICCY wishes to see the introduction of a NI Bill of Rights, incorporating the principles and provisions of the UNCRC.

1.3 Scotland

In Scotland, repealing the Human Rights Act 1998, and any accompanying dilution of rights, is likely to be strongly opposed. The UK Government's statement in their response to the List of Issues does not reflect the tenor of recent discussions around the HRA in Scotland, nor the constitutional implications and ramifications of such 'reform' for Scotland.⁹ For example:

¹ <https://www.gov.uk/government/speeches/queens-speech-2015>

² <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf>

³ https://www.conservatives.com/~media/files/.../human_rights.pdf

⁴ Trinity Term [2015] UKSC 47 On appeal from: [2014] EWCA Civ 286 JUDGMENT Cameron Mathieson, a deceased child (by his father Craig Mathieson) (Appellant) v Secretary of State for Work and Pensions (Respondent)

⁵ R (C) v SoS for Justice [2008] EWCA 882

⁶ The Good Friday Agreement 1998, Part 2

⁷ The Good Friday Agreement is the Northern Ireland Peace Agreement 1998

⁸ The Good Friday Agreement 1998, Strand 3; Rights, Safeguards and Equal Opportunity, Para. 4

⁹ The HRA is hard wired into the Scotland Act (1998)⁹. This means that the Scottish Government and Scottish Parliament cannot act inconsistently with the ECHR. Repealing the HRA would seriously undermine the current devolution settlement. The UK Parliament does have the power to legislate on devolved matters in Scotland, but the 'Sewel convention' states that it will do so only with the consent of the Scottish Parliament. This Convention will apply if repeal of the HRA affects devolved matters. The First Minister has stated that the Scottish Government will withhold consent to any moves to repeal the HRA and replace it with a regressive Bill of Rights.... *we will argue strongly against repeal at Westminster, and – since human rights is a devolved issue, and Convention rights are embedded into the devolution settlement - we will also argue*

- There is strong support for the HRA across the Scottish Parliament and civil society. Although the HRA is not devolved, a recent motion in the Scottish Parliament in support of the Act was passed by 100 votes to 10.¹⁰
- Scottish Ministers strongly oppose the UK Government's plans. In 2015, the First Minister stated: *'The Scottish Government values the Human Rights Act. We see it as a proportionate, pragmatic and progressive way of ensuring that the protections of the European Convention of Human Rights can be taken into account by UK courts. We see those protections as being essential to any civilised society. And they are especially important to those with least power.'*¹¹
- There would be direct and adverse consequences for the people of Scotland in 'reserved' policy areas should the HRA be repealed e.g. immigration, defence, aspects of social security, employment and privacy. This could seriously impact on the ability of some of Scotland's most vulnerable children to realise their rights.

1.4 Wales

The Government of Wales Act 2006 sets out that Welsh Ministers are prevented from making any legislation or undertaking any action that is incompatible with Human Rights Act.¹² The Welsh Government has publicly stated that they will do everything to block any regressive change to the Human Rights Act 1998. A cross party group of Labour, Liberal Democrat and Plaid Cymru AMs have backed a statement of opinion saying the National Assembly for Wales vigorously opposes any moves by the UK Government to repeal the Human Rights Act.¹³

UNCRC implementation

2.1 England

We welcome the public commitments made by Ministers to the UNCRC over the course of the last year, and to giving due consideration to the UNCRC when making policy and legislation. We are aware that limited impact assessment has been undertaken for legislation including the Welfare Reform and Work Bill 2015 and the Immigration Bill.¹⁴ We would argue however that full, children's rights impact assessments should specifically address the rights of the child in the context of the obligations in the UNCRC, and make relevant adjustments to policy proposals to minimise negative impact on children.

Since our report to the Committee last year a number of cases referring to the UNCRC and the best interests of the child have been heard or are due e.g. a recent case heard at the Court of Appeal.¹⁵ Progress is being made in some areas of policy in respect of the need to work in the best interests of the child, but frequently cases are finding that insufficient priority has been given to the best

strongly that repeal will require a legislative consent motion in the Scottish Parliament. I see no prospect whatsoever of such consent being granted'

¹⁰ Debate of 11th November 2014

¹¹ <http://news.scotland.gov.uk/Speeches-Briefings/SNAP-Human-Rights-Innovation-Forum-2040.aspx>.

¹² Unlike the UK Parliament the National Assembly for Wales has legal limits to its legislative competence. These limits include a prohibition on acting incompatibly with 'a Convention right or Community law' meaning those provisions of the ECHR under the HRA 1998 and any requirement under European Law.

¹³ <http://www.assembly.wales/en/bus-home/pages/plenaryitem.aspx?category=statements%20of%20opinion&itemid=731&c=Statements%20of%20Opinion&key%20word=human%20rights>

¹⁴ E.g. <http://www.parliament.uk/documents/impact-assessments/IA15-006E.pdf> and <http://www.parliament.uk/documents/impact-assessments/IA16-003.pdf>

¹⁵ <https://www.judiciary.gov.uk/judgments/susan-rutherford-and-others-v-secretary-of-state-for-work-pensions-and-a-v-secretary-of-state-for-work-pensions/> AND <https://www.supremecourt.uk/cases/docs/uksc-2014-0166-judgment.pdf>

interests of the child or the other obligations within the UNCRC. Without incorporation of the UNCRC into domestic law there is no legal remedy to address this.¹⁶

2.2 Northern Ireland

While recognising that the two pieces of Northern Ireland legislation mentioned in the State party response represent progress, they fall far short of incorporation of the UNCRC, or of giving full effect to the UNCRC. Although some UNCRC articles have been occasionally considered in cases affecting children in NI courts, it remains the fact that the UNCRC does not have authority in the legal system, and so there are limited remedies for breaches of children's rights.

2.3 Scotland

There has been partial realisation of the UNCRC in Scotland through the Children and Young People (Scotland) Act 2014. The 2014 Act does not place strong duties on Scottish Ministers or public bodies to systematically consider children's rights. The duty on Ministers for example is to *'keep under consideration'* steps which would or might secure better effect of the UNCRC. Furthermore, this applies only if *'they consider it appropriate to do so.'* It does little to ensure compliance or accountability. Ministers and public bodies only have to prove that they have considered steps which would or might secure better effect, rather than actually take those steps. As such, the duty is weak.

Children's Rights and Wellbeing Assessments (CRWIA) have been introduced to ensure that the impact of proposed policies and legislation on children and young people across all governmental departments are taken into account. The use of CRWIAs is welcome, although it should be noted that these are carried out on a voluntary basis, rather than being a statutory requirement. Extending the use of CRWIAs to other public bodies in Scotland would be most helpful, as would the introduction of a programme of children's rights training to ensure that these are completed consistently.

The Act also requires Ministers to promote public awareness and understanding of children's rights. Scotland's First Minister has stated that she is open to *'exploring implementing and incorporating into Scots law some of the key international human rights treaties' including the ICESCR, the UNCRPD, CEDAW and the UNCRC.*¹⁷ To date, however, there has been no firm commitment by the Scottish Government to the incorporation of the UNCRC into Scots law.

2.4 Wales

The Welsh Government must be commended for its promotion of the *Rights of Children and Young Persons (Wales) Measure 2011* and for steps taken to implement it via its administrative schemes, in-house training and support for practitioner training. However more recent opportunities to further embed 'due regard' to the UNCRC in public administration in Wales has been lost. For example:

- The Welsh Government rejected Opposition amendments tabled in the Violence against Women, Domestic Abuse and Sexual Violence Act 2015, the Well-being of Future Generations Act, and the Regulation and Inspection of Social Care Act 2015, which would have placed the duty on all providing services to children.
- The Welsh Government rejected amendments in two Bills: Social Services and Well-being (2014) and Violence Against Women, Domestic Abuse and Sexual Violence (2015), which would have abolished the defence of reasonable chastisement to charges of

¹⁶ *R(JS) v SSWP* [2015] UKSC 16

¹⁷ She further noted *'Incorporation is important, but it's also important to recognise that it isn't a perfect solution, it won't automatically mean that policy-making improves and that rights are better represented. But it does have a role to play alongside other substantive steps that we must take.'* <http://news.scotland.gov.uk/Speeches-Briefings/SNAP-Human-Rights-Innovation-Forum-2040.aspx>

common assault in Wales. Welsh Minister for Communities and Tackling Poverty said in debate on 17 November there is 'no mandate' to change the law and it is a matter for party manifestos in future.¹⁸

Additionally it has been noted across all civil society reports to the UN Committee that although there is good policy and legislation on the UNCRC in Wales, there is still a long way to go to ensure its successful implementation.

