

Submission by Save the Children UK¹ related to the United Kingdom of Great Britain and Northern Ireland for Universal Periodic Review 1st session

Children's rights in the UK: Key issues of concern

INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF CHILDREN'S HUMAN RIGHTS

Reservations to the Convention on the Rights of the Child (UNCRC)

The UK Government continues to have two reservations in place on the UNCRC despite calls from the UN Committee on the Rights of the Child (the UN Committee) to remove them in 1995 and 2002.¹ There has been no progress on removing the general reservation on immigration and citizenship, which has been described by the UN Committee as *"incompatible with the object and spirit of the Convention"*.² Despite a UK Government assurance that: *"there are appropriate social and legal mechanisms in place to ensure that all children present in the UK receive appropriate levels of protection and care"*³ in practice the effect of the general reservation has been to create a lower standard of care for children from abroad (see below).

The UK Government has recently stated that *"it would like to retain its reservation to article 37 (c), but on the basis that the position is kept under review"*.⁴ It has been recognised that the requirement of article 37 (c) *"that every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so"* has not been met in Scotland and the North of Ireland.⁵ HM Chief Inspector of Prisons reports have also questioned whether the complete separation of girls from women has been achieved in England and Wales.⁶

The UK Government should:

- **immediately withdraw its general reservation on the UNCRC in relation to immigration and citizenship;**
- **act with urgency to ensure it meets the requirements of article 37 (c) and remove its reservation.**

Ratification of Optional Protocols to the UNCRC

Despite signing the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography on 7 September 2000 the UK Government has yet to ratify it, despite assurances that it planned to do so.⁷ When the UK Government ratified the Optional Protocol to the UNCRC on the involvement of children in armed conflicts in June 2003 it put in place a declaration which set out a number of circumstances when it might not be possible to prevent the deployment of under-18s in hostilities. The Government has confirmed that it has no plans to withdraw this declaration.⁸

The UK Government should:

- **ratify the Optional Protocol on the sale of children, child prostitution and child pornography at the earliest opportunity;**
- **remove its declaration to the Optional Protocol on the involvement of children in armed conflicts to ensure that children are never deployed in hostilities.**

General measures of implementation of the Convention on the Rights of the Child

There is still no adequate co-ordinating body for the implementation of the UNCRC across central government departments and only limited coordination across the devolved administrations. There has been no progress by the UK Government to *"incorporate into domestic law the rights and principles of the Convention to ensure*

¹ Save the Children UK is a member of the International Save the Children Alliance in ECOSOC status with the UN

compliance of all legislation” as recommended by the UN Committee on the Rights of the Child in 2002.⁹

There are no mechanisms in place to fully child rights proof all Government policy and legislation which will have an impact on children - there is only limited rights proofing of legislation under the Human Rights Act 1998¹⁰ and through the Parliamentary Joint Committee on Human Rights. There are no effective government mechanisms in Wales and Scotland, although the Scottish Commissioner for Children and Young people produce child rights impact statements on proposed legislation. In the North of Ireland Section 75 of the Northern Ireland Act 1998 placed a duty on public bodies to promote equality of opportunity including “people of different ages”. However, the potential of this unique duty has not been realised in respect of children and young people. The Northern Ireland Commissioner for Children and Young People has developed a children’s rights impact assessment tool based on the Scottish model.

The UK Government has still not undertaken an analysis of all sectoral and total budgets across the State Party in order to show the proportion spent on children, identify priorities and allocate resources to the maximum extent available in line with the UN Committee’s recommendation.¹¹ There is still an absence of disaggregated data on this issue and spending on children is not expressed as a proportion of GDP. A Children’s Budget has only been developed by the Welsh Assembly Government¹² and is absent in the rest of the UK.

Of the four governmental children’s plans in place across the UK only those for Wales and Northern Ireland¹³ are explicitly linked to the UNCRC¹⁴. The recent government consultation in England called by for a new children’s plan *Time to Talk* is not based on the framework of the UNCRC.¹⁵

Four children’ Commissioners have been established across the UK. However, the statutory base of the Children’s Commissioner for England is inadequately linked to the UNCRC and has a remit to “*promote awareness of the views and interests of children*” instead of safeguarding and promoting their rights. It also fails to meet the minimum standards of the Paris Principles, by not being fully independent of Government.¹⁶ The new Equality and Human Rights Commission¹⁷ (England, Scotland and Wales) will promote and protect children’s rights and the remits of both the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland include children.

