

Equality and Human Rights Commission

Children's Rights in the UK

Updated submission to the
UN Committee on the Rights
of the Child in advance of the
public examination of the UK's
implementation of the Convention
on the Rights of the Child

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Section 1

Introduction

- 1 This submission provides information on the implementation of the rights set out in the Convention on the Rights of the Child (CRC) in response to issues raised by UN Committee on the Rights of the Child (UN CRC) in its *List of Issues on the United Kingdom of Great Britain and Northern Ireland*, published in October 2015.¹ This submission should be read in conjunction with the EHRC's report, *Children's Rights in the UK*, which was submitted to UN CRC in August 2015.
- 2 The economic crisis and the UK Government's attendant responses have, together, had a significant impact on the fulfilment of children's rights. The UK Government's programme of reforms to the social security system is having a disproportionate impact on children's rights to an adequate standard of living and social security. The best interests of the child have not always been a primary consideration in the decisions taken by UK Government in implementing these reforms.
- 3 The UK, Scottish and Welsh Governments are taking different approaches in devolved areas such as health, social services and education. In areas such as social security, which are reserved to the UK Parliament, the devolved administrations in Scotland and Wales have adopted different responses to mitigate the impact of Westminster policies in their jurisdictions.
- 4 The EHRC regrets that the UK Government has not directly incorporated the CRC into UK-wide law. It has not taken steps to enhance its status in law as have been taken in Wales and Scotland. The commitment of the UK Government to give due consideration to the CRC when developing new policy or legislation is currently

¹ UN CRC, List of issues in relation to the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/Q/5, 29/10/2015. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQ%2f5&Lang=en. Hereafter: UN CRC, LOI, October 2015

inadequate and unenforceable.² Serious consideration of children's rights in the context of the proposed new Bill of Rights could provide an opportunity for the status of children's rights to be enhanced in the UK.

5 The EHRC would like to highlight the following key concerns in relation to the implementation of CRC since the UK was last reviewed in 2009:

- **Enhancing the status of the CRC in domestic law:** The current status of the CRC in UK law does not provide any guarantee that the CRC will be respected. Strengthening domestic remedies and mechanisms for the scrutiny of policy and legislation would improve the UK's compliance. The proposed Bill of Rights could provide an opportunity for enhancing the status of children's rights in UK law.
- **Children's access to civil justice:** The reduced scope and availability of legal aid in England and Wales has had deleterious effects on children's access to justice. The exceptional cases funding scheme does not remedy these effects, and the proposed residence test should be withdrawn.
- **Impact of social security reform on children and child poverty:** The best interests of the child were not a primary consideration in the implementation of the household benefit cap and some of the provisions of the UK Government's Welfare Reform and Work Act 2016³. Reductions in child poverty rates depend on government measures, and the UK has not come close to achieving the targets set out in the Child Poverty Act 2010. The Welsh Government's targets to reduce child poverty in Wales are proving similarly difficult to achieve.
- **Children's access to mental health services:** Funding is being cut to crucial children's mental health services in England, whilst demand for these services is rising. In Wales, funding is not meeting the increased demand for services. Difficulties accessing children and adolescent mental health services have been reported. Children detained under the Mental Health Act in England and Wales continue to be held in police cells.
- **Educational attainment:** Gender, ethnicity, socio-economic status, placement in the care of a local authority (looked-after children), and Gypsy, Roma or Traveller ethnicity have all been shown to impact a child's educational attainment at GCSE level⁴ in England and Wales. The Special educational needs and

² Cabinet Office, Guide to making legislation, July 2015, para 11.123. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328408/Guide_to_Making_Legislation_July_2014.pdf

³ Welfare Reform and Work Act 2016. Available at: <http://www.legislation.gov.uk/ukpga/2016/7/contents/enacted/data.htm>

⁴ A qualification in a specific subject typically taken by school students aged 14–16, at a level below A level. The equivalent in Scotland is Standard Grade.

disability code of practice⁵ and the Pupil Premium in England⁶ introduce new protections, but some concerns remain about their implementation.

- **Youth justice:** The UK Government is currently not considering undertaking a review of the (low) age of criminal responsibility in England and Wales. Children in the criminal justice system could be better protected both at trial and in detention, where many are subjected to restraint and isolation.

1.1 Key developments since August 2015

- 6 This submission provides an update on important developments relevant to the UN CRC since August 2015, when the EHRC published *Children's rights in the UK*.
- 7 Since August 2015, the UK and Welsh Governments have made notable progress in some areas. Namely:
- The UK Government's Department for Education launched a consultation 'into the ways local government service providers in England identify and cater to the needs of children with special educational needs and disabilities.
 - Use of the Pupil Premium in England (to improve educational outcomes for children from low-income households) has come under increased scrutiny.
 - The UK Government has undertaken a review to determine whether the youth justice system in England and Wales is fit for purpose.
 - Wales has appointed a Future Generations Commissioner to “act as a guardian for the needs of future generations”.⁷
 - The Welsh Government's 2016-2020 equality objectives include key actions to tackle inequalities faced by children, including poverty and educational attainment gaps.⁸

⁵ Department for Education, Special educational needs and disability code of practice: 0 to 25 years, January 2015. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

⁶ Department for Education and Education Funding Agency, Pupil premium: funding and accountability for schools, March 2014. Available at: <https://www.gov.uk/guidance/pupil-premium-information-for-schools-and-alternative-provision-settings>

⁷ Welsh Government, New appointments to create a strong voice for future generations, 03/11/16. Available at: <http://gov.wales/newsroom/environmentandcountryside/2015/151103-new-appointments-create-strong-voice-future-generations/?lang=en>

⁸ Welsh Government, Equality Objectives 2016-2020, 10/03/16. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/equality-objectives/?lang=en>

- 8 Since August 2015, some challenges have also emerged or continue to persist:
- The impact assessment for the Welfare Reform and Work Act 2016 (WRWA), which includes a reduction to the household benefit cap and changes to child tax credits, does not adequately address the potential impact on children's rights.
 - Funding for a promised increase in the provision of childcare for three- to four-year olds in England is uncertain, as are measures to ensure that the childcare offered will be of a good quality and deliver for all children, including disabled children and those with special educational needs.
 - Sixteen- and 17-year olds in England are being placed in temporary accommodation that may not meet their needs.
 - Personal, social and health education in England continues to have no statutory status.
 - The age of criminal responsibility in England and Wales is low.
 - There is increased use of restraint and segregation in the secure youth estate.
- 9 This submission also presents additional evidence in relation to issues raised in the UN CRC's List of Issues that was not available to the EHRC when it published *Children's rights in the UK*.⁹
- 10 Where new information is presented below, the EHRC has updated the recommendations that it made to the UK Government in *Children's rights in the UK*.
- 11 The Commission has also presented recommendations to the Welsh Government based on the key challenges identified in *Is Wales Fairer?*, the EHRC's periodic review of equality and human rights progress in Wales. These challenges need to be addressed by the incoming Welsh Government following elections for the National Assembly for Wales in May 2016.
- 12 The final set of recommendations is included as an appendix to this report and serves as a concise statement of the EHRC's priority issues in relation to the implementation of children's rights in the UK since the State party was last reviewed by UN CRC.

⁹ This evidence includes data drawn from *Is Britain Fairer?*, the EHRC's statutory five-yearly report which provides a comprehensive review of equality and human rights progress in England, Scotland and Wales between 2007/08 and 2012/13, and the supporting *Is Wales Fairer?* report which focusses specifically on Wales: EHRC, *Is Britain Fairer?*, 2015. Available at: <http://www.equalityhumanrights.com/isbritainfairer>

1.2 Devolution and the scope of this submission

- 13 The National Assembly for Wales was established by the Government of Wales Act 1998.¹⁰ In a referendum in 2011, the people of Wales voted in favour of granting the Assembly further powers for legislating in Wales without first needing the agreement of the UK Parliament.¹¹ Issues relevant to children's rights that were devolved to the National Assembly for Wales and the Welsh Government include economic development, education and training, health and social services and local government.¹²
- 14 The Scottish Parliament was created by the Scotland Act 1998.¹³ Its powers were extended by the Scotland Act 2012.¹⁴ Matters relevant to children's rights that were devolved to the Scottish Parliament and Government include education and training, health and social services, housing and local government.

1.3 Scope of this submission

- 15 This submission covers England and Wales for all thematic areas and Scotland for issues which are reserved to Westminster, although in some cases, statistics and evidence for the UK or Great Britain are presented. The submission of the Scottish Human Rights Commission will cover Scotland in more detail and the submission of the Northern Ireland Human Rights Commission will cover Northern Ireland, which is outside the remit of the Equality and Human Rights Commission (EHRC). Therefore, there are specific recommendations in this submission addressed to the UK Government and separate recommendations for the Welsh Government. However, they may also be relevant to the other devolved administrations, and the EHRC expects all of the UK's Governments to work together to progressively realise the rights set out in the CRC.