Children's Commissioners

3.1 England

As set out in our report to the Committee last year the powers of the Children's Commissioner for England has been strengthened since 2008, and now has a wider and explicitly rights-based remit.¹⁹ Additionally she is now required to report in particular on her work to promote and protect the rights of children living away from home or who are in receipt of social care (Section 2B of the Children Act 2004, as amended by Children and Families Act 2014). The Children's Commissioner for England is no longer required to consult with the Secretary of State before undertaking an inquiry. The Commissioner regularly briefs Ministers and parliamentarians on policy findings and has proposed an annual formal meeting with Parliament.

3.2 Northern Ireland

The legislation that established the Office of the Commissioner for Children and Young People in Northern Ireland (the Commissioner for Children and Young People (Northern Ireland) Order 2003) requires her to periodically review the workings of the legislation, in order to make recommendations to Government on how it should be amended. On two occasions, in 2006 and 2012, the Commissioner commissioned independent experts to conduct these reviews, including determining whether the office is Paris Principles compliant. In each case, it was found that the fact that the Office was an 'arms length body' of a Government Department did not allow it to be sufficiently independent to be considered Paris Principles compliant. Also, while the legislation appeared to provide strong powers to the Commissioner, the reports highlighted how, in practice, it restricted the use of the powers through, 'exclusion clauses' and not providing the Commissioner with 'victims status' to take forward legal cases in her own name.

The Commissioner submitted the first report to Government in 2007, but did not receive a response. Having repeatedly asked for a response, in 2012 she was advised that she should repeat the process as required in her legislation, and that the NI Executive would respond to both reports at the same time. This was duly completed and submitted in 2013, it largely reiterated the previous recommendations as well as providing more evidence to demonstrate that the legislation limited the ability of the Commissioner to use her powers to provide an effective remedy to breaches of children's rights. To date the NI Executive has not provided a formal comprehensive response to the recommendations in either reports, and has not provided a reason for this.

This is particularly disappointing as one of the recommendations was that the Office of the Commissioner for Children and Young People should move to become accountable to the Northern Ireland Assembly, rather than a government department, to meet the independence requirements of the Paris Principles. In May 2016 the 12 government departments are being restructured and reduced to nine. This was an opportunity for the Commissioner's Office to be moved under the remit of the NI Assembly, but instead it has been decided that it should move to another government

¹⁸ <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3486&language=en&assembly=4&c=Record%20of%20Proceedings&startDt=17/11/2015&endDt=17/11/2015#256999>

¹⁹ Children and Families Act 2014

department.

3.3 Scotland

In Scotland, the Children and Young People's Commissioner 'may carry out an investigation into whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people'.²⁰ This power of investigation relates to matters affecting children and young people generally or particular groups of children and young people. The Commissioner may not investigate where to do so 'would duplicate work that is properly the function of another person'. The 2014 Act will allow the Commissioner to investigate matters on behalf of individual children and young people for the first time, with some exceptions.²¹

In their last concluding observations (2008) (CO17),²² the Committee stated that the Commissioner should be 'equipped with the necessary human and financial resources to carry out their mandate in an effective and coordinated manner so that the rights of all children in all parts of the State party are safeguarded.'

The Commissioner welcomed the move to extend his powers through the 2014 Act, however, is disappointed that funding for only one additional staff member has been allocated to him in order to fulfil this duty. The concern is that, with insufficient staffing and resources, the Commissioner will not be able to provide appropriate levels of support to individual children and young people approaching the Commissioner's office, some of whom are likely to present with complex and/or urgent children's rights issues.

3.4 Wales

The Welsh Government's response regarding extending the remit of the Children's Commissioner for Wales on non-devolved matters should be progressed, but the Welsh Government's response on independence of the Children's Commissioner for Wales is inadequate: the legislation governing the Children's Commissioner for Wales remains non-compliant with the Paris Principles in that regard. Promised legislative reform in the current Assembly never materialised and there must now be a clear plan put in place towards legislative reform of the Children's Commissioner's role and remit, including but not limited to making the Commissioner accountable to the National Assembly for Wales rather than the Welsh Government. New legislation for the Commissioner should enhance her ability to achieve the principal aim of promoting and safeguarding the rights and welfare of children in Wales, by enabling her to exercise strengthened powers on all matters relating to children within her jurisdiction.²³

Age discrimination

4.1 England, Scotland, Wales

Only adults have full equal protection from unlawful discrimination. Children and young people under 18 are still excluded.

Children are protected from discrimination by the Equality Act 2010, for example, from discrimination due to disability but they are not protected in the majority of its age discrimination provisions. Therefore there is no protection from for example, discrimination in the application of

²⁰ Section 7 (1), Commissioner for Children and Young People (Scotland) Act 2003
<http://www.legislation.gov.uk/asp/2003/17/section/7>

²¹ Section 5, Children and Young People (Scotland) Act 2014. See: <http://www.legislation.gov.uk/asp/2014/8/section/5>. This section will come into force in January, 2017.

²² <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

²³ National Assembly for Wales, Children and young people Committee, Legacy Report 2016

stop and search powers, or access to mental health services. As the State party's response makes clear, neither are centrally monitored for disparities or discrimination by government through the systematic collection of administrative data. An obligation to mitigate age discrimination may address this lack of oversight. Extending provisions relating to age discrimination to under 18s would also help to ensure, for example, that teenagers are not denied access to support from children's social services.²⁴

4.2 Northern Ireland

The NI Government has stated its intention to bring forward Age Discrimination legislation (Goods, Facilities and Services) which excludes under 16s from its scope. No rationale has been provided for the proposed exclusion of under 16s and compelling evidence on the need for under 16s to be protected from age discrimination in accessing goods, facilities and services has been shared with Government. NICCY does not believe that there is any legal or practical reason for this exclusion.

Counter terrorism

5.1 England

The Committee has asked for evidence of measures to protect children, particularly Muslim children, from stigmatisation due to counter terror measures. The Channel Programme, which provides support to those vulnerable to radicalisation,²⁵ is described as 'non-stigmatising'. It would be useful to be provided with information about the Prevent duty on schools to protect children from radicalisation,²⁶ including the numbers of children it has affected, and what the outcomes and impact are. It would also be helpful to have information about programmes to tackle islamophobia or faith-based hate crime directed at children.

5.2 Northern Ireland

The NI Executive has not provided information on this.

5.3 Scotland

In Scotland, the Commissioner is concerned that there is no critical analysis of the impact of the Counter terror measures on ethnic minority groups.

5.4 Wales

The Welsh Government has taken positive measures but they should explain how they are specifically engaging with and facilitating participation of children to ensure Welsh Government are informed by the perspectives of children and not just a counter-terrorism/justice and security model, as well as what arrangements are in place to monitor and evaluate actions being taken.

Legal aid

6.1 England

The Committee has asked about measures taken to ensure access to justice in the context of cuts to legal aid, but the State party's response does not provide any details, such as public reports, of the 'close monitoring' of the impact of legal aid reforms. The commitment to a review of the legislation is welcomed, but we argue that three years from the measures coming into force is the minimum time that should pass before a review. The review should therefore be expedited and must specifically address the impact of the changes to legal aid on children, so that any negative impacts can be mitigated.

²⁴ See: <http://www.crae.org.uk/media/26392/Making-the-Case-FINAL.pdf>

²⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf

²⁶ <https://www.gov.uk/government/publications/protecting-children-from-radicalisation-the-prevent-duty>

6.2 Scotland

In Scotland, 2010 Regulations²⁷ changed the way in which children's eligibility for civil legal aid was assessed. This assessment is now based on their parents' income, rather than their own (as previously). Some children, who would have been eligible to instruct their own solicitor, are no longer able to do so. For some children, including those involved in contact disputes, particularly where there has been domestic abuse, then this can make the difference between their views being heard or not.

6.3 Northern Ireland Children

In NI, the Department of Justice is considering a second Access to Justice Review²⁸ which was commissioned to develop a strategy for a sustainable legal aid scheme. Within the 150 recommendations are a number of very worrying proposals concerning both criminal and civil proceedings.

NICCY is gravely concerned that, if the Review's recommendations are implemented, the rights and best interests of children will not be protected and their access to justice will be severely diluted. Without the availability of legal aid for appropriate legal representation, children will be denied the only practical means of enforcing their legal rights.

6.4 Wales

The Welsh Government response does not address the need to gather data on the scale and nature of the problems faced by unrepresented litigants in Wales in family proceedings. It also does not address the impact on cost and quality of private law family proceedings where no-one has legal advice and representation.

Youth Parliaments

7.1 England

As we set out in our report to the Committee last year, there are specific statutory obligations for local authorities in England to take account of the views of children in discharging their duties however, there is a focus on 'youth' participation and the participation of younger or vulnerable e.g. disabled children is lacking – within both local and national government. The Children's Commissioner for England has taken significant steps over the past few years to develop participation for children under 11 years of age and this approach should be reflected in wider practice and guidance.

7.2 Northern Ireland

The Northern Ireland Assembly had taken several years to progress plans for a Northern Ireland Youth Parliament, and it is very disappointing that they have not been realised. The UK Youth Parliament advises on issues for which the UK Government has competency, but the majority of issues affecting children in Northern Ireland come under the remit of the Northern Ireland Assembly. It is critical therefore that a Northern Ireland Youth Parliament is set up to advise on the issues facing children and young people and the impacts of decisions by the Northern Ireland Assembly without further delay.