The UK Government should:

- **affirm its political will to fully embrace a culture of children’s rights and set up the necessary institutional frameworks needed to promote and protect children’s human rights across the UK, including:**
- **co-ordinate the implementation of the UNCRC across UK Government and devolved administration departments;**
- **incorporate the principles and provisions of the UNCRC into domestic law;**
- **establish child rights proofing mechanisms;**
- **ensure availability of disaggregated data about spending on children;**
- **develop plans of action for implementation of the UNCRC;**
- **ensure Paris Principle compliant legislation relating to the duties and powers of Children’s Commissioners.**

IMPLEMENTATION OF HUMAN RIGHTS OBLIGATIONS IN RELATION TO CHILDREN

Analysis of Government action on the UN Committee on the Right of the Child’s 2002 Concluding Observations has shown that there has been little progress in taking forward the Committee’s recommendations.¹⁸

Corporal punishment

Rather than having clear, univocal protection, legislation across the UK continues to justify violence against children by seeking to limit its use rather than end it completely.¹⁹ In 2002 the UN Committee, echoing its 1999 recommendation, stated: “...governmental proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention... particularly since they constitute a serious violation of the dignity of the child.”²⁰ In 2005, the European Social Rights Committee declared that the UK is in breach of article 17 of the Charter - the right of children and young people to appropriate social, legal and economic protection -²¹ and last year the independent expert for the United Nations study on violence against children recommended that States: “prohibit all forms of violence against children, in all settings, including all corporal punishment”.²²

Contrary to these clear recommendations, there continues to be resistance to reforming the law. Indeed, the UK Government’s recent review of Section 58 of the Children Act 2004 in England and Wales concluded that it was “neither correct nor incorrect to say that ‘smacking is legal.’”²³ despite its own analysis of consultation responses (which concluded that the “overwhelming majority of respondents called for children to enjoy the same rights to protection as adults”) and its own qualitative research with children aged between 4 and 16 years (which found that children associated smacking with fear, shame and anger and believed that smacking was out of place in modern childhood.²⁴) The Welsh Assembly Government has taken a principled stand against the physical punishment of children and agrees with the UN Committee that corporal punishment should be prohibited in law but does not have the power to change the law.²⁵

We fully endorse the UPR submission by the Global Initiative to End All Corporal Punishment of Children.

The UK Government should:

- **move quickly to satisfy its human rights obligations by ensuring that children have full protection from abuse under the law.**

Asylum-seeking children

The Government has not taken steps to “address thoroughly the particular situation of children in the ongoing reform of the immigration and asylum system to bring it into line with the Convention” as recommended by the UN Committee.²⁶

There is increasing concern over the development of dual systems of care and support – one for citizen children and one for asylum seeking, trafficked and other children who are subject to immigration controls. A key example of this is the omission of immigration agencies from the duty to ‘safeguard and promote the welfare of children’ introduced by Section 11 of Children Act 2004 in England and Wales. In addition, recent proposals to reform the system for separated children in the UK are driven by a desire to reduce the cost of support services for these children and are not compatible with the principles and provisions of the UNCRC.²⁷

The detention of children with their families, without charge or trial, for unlimited time and without automatic supervision of the court, continues to be UK Government policy despite it being damaging to children’s health and welfare²⁸ and breaching key international human rights standards. The four UK Children’s Commissioners have also expressed “profound” concern about the detention of children.²⁹ In 2006, 1,235 children were detained with their families³⁰ for between 7-268 days.³¹

Financial destitution is increasingly being used as a tool by the UK Government to force families to return to their countries of origin. Section 9 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 provides for the withdrawal of asylum support from failed asylum seeking families who have not taken steps to leave the UK.

The UK Government should:

- **end the detention of asylum-seeking children in families in immigration removal centres;**
- **scrutinise the Unaccompanied asylum seeker children reform proposals against the framework of the UNCRC;**
- **ensure that the UNCRC, Children Act 1989, Children (Scotland Act) 1995 and Children (Northern Ireland) Order 1995 remain the frameworks for the care and protection for all separated children in the UK;**
- **extend the duty to safeguard and promote the welfare of children to immigration agencies in all parts of the UK.**

Juvenile justice

Since 2002, UK Government compliance with the UNCRC in the area of juvenile justice has worsened and continues to violate the standards set out in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice - "The Beijing Rules".

The age of criminal responsibility is much too low - 10 years in England, Wales and the North of Ireland and 8 years in Scotland. This is lower than most European countries and is incompatible with social rights and responsibilities.

28 children in England and Wales died in custody between July 1990 and January 2005³². Increasingly children are being imprisoned despite being assessed as too young and vulnerable to cope in a prison environment. Detention is not used as a last resort with more children, at lower ages and for lesser offences being detained in custody on remand and as a sentence. As at February 2007 there were 8,828 children in custody in England and Wales. In Northern Ireland, the average number of 10-17 year olds held in the Juvenile Justice Centre each month is 37³³, with a further 25-30 under 18s held in the Youth Offender Centre on any given day³⁴

Children are routinely brought before the adult magistrate court in a range of circumstances - when co-accused with an adult or if there is no youth court sitting - and legislation also allows for children to be brought before the adult crown court when they are being tried for violent or sexual offences.