¹⁰ Government of Wales Act 1998. Available at: <http://www.legislation.gov.uk/ukpga/1998/38/contents>

¹¹ National Assembly for Wales, Media Pack. Available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx>

¹² National Assembly for Wales, Media Pack. Available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx>

¹³ Scotland Act 1998. Available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents>

¹⁴ Scotland Act 2012. Available at: <http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted>

1.4 The role of the EHRC

- 16 The EHRC was established by the UK Parliament in the Equality Act 2006 as an independent body with a mandate covering both equality and human rights. Among other human rights responsibilities, the EHRC was tasked by the UK Parliament with “encouraging good practice in relation to human rights”.¹⁵
- 17 The UK Parliament has also given the EHRC responsibilities to assess and report on the UK's progress in achieving the human rights in the treaties that the UK has chosen to ratify, both within the European Convention on Human Rights (ECHR) and other international human rights treaties.¹⁶ The EHRC works with its fellow National Human Rights Institutions (NHRIs) in the UK and with government departments and agencies to fulfil this role.

¹⁵ Section 9(1)(b) of the Equality Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9>

¹⁶ Section 9(2) of the Equality Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9>

Section 2

General measures of implementation: Enhancing the status of children's rights in domestic law

- 18 In its 2015 report, *Children's rights in the UK*, the EHRC recommended that the CRC be given enhanced status in domestic law.
- 19 The report made the following key points:
- The UK Government has not directly incorporated the CRC into domestic law, nor has it signed and ratified the third optional protocol to the CRC, which would allow children to bring individual complaints to UN CRC.
 - The commitment made by the UK Government to pay due consideration to the CRC when developing new policy or legislation¹⁷ has, in practice, been inconsistent.
 - The Human Rights Act 1998 (HRA) provides essential protections for the rights of children and a crucial remedy when their rights have been violated. Any change to the legal framework for human rights protection in the UK (i.e. replacement of the HRA by a Bill of Rights) must not diminish the protections currently afforded by the HRA.
 - A public consultation on a Bill of Rights which seeks the views of children and young people could provide an opportunity to consider options for better protecting children's rights in the UK.
 - Statutory mechanisms which have been introduced in Scotland and Wales to enhance the status of the CRC¹⁸ could provide useful guidance for the UK. The

¹⁷ Cabinet Office, Guide to making legislation, July 2015, para 11.123. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328408/Guide_to_Making_Legislation_July_2014.pdf

¹⁸ The Rights of Children and Young Persons (Wales) Measure 2011. Available at: <http://www.legislation.gov.uk/mwa/2011/2/contents>. For information on the measure, see

Children's Rights Scheme in Wales sets out measures to increase accountability and compliance with the CRC, including the establishment of a process for children's rights impact assessments for Welsh Government decisions¹⁹. The impact of these mechanisms in practice requires further consideration.

20 In its response to UN CRC's list of issues, the UK Government set out that “the Human Rights Act opened the [human rights] system to abuse” and that “the Bill of Rights is a way to restore appropriate constitutional balance”.²⁰ The EHRC believes that the HRA is well-crafted and both reflects and is embedded in the constitutional arrangements for the UK. In particular, it maintains parliamentary sovereignty and a primary role for domestic courts in the interpretation of the ECHR. The HRA has led to greater quality and accountability in public service delivery and is central to the arrangements for devolution in Northern Ireland, Wales and Scotland.

21 The State party's response to UN CRC's list of issues emphasises that the “Cabinet Office guidance encourages impact assessments to be undertaken on legislative changes to ensure children's rights are considered.”²¹ The guidance contains a commitment to due consideration to the CRC in developing new policy as well as legislation. However, since August 2015, various developments have demonstrated that this guidance is inconsistently applied. For example:

- Impact assessments for the Welfare Reform and Work Act 2016 did not fully consider the impacts of proposed measures on the rights of children across the UK, particularly in relation to measurements of child poverty and a proposed further reduction to the household benefit cap.²²

<http://gov.wales/topics/people-and-communities/people/children-and-young-people/rights/uncrc/?lang=en>

The Children and Young People (Scotland) Act 2014 Sections 1 and 2. Available at:

<http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

¹⁹ Welsh Government, Children's Rights Scheme 2014. Available at:

<http://gov.wales/docs/dsijlg/publications/cyp/140501-childrens-rights-scheme-2014-en.pdf>

^{20 20} Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues, CRC/C/GBR/Q/5/Add.1, 02/03/16, paras 3 and 4. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en

²¹ Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues, CRC/C/GBR/Q/5/Add.1, 02/03/16, para. 6. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en

²² See 4.2, this submission

- The UK Government reiterated its decision not to make personal, social and health education a statutory part of the national curriculum in England.²³
- The review of the youth justice system has not taken the opportunity to address the continued use of restraint and segregation of children and young people in detention in England and Wales.²⁴

²³ See 5.6, this submission

²⁴ See 6.2 and 6.3, this submission

Section 3

General Principles: Access to civil law justice in England and Wales (Article 12, list of issues para 7)

- 22 Access to civil law justice is a matter which is reserved to the UK Government and Parliament. In Children's rights in the UK, the EHRC raised concerns regarding:
- the impact of reforms introduced by the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO), applicable to England and Wales, including;
 - restrictions to the scope of legal aid in non-asylum immigration, education, prison law and private family law cases; and
 - the failure of the exceptional cases funding scheme to provide the human rights safety net it was intended to provide; and
 - the potential impact on vulnerable groups of children of the proposed residence test for civil legal aid. The test limits access to civil legal aid to people who are lawfully resident in the UK and who, at some point, have been lawfully resident for at least 12 continuous months.
- 23 Since then, the Court of Appeal has issued a judgment which could increase the likelihood that the residence test will be implemented by the UK Government.²⁵ In July 2014, the High Court ruled that the residence test was 'ultra vires' of the LASPO Act, and in breach of Article 14 of the European Convention on Human Rights (prohibition of discrimination in the enjoyment of rights) read with Article 6 (the right to a fair trial), and therefore discriminatory.²⁶ In November 2015, the Court of Appeal overturned this decision, holding that the introduction of a residence test was within the powers conferred by LASPO and that, while withholding legal aid from particular groups was discriminatory, it could be justified because the UK Government should be allowed a wide margin of discretion on matters of public expenditure.

²⁵ R(Public Law Project) v Secretary of State for Justice [2014] EWHC 2365 (Admin).

²⁶ R(Public Law Project) v Secretary of State for Justice [2014] EWHC 2365 (Admin).

- 24 Although CRC does not form part of the UK-wide legal framework, under Article 3(1) CRC, courts of law are expected to take the best interests of the child as a primary consideration in their actions. The judgment in this case makes no reference to this principle either in relation to the court decision or to the actions of the UK Government in introducing the residence test. Nor did the Court consider the right of children to be heard in judicial and administrative proceedings affecting them, as protected by Article 12(2) CRC. The EHRC is concerned that Articles 3 and 12 CRC could be breached if the residence test were implemented.
- 25 A further appeal to the Supreme Court is being considered by the claimants. Meanwhile, implementation of the residence test has been delayed.
- 26 In *Children's Rights in the UK*, the EHRC recommended that the UK Government monitor the impact of reforms introduced by LASPO on access to justice for rights protected by the CRC.²⁷ The State party's response to the list of issues sets out that a post-implementation review of LASPO will be undertaken within 3-5 years.²⁸ Given the gravity of the concerns highlighted by the EHRC in *Children's rights in the UK* and the potential impacts on access to justice for children's rights under the CRC the EHRC considers that the time frame of 3 to 5 years is not appropriate.

²⁷ *Children's Rights in the UK*, p. 17

²⁸ Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues, CRC/C/GBR/Q/5/Add.1, 02/03/16, para. 25. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en

Section 4

Disability, basic health and welfare: Adequate standard of living and social security across the UK (Articles 3, 4, 26 and 27)

4.1 Child poverty (list of issues para 15 and part III, para 2(h))

- 27 Many areas relevant to income poverty of children such as social security entitlements are reserved to the UK Government and Parliament. However, the Welsh Government also has responsibility for tackling child poverty in Wales. The responsibility is set out in instruments such as the Children and Families (Wales) Measure 2010, which requires public authorities to take action to tackle child poverty, and is implemented through the Welsh Government's distinct child poverty strategy and targets.²⁹
- 28 In *Children's rights in the UK*, the EHRC reported on income poverty rates of children, welcoming the reduction in the proportion of children living in relative and absolute poverty Before Housing Costs (BHC), but noting the significant progress the UK Government needs to make to meet the targets set out in the Child Poverty Act 2010 which cover the UK as a whole. The EHRC also noted that when After Housing Costs (AHC) figures are used, the proportion of children in absolute poverty actually increased between 2007/08 and 2013/14.³⁰ Additional data is provided here with a specific focus on child poverty in Wales, and on child poverty in the UK experienced by children living in families with a disabled family member.