7.3 Scotland

In Scotland, there is no children's and youth participation action plan or structure in place to facilitate meaningful participation and the involvement of young people in policy-making at all levels

²⁷ Civil Legal Aid (Scotland) Amendment Regulations 2010

²⁸ Report of the Access to Justice Part II, 2015 <https://www.dojni.gov.uk/sites/default/files/publications/doj/access-to-justice-review-part-2-report.pdf>

of government. As a result, even where policy-makers are keen to engage with children and young people (e.g. to consult on a draft policy), then the quality of that participation experience, and the information gleaned from it, can vary widely.

The Scottish Government funds the Scottish Youth Parliament on a three-yearly basis. It is funded to be the democratically elected voice of Scotland's young people (aged 14 to 25 years) and represents constituencies in all 32 local authorities throughout the country, as well as several national voluntary organisations. There is no equivalent support or structure in place to ensure the views of children under the age of 11 are captured or taken account of, although bodies such as the Children's Parliament do regularly consult with younger children.

7.4 Wales

Funky Dragon was for the first 10 years funded and described by the Welsh Government, and recognised internationally as a Children and Young People's Assembly. Now there is no such Assembly. *Young Wales* is a three year Welsh Government-funded national participative structure feeding in to Welsh Government decision-making, not a youth parliament.

The Children's Commissioner for Wales would like to see the establishment of a permanent national, independent, peer-led, democratically elected youth assembly that is enshrined in law.

Voting age

8.1 England

As we reported last year, the Commissioners believe that 16 and 17 year olds should be enabled to vote in all elections. In 2015 the UK Government overturned an amendment to the EU Referendum Act to lower the voting age to 16.

8.2 Northern Ireland

Despite the passage of a NI Assembly motion in 2012 in favour of reducing the voting age to 16 for all elections and referendums, there has been no progress on this since then. There is a lack of clarity over where the legislative competence for this matter lies: the NI Executive has stated that this lies with the UK Government, while the State party's report on the List of Issues states that the devolved institutions have legislative competence to set the voting age at a local level.

8.3 Scotland

The 2014 Scottish independence referendum was the first time at which 16 and 17 yr olds were able to vote in Scotland. The franchise was subsequently extended to 16 and 17 year olds for local and Scottish Parliament elections.²⁹ However, 16 and 17 year olds in Scotland cannot participate in Westminster or European elections.

8.4 Wales

10, 375 young people participated in a consultation in 2015 by the National Assembly for Wales with 53% young people responding that they wanted 16 and 17 year olds to have the right to vote.

"I believe this report gives me a clear mandate to inform Assembly Members that when they vote on this issue in time for the 2021 election, that it is the will of the young people of Wales to extend the voting franchise to 16 year olds" (Presiding Officer, National Assembly for Wales).³⁰

²⁹ The Scottish Elections (Reduction of Voting Age) Act 2015.

³⁰ National Assembly for Wales (2015) Should the voting age be lowered to 16, summary of responses to the Presiding Officers 'Vote @ 16?' consultation for 11- 25 year olds. <http://www.yourassembly.org/wp-content/uploads/2015/07/Vote%4016-REPORT-E-small.pdf>

The Draft Wales Bill, currently the subject of consultation from the Secretary of State for Wales, proposes to transfer responsibility to the National Assembly for Wales of legislative competence in relation to the franchise in Local Government and Assembly elections. This would enable the National Assembly for Wales to introduce voting for 16 and 17 year olds.

Corporal punishment

9.1 England

The UK Government has consistently stated that they have no intention of repealing Section 58 of the Children Act 2004.³¹

9.2 Northern

NICCY is deeply concerned that the Northern Ireland Government has failed to bring forward legislation to remove all legal defences for the physical punishment of children in the family environment.

9.3 Scotland

The Scottish Government has pledged to keep all legislation³² designed to protect children from violence under review. However, in relation to corporal punishment, there has been no firm commitment to legislative change.

9.4 Wales

Despite previous commitments in principle to legislate for children to be provided with equal protection from harm, CCfW is extremely disappointed that the Welsh Government has failed to introduce such a measure.

Restraint

10.1 England

Within the children's custodial estate in England and Wales, restraint is not, as the UK State party response states, prohibited unless children 'are putting the safety of themselves or others at risk.' It is also permitted where 'action needs to be taken to prevent injury or serious damage to... property.'³³ And in Young Offender Institutions (YOIs) it is permitted for 'good order and discipline.'³⁴

Minimising and Managing Physical Restraint has been introduced, but full roll-out has been delayed until summer 2016. Assessment so far has concluded:

- Restraint continues to be used where it could be avoided by de-escalation
- Non-approved restraint holds are still used
- Many children report that restraint is distressing and painful
- Effective monitoring is compromised by poor local governance.³⁵

³¹ Section 58 in England and Wales provides a 'reasonable punishment' defence to parents, grandparents, nannies, babysitters etc. to a charge of common assault/battery.

³² Physical punishment is still allowed in the home in Scotland. Section 51 of the Criminal Justice (Scotland) Act 2003 prohibits adults from delivering blows to the head and using an implement to punish children. However, the Act also provides for the defence of 'justifiable assault' to a charge of assaulting a child. As such, children and young people in Scotland do not have the same protection from violence as adults.

³³ Ministry of Justice (2012) *Minimising and Managing Physical Restraint 2012 Volume 5: Physical Restraint*. London: Ministry of Justice

³⁴ <http://webarchive.nationalarchives.gov.uk/20140715125548/http://www.justice.gov.uk/downloads/youth-justice/custody/mmpr/use-restraint-policy-framework.pdf>
http://www.legislation.gov.uk/ukxi/2000/3371/pdfs/ukxi_20003371_en.pdf

³⁵ HM Inspectorate of Prisons (2015) *Behaviour management and restraint of children in custody: a review of the early implementation of MMPR*. London: HM Inspectorate of Probation

There has been a significant rise in the per capita use of restraint, from 17.6 per 100 children in 2010 to 28.2 in 2015.³⁶ Undercover footage in a BBC documentary in January 2016 also showed serious assaults by staff on children at Medway Secure Training Centre and failure on the part of staff and management to appropriately record and monitor use of restraint.

In mental health and learning disability settings, it is critical that there is clear statutory guidance on safe and appropriate use of restraint on children – including use of prone restraint and medical ‘restraints’, sufficient staff training, and the requirement for the full recording and monitoring of incidents of restraint.

10.2 Northern Ireland

Information on the use of restraint in all settings in NI is very difficult to access. NICCY is aware of and concerned about a number of isolated incidents where restraint has been used on children but information on the use of restraint more widely in NI has not been published. There remains an urgent need for a review of the use of restraint and the collation and publication of disaggregated data on the use of restraint in education, custody, mental health, welfare and immigration settings in NI. The NI Government should ensure that this information is routinely gathered and that mechanisms to monitor and review the use of restraint, including in non-statutory settings, are in place.³⁷

10.3 Scotland

In Scotland, restraint and seclusion in schools for children with disabilities continues to be of concern, where restraint is not always used as a measure of last resort. Young, disabled (and often non-verbal) children are being restrained in schools and some of these restraints have resulted in injuries. The use of restraint with this group of children and young people is not adequately monitored. The practice of disabled children being isolated (secluded) in ‘safe spaces’ or ‘chill out rooms’ is also of concern as the use of such rooms is not closely regulated and children can be put there as a result of behaviour linked to their disability.

In Scotland, there is guidance and training for staff in education, custody, mental health and care settings on restraint. Guidance for residential care staff was revised in 2013. A self-evaluation document, ‘How Good is Our School 4’, has a stronger focus on safeguarding and wellbeing and will be used in school inspections in Scotland from August 2016.

The use of Positive Behaviour Support (PBS) in some schools and services for children with learning disabilities, as an alternative to restraint and seclusion, is welcome and should be extended to all schools working with children and young people with learning disabilities. Staff training in de-escalation techniques and children's rights would also be helpful.

10.4 Wales

The Welsh Government response is inadequate: there is insufficient data collection on the issue of restraints.

Children in care

11.1 England

³⁶ Ministry of Justice / Youth Justice Board (2016) *Youth Justice Annual Statistics 2014-2015. Supplementary tables*. London: Ministry of Justice

³⁷ The Regulation and Quality Improvement Authority have been commissioned by DHSSPS, to assess the current arrangements for restraint and seclusion throughout the health and social care trusts. To be completed 2016-17. http://rqia.org.uk/publications/corporate_documents.cfm last accessed 23.03.16

It is not acceptable that 90% of children in care were moved up to two times last year – this is around 60,000 children.