Anti-Social Behaviour legislation in England and Wales continues to allow children to be named and shamed despite a recommendation by the UN Committee to ensure that the privacy of children is fully protected.³⁵

The UK Government should:

- **raise considerably the age of criminal responsibility;**
- **ensure that detention and custody is only used as a measure of last resort;**
- **make certain that no child should be tried as an adult - irrespective of the circumstances or the gravity of his/her offence.**
- **abolish 'Naming and shaming' of children and guarantee their right to privacy is protected at all times.**

Child poverty

Levels of child poverty are unacceptably high throughout the UK – with 3.8 million children living below the poverty line and 1.3 million children living in severe poverty.³⁶ The UK Government missed its target (set in 1999) of reducing child poverty by a quarter in 2006. In 2007, child poverty levels rose for the first time in seven years. It now looks increasingly likely that, without significant policy intervention, the UK Government's target of halving child poverty by 2010 will be substantially missed. This target is a key staging post in the long-term commendable commitment to eliminate child poverty by 2020. It is estimated that an additional £4 billion a year will need to be invested by the Government in order to meet its 2010 target.

The UK Government should:

- **allocate the additional funds needed to meet its target of halving child poverty by 2010 as a matter of urgency.**

Education

The educational attainment of some groups of children are significantly below the national average – specifically among working class White males and children from some minority ethnic groups such as Gypsy/Traveller children and Black and Asian children.³⁷

The rates of children excluded from school remain high across the UK with roughly 10,000 children being permanently excluded each year. Despite Government actions to address the particularly high exclusion rates for children from Black and Minority Ethnic groups and children with Special Educational Needs, progress has been slow.

Children in custody in England and Wales remain excluded from the statutory right to education under Section 562 of the Education Act 1996 despite the UN Committee urging the Government to address this inequality.³⁸

The UK Government should:

- **put more resources into addressing inequalities in the educational attainment of disadvantaged children and young people, including: the poorest children, looked after children, Gypsy/Traveller children, disabled children and those with additional support needs;**
- **considerably reduce school exclusions;**
- **give children in custody a statutory right to education.**

Use of plastic baton rounds in Northern Ireland

The UN Committee recommended that the use of plastic bullets be abolished as a means of riot control given that they can cause injuries to children and may jeopardise their lives.³⁹ While the L21A1 version of the plastic bullet is no longer used it has simply been replaced with another version (the Attenuating Energy Projectile or AEP). No evidence has ever been produced of a child impact assessment having been conducted prior to the introduction of the AEP, and a recent study by a group of doctors at four hospital emergency departments in Northern Ireland suggested that AEPs have caused more harm than the previously used plastic bullets.⁴⁰

In addition, the Chief Constable confirmed at the Northern Ireland Police Board meeting of June 7 2007 that the Police Service of Northern Ireland intends to purchase 12 Taser stun guns for use in the North of Ireland – again there has been no child impact assessment conducted in relation to this plan.

The UK Government should:

- **ensure that AEPs are not “used in any circumstances where children are present and at risk of being harmed.” in line with the statement by the Commissioner for Children and Young people in Northern Ireland.⁴¹**

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¹ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 7 and UN Committee on the Rights of the Child (1995) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 7