²⁹ Children and Families (Wales) Measure 2010. Available at: <http://www.legislation.gov.uk/mwa/2010/1/contents> and Welsh Government, Child Poverty Strategy for Wales, March 2015. Available at: <http://gov.wales/docs/dsjlg/publications/150327-child-poverty-strategy-walesv2-en.pdf>

³⁰ EHRC, *Children's rights in the UK*, pp. 29-33

- 29 In March 2015, the Welsh Government published its revised Child Poverty Strategy for Wales, setting out its aim to eradicate child poverty in Wales by 2020. Significant progress is needed for the Welsh Government to achieve this target. The EHRC's *Is Wales Fairer?* report found that 32% of children in Wales were living in poverty in 2012/13. Poverty rates were higher for children in the youngest age group (0–4) at 42.0%, compared with those aged 5–10 in 2012/13, at 25.6%. Girls were more likely to be living in poverty than boys (38% compared with 26%, respectively).³¹
- 30 Thirty-seven percent of children in the UK who lived in a family with a disabled member were in relative poverty AHC in 2013/14 while 40% were in absolute poverty.³² For children in families without a disabled member the respective rates were 24% and 27%. There was a far higher rate of combined low income and material deprivation for children living in families with a disabled member compared with those without: 22% compared with 10% BHC.³³ The rate was also far higher for children where the head of household was a member of the Bangladeshi (33%), Black (27%), or Pakistani (26%) ethnic groups compared with those of the majority White (11%) ethnic group.
- 31 Projections of the likely effect of the UK Government's Summer Budget 2015 by 2020 note that for working families, the greatest losses will be for lone parents, large families and those where childcare costs exceed the maximum limits for support.³⁴ This could undermine efforts to reduce child poverty rates.

4.2 The Welfare Reform and Work Act 2016 (list of issues para 15)

- 32 The Welfare Reform and Work Act 2016 (WRWA) achieved Royal Assent on 16 March 2016. The measures addressed below apply to England, Scotland and Wales.

³¹ EHRC, *Is Wales Fairer?*, 2015, p. 16. Available at:

<http://www.equalityhumanrights.com/publication/wales-fairer>

³² Department for Work and Pensions (2015) Households Below Average Income. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf

³³ Department for Work and Pensions (2015) Supporting data tables. Table 4.5db: Percentage of children in low-income groups by various family and household characteristics, United Kingdom.

Available at: <https://www.gov.uk/government/statistics/households-below-average-income-19941995-to-20132014>

³⁴ Hirsch, D. (2015) Will the 2015 Summer Budget improve living standards in 2020? Joseph Rowntree Foundation. <https://www.jrf.org.uk/report/will-2015-summer-budget-improve-living-standards-2020>

4.2.1 Inadequate impact assessments

- 33 In *Children's Rights in the UK*, the EHRC highlighted the centrality of comprehensive and rigorous impact assessments for ensuring the UK fulfils its CRC obligations.³⁵ The EHRC considers UK financial decisions made according to a process that is compliant with the Public Sector Equality Duty (PSED) are more likely to be consistent with the UK's obligations under CRC Articles 3 and 4, taken in conjunction with Articles 26 and 27. The PSED requires analysis of potential impact of policy and legislation by age, among other characteristics protected by equality legislation.
- 34 The UK Government produced seven impact assessments to accompany the WRWA in its passage through parliament. These included impact assessments on the benefit cap, and on changes to the child and family element of Tax Credits and Universal Credit.³⁶ The EHRC's analysed these impact assessments and concluded that they lacked the depth and detail parliamentarians needed to properly scrutinise the proposed legislation and consider its implications for children's rights in the UK. The EHRC has written to the Secretary of State for Work and Pensions, highlighting the need for more detailed assessment of the impact of the Act on children, including on those with protected characteristics.³⁷
- 35 The impact assessments that accompanied the WRWA also failed to provide an analysis of the cumulative impacts of proposed changes on children. Recent research shows cumulative impact assessments to be both feasible and practicable.³⁸
- 36 Following the production of these seven impact assessments and the EHRC's letter to the Secretary of State, the Department for Work and Pensions produced a Human Rights Memorandum with the stated aim of assessing the compatibility of the

³⁵ EHRC, *children's rights in the UK*, p. 30-31, July 2015. Available at:

<http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/UNTreaty/Children's%20rights%20in%20the%20UK%20Sept%202015.docx>

³⁶ DWP, *Welfare Reform and Work Bill: Impact Assessments*. Available at:

<http://services.parliament.uk/bills/2015-16/welfare-reform-and-work/documents.html>

³⁷ EHRC letter to the Secretary of State for Work and Pensions. Available at:

http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Parli_Briefings/276Duncan_Smith.pdf; response available at:

http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Parli_Briefings/2015-10-13%20SoS%20to%20R%20Hilsenrath%20-%20EHRC.PDF

³⁸ Reed, H. and Portes, J., 2014, *Cumulative Impact Assessment: A Research Report* by Landman Economics and NIESR for the Equality and Human Rights Commission. Available at:

http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Cumulative%20Impact%20Assessment%20full%20report%2030-07-14.pdf

proposed legislation with the European Convention on Human Rights.³⁹ The memorandum also briefly addresses the impact of the WRWA on the UK's international human rights obligations, including those under the CRC.

- 37 While the EHRC welcomed the production of a Human Rights Memorandum, our analysis of its contents indicated a number of ways in which it could be strengthened in relation to children's rights. For example, the UK Government's position is that "refocusing government action from tackling the symptoms of child poverty to tackling the root causes of poverty (worklessness, poor educational attainment)" would "make a real and lasting difference to children's lives", and is therefore in compliance with CRC Article 3 on the best interests of the child.⁴⁰ However, as the EHRC has briefed the UK Parliament, this assessment conflates the present or potential interests of children *in general* with the best interests of particular children affected by proposed changes, and is therefore not a correct interpretation of Article 3.⁴¹ In addition, while the EHRC welcomes the UK Government's acknowledgement in the memorandum of CRC Article 12 on the right of children to be heard, the memorandum does not make explicit the extent of consultation with children and whether due weight has been given to children's views in accordance with Article 12.⁴²

4.2.2 Further reduction in the household benefit cap

- 38 Previous welfare reforms implemented by the UK Government introduced a cap on the total amount of benefits that working-age people are entitled to receive. This cap, set at £26,000 per year for a couple (with or without children) and single parent households, and £18,200 per year for households of a single adult with no children, has been in place since September 2013.
- 39 Section 96 of the Welfare Reform Act 2012, as amended by s8 of the WRWA, lowers the upper annual limit of benefits for people in these households to £23,000 in Greater London, and to £20,000 outside Greater London. The cap applies to all households in England, Scotland and Wales who receive housing benefit or

³⁹Department for Work and Pensions (DWP), Memorandum to the Joint Committee on Human Rights: The Welfare Reform and Work Bill 2015, September 2015, <https://www.gov.uk/government/publications/welfare-reform-and-work-bill-2015-human-rights-memorandum> (Hereafter 'DWP, Human Rights Memorandum')

⁴⁰ DWP, Human Rights Memorandum, para 76

⁴¹ EHRC, Welfare Reform and Work Bill, Public Bill Committee: response to call for written evidence, October 2015, para 1.5. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/welfare-reform-and-work-bill-written-evidence-submission>

⁴² DWP, Human Rights Memorandum, para 77

Universal Credit and whose entitlement to prescribed benefits exceeds the amounts specified, regardless of the needs of those households.

40 In its consideration of this reduction, the UK Government has failed to give primary consideration to the best interests of the child. In a recent UK Supreme Court case,⁴³ three of five judges raised serious concerns as to whether the Secretary of State's decision to implement the current household benefit cap complied with Article 3(1) CRC. In its Human Rights Memorandum, DWP notes that the UK Government has considered its obligations under Articles 3 and 27 CRC, but that the cap is compliant because “[t]he best interests of children overall is to have parents in work and work remains the surest route out of poverty”. Further, it notes that “the improvements to the overall economic situation will have a positive impact on children and their best interests”.⁴⁴ This position is at odds with the conclusion of the three judges in the case, as it fails to take into account the immediate impact that the household benefit cap has on the interests of children to have access to adequate food, clothing, warmth and housing.⁴⁵

4.2.3 Changes to child poverty measurements

41 The Child Poverty Act 2010 (CPA) set four indicators to measure child poverty across the UK; relative low income, combined low income and material deprivation, absolute low income and persistent poverty.⁴⁶ It also set targets against these measures. The WRWA retains these indicators, and an obligation on the Secretary of State to publish data against these indicators on an annual basis.⁴⁷ The EHRC has welcomed the introduction of new reporting duties on numbers of children living in workless households and children's educational attainment⁴⁸ as we consider these factors to be important causal risks that contribute to the perpetuation of child poverty.⁴⁹

⁴³ *R (on the application of SG and others) v Secretary of State for Work and Pensions*. Available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf

⁴⁴ DWP, Human Rights Memorandum, para 77.