The impact of frequent placement moves is significant for the child – it makes access to education vulnerable and contributes to frequent changes of social worker. We call for this to be addressed as a matter of urgency. From our evidence, adequate recruitment, support and training of foster carers is essential as well as investment in security of placement. We note the £36m investment reported was for the period 2011-5, and would seek assurances that further investment will address the poor stability figures cited for 2014-15 and beyond.

Frequent changes of social workers for the child are a problem – this is caused by high staff turnover and a reliance on agency staff. Children report that this is distressing and disruptive and means that their voice is not always heard in care planning. Consistency of social worker is an essential part of an effective care package.

We would additionally argue that better resources are required to meet the needs of children ‘on the edge’ of the Care System, or who are deemed to be ‘in need.’ Good, joined-up and preventative services need to be in place to ensure where possible a child is not taken into care and they get the best support available.

We support the ‘Staying Put’ initiative (see Part II) enabling care leavers to stay with foster carers until they are 21 years old; however, we would argue for extended support for all care leavers, including those who are living in residential settings, such as children’s homes, which could be through support hubs or networks.

11.2 Northern Ireland

The legal framework for looked after children is in urgent need of modernisation.³⁸ It does not meet the principles of international human right requirements, including the UNCRC. A lack of progress in taking forward the ‘Adoption and Children’s Bill’³⁹ has delayed the introduction of provisions which would provide better services for children going through the adoption process. The introduction of a principle of no delay and court timetabling would reduce the delay for young people unable to live at home and a special guardianship order would provide opportunities for older children to benefit from permanence and stability.

The NI Government must address the reasons for children entering care, ensure that adequate funding and resources are provided to support the whole child care system, and ensure that state care is in the best interests of the child and considered only after prevention and early intervention measures have been tried.^{40 41} It is important to note that, in 2013-14, social services spend per head was almost a third less in NI than the UK average.⁴²

11.3 Scotland

At 31 July 2015, there were 15,404 looked after children – a decrease of 196 from 2014, the third consecutive year the numbers have decreased following a peak of 16,248 in 2012.

³⁸ A review of the Childrens (NI) Order 1995 and the introduction of an Adoption and Childrens Bill.

³⁹ Adoption and Children Bill: Departmental Briefing, DHSSPS Committee Official Report, 28 May 2014- <http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2013-2014/may-2014/adoption-and-children-bill-departmental-briefing/>

⁴⁰ The DHSSPS report that the increase in children in care may be due to factors such as low employment, poverty and a reduction in support systems- Children’s Social Care Statistics for NI, 2014-15, DHSSPS, 15 October 2015, p.33

⁴¹ There has been a growth in the number of unallocated cases across family support / children’s disability sectors i.e. at 31st March 2015 there was 399 unallocated cases in contrast to 354 at 31 March 2012. Financial constraints on family and childcare services have contributed to this. HSCB, Childrens Service Improvement Board Paper, March 2016

⁴² Annex C- UK Government response to Q1, p.4 (Spend per Head NI- £501, UK Av.-£761).

In Scotland, the Children and Young People (Scotland) Act 2014 has increased the age of leaving care to 21; expanded the support offered to young people who have been in care and allowed local authorities to support young people up to 26, continuing care beyond a formal placement. Key public bodies are now under a statutory duty to produce a Corporate Parenting Plan; setting out how they will meet the needs of looked after and care experienced children and young people over the next three years.

11.4 Wales

The Welsh Government is taking positive steps primarily under the transformation of social services through the Social Services and Well-being (Wales) Act 2014.⁴³ However they fail to answer the question why there has been an increase in numbers of children in care. CCfW urges close monitoring about reasons for fluctuations in numbers coming in to care, looking at factors including poverty and workforce issues including training on best interests, specifically ensuring due regard to the Committee's General Comment on Best Interests. Additionally there should be close monitoring of placement changes and quality of care, including seeking out and listening to children's own views.

The introduction of the 'When I am Ready' provisions under the regulations and guidance for Part 6 of the Social Services and Wellbeing (Wales) Act 2014, allows young people in foster care to extend their post 18 living arrangements to 21. However, it is regrettable that those young people who have been placed in residential care are not equally entitled to remain in their placement beyond the age of 18, thus disrupting the continuity of their care in the residential setting. Additionally the lack of additional funding for local authorities to implement this scheme is disappointing and has the potential to restrict the opportunities of young people to benefit from it.

Mental health

12.1 England

Children are not able to access the mental health services they critically need. Services for children are under funded and in need of reform. We welcome reports of new investment in child and adolescent mental health services, and the move to collect data to monitor waiting times and levels of access to some mental health services. We would wish to see detailed plans and timescales for this investment, as the Committee have requested, and a commitment to ongoing funding, clear objectives and outcomes so that services are sustained and effective.

The Children and Young People's Mental Health and Wellbeing Taskforce published detailed recommendations in March 2015.⁴⁴ It is essential that progress is measured against these recommendations, especially for lower level mental health need, and early intervention and prevention services.

We welcome the fact that the report shows a drop in the number of children detained in police custody under the Mental Health Act, and that the Policing and Crime Bill will prohibit the use of Police stations in future. We are concerned by reports of shortages of alternate places of safety, and seek assurances that sufficient investment will ensure the aspirations of this Bill are met. We wish to see detailed plans and timescales setting out how government will ensure there are appropriate places of safety for children who are detained under the Mental Health Act

12.2 Northern Ireland

⁴³ Part 6 of the Social Services and Well-being (Wales) Act, came into force in April 2016, provides a new framework for care planning, placement and case review.

⁴⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414024/Childrens_Mental_Health.pdf

The full implementation of a regional child and adolescent mental health (CAMHS) framework is needed to ensure all children and young receive a high quality integrated service that meets their need at the right time and in the right place.⁴⁵ The NI Executive must address the chronic underinvestment in CAMHS, particularly given the increasing need, complexity of conditions and lack of progress in provisions for some areas, particularly community based services. Any additional ad hoc funding from the UK national budget for CAMHS should be ringfenced for CAMHS services in Northern Ireland.

Clear mental health inequalities exist between different socio-economic groups in NI and between NI and the UK average.⁴⁶ On the basis of 2012 five-year average figures, suicide rates in NI were four times higher than England and Wales for 15–19 year olds and 17 times higher for 10–14 year olds.⁴⁷ In 2014, 18 children and young people in Northern Ireland aged up to 19 years died by suicide (including 3 children aged under 15 years). Fifteen of these deaths were of boys and young men.⁴⁸ There is also increasing awareness of the need for specialist support to address the impact of trans-generational trauma and poor mental health from the conflict.⁴⁹

There is a lack of provision of adequate specialist therapeutic services, leading to long waiting times and inequitable access of provision. Children continue to be detained in adult mental health wards, despite the establishment of inpatient CAMHS facilities. It is reported that 73 young people were admitted to adult mental health wards in 2011/12, which reduced to 15 in 2012/13 but increased to 20 in 2013/14 and has remained at that level for 2014/15.⁵⁰

There is a lack of available disaggregated data in NI with regard to CAMHS, particularly regarding budget allocation, prevalence of conditions, diagnoses, treatment and outcomes. It is important that this lack of data is addressed.⁵¹

The Mental Capacity Bill has progressed through the NI Assembly, is awaiting Royal Assent and is expected to become law in 2017. The Bill covers both health and criminal justice and the health provisions only apply to those aged over 16 due to the Government's belief that the test for capacity in the Mental Capacity Bill cannot be applied to children in the same way as adults. The current mental health legislation in NI, the Mental Health (Northern Ireland) Order 1986, will remain in place with some amendments for under 16s despite a comprehensive review of mental health and learning disability in NI finding that it is not fit for purpose and in places is not compliant with the ECHR. Under 16s will therefore be unable to access the protections and safeguards contained in the new Mental Capacity Bill due to their age. These include vital deprivation of liberty safeguards. Under the Mental Capacity Bill it will be necessary to assess an individual's capacity and only once a

⁴⁵ RQIA (2011) Independent Review of Child and Adolescent Mental Health Services in NI, http://www.rqia.org.uk/publications/rqia_reviews/rqia_reviews_2010.cfm

⁴⁶ A repeat survey shows no improvement between 2010 and 2015 in self reported wellbeing of a cohort of 16 yr olds- 26% reported experiencing serious personal, emotional, behavioural or mental health problems in the last year. This figure increases to 43% when the 16 year olds are from disadvantaged backgrounds

Schubotz, D. (2010) The mental and emotional health of 16-year olds in Northern Ireland: Evidence from the Young Life and Times survey, Patient and Client Council, www.ark.ac.uk/ylt/results/PCC_YLT_mental_health_report.pdf

⁴⁷ Safeguarding Board for Northern Ireland (2014) Annual Report for the period to 31 March 2014, Belfast: SBNI.