^{2 2} UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 6

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- ³ UK Government (2007) The Consolidated 3rd and 4th Periodic report to the UN Committee on the Rights of the Child, paragraph 8
- ⁴ UK Government (2007) The Consolidated 3rd and 4th Periodic report to the UN Committee on the Rights of the Child, paragraph 4
- ⁵ UK Government (2007) The Consolidated 3rd and 4th Periodic report to the UN Committee on the Rights of the Child, paragraphs 3 and 4
- ⁶ HM Chief Inspector of Prisons report on HMP/YOI Eastwood Park 7–9 March 2006 page 10 and HM Chief Inspector report on HMP & YOI New Hall 7–9 March 2006
- ⁷ See for example Hansard House of Lords Column 9 Oct 2006: Column WA17 *“The Home Office is undertaking a review to determine the extent to which the United Kingdom complies with the articles set out in the optional protocol on the sale of children, child prostitution and child pornography. The Government want to ensure that there are no gaps in the measures which exist to protect children in the way the protocol intended. Once the Government are confident that the United Kingdom is fully compliant, the optional protocol will be ratified”*.
- ⁸ UK Government (2007) The Consolidated 3rd and 4th Periodic report to the UN Committee on the Rights of the Child, paragraph 30
- ⁹ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland paragraph 9
- ¹⁰ The Human Rights Act 1998 requires government departments to publish a statement on all Parliamentary Bills on their compatibility with the European Convention on Human Rights
- ¹¹ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland paragraph 11
- ¹² Welsh Assembly Government (2004) Children and Young People: Rights to Action
- ¹³ Welsh Assembly Government (2004) Children and Young People: Rights to Action; Office of the First Minister and Deputy First Minister (2006) Our Children and Young People – Our Pledge. The ten year strategy for children and young people in Northern Ireland 2006-2016
- ¹⁴ Every Child Matters in England and A vision for Children Centred around their Needs and Wishes in Scotland, do not constitute a plan of action for implementation of the UNCRC
- ¹⁵ Department for Children, Schools and Families (2007) Time to Talk
- ¹⁶ Children Act 2004 Part 1 Sections 2 and 8
- ¹⁷ Established by the Equality Act 2006 the EHRC merged the Commission for Racial Equality, Disability Rights Commission and the Equal Opportunities Commission
- ¹⁸ See for example Children’s Rights Alliance for England (2006) State of Children’s Rights in England; Kilkelly et al (2004) Children’s Rights in Northern Ireland; Croke and Crowley (eds) (2006) Righting the Wrongs: the reality of children’s rights in Wales
- ¹⁹ Section 58 of the Children Act 2004 (England and Wales) and Article 2 of the Law Reform (miscellaneous Provisions) (Northern Ireland) Order 2006 and do not remove the defence of “reasonable chastisement”, in Scotland Section 51 of the Criminal Justice (Scotland) Act 2003 does not remove the defence of “justifiable assault”
- ²⁰ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland
- ²¹ European Committee of Social Rights (2005) European Social Charter, Conclusions XVII-2, Volume 2
- ²² United Nations (2006) Report of the independent expert for the United Nations study on violence against children, Paragraph 38 and 98
- ²³ Department for Children, Schools and Families (2007) Review of Section 58 of the Children Act 2004, paragraph. 42
- ²⁴ Sherbert Research for the Department of Children Schools and Families (2007) A Study of Children’s Views on Physical Discipline and Punishment
- ²⁵ Jane Hutt, Minister for Children. NAFW Record of Proceedings/Cofnod for October 23rd 2002 and NAFW Record
- ²⁶ UN Committee on the Rights of the Child (2002) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 48.g
- ²⁷ Home Office (2007) Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children
- ²⁸ Recent HMIP reports have been highly critical of the failure to protect children and safeguard their welfare, see for example HM Inspector of Prisons, August 2005 Report of a follow-up inspection of Oakington IRC, June 2005.
- ²⁹ Joint Statement (Green/Williams/Marshall/Clarke), 2006.
- ³⁰ Home Office (2007) Asylum Statistics United Kingdom 2006
- ³¹ Save the Children (2005) No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards

³² Goldson, B. and Coles, D. (2005) *In the Care of the State? Child Deaths in Penal Custody in England and Wales, Inquest*

³³ Youth Justice Agency 2007 Annual Report 2006-2007

³⁴ House of Commons written answer. Hansard 16 April 2007. Column 512W and Kilkelly et al, (2004) *Children's Rights in Northern Ireland*

³⁵ UN Committee on the Rights of the Child (2002) *Concluding Observations on the United Kingdom of Great Britain and Northern Ireland*

³⁶ This has been calculated using a measure developed by Save the Children UK, which is a mixed measure of income and deprivation - 50% median income plus children and adults lacking at least one basic necessity and either children or adults lacking more than one.

³⁷ NAFW (2006) *Academic Achievement and Ethnic background 2005 statistical release*; NAFW (2007) *Examination and Assessment Achievement: Gender Analysis 2006 statistical release*; Department for Education and Skills *Ethnicity and Education: The evidence on Minority Ethnic Pupils, 2005*. The Scottish Government (2007) *Exclusions from Schools 2005/06*; Department of Education (2005) *Indicators on Traveller Education – traveller attainment* www.deni.gov.uk/copy_of_trav_baseline-2.xls

³⁸ UN Committee on the Rights of the Child (2002) *Concluding Observations on the United Kingdom of Great Britain and Northern Ireland*, paragraph 46 (d)

³⁹ UN Committee on the Rights of the Child (2002) *Concluding Observations on the United Kingdom of Great Britain and Northern Ireland*, paragraph 28

⁴⁰ Maguire, K. et al (2007) 'Injuries caused by the attenuating energy projectile: the latest less lethal option' in *Emergency Medicine Journal*, 24, 103-105

⁴¹ Submission to the UN Secretary General's Study on Violence against Children, Northern Ireland Commissioner for children and Young people, March 2005