⁴⁵ *R (on the application of SG and others) v Secretary of State for Work and Pensions*. Available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf

⁴⁶ Child Poverty Act 2010, Sections 2-6. Available at: <http://www.legislation.gov.uk/ukpga/2010/9/contents>

⁴⁷ S4, WRWA

⁴⁸ Section A1A CPA, as amended by section 5, WRWA

⁴⁹ EHRC, Briefing on the Welfare Reform and Work Bill, Committee Stage: Clauses 4 and 6, House of Lords, 07/12/15. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/welfare-reform-and-work-bill-committee-stage>

42 While child poverty measurements have been retained and strengthened, three main concerns remain with the amendments to the CPA:

- The targets in relation to the reduction of child poverty have been repealed.⁵⁰ In its parliamentary briefing the EHRC noted that targets for the reduction of child poverty can provide a focus for Government actions and serve as an accountability mechanism.⁵¹
- The duty of the Secretary of State to publish a UK child poverty strategy and the duties on local authorities to cooperate to reduce child poverty, to produce local child poverty needs assessments, and to prepare joint child poverty strategies for local areas have been repealed.⁵² The EHRC welcomes the UK Government's commitment to publishing a new 'Life Chances Strategy' in spring 2016.⁵³ However, it does not consider that this commitment is an appropriate substitute for a statutory obligation placed the UK Government to publish a UK child poverty strategy.
- The new reporting duties would apply to England alone.⁵⁴

4.2.4 Changes to child tax credits

43 Recent changes to the Tax Credits Act 2002 and the Welfare Reform Act 2012 have limited entitlement to child tax credits or the child element of universal credit to the first two children in a household.⁵⁵ Parents will not be able to claim for any third (or subsequent) child born on or after 6 April 2017. If the child is disabled, parents will be able to claim the Disabled Child Element of CTC, but not the additional child element. Changes to child tax credits will apply to households across the UK, including Northern Ireland, and changes to the child element of universal credit will apply to households in England, Scotland and Wales.

⁵⁰ S7 WRWA, which repeals the targets set out in sections 3-6 of the CPA

⁵¹ EHRC, Parliamentary briefing: Welfare Reform and Work Bill, Report Stage, Clauses 1, 4, 7 and 8, House of Lords, 25/01/16. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/welfare-reform-and-work-bill-report-stage-clause-1-4-7-and-8-house-lords-25-january-2016>

⁵² S7 WRWA, which repeals section 9 CPA on the UK child poverty strategy and section 19-25 CPA which set out duties on local authorities to reduce child poverty.

⁵³ Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues, CRC/C/GBR/Q/5/Add.1, 02/03/16, para. 65. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en

⁵⁴ Section A1A CPA, as added by section 5 WRWA

⁵⁵ Section 9 of the Tax Credits Act 2002 as amended by section 13 WRWA and section 10 of the Welfare Reform Act 2012, as amended by section 14 of the WRWA.

- 44 These changes may impact on the living standards of children in households with more than two children, and therefore would constitute a regressive measure in relation to the implementation of Articles 26 and 27 of CRC. As stated in a Public Law Project conference paper on the proposed legislation prior to its passage, these measures are harder to justify on the basis of the benefit to children that could arise from parents being incentivised to move into work, as “children can only be said to benefit to the extent that parents decide not to have them in the first place.”⁵⁶
- 45 The EHRC raised particular concerns with the potential disproportionate impact of the measures on families who hold a particular religion or belief,⁵⁷ as data from the Office of National Statistics demonstrates that some ethnic groups and families with a particular religion or belief have larger families than others.⁵⁸
- 46 DWP's impact assessment for these changes was not sufficiently detailed to support proper scrutiny of the legislation.⁵⁹ In particular it failed to mention the PSED, how its aims would be achieved, how the potential impact will be monitored or how adverse impact identified after implementation would be tackled. There is no evidence provided to support DWP's assumption that the measures will incentivise families to have only two children if they cannot afford to have more. While the potential impact on ethnic minorities is noted by the DWP,⁶⁰ those groups most likely to be affected are not identified. Nor is there an analysis of the effectiveness of such a measure on groups who have a cultural practice of large families, or on those for whom family planning is against their religious teachings.⁶¹
- 47 The failure to fully assess the potential impacts of the measures on children in families from ethnic minorities and those who share a particular religion or belief will

⁵⁶ Burton, J., Clarke, S., Spencer, M., Social security salami slicing: what's left to cut?, 06/11/15. Available at: <http://www.publiclawproject.org.uk/resources/219/socila-security-salami-slicing-whats-left-to-cut>

⁵⁷ EHRC, Parliamentary Briefing, Welfare Reform and Work Bill, Committee Stage: Clauses 11 and 12, House of Lords, 07/12/2015. Available at: http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Parli_Briefings/Welfare%20Reform%20and%20Work%20Bill%20Lords%20Committee%20Stage%20Briefing%20Clauses%2011&12%2007%2012%2015%20FINAL.docx

⁵⁸ Office of National Statistics, Data Table CT0546 - Religion by number of dependent children in family, 2015. Available at: <http://www.ons.gov.uk/ons/about-ons/business-transparency/freedom-of-information/what-can-i-request/published-ad-hoc-data/census/ethnicity/ct0546-2011-census.xls>

⁵⁹ DWP, Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element, para. 31. Available at: <http://www.parliament.uk/documents/impact-assessments/IA15-006E.pdf>

⁶⁰ DWP, Welfare Reform and Work Bill: Impact Assessment of Tax Credits and Universal Credit, changes to Child Element and Family Element, para. 31. Available at: <http://www.parliament.uk/documents/impact-assessments/IA15-006E.pdf>

⁶¹ EHRC, Parliamentary Briefing, Welfare Reform and Work Bill, Committee Stage: Clauses 11 and 12, House of Lords, 07/12/2015

make it more difficult to mitigate any potential adverse impacts on the rights to an adequate standard of living and social security of these groups.

4.3 Devolution of certain social security matters through the Scotland Act 2016

48 The Scotland Act 2016, which received Royal Assent on 23 March 2016⁶² devolves significant new welfare powers, representing approximately 17% (£2.6 Billion) of currently reserved welfare spend.⁶³ The new social security powers will cover most disability and carers benefits, as well as the housing element of Universal Credit (UC) and certain administrative arrangements for UC (such as the frequency of payments), as well as new powers to make discretionary top-up payments.⁶⁴

4.4 Childcare provision

4.4.1 Increased free childcare allowance for three to four year olds in England

49 The availability and affordability of childcare for working parents plays an important role in contributing to the fulfilment of children's CRC Article 27 right to an adequate standard of living and their Article 6 right to development.

50 In *Children's Rights in the UK* the EHRC welcomed the UK Government's intention to extend the existing 15 hours per week of free early education or childcare in England to 30 hours a week for three- and four-year olds whose parents or carers are working.⁶⁵ The additional provision has now been brought into law through the Childcare Act 2016.⁶⁶

51 The affordability of childcare is a particular difficulty for low-income and lone parents, who often tend to be less informed about the childcare available.⁶⁷ The EHRC

⁶² Scotland Act 2016. Available at: <http://services.parliament.uk/bills/2015-16/scotland.html>

⁶³ The Scottish Parliament, Devolution (Further Powers) Committee guide to Scottish Devolution, November 2015, p. 9-10. Available at: www.scottish.parliament.uk/2015.11.10_Citizens_Guide_Draft_FINAL.pdf

⁶⁴ The Scottish Parliament, Devolution (Further Powers) Committee guide to Scottish Devolution, November 2015, p. 9-10. Available at: www.scottish.parliament.uk/2015.11.10_Citizens_Guide_Draft_FINAL.pdf

⁶⁵ EHRC, *Children's rights in the UK*, p. 36

⁶⁶ Childcare Act 2016: Available at: <http://www.legislation.gov.uk/ukpga/2016/5/enacted>

⁶⁷ Campbell-Barr, V. and Garnham, A., 2010, *Childcare: A Review of What Parents Want*, EHRC Research Report 66. Available at:

welcomes the requirement in the Childcare Act that local authorities in England publish information about childcare provision.

- 52 However, a number of issues were raised during the passage of the Childcare Bill through the UK Parliament, including:
- The UK Government has not satisfactorily demonstrated how the additional provision of childcare will be fully and sustainably funded.⁶⁸ Inadequate funding may have negative implications for the availability, affordability and quality of childcare in general if the overall market is affected.⁶⁹
 - The system must be made to deliver for all children – including disabled children and children with special educational needs.⁷⁰
- 53 Continued attention to these issues is needed to ensure the Childcare Act can succeed in positively enhancing children's rights.