⁴⁸ NISRA (2015) Numbers of Deaths from Suicide Registered in Northern Ireland by Sex and Age 1970-2014, accessed 12.02.16

⁴⁹ CVS (2015) Towards a Better Future: The Trans-generational impact of the troubles on mental health , <http://www.cvsni.org/index.php/policy-and-research/publications>

⁵⁰ Rees, D., York, A., and McDougall, T (2014) Child and Adolescent Mental Health: A Review of Beechcroft and the acute child and adolescent mental health care pathway. HSCB, PHA and BHSC

⁵¹ Mental Health Foundation (2016) Mental Health in Northern Ireland: Fundamental Facts- <https://www.mentalhealth.org.uk/publication-download/mental-health-northern-ireland-fundamental-facts> (last accessed 22.03.16)

lack of capacity has been established will it be possible to apply the test for formal detention in hospital. Under the Mental Health (Northern Ireland) Order 1986, there is no requirement to establish a lack of capacity before applying the formal detention test.

12.3 Scotland

Mental health is not given the same priority as physical health - there is an urgent need to expand CAMHS provision in Scotland. Children with mental health needs continue to be cared for in non-specialist or adult settings and there are difficulties in recruiting such specialists (i.e. in child and adolescent psychiatry). Existing specialist CAMHS are often provided in poor quality, crowded and inappropriate premises. Many young people regard these as stigmatising.

There are inequities in the provision of maternal mental health in Scotland. Most women have access to specialised mother and baby units (and receive in-patient care where their babies with them), but few can access specialised community services. There needs to be support and intervention for families at the earliest stage of life i.e. to improve the mental health of mothers and babies).

There is a need for specialist services to help children make the transition from CAMHS to adult mental health services; school counselling is patchy and there are particular concerns for children who commit or are at risk of committing serious crime, including those with a history of prior abuse and neglect. There is only one CAMHS Forensic team in Scotland.

During the quarter ending March 2015, over 4,200 children and young people started treatment at CAMHS services in Scotland. Of these, 85.2% were seen within 26 weeks and 78.9% were seen within 18 weeks. During the quarter ending March 2015, the 18 week HEAT target⁵² was met by eight Boards, while six did not meet it.

Measurable mental ill health is twice as prevalent in socio-economically deprived areas as in affluent areas.⁵³ The prevalence of mental ill health increases in direct proportion to the number of other problems a person has.⁵⁴ It is therefore of concern that general practices serving the most deprived 40% of the Scottish population receive less funding per capita than practices serving the most affluent 60%.⁵⁵

12.4 Wales

CCfW welcomes the NHS in Wales (with the support of Welsh Government) new investment and a more comprehensive approach in 2015 to mental health under the 'Together for Children and Young People' (T4CYP) improvement programme.⁵⁶ This programme will have to be rigorously assessed for its impact on delivery and outcomes for children and young people. It should also be noted that children and young people's access to services continues to be a major cause for concern.

⁵² Performance target agreed by the Scottish Government for NHS Scotland.

⁵³ Mossabir, R., Morris, R., Kennedy, A., Blickem, C. and Rogers, A. (2015), A scoping review to understand the effectiveness of linking schemes from healthcare providers to community resources to improve the health and well-being of people with long-term conditions. *Health & Social Care in the Community*, 23: 467–484. doi: 10.1111/hsc.12176

⁵⁴ Barnett, K., Mercer, S.W., Norbury, M., Watt, G., Wyke, S., and Guthrie, B. (2012) Epidemiology of multimorbidity and implications for health care, research, and medical education: a cross-sectional study. *Lancet*, 380 (9836).37-43. DOI: 10.1016/S0140-6736(12)60240-2

⁵⁵ McLean G, Mercer s, Watt G, Guthrie B. General practice funding underpins the persistence of the inverse care law: cross-sectional study in Scotland. *Br J Gen Pract* 2015; DOI:10.3399/bjgp15X687829

⁵⁶ Together for Children and Young People Improvement Programme launched February 2015 by NHS Wales with the support of Welsh Government. <http://www.wales.nhs.uk/documents/Newsletter%201%20August%202015.pdf>

Sexual relationships education (SRE)

13.1 England

The State party response clarifies that SRE is statutory in all maintained secondary schools but not in Academies. The introduction of the Education White Paper in March 2016 proposes that all schools will become Academies by 2022, which implies that SRE will no longer be a statutory requirement.⁵⁷ Given the importance of this subject in strengthening children's resilience to abuse, exploitation, sexting and violence within relationships, all children should have access to good quality SRE that includes healthy relationships, safety and consent, and not just reproductive information.

13.2 Northern Ireland

In NI, a 2011 evaluation of Relationship and Sexuality Education (RSE) found that almost 20% of post-primary schools did not have an RSE policy in place.⁵⁸ Research highlights a lack of education in schools in NI on LGB issues as part of RSE.⁵⁹

The recommendations regarding relationships and sexuality education and the personal development curriculum from the 2014 Independent Inquiry into Child Sexual Exploitation in NI have not been fully implemented or monitored.⁶⁰

The RSE curriculum was recently reviewed by Department of Education and a circular issued by the Department. However, it is up to each individual school to decide the content of curriculum delivered, which can lead to gaps in the information provided.

13.3 Scotland

Statutory guidance on conduct of relationships, sexual health and parenthood education was issued in December 2014 and applies across Scotland.

13.4 Wales

SRE is mandatory in the Welsh national curriculum but there is currently an inadequate prescription of content. It is hoped that under the new National Curriculum for Wales, the Health and Well-being Area of learning and experience linking with relationship and sex education will include issues such as children's resilience to abuse, exploitation, sexting and violence within relationships, all children should have access to good quality SRE that includes healthy relationships, safety and consent, and not just reproductive information.

Child poverty and welfare reform

14.1 UK

The changes to the way in which child poverty will be monitored and reported on annually, put in place through the Welfare and Work Bill, have been widely criticised. The repeal of most of the Child Poverty Act 2010 removes the responsibility previously placed on the UK Government to develop strategies and action plans to reduce the number of children living in poverty, using four robust child poverty measures. Replacing these with a 'Life Chances Strategy', focussing instead on family breakdown, problem debt and drug and alcohol dependency reframes policy-driven economic inequalities as individual and family problems. The Children's Commissioner for England has

⁵⁷ Department for Education (2016) Educational Excellence Everywhere

⁵⁸ Report of the Evaluation of Relationships and Sexuality Education in Post-Primary Schools, Education and Training Inspectorate Northern Ireland, January 2011.

⁵⁹ In a 2014 survey, 49% of 16 year olds stated that LGB issues were not explained or discussed during RSE - Young Life and Times, Ark, 2014.

⁶⁰ K. Marshall (2014) Report of the Independent Inquiry into Child Sexual Exploitation in Northern Ireland, Belfast: RQIA.

consulted with academics and experts on the proposed new measures, and would argue for the inclusion of critical 'early years' measures to ensure this approach is meaningful.

Following intervention from the House of Lords, the UK Government agreed to continue to record and report data for the four original child poverty measures, including publishing annual figures on income related child poverty, although it will no longer have any commitment to reduce the levels of child poverty against these measures.

The State party report on the List of Issues states that the changes to welfare payments aim to 'create a fairer system which incentivises work, reduces poverty and protects the most vulnerable'. In doing this, it has protected spending on some groups, particularly elderly people, and in doing so has been very successful in reducing levels of pensioner poverty. However, it has failed to provide the same protections to children, to the point where the most recent projections suggest that absolute child poverty will rise from 15.1% in 2015-16 to 18.3% in 2020-21, and relative child poverty from 17.8% in 2015-16 to 25.7% in 2020-21.⁶¹ The majority of these rises can be explained by a sharp increase in poverty among families with three or more children. Household income inequality is also expected to increase with the 90:10 ratio (i.e. the ratio of income at the 90th percentile of the household income distribution to income at the 10th percentile) projected to increase from 3.8 to 4.2.⁶²

A key feature of the changes to the social security system has been the introduction of stricter conditionality and sanctions. Sanctions are used much more frequently than in the past, with more than 290,000 issued in 2013, over double the level issued by programmes before 2010.⁶³ Their severity has also increased and conditionality is now applied to previously exempt groups such as lone parents and disabled people. Children's right to an adequate standard of living is not a key consideration in applying sanctions and conditionality as they are considered 'third parties', despite being directly affected by severe cuts to their household income. It is disappointing to note that the State party has not provided figures on the use of food banks to feed children, as this is a clear indication of the extreme hardship many families, and children, are facing.

All four UK Commissioners' publicly supported the House of Lord's successful opposition to the proposals to reduce the provision of tax credits to children and families in October 2015. We would argue that any future consideration of revision of in-work benefits are preceded by a full assessment of the likely impact on children, and steps taken to avoid any measures that will reduce the ability of low income families to provide for their children's needs.

14.2 Northern Ireland

The Northern Ireland Executive has not provided legislative consent for the amendments to the Child Poverty Act and so will retain the statutory duty to produce Child Poverty Strategies and Action Plans every three years. This is very welcome, as is the recent publication of the Executive's Child Poverty strategy, which provides a framework for future action to tackle child poverty.