4.4.2 Childcare provision in Wales

- 54 The provision of childcare is devolved to the National Assembly for Wales and the Welsh Government. The systems in the different countries do not lend themselves to direct comparison. Children aged three and four in Wales are entitled to a minimum of 10 hours a week of free early education, and some children aged two to three years old are eligible for 12.5 hours a week of free childcare under the Flying Start Programme.
- 55 Evidence presented in *Is Wales Fairer?* shows that access to childcare in Wales for under 8s has increased slightly since 2008/09, but that provision is patchy, with poor supply in the South Wales valleys and in parts of rural Wales. The evidence

http://www.equalityhumanrights.com/sites/default/files/documents/research/childcare_what_parents_want.pdf

⁶⁸ Institute for Public Policy Research, *Extending the Early Years Entitlement – Costings, Concerns and Alternatives*, October 2015, pp 3 and 9. Available at:

<http://www.ippr.org/files/publications/pdf/extending-the-early-years-entitlement-costings-concerns-and-alternatives-oct2015.pdf>

⁶⁹ Institute for Public Policy Research, *Extending the Early Years Entitlement – Costings, Concerns and Alternatives*, October 2015, p 9. Available at: <http://www.ippr.org/files/publications/pdf/extending-the-early-years-entitlement-costings-concerns-and-alternatives-oct2015.pdf> Ceeda, *Counting the cost*, October 2014, pp4–5. Available at: <https://www.pre-school.org.uk/document/7905>

⁷⁰ Public Bill Committee (Childcare Bill), *Written Evidence, PBC (Bill 084) 2015–2016*, p20, para 3.1 . Available at: <http://www.publications.parliament.uk/pa/cm201516/cmpublic/childcare/memo/childcareconsolidated.pdf>

gathered also suggested that access to childcare in Wales was more difficult for parents of disabled children and parents with atypical work patterns.⁷¹

- 56 The EHRC welcomes a new Welsh Government scheme which will aim to help unemployed parents into work or training by helping them with childcare costs.⁷²

4.5 Housing (list of issues para 16 and part III, para 2(k))

4.5.1 Child homelessness and temporary accommodation

- 57 Housing and homelessness are devolved issues, though their incidence may be affected by UK Parliament actions on related, centrally managed issues, such as social security. In the EHRC's updated submission on ICESCR, we raise concerns about the increase in the number of homeless households in temporary accommodation, including Bed and Breakfast (B&B) accommodation.⁷³
- 58 This section focuses on the situation of homeless children in families living in temporary accommodation, and 16- and 17-year olds facing homelessness.

4.5.2 Children in homeless families

- 59 Recent government statistics for England, Scotland and Wales indicate that the number of children who are homeless and living in temporary accommodation stood at 105,000 at the end of June 2015.⁷⁴

⁷¹ EHRC, *Is Wales Fairer?*, p. 17. Available at: <http://www.equalityhumanrights.com/publication/wales-fairer>

⁷² Welsh Government, *New £10.9m childcare scheme to help get parents into work*, 13/10/15. Available at: <http://gov.wales/newsroom/people-and-communities/2015/childcare-scheme-help-parents-into-work/?lang=en>

⁷³ Page ref to ICESCR Update needed

⁷⁴ Shelter, *This is no place for a child': the experiences of homeless families in emergency accommodation*, November 2015. Available at: http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/research_this_is_no_place_for_a_child?_ga=1.146739636.1438392177.1448627800.

Shelter calculated the number of children who are homeless in temporary accommodation in Great Britain by adding the total number of children in temporary accommodation in Scotland (see: <http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/RefTables/homelessApriltoJune2015>) to the total number of children in temporary accommodation in England (see: <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>), and then adding the estimated number for Wales on the basis of the number of families in temporary accommodation (see: <https://stats.wales.gov.uk/Catalogue/Housing/Homelessness>). Their calculations revealed a total of 105,251 children in temporary accommodation in England, Scotland and Wales at the end of Q2 2015.

- 60 While local authorities have a duty to rehouse unintentionally homeless families with children, they may remain in temporary accommodation because it has not yet been possible to find them new housing. Of these families, a proportion is placed in non-self-contained accommodation such as B&B accommodation, hostels and other shared accommodation.
- 61 Recent research from Shelter, a housing and homelessness charity, suggests that living in non-self-contained temporary accommodation with shared facilities, such as hostels and B&Bs, may have a negative impact on children's mental and physical health, and on their educational attainment.⁷⁵ Families described children experiencing high levels of anxiety, poor sleep, disrupted routines and a lack of quiet space to complete homework.⁷⁶ This study corroborates earlier research findings⁷⁷ and indicates that the placement of children in non-self-contained temporary accommodation with shared facilities not only affects children's right to an adequate standard of living under Article 27 CRC, it may also affect children's rights to the highest attainable standard of physical and mental health; to education; and to rest, play and leisure, under Articles 24, 28 and 31 of CRC (respectively).
- 62 In England and Wales, B&B accommodation is recognised as unsuitable for homeless children in Statutory Instruments⁷⁸ and guidance,⁷⁹ which state that families with children must only be placed in B&B accommodation in emergency cases, and only for a limited time.

⁷⁵ This was a qualitative research report, drawing on interviews with 20 families in shared temporary accommodation. Shelter, 'This is no place for a child': the experiences of homeless families in emergency accommodation, November 2015, pp 13-14. Available at: http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/research_this_is_no_place_for_a_child?_ga=1.146739636.1438392177.1448627800

⁷⁶ Ibid, p 15.

⁷⁷ Local Government Ombudsman, No place like home: Councils use of unsuitable bed & breakfast accommodation for homeless families and young people. Focus report: learning lessons from complaints, October 2013. Available at: <http://www.lgo.org.uk/downloads/special%20reports/1885-FR-No-place-like-home-FINAL-11.10.2013.pdf> Shelter, Chance of a lifetime: the impact of bad housing on children's lives, 2006. Available at: http://england.shelter.org.uk/_data/assets/pdf_file/0016/39202/Chance_of_a_Lifetime.pdfw; Shelter, Living in Limbo - survey of homeless households living in temporary accommodation, June 2004. Available at: http://england.shelter.org.uk/_data/assets/pdf_file/0012/40116/Living_in_Limbo.pdf

⁷⁸ Homelessness (Suitability of Accommodation) (England) Order 2003; Homelessness (Suitability of Accommodation) (Wales) Order 2015.

⁷⁹ DCLG, Homelessness Code of Guidance for Local Authorities, July 2006, para 7.6. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7841/152056.pdf; Government of Wales, Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness, April 2015. Available at: <http://gov.wales/docs/desh/publications/150424-code-of-guidance-for-local-authorities-on-allocation-of-accommodation-and-homelessness-en.pdf>

- 63 Notwithstanding these restrictions and guidance, statistics show that the number of homeless families staying in B&B accommodation in Great Britain has increased four-fold between June 2009 and June 2015, rising from 590 to 2,700.⁸⁰

4.5.3 Homeless 16- and 17-year-olds in England

- 64 A recent report by the Children's Society (an organisation that assists street children, disabled children, young refugees, and children in trouble with the law) estimated that at least 12,000 16- and 17-year-olds in England present as homeless to their local authorities each year. The actual figure could be higher due to inconsistent or inadequate recording of data by local authorities.⁸¹
- 65 Of those 16- and 17-year-olds presenting as homeless to their local council, only half receive an assessment under the Housing Act 1996 or Children Act 1989, and just one in five are accommodated by their local authority⁸² Moreover, statutory guidance⁸³ requiring that 16- and 17-year-olds should receive assistance under the Children Act 1989 is not followed in a number of cases, with young people missing out on potential support.⁸⁴

⁸⁰ Calculated from government statistics for Scotland (see: <http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/RefTables/homelessApriltoJune2015>), England (see: <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>), Wales (see: <https://statswales.wales.gov.uk/Catalogue/Housing/Homelessness>)

⁸¹ Children's Society, Getting the house in order: keeping homeless older teenagers safe, March 2015, p 16-18. Available at: http://www.childrenssociety.org.uk/sites/default/files/getting-the-house-in-order_PCR025aHousing_Report_LR_final_6_web.pdf. The report was based on Freedom of Information requests, analysis of more than 70 cases of children's experiences and interviews with young people and professionals. See also; Homeless Link, No Excuses: preventing homelessness for the next generation, 2013. Available at: <http://www.homeless.org.uk/sites/default/files/site-attachments/No%20Excuses%20Report%202013.pdf>

⁸² Children's Society, Getting the house in order: keeping homeless older teenagers safe, March 2015, p 8. Available at: http://www.childrenssociety.org.uk/sites/default/files/getting-the-house-in-order_PCR025aHousing_Report_LR_final_6_web.pdf

⁸³ Department for children, schools and families and Department for Communities and Local Government. *Provision of Accommodation for 16- and 17-year-olds young people who may be homeless and/or require accommodation, 2010*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8260/Provision_20of_20accommodation.pdf

⁸⁴ Children's Society, Getting the house in order: keeping homeless older teenagers safe, March 2015, p 20-22. Available at: http://www.childrenssociety.org.uk/sites/default/files/getting-the-house-in-order_PCR025aHousing_Report_LR_final_6_web.pdf

- 66 Evidence shows that young people are still being placed in inappropriate temporary accommodation, such as hostel and B&B accommodation.⁸⁵ There were 40 households in B&B accommodation headed by 16 and 17 year olds at the end of December 2015, and half of these had been there for more than six weeks.⁸⁶
- 67 The EHRC notes that recent statistical releases no longer disaggregate the data by this age group. This has also been noted in a House of Commons Library briefing paper.⁸⁷

⁸⁵ Children's Society, Getting the house in order: keeping homeless older teenagers safe, March 2015. Available at: http://www.childrensociety.org.uk/sites/default/files/getting-the-house-in-order_PCR025aHousing_Report_LR_final_6_web.pdf

⁸⁶ House of Commons Library Briefing Paper No. 02110: Households in temporary accommodation (England), 2016. Available at: <http://researchbriefings.files.parliament.uk/documents/SN02110/SN02110.pdf>

⁸⁷ House of Commons Library Briefing Paper No. 02110: Households in temporary accommodation (England), 2016. Available at: <http://researchbriefings.files.parliament.uk/documents/SN02110/SN02110.pdf>

Section 5

Education, leisure and cultural activities (Articles 28 and 29)

68 Education is a devolved matter in Scotland and Wales. The EHRC is concerned by gaps in educational attainment linked to a child's gender, ethnicity, socio-economic status, special educational needs or disability status, or placement in the care of a local authority. The gaps set out below illustrate the need for the UK and Welsh Governments to make improvements to ensure the right to education for all children without discrimination, as protected by Article 28 CRC, taken in conjunction with Article 2.

5.1 Educational attainment in England

69 In *Children's Rights in the UK* the EHRC noted trends in educational attainment from 2008 to 2013 in England and Wales for children with particular protected characteristics.⁸⁸ It highlighted that:

- girls continue to out-perform boys at all stages of education;
- GCSE-level attainment by Gypsy/Roma and Traveller children is significantly lower than the national average for all pupils;
- while ethnicity continues to impact on educational outcomes, the gap between White pupils and Pakistani, Bangladeshi, African, Caribbean and Black pupils has decreased since 2008; and
- GCSE-level attainment among looked-after children showed some improvement, although a significant gap remained between this group and the national average.

70 Reforms to the English education system, particularly those from September 2013 onwards, have made comparisons over time more difficult.⁸⁹ Nevertheless, the most

⁸⁸ EHRC, *Children's rights in the UK*, paras 146 and 147

recent data on the percentage of pupils achieving at least five A*-C GCSE grades or equivalent, including English and mathematics, show that:⁹⁰

- Girls had pulled further ahead of boys in their educational attainment, but the gap narrowed slightly between 2013/14 and 2014/15, owing to a small increase in boys' attainment.
- There continues to be much variation in attainment by ethnicity, with the latest data displaying an attainment pattern very similar to that seen in the 2013/14 statistics presented in *Children's Rights in the UK*.
- The attainment of Gypsy/Roma and Irish Traveller pupils remains of particular concern as they are consistently among the lowest performers; in 2014/15, just 8.6% of Gypsy/Roma and 17.6% of Irish Traveller pupils achieved at least five A*-C GCSE grades, compared to a national average of 57.1 percent.
- Socio-economic disadvantage continues to have an impact on attainment: in 2014/15, the gap in attainment between pupils eligible for free school meals and those not eligible for free school meals was 27.8 percentage points and just 33.1% of eligible pupils achieved the GCSE threshold compared to 60.9% of pupils not eligible for free school meals.

5.2 Educational attainment in Wales

71 In Wales, a key measure of educational attainment is the percentage of pupils achieving the equivalent of at least five A*-C GCSE grades, including English or Welsh first language, and mathematics. The proportion of pupils achieving this level of attainment increased from 47% in 2008/09 to 53% in 2012/13.⁹¹ While we welcome this increase, there has been little reduction in the inequalities in attainment observed between different groups and for some groups, the gap has widened.

⁸⁹ Statistics on GCSE attainment from 2013/14 onwards are not directly comparable with previous years due to changes in performance measures. While there were further changes to performance measures in 2014/15, the DfE considers the effect of these changes to have been small enough to make valid comparisons between 2013/14 and 2014/15. (Department for Education, Revised GCSE and equivalent results in England: 2014 to 2015, Main Text SRF 01/2016, pp. 3 and 4. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494073/SFR01_2016.pdf)

⁹⁰ The figures reported are from the Department for Education, Revised GCSE and equivalent results in England: 2014 to 2015, SRF 01/2016. Available at: <https://www.gov.uk/government/statistics/revised-gcse-and-equivalent-results-in-england-2014-to-2015>

⁹¹ EHRC, Is Wales Fairer?, p. 10. Available at: <http://www.equalityhumanrights.com/publication/wales-fairer>

- 72 The pattern of attainment by protected characteristic is broadly similar to that in England:
- Girls in Wales continued to perform better than boys in 2015.
 - Black pupils in Wales perform below the national average (47.1% compared to 56.0%, aggregated over 2013-15).
 - The attainment gap in Wales for pupils with special educational needs remains large with only 23.3% of SEN pupils achieving the benchmark in 2015.⁹²
- 73 Data from *Is Wales Fairer?* highlighted a number of other groups for which significantly lower proportions of children achieve at least five A*-C GCSE grades including English or Welsh, and mathematics:
- 13% of Gypsy/Roma children in 2013/14;
 - 17% of looked-after children (17% in 2013/14); and
 - 26% of children eligible for Free School Meals in 2012/13.⁹³

5.2.1 The impact on educational attainment of the under-occupation deduction

- 74 In *Socio-Economic Rights in the UK*, the EHRC noted the negative impacts of the under-occupation deduction on the rights of vulnerable individuals, particularly disabled people.⁹⁴ The under-occupation deduction is a reduction in the amount of housing benefit paid to claimants if they live in social housing that is deemed to be too large for their needs. This is based on the premise that two children of opposite sex under ten years, two children of the same sex under 16 years, and adult couples should share a bedroom, with some exemptions, such as households with a disabled child who needs his or her own bedroom.
- 75 A recent small-scale qualitative study, based on interviews with parents, school representatives and community groups in Manchester, suggests that the educational progression of children under 16 who have to share a bedroom as a result of the under-occupation deduction may be adversely impacted by the lack of a quiet place to do homework and by disturbed sleep because of sharing with younger siblings.⁹⁵

⁹² The Level 2 threshold measure reports the percentage of pupils achieving the equivalent of at least five A*-C GCSE grades. Welsh Government, 'Academic achievement by pupil characteristics', 2016. Available at:

<http://gov.wales/statistics-and-research/academic-achievement-pupil-characteristics/?lang=en>

⁹³ EHRC, *Is Wales Fairer?*, p. 10. Available at: <http://www.equalityhumanrights.com/publication/wales-fairer>

⁹⁴ *Socio-Economic Rights in the UK*, 2015, paras 32-37

⁹⁵ University of Manchester, *The Impacts of the 'Bedroom Tax' on Children and Their Education A Study in the City of Manchester*, November 2015. Available at:

The findings also suggest that material hardship from a combination of social security reforms, including the under-occupation deduction, is contributing to physical and psychological problems among children, including hunger at school and emotional distress, which negatively affects children's learning.⁹⁶

5.3 Special Educational Needs in the pupil population in England and Wales (list of issues part III, para 2(I))

- 76 In *Children's Rights in the UK*, the EHRC highlighted the UK's interpretive declaration with regards to Article 24(2) of the Convention on the Rights of Persons with Disabilities, as it suggests an acceptance of a fixed and permanent role for separate special schools for disabled children. The EHRC also welcomed a statement by the UK Government of its commitment to inclusive education for disabled children and its intention to progressively remove barriers to participation in mainstream education.⁹⁷
- 77 In the UK, children with Special Educational Needs (SEN) may be educated in State-funded or non-State-funded mainstream schools, or within State-funded or non-State-funded special schools. Within mainstream schools, children with SEN may be taught in classrooms with other pupils, or they may attend a SEN/special unit or be placed in resourced provision.⁹⁸
- 78 Statistics provided in the UK State response to UN CRC's list of issues do not provide any breakdown of educational provision for children with Special Educational

<http://www.manchester.ac.uk/discover/news/first-research-to-examine-impact-of-the-bedroom-tax-on-children-and-their-education>. Interviews were carried out with a small sample of key stakeholders identified on the basis of their relevant knowledge and experience, including representatives of 20 schools, housing associations and community organisations, and 14 parents/carers.

⁹⁶ University of Manchester, *The Impacts of the 'Bedroom Tax' on Children and Their Education A Study in the City of Manchester*, November 2015, pp: 36-40; 74-78.

⁹⁷ EHRC, *Children's Rights in the UK*, para 138

⁹⁸ Resourced provisions are where places are reserved at a mainstream school for pupils with a specific type of SEN, taught mainly within mainstream classes, but requiring a base and some specialist facilities around the school. Resourced provisions: receive additional funding from the Local Authority (especially for the purpose of the provision); cater for a specific type or types of SEN (e.g. specific learning difficulties); are usually for pupils with statements of SEN.

Needs.⁹⁹ The EHRC therefore provides figures from the UK Government's Department for Education (DFE) on England:¹⁰⁰

- In January 2015, there were just over 1.3 million pupils in England with identified Special Educational Needs, accounting for 15.4 percent of the pupil population.
- Of these pupils, 1.1 million were in state-funded mainstream schools.
- Of the pupils with SEN in state-funded mainstream schools, some 38,000 (3.5 percent) were either attending a SEN unit or placed in resourced provision.
- There were 77,000 pupils with SEN in independent (non-State-funded) schools.
- There were some 100,000 pupils with SEN in State-funded special schools, and almost 4,000 pupils with SEN in non-State-funded special schools.