The £585 million made available to provide additional support where needed due to the implementation of the 'Welfare Reform' changes in Northern Ireland is also very welcome. It should be noted, however, that only a portion of this money will be allocated to families with children and furthermore, this will only be available over the next four years. There is no information on any

⁶¹ Browne, J., and Hood, A., (2016), 'Living Standards, Poverty and Inequality in the UK: 2015-16 to 2020-21', [London: Institute for Fiscal Studies]. These figures are *Before Housing Costs* and therefore considerably lower than the *After Housing Costs* figures provided in the State Party List of Issues response annex.

⁶² *Ibid.*

⁶³ Watts, B. Et al, (2014), 'Welfare Sanctions and Conditionality in the UK', (York: JRF), p5.

further mitigating measures following this time.

Even without the majority of the 'Welfare Reform' changes being implemented to date, child poverty rates have been increasing in Northern Ireland, as has the reliance on food banks to feed children. The Trussell Trust, one of the biggest Food Bank networks, reports that in the year 2014-15 its food banks had provided three day emergency food supplies for 7,571 children.⁶⁴

14.3 Scotland

The UK Government's welfare reforms are having a serious impact on children and young people in Scotland. Levels of poverty in Scotland are growing and are 'deepening'.⁶⁵ More than one in five children in Scotland now live in poverty and the number is climbing. Forecasts by the Institute of Fiscal Studies suggest that by 2020 this figure will have risen by a further 50%.⁶⁶ By then, the income of families towards the bottom of the financial scale will have actually gone down – a shift 'without precedent' in modern times.

The Scottish Child Poverty Strategy focuses on devolved matters and therefore does not tackle some of the root causes of poverty. There is no legislative duty on local authorities in Scotland in relation to poverty.

14.4 Wales

In 2011/12, 200, 00 children were recorded to be living in relative poverty after housing costs and in 2014/15, 30, 146 children used food banks more than doubling from the total in 12, 625 in 2013/2014.⁶⁷

It is positive that the Welsh Government has stated that it will retain its child poverty targets. However, even though there is a Welsh Government Child Poverty Strategy with a stronger focus on children's rights, there is still no delivery plan and the age-inclusive Tackling Poverty Action Plan does not adequately focus on children's issues. There is a danger of the focus on child poverty being lost in the move to 'age-inclusive' approaches. Additionally the Welsh Government hasn't adequately children's rights impact assessed its budget for the last two years despite the duty of 'due regard' under the *Rights of Children and Young Persons (Wales) Measure 2011*.

Homelessness

15.1 England

We are concerned by the increase in the numbers of homeless households with dependent children, and children placed in temporary accommodation as outlined in the data in Part III. If pregnant women in temporary accommodation are taken into account, there were 106,140 children or expected children in temporary accommodation by the end of December 2015, and 2,270 dependent or expected children in Bed and Breakfast accommodation, of which 870 had been resident for more than 6 weeks⁶⁸ – despite a legal prohibition on this.

⁶⁴ <https://www.trusselltrust.org/news-and-blog/latest-stats/> NB This provides figures for across the UK, indicating that a total of 396,997 three-day emergency food supplies were given out for children across the UK in 2014-15

⁶⁵ Poverty In Scotland 2016

⁶⁶ Institute of Fiscal Studies

⁶⁷ <http://www.trusselltrust.org/stats>

⁶⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509763/Statutory_Homelessness_Statistical_Release_October_to_December_2015.pdf

15.2 Northern Ireland

The figures provided by Northern Ireland Government regarding the number of homeless children show an alarming increase in numbers of children under 1 year, who are living in homeless families, rising from 54 children in 2013 to 685 children under 1 year in 2015.

NICCY is concerned that supported accommodated provision commissioned by NI Government for children aged 16 years and older is not subject to secondary legislation and regulations in line with other residential settings for children in alternative care.

15.3 Wales

As reported in the UK response, CCfW are pleased to see there has been some decrease in the number of homeless households with dependent children in Wales 2012/13-2014/15. It is also positive there has been recent investment in programmes to support young people who are homeless or at risk of being homeless and that there has been research⁶⁹ and further investment in services to support children who are care leavers at risk of becoming homeless. Funding for services and programmes to support these vulnerable children and young people must continue.

Segregation and selection (NI)

16.1 Northern Ireland

Segregated education on religion in NI remains a serious issue. Only 7% of schools in NI are integrated.⁷⁰ A Shared Education Act has been introduced however, concerns exist that 'shared education' falls far short of integrated education and is being advanced at its expense.

The last official transfer test for academic selection for post-primary schools took place in 2008. There remains significant political opposition to the introduction of a legal framework for transfer from primary to post-primary schools. Most grammar schools in NI continue to use one of two sets of unregulated admissions tests which are not supported by the Department of Education and many children sit both, which can be up to five exams.⁷¹ Primary schools are officially discouraged from preparing children for these exams, but some do and many parents pay for private tuition for their children. The attainment gap between children in grammar and secondary schools in NI remains significant.⁷²

Immigration and Asylum

17.1 England and Wales

In the refugee crisis that is facing Europe, it is imperative to assist unaccompanied children who are currently residing in camps in Europe and protect them from traffickers. We encourage the UK Government to do all it can to work with French officials to safeguard children in the camps and expedite all available measures, including Dublin III regulations to place children safely with family members in the UK. We advocate for a formal resettlement programme for displaced children in Europe. Additionally we encourage the UK Government to take steps to ensure that facilities at ports of entry to the UK, particularly in the South East are equipped to cope with increases in numbers arriving in advance of the summer months.

⁶⁹ <http://ppiw.org.uk/ppiw-report-publication-provision-for-young-care-leavers-at-risk-of-homelessness/>.

⁷⁰ Department of Education - http://www.deni.gov.uk/16-schools-integratedschools_pg.htm

⁷¹ Demand for grammar school places in NI was at record levels in 2015. 64 of NI's 68 Grammar Schools used academic selection to determine admissions in 2015 with 12,047 children applying to attend a grammar school. – Record Numbers Apply for Grammar School Despite Minister's Opposition, R. Black, Belfast Telegraph 25th January 2016

⁷² In 2014/15 95.0% of grammar school leavers left with at least five GCSEs at grades A* - C or equivalent including GCSE English and Mathematics. This figure was 46.8% for non-grammar school leavers - Statistical Bulletin 8/2015 Annual enrolments at grant-aided schools in Northern Ireland 2015/16: Basic provisional statistics 10th December 2015.

The Immigration Bill currently progressing through Parliament includes a number of reforms. We are particularly concerned about provisions that would prevent local authorities providing 'leaving care' support under the Children Act 1989 to young people who are over 18 and have no immigration status. The groups affected include those given temporary leave following an unsuccessful asylum claim made as an unaccompanied child, and any young person with an irregular or unresolved immigration status. Child welfare legislation has made specific provision for children leaving care in recognition of their particular needs; the acceptance that children do not become adults immediately on reaching 18.

Secondly, the bill proposes to enforce the dispersal of unaccompanied children from overcrowded areas in the South East – whilst there is a need to keep each local authority case load to a manageable level, sufficient support (e.g. interpreting and legal services, and appropriate foster placements) need to be available in new areas to ensure each child's needs are met.

The State party's response to the List of Issues explains the approach to age assessment in the Modern Slavery Act, but does not refer to the process in asylum cases. The Home Office's 'Assessing Age' policy allows for individuals claiming to be children, to be treated as adults if their appearance/demeanour 'strongly suggests they look significantly over 18.' Although complex, we argue for the best interests of the child to remain paramount at all times in the age assessment process. It would be useful to get clarity on any current or proposed initiatives to improve the assessment processes applied to UASC to ensure they are provided with age appropriate care/accommodation.

17.2 Northern Ireland

In Northern Ireland, clause 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 has not yet been commenced to ensure that separated children have access to an independent guardian, who is required by the legislation to act in the best interests of the child at all times. This breaches timescales accompanying the legislation and should be remedied as a matter of urgency.

17.3 Scotland

Section 22 of the Children (Scotland) Act 1995 imposes a duty on local authorities to provide services for 'children in need'. It would be useful to ascertain the extent to which destitution is affecting asylum seeking and migrant children and how many families are having to use the 'children in need' provision in order to access the most basic support.