79 In Wales, of the 466,000 pupils in state-funded schools in January 2015, 105,000 (22.5%) had special educational needs. Pupils with a statement accounted for 2.7% of the total pupil population. Over 100,000 pupils with SEN were in mainstream schools; the remaining 4,500 were in special schools.¹⁰¹

5.4 Implementation of the SEND code in England

80 In *Children's rights in the UK*,¹⁰² the EHRC recognised that the Children and Families Act 2014 and Special Educational Needs and Disabilities (SEND) Code strengthened compliance by the legal framework in England with CRC Articles 28 and 29 concerning children's right to education.¹⁰³ However, it was noted in that report that more time was needed to assess the impact of these measures.

⁹⁹ Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues, CRC/C/GBR/Q/5/Add.1, 02/03/16, para. 118(l). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en

¹⁰⁰ Figures for England are from Department for Education (2015) 'Special educational needs in England: January 2015', SFR25/2015. Available at: <https://www.gov.uk/government/statistics/special-educational-needs-in-england-january-2015> [Accessed 18/01/2016]

¹⁰¹ Figure for Wales are from an ad-hoc statistical request published by the Welsh Government: Welsh Government (2015) 'Pupils with special educational needs by type of provision and sector, January 2015', 24/08/2015: <http://gov.wales/docs/statistics/adhocrequests/2015/150824-pupils-sen-type-provision-sector-january-2015-en.xlsx> [Accessed 18/01/2016]

¹⁰² EHRC, children's rights in the UK, July 2015. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/UNTreaty/Children's%20rights%20in%20the%20UK%20Sept%202015.docx>

¹⁰³ EHRC, Children's rights in the UK, pp. 51/52

81 In October 2015, the Department for Education (DfE) launched a consultation on the proposed arrangements by which Ofsted and the Care Quality Commission (CQC)¹⁰⁴ inspect how local service providers in England¹⁰⁵ identify children and young people with SEND, and provide them with appropriate services to meet their needs.¹⁰⁶ The DfE is currently analysing responses to the consultation, and inspections are due to start in May 2016. The EHRC welcomes this consultation and notes its potential to contribute to the fulfilment of the UK's Article 28 and Article 29 CRC obligations to provide a quality education equally to all children.

82 While the reformed system is in its early stages, initial research by the National Autistic Society, the Driver Youth Trust and the National Deaf Children's Society on its impact suggests that:¹⁰⁷

- The reforms have not been adequately communicated leaving stakeholders, including students and their parents, struggling to navigate the new system.
- Overall, SEND provision is now 'fragmented' and consequently more difficult to navigate, although some schools and local authorities have developed high-quality and innovative support in response to the reforms.
- Such fragmentation of provision is also leading to wasted resources and disconnected or duplicated services, while leaving many children and young people without the support they need to succeed in education.
- The majority of those parents whose child has an Education, Health and Care (EHC) plan are happy with its contents.
- Parents of children with autism or who are deaf are currently dissatisfied with the new system including the new 'local offer'¹⁰⁸ and the assessment for the EHC plans.

¹⁰⁴ the inspectorates for education and health in England

¹⁰⁵ local authorities, nurseries, schools, further education establishments, and health services

¹⁰⁶ DfE, Local Area SEND inspections: The inspection of local areas' effectiveness in identifying and meeting the needs of children and young people who are disabled and have special educational needs, 2015. Available at: <https://www.gov.uk/government/consultations/local-area-send-consultation>

¹⁰⁷ The National Autistic Society, School Report, 2015. Available at: <http://www.autism.org.uk/get-involved/media-centre/news/sen-report.aspx> Driver Youth Trust, Joining the dots, 2015. Available at: <http://driveryouthtrust.com/index.php/joining-the-dots/> National Deaf Children's Society, One year on: impact of changes to the special educational needs system on deaf children, 2015. Available at: http://www.ndcs.org.uk/news/ndcs_news/sen_report.html

¹⁰⁸ Local offers are meant to provide families with clear and accessible information on the support available for all children and young people with SEND in their area. They also aim to make SEND provision more responsive to local needs and aspirations by directly involving SEND children and young people, their parents, and service providers including NHS services in its development and review.

- Many parents of children with autism or who are deaf reported feeling that they had not been properly listened to, and had to go to considerable lengths to secure adequate support for their children, including recourse to legal action.

5.5 Review of the Pupil Premium in England

- 83 In *Children's Rights in the UK*,¹⁰⁹ the EHRC noted evidence from a 2014 Ofsted report suggesting that school leaders in England are spending the pupil premium (PP) more effectively, but that weak leadership and governance pose continued barriers to closing the attainment gap.¹¹⁰ The EHRC also acknowledged the introduction of the early years pupil premium (EYPP) for nursery age children in January 2015,¹¹¹ but held that it was too early to determine the impact.
- 84 More recently, the National Audit Office (NAO)¹¹² and the Public Accounts Committee¹¹³ have reported that early signs are positive, with school leaders increasingly using their PP to improve outcomes for disadvantaged children, but that it will take time for the full impact of the PP to be known.¹¹⁴ They acknowledged that the attainment gap between disadvantaged pupils and their peers had narrowed since 2011, yet remains large, with progress uneven across England.
- 85 The NAO also reported that “at this stage, the significance of the improvements is unclear. More time and further evaluation will be needed to establish whether the Department has achieved its goals”.

¹⁰⁹ EHRC, *Children's Rights in the UK*, paras 158-161

¹¹⁰ Ofsted: T pupil premium: an update, July 2014. Available at:

<https://www.gov.uk/government/publications/the-pupil-premium-an-update>

¹¹¹ Department of Education, *Disadvantaged Children to benefit from 'life-changing' money*, January 2015. Available at: <https://www.gov.uk/government/news/disadvantaged-children-to-benefit-from-life-changing-money>

¹¹² National Audit Office, *Funding for disadvantaged pupils*, 2015, available at <https://www.nao.org.uk/report/funding-for-disadvantaged-pupils/>

¹¹³ House of Commons Committee of Public Accounts, *Funding for disadvantaged pupils*. Third Report of Session 2015–16, available <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news-parliament-2015/report-published-funding-for-disadvantaged-pupils-15-16/>

¹¹⁴ The DFE does not expect the full impact of funding to be felt until 2018 for primary schools and 2023 for secondary schools.

- 86 The EHRC welcomes implementation by the DfE of a recommendation by the EHRC,¹¹⁵ reiterated in *Children's Rights in the UK*,¹¹⁶ to disaggregate PP take-up by protected characteristics as part of the monitoring process.
- 87 Schools are also required to publish full details of their PP funding, including use and impact, and the outcomes for disadvantaged pupils are published annually in performance tables.¹¹⁷ Ofsted's inspection framework now includes consideration of the attainment and progress of disadvantaged pupils eligible for the PP.¹¹⁸
- 88 The EHRC welcomes these developments as they contribute to the progressive realisation of the right to education on an equal basis for all children.

5.6 Personal, social and health education in England (list of issues para 14)

- 89 In *Children's rights in the UK*, the EHRC highlighted the key role of personal, social and health education in informing children about their CRC rights, and addressing violence against women and girls. It noted the concerns of UN, Parliamentary and education bodies regarding the non-statutory status and the quality of Personal, social and health education (PSHE) in England.¹¹⁹
- 90 In July 2015, the DfE responded to a report of the UK Parliament's Education Committee, but did not directly respond to the recommendation that PSHE be included as a statutory part of the national curriculum.¹²⁰ The Education Committee found this response to be 'disappointing' and 'feeble' in failing to address the issue.¹²¹

¹¹⁵ EHRC, Fair Financial Decision-Making, Progress Report, June 2014, p.38. Available at:

<http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/section-31-assessment-hm-treasury/fair-financial-decision-making-progress-report-%E2%80%93-june-2014>

¹¹⁶ EHRC, *Children's Rights in the UK*, para 162

¹¹⁷ Available at: http://www.education.gov.uk/schools/performance/geo/england_all.html

¹¹⁸ Department for Education, Pupil premium: funding and accountability for schools, 2015. Available at: <https://www.gov.uk/pupil-premium-information-for-schools-and-alternative-provision-settings>

¹¹⁹ EHRC, *Children's rights in the UK*, pp. 63-64

¹²⁰ DfE, Government Response: Life lessons: PSHE and SRE in schools, July 2015. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446038/50742_Cm_9121_Web.pdf

¹²¹ House of Commons Select Committee on Education, Government response to sex education report is 'feeble', July 2015. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/education-committee/news-parliament-2015/comment-sex-education-15-16/>

- 91 In a letter to the Secretary of State for Education in November 2015, the Education Committee reiterated its concerns regarding the non-statutory status of PSHE in England.¹²² A response from the Secretary of State for Education in February 2016 confirmed the UK Government's position not to make PSHE a statutory part of the curriculum in England at this time. It also set out its plans to improve the quality of PSHE teaching in schools, including through producing an action plan and recommendations for improving PSHE and a comprehensive PSHE toolkit for schools.¹²³
- 92 Personal and social education (PSE) is a statutory part of the curriculum in Wales. Guidance on the PSE framework sets out the aims of PSE, which is to:
- develop learners' self-esteem and a sense of personal responsibility;
 - promote self-respect, respect for others and celebrate diversity;
 - equip learners to live safe, healthy lives;
 - prepare learners for the choices and opportunities of lifelong learning; and
 - empower learners to participate in their schools and communities as active responsible citizens locally, nationally and globally¹²⁴.