Youth Justice

18.1 England and Wales

We welcome the current Review of Youth Justice (England and Wales). However, raising the age of criminal responsibility was explicitly excluded from the review's terms of reference⁷³ and the UK Government has also signalled its opposition to a Private Member's Bill seeking to raise the age to 12 years.⁷⁴

Although youth courts are encouraged to retain jurisdiction for children, during 2014, 1,927 children were tried in the Crown Court.⁷⁵ Adult courts may be adapted for the trial of children, but there is evidence that the Crown Court remains an intimidating venue that precludes the proper

⁷³ Ministry of Justice (2015) Review of the youth justice system: terms of reference. London: Ministry of Justice

⁷⁴ <http://services.parliament.uk/bills/2015-16/ageofcriminalresponsibility/stages.html>

⁷⁵ Ministry of Justice (2015) *Criminal justice statistics: December 2014*. London: Ministry of Justice

participation of children – thus preventing them from a fair trial.⁷⁶

The review of youth justice in England and Wales represents an opportunity to improve the arrangements for children in conflict with the law. The interim report notes the need for a ‘fundamental change’ of youth custody, and that existing institutions should be replaced by smaller institutions located in the communities that they serve. Fundamental change is particularly required in relation to Young Offending Institutions (YOIs) which are large scale custodial establishments, managed by the prison service and comparable in many ways to adult prisons. Such institutions hold more than two thirds of all children in custody. By comparison with other forms of secure provision, they have low staff to child ratios, higher levels of violence and inadequate regimes.

Research for the Children’s Commissioner of England found that children who experience isolation in a Young Offender Institution spend on average eight to nine times as long separated from their peers as a child in a secure children’s home.⁷⁷ Successive inspection reports consistently show that around one third of children in Young Offending Institutions (YOIs) are locked in their cells rather than participating in the standard regime. The research also indicated that children from minority ethnic backgrounds and those in public care are significantly more likely to be placed in isolation.⁷⁸ This is a particular concern given that the over-representation of both of these groups of children has increased as the size of the total child custodial population has fallen.

18.2 Northern Ireland

There is a Youth Justice System in Northern Ireland. The minimum age of criminal responsibility (MACR) in NI remains 10 years. An independent Youth Justice Review (YJR) commissioned by the Department of Justice recommended an immediate increase to 12 yrs, with consideration to be given to a further rise to 14 yrs following a period of review.⁷⁹ The Minister for Justice has stated his support for this but cites a lack of required cross party support as the reason for the lack of progress. The MACR must be urgently raised in line with General Comment No.10 and the Committee’s 2008 Concluding Observations.

Both the Committee and the YJR have highlighted the need for a range of alternative measures and / or accommodation as alternatives to custody. NICCY continues to be concerned by the number of children detained in the Juvenile Justice Centre (JJC) either as a ‘place of safety’ or on remand. In the period January 2015 – December 2015, 224 children were admitted to the JJC under PACE⁸⁰ and a total of 246 on remand.⁸¹

Some improvement has been made in this regard, however co-operation between relevant government departments and agencies is required to ensure the availability of suitable accommodation for children and the provision of support services so that the detention of children can be reduced to an absolute minimum.

In NI while children are not tried as adults, they can be tried in adult courts. In the period 2011 –

⁷⁶ Carlile, A (2015) *Independent Parliamentarians’ Inquiry into the Operation and Effectiveness of the Youth Court*. London: NCB

⁷⁷ Children’s Commissioner for England (2015) *Unlocking potential: a study of the isolation of children in custody in England*. London: Children’s Commissioner

⁷⁸ Children’s Commissioner for England (2015) *Unlocking potential: a study of the isolation of children in custody in England*. London: Children’s Commissioner

⁷⁹ ‘A Review of the Youth Justice System in Northern Ireland’ 2011

⁸⁰ The Police and Criminal Evidence (Northern Ireland) Order 1989 allows children to be detained in the JJC if it is considered to be in their own interests.

⁸¹ There were a total of 246 remands. This figure includes 141 young people who were admitted initially on remand, 103 young people who transferred from PACE admissions to remand and 2 were there on sentence which once completed, they were returned on remand.

2015, 188 children under 18 years were tried in the adult Crown Courts alone.⁸² It is not appropriate for children to ever be tried in adult courts as the nature of the proceedings, the courtroom layout and the facilities are not suitable for children. Children's presence in the court or its precincts at the same time as adult defendants may also result in them being exposed to intimidation, abuse or offensive language.

The Secure College in Northern Ireland accommodates young men from the age of 18 to 21.

18.3 Scotland

An independent advisory group was set up in November 2015 to explore the implications of raising the age of criminal responsibility in Scotland from 8 to 12 years of age. The group was tasked with looking at issues such as care, protection and risk; the role of the Police; the Children's Hearings system and Disclosure (including criminal records). This group reported to Ministers in March 2016 and recommended that the age of criminal responsibility should be raised to 12 'at the earliest opportunity'.⁸³ The Scottish Government has issued a consultation on raising the age of criminal responsibility, which will conclude in June 2016.

In 2015, the Scottish Courts and Tribunals Service carried out an Evidence and Procedure Review and produced proposals in 2016 to improve the experiences of child victims and vulnerable witnesses⁸⁴. This is most welcome, as current processes urgently require reform, in order to be more child-centred.

Life sentences

19.1 England and Wales

During 2014, 21 children were sentenced to life imprisonment as a mandatory or discretionary punishment.⁸⁵ Outside of the UK, just two European states – France and Cyprus - have legislation that provides for life imprisonment of a child. Moreover, in those countries the provisions are rarely used. According to Child Rights International Network, just two children in France have been sentenced to life in the last quarter of a century and there is no record of any such sanctions having been imposed in Cyprus.⁸⁶

19.2 Northern Ireland

In NI, children can receive indeterminate custodial sentences⁸⁷ for serious offences. Children may also be the subject of discretionary sentences for an offence whereby an adult would receive a sentence of imprisonment for 14 years or more. These sentences can have a very detrimental effect on the health and well being of children and their potential for rehabilitation and therefore these sentencing options should be abolished for children.

Child sexual abuse and child sexual exploitation

20.1 England

Many victims of child sexual abuse are not identified by statutory services. An analysis undertaken by the Children's Commissioner in November 2015 demonstrates that approximately 1 in 8 victims of sexual abuse are known to the authorities, and the majority of victims are abused by someone

⁸² This figure includes provisional data for 2015

⁸³ <http://www.gov.scot/Publications/2016/03/3627>

⁸⁴ <http://www.scotcourts.gov.uk/docs/default-source/SCS-Communications/evidence-and-procedure-report---next-steps---february-2016.pdf?sfvrsn=2>

⁸⁵ Ministry of Justice (2015) *Criminal justice statistics: December 2014*. London: Ministry of Justice

⁸⁶ Bateman, T (2015) *The state of youth justice 2015: an overview of trends and developments*. London: National Association for Youth Justice

⁸⁷ There is no fixed date for release set when an indeterminate sentence is passed.

within their family circle.⁸⁸ Consequently, many victims of child sexual abuse are unlikely to receive any specialist help and support to facilitate their recovery.

There is a reliance on victims of sexual abuse disclosing their experience in order to activate criminal justice and child protection processes. Data collected and analysed by the Children's Commissioner demonstrates that victims of sexual abuse are more likely to come to the attention of statutory authorities during adolescence, through either report or discovery. However, survey data obtained from survivors of abuse demonstrates that children are most likely to be sexually abused at a much younger age, though they often do not recognise that they were sexually abused until much later. It is clear that many children lack the knowledge to recognise abuse, and the words to describe it to an adult. It is therefore unlikely that many victims will be able to disclose abuse and activate the processes designed for their protection.

In general, the evidence suggests that professionals in universal services (such as education and health services) do not possess the knowledge or confidence to identify victims of sexual abuse and respond accordingly. The Children's Commissioner's work on sexual abuse has highlighted a general anxiety among professionals in the substantiation of concerns and the potential impact of asking 'leading questions' of children to substantiate concerns and initiate processes for assessment and identification. Improved models of multi-agency working, that centre on the child should be introduced to ensure that cases of abuse are identified, assessed and result in effective action by agencies working together. There also needs to be a stronger emphasis on preventative work

20.2 Northern Ireland

NICCY has concerns regarding the NI Government's fragmented implementation of recommendations from the Independent Inquiry into Child Sexual Exploitation in NI and the Child Sexual Exploitation Thematic Review. The implementation process should be subject to independent oversight and monitored against tangible improved outcomes for children and young people.

The NI Government should take measures to fully implement the Committee's 2014 Concluding Observations on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. This should include bringing forward amendments to the Sexual Offences (Northern Ireland) Order 2008 to ensure that all children are equally protected from offences, and gathering and reporting on disaggregated data consistently across NI and UK Government agencies, including UK Visas and Immigration.

The UK Government should ratify the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the 'Lanzarote Convention', as a matter of urgency.

20.3 Scotland

In Scotland, the Human Trafficking and Exploitation (Scotland) Act 2015 was passed in November, 2015.

20.4 Wales

The Welsh Government should be commended for the strategies it has developed to tackle Child Sexual Exploitation and CCfW supports their implementation. Work in this area represents a good example of cooperation at the devolved level between Welsh Government working together with civil society groups on a matter to which the Welsh Government has attached due priority.

⁸⁸ Protecting Children from harm: A critical assessment of child sexual abuse in the family network in England and priorities for action

<http://www.childrenscommissioner.gov.uk/sites/default/files/publications/Protecting%20children%20from%20harm%20-%20full%20report.pdf>

There is still some way to go with regards to strategic developments relating to Child Sexual Abuse.

Children in armed conflict

21.1 England

In response to queries in the List of Issues, the UK Government has confirmed the following:

- The British army intends to expand the recruitment of children in order to ‘alleviate the risk of undermanning’ (para 113).
- The minimum period of service applied to children at enlistment into the British army is again longer (up to six years) than that applied to adult recruits (four years) in order to ensure that recruits provide ‘a reasonable length of useful service’ (para 113).

In these cases, the best interests of the child have been subordinated to the interests of the State party and its armed forces

21.2 Northern Ireland

The NI Government does not have a remit with regard to recruitment to the British army. However, given the extremely detrimental impact of the legacy of the NI conflict and ongoing paramilitary recruitment and violence on children and young people in NI, there should be a complete cessation to recruitment of children into the armed forces. The UK is the only country in Europe to recruit 16 year olds into the army.

21.3 Scotland

There are concerns from teachers, students and parents around military visits to state schools in Scotland (especially armed forces recruitment) Scotland receives a disproportionate number of these visits compared to constituent parts of the UK. Recent data shows 1445 visits by the military to schools in Scotland between 2010 and 2012. There is no specific guidance on military visits for local authorities or schools.

Based on the proportion of the UK population living in Scotland (roughly 8.4%), one would expect the proportion of armed forces visits to secondary schools and colleges in Scotland to be similar, but available data (2011-12) shows 11.2%.

21.4 Wales

The Welsh Government has taken a decision in principle to support more research into how the armed forces operate in secondary schools in Wales. The response was the result of an investigation and report by the Assembly’s Petition’s Committee which called for further scrutiny ‘into the reasons for the unevenness of the armed forces visits to schools in Wales.’^{89 90}

Data, statistics and other information, if available (Part III)

We are providing information or commentary only on data/information that has not already been referred to in Part 1 and/or matters that we believe are matters of concern.

Overall, we are concerned by the lack of centrally collected data, and the implication that the available local or administrative data is not being routinely collected and analysed by policy makers

I. Consolidated children and social sector budget

⁸⁹<http://www.assembly.wales/NAfW%20Documents/News%20section%20documents/Stop%20the%20Army%20Recruiting%20in%20schools.pdf>

⁹⁰ <http://www.assembly.wales/laid%20documents/gen-ld10363/gen-ld10363-e.pdf>

There is limited information provided in this section. For example, it is unclear what levels of resources are specifically allocated to children and children's services – this prevents the effective monitoring of children's rights budgeting and is of considerable concern given the context of fiscal austerity and budget cutting decisions.

Consistent and robust data collection is required to ascertain (for example), the numbers of disabled children, those children affected by imprisonment, homelessness etc. Disabled children in particular face multiple violations to their rights. They have been badly hit by UK welfare cuts and at local authority level. We frequently hear about services being cut, eligibility criteria altered which has led to disabled children using fewer services and receiving inappropriate and inadequate support.

II. Taser guns

It is inadequate that there is no official data on the use of Taser Guns in England, Scotland and Wales. Steps must be taken to ensure the regular collection and publication of fully disaggregated national data on the use of Taser on children.

III. Stop and search

England: It is important to understand the experience of stop and search from children and therefore steps should be taken to ensure this is collected by the police and routinely analysed centrally.

Northern Ireland: The levels of stop and search and questioning of children in Northern Ireland remain high. There may be a detrimental impact on children who witness the stop and search or questioning of adults. There is insufficient evidence that stop and search fulfils its purpose

Scotland: Following the recommendations of an independent advisory group⁹¹, the use of non-statutory (consensual) stop and search in Scotland has declined significantly. A Code of Practice on the use of stop and search in Scotland is currently being consulted upon. Once this Code of Practice comes into force, then the use of non-statutory stop and search on people of all ages in Scotland will come to an end.

The same advisory group also recommended that there should be a consultation on whether there was a need for a statutory power to stop and search children and young people for alcohol. The Commissioner is unconvinced of the need for such a power, as the Police already have extensive powers of seizure in relation to alcohol.

IV. Child victims paramilitary-style attacks in Northern Ireland

The statistics provided on the number of child victims of violence carried out by non-state actors involved in paramilitary-style attacks in NI are likely to reflect significant under-reporting. The Police Service of Northern Ireland (PSNI) does not collect data on paramilitary attacks disaggregated by age.

Statistics are not collected by the NI Housing Executive (NIHE) on the number of young people who have been made homeless due to paramilitary threats. However, in 2014-15, 433 applications were submitted to NIHE from people made homeless due to paramilitary intimidation, of which 96 were from families. This figure is partial, as it does not include young people or families who have left Northern Ireland, or who have not approached the NIHE for help with housing. However, it does indicate that the scale of paramilitary intimidation and violence is considerably higher than the Police statistics would suggest.

⁹¹ <http://www.gov.scot/Resource/0048/00484527.pdf>

Since March 2015 NICCY has undertaken engagement with over 500 young people aged 8 to 21 from across NI and from a variety of communities. Reports of activity by non-state forces have been confirmed by young people across both communities who have stated that there is increasing recruitment to paramilitary organisations often through coercion or in payment for drug debts. Young people perceived to be involved in crime or anti-social behaviour continue to be assaulted and excluded from their communities.

V. Children subjected to female genital mutilation (FGM)

NICCY notes with concern that currently no official data is available in Northern Ireland regarding adults or children subject to FGM. In the absence of official data, the Department of Finance and Personnel has been provided with anecdotal information that approximately two women each month present with FGM when accessing maternity services.⁹²

VI. Child malnutrition, including under- and over-nutrition and micronutrition deficiencies

NICCY note that data has been provided on undernutrition, overnutrition and micronutrition for all jurisdictions in the UK except for Northern Ireland.

VII. Children with disabilities and special educational needs in education or out of school

Northern Ireland: The number of children and young people with special educational needs (SEN) who are being informally excluded from school is not collected. NICCY has been informed that there are high numbers of children with SEN being home educated due to the failure of schools to meet their needs. Similarly, if a child has never been registered with a school, neither the Department of Education or Education Authority in NI hold any information on the quality and type of education that child receives. This has potentially extremely grave implications for the right of all children to access an effective and appropriate education. The legislative framework relating to this must be urgently amended.

Scotland: The Education (Additional Support for Learning) (Scotland) Act 2009 created a presumption that every looked after child in Scotland has additional support needs, unless they are assessed otherwise. Where a looked after child is assessed as having additional support needs, local authorities must assess whether they require a Co-ordinated Support Plan. Research carried out in 2013 and 2015⁹³ found that the application of the presumption varied widely across Scotland. The research in 2015 found that of 12, 533 looked after children with additional support needs; only 6,374 were assessed for a Co-ordinated Support Plan (CSP). Of the 6,374 assessed, only 368 were deemed to require a CSP, that is, only 2.9% of looked after children with additional support needs. Closer monitoring of the application of this legal presumption is required to ensure that looked after children are able to receive the support they are entitled to.

Wales: CCfW welcomes Welsh Government's intentions to introduce a new legal framework that brings together the existing requirements of Part IV of the Education Act 1996 with the support provisions for young people with learning difficulties and/or disabilities as set out in the Learning and Skills Act 2000. This signals an important point of progress in developing a unified framework of support for children and young people with additional learning needs in Wales.

⁹² Department of Finance and Personnel (2014) Analysis of the responses to the consultation on Multi-agency Practice Guidelines in Female Genital Mutilation.

⁹³ Govan Law Centre: <http://govanlc.blogspot.co.uk/2015/05/glc-research-reveals-systemic-failure.html?m=1>

VIII. *Children involved in sexual exploitation and provided access to recovery and social reintegration services*

Northern Ireland: It is a matter of concern that data regarding the number of child victims of sexual exploitation, pornography and trafficking is not consistently gathered and reported in Northern Ireland. State party figures note that one child in NI was identified as a potential victim of trafficking in 2014. However, the NI Department of Justice reported that in 2014 eight children identified as potential victims of human trafficking (for all forms of exploitation) were recovered.⁹⁴

In relation to Child Sexual Exploitation the State Party provides no detailed figures regarding NI. However, the 2014 Independent Inquiry into Child Sexual Exploitation in NI reported that, based on available case information, between 100 and 145 children were at significant risk of sexual exploitation, noting that the actual figure for children at risk was likely to be much higher.⁹⁵

Wales: To address the current issue of little or no consistent data collected or held on the prevalence of CSE across Wales, the development of a dataset by Welsh Government has concluded which will aim to provide an accurate and consistent reporting across Wales.

⁹⁴ Department of Justice (2015) Human Trafficking and Exploitation Strategy 2015/16, Belfast: DoJ

⁹⁵ K. Marshall (2014) Report of the Independent Inquiry into Child Sexual Exploitation in Northern Ireland, Belfast: RQIA.