¹²² Letter from the Education Committee to the Secretary of State for Education regarding statutory status for PSHE, 25 November 2015. Available at: <http://www.parliament.uk/documents/commons-committees/Education/Letter-from-the-Committee-to-the-Secretary-of-State-regarding-statutory-status-for-PSHE.pdf>

¹²³ Letter from Nicky Morgan MP, Secretary of State for Education to Neil Carmichael MP, Chair of Education Select Committee, 10/02/16. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499338/Nicky_Morgan_to_Education_Select_Committee_-_10_Feb_2016--.pdf

¹²⁴ Department for Children, Education, Lifelong Learning and Skills, Welsh Government, Personal and social education framework for 7 to 19-year-olds in Wales. Available at: <http://learning.gov.wales/docs/learningwales/publications/130425-personal-and-social-education-framework-en.pdf>

Section 6

Special protection measures: Youth justice (Articles 37 and 40)

- 93 Youth justice is a matter reserved to the UK Parliament and Government. In *Children's rights in the UK*, the EHRC addressed a number of issues in relation to youth justice in England and Wales, including: the age of criminal responsibility, the use of ordinary courts for trials involving children, children's effective participation in proceedings, use of youth courts, alternatives to child custody, use of restraint in the secure youth estate, use of segregation, and secure colleges.¹²⁵
- 94 Since then, the UN Human Rights Committee has called on the UK Government to raise the minimum age of criminal responsibility in England and Wales in accordance with international standards, and to further reduce the number of children in the youth justice system.¹²⁶

6.1 Review of the youth justice system in England and Wales (list of issues, para 19)

- 95 In September 2015, the UK Government's Secretary of State for Justice announced a review of the youth justice system in England and Wales which will consider “the evidence and current practice in preventing youth crime and rehabilitating young offenders [...] explore how the youth justice system can most effectively interact with

¹²⁵ EHRC, *Children's rights in the UK*, pp. 65 - 76

¹²⁶ Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, 17/08/2015, para. 23. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en

wider services for children and young people; and [...] consider whether the current arrangements are fit for purpose.”¹²⁷

- 96 An interim report of emerging findings from this review was published in February 2016.¹²⁸ The EHRC welcomes the particular focus of the review on transforming education in custody.¹²⁹ The Ministry of Justice (MoJ) makes a welcome commitment to ensuring that children receive the highest quality education and that children's best interests do not become “secondary to containment, the management of risk and establishing uniform processes.”¹³⁰ This is in line with the concerns raised in *Children's rights in the UK* about the education of children with disabilities and SEN in detention.¹³¹ We look forward to seeing further details set out in the review's final report in July 2016, which will take into account the experiences of children with disabilities and SEN.
- 97 The EHRC agrees with the concern raised in the review around the “inappropriate use of police detention for children experiencing mental health crises”. We welcome the extension of the remit of the review to cover initial police response to children experiencing mental health crises and a fresh consideration of courts and sentencing.¹³²
- 98 The review could be strengthened if its remit were further extended to address the use of restraint and segregation in detention. A review of these elements of the youth justice system would help ensure that children deprived of their liberty are treated in a manner consistent with the promotion of their sense of dignity and worth in line with Articles 37 and 40 CRC.

¹²⁷ Secretary of State for Justice, Michael Gove, Written statement to Parliament on Youth Justice, 11 September 2015. Available at: <https://www.gov.uk/government/speeches/youth-justice>

¹²⁸ MoJ, Review of the youth justice system: an interim report of emerging findings, 09/02/16. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498736/youth-justice-review.pdf

¹²⁹ MoJ, Review of the youth justice system: an interim report of emerging findings, 09/02/16, para. 11-21. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498736/youth-justice-review.pdf

¹³⁰ MoJ, Review of the youth justice system: an interim report of emerging findings, 09/02/16, para. 12. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498736/youth-justice-review.pdf

¹³¹ EHRC, *Children's rights in the UK*, p. 50

¹³² MoJ, Review of the youth justice system: an interim report of emerging findings, 09/02/16, para. 39 and 6. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498736/youth-justice-review.pdf

99 Although youth justice is not an area of policy devolved to the Welsh Government, many of those agencies and staff employed within the Youth Justice System operate within areas of devolved competence. In July 2014, the Welsh Government published a Welsh Government and Youth Justice Board joint strategy to 'improve services for young people from Wales at risk of becoming involved in the youth justice system'.¹³³ The review of the youth justice system notes the “uneasy division between centrally and locally-held responsibilities”. It considers the feasibility of devolving the budget and commissioning responsibility for youth custody to local areas or regional bodies and the Welsh Government to give local areas “greater flexibility to design and manage the system to fit with their priorities and needs.”¹³⁴

6.2 Use of restraint in the secure youth estate in England and Wales (list of issues para 19)

100 In *Children's rights in the UK*, the EHRC raised the following concerns:

- There has been a marked increase in the rate of restrictive physical interventions per 100 young people in the secure youth estate in England and Wales.
- Current guidelines specify that restraint can be used to promote good order and discipline in Young Offenders Institutions (YOIs).
- The low level of implementation of the 'Minimising and managing physical restraint' system (MMPR), a behaviour management approach developed to reduce the use of physical force in the secure youth estate.

101 Since the publication of *Children's rights in the UK* in August 2015, the sixth annual report by the UK National Preventive Mechanism (NPM) and Her Majesty's Inspectorate of Prisons (HMIP) of their review of the early implementation of MMPR in England and Wales has been published.¹³⁵

¹³³ Youth Justice Board for England and Wales and Welsh Government, Youth justice strategy for Wales: children and young people first. Available at: <https://www.gov.uk/government/publications/youth-justice-strategy-for-wales-children-and-young-people-first>

¹³⁴ MoJ, Review of the youth justice system: an interim report of emerging findings, 09/02/16, paras. 29-33. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498736/youth-justice-review.pdf

¹³⁵ National Preventive Mechanism, Monitoring Places of Detention: Sixth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2014 - 31 March 2015. Available at: <http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/12/NPM-Annual-Report-2014-15-web.pdf>. HM Inspectorate of Prisons, Behaviour management and restraint of children in custody: A review of the early implementation of MMPR by HM Inspectorate of Prisons, November

- 102 Figures provided by the Ministry of Justice and the Youth Justice Board show that recorded rates of restraint have increased to a five-year high across the secure estate for children and young people.¹³⁶ The number of injuries caused to children by the use of restraint is far higher than the figures released by the Youth Justice Board. In 2013/14, the Youth Justice Board initially stated that the use of restraint caused injuries to young people in 120 cases.¹³⁷ Following a parliamentary question, it was revealed that the use of restraint had actually caused injuries to children in 658 cases in 2013/14.¹³⁸
- 103 HMIP's review emphasises that the implementation of MMPR is taking place in the context of a substantial fall in the number of children in custody, meaning that Young Offenders Institutions and Secure Training Centres “now hold an even more concentrated mix of children [...] with more challenging behaviour and complex needs than in the past.”¹³⁹
- 104 HMIP welcomed “the significant improvements that [MMPR] has brought to the national oversight of restraint and the greater focus on communication and de-escalation as part of a wider approach to behaviour management”, but raised a number of concerns:¹⁴⁰
- Many children in YOIs and STCs were unable to identify any difference between their experience of MMPR and previous behaviour management systems in terms of attempts made to reduce the incidence of restraint or actual restraint practice.
 - Effective relationships between staff and detainees, which serve to de-escalate volatile incidents and minimise the number of children who experience restraint,

2015. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/behaviour-management-and-restraint-of-children-in-custody/>

¹³⁶ Ministry of Justice and Youth Justice Board, Youth justice annual statistics 2013-14, p. 49, Chart 8.2B,, available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf

¹³⁷ Ministry of Justice and Youth Justice Board, Youth justice annual statistics: 2013 to 2014.

Available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2013-to-2014>

¹³⁸ Number of injuries from 2008 – 14, <http://qna.files.parliament.uk/qna-attachments/446043/original/23231%20Table.xls>

¹³⁹ HM Inspectorate of Prisons, Behaviour management and restraint of children in custody: A review of the early implementation of MMPR by HM Inspectorate of Prisons, November 2015, p. 5. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/behaviour-management-and-restraint-of-children-in-custody/>

¹⁴⁰ HM Inspectorate of Prisons, Behaviour management and restraint of children in custody: A review of the early implementation of MMPR by HM Inspectorate of Prisons, November 2015, pp. 5-7.

Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/behaviour-management-and-restraint-of-children-in-custody/>

were more difficult to establish in YOIs, which are larger than STCs and have lower staffing levels. In contrast, STC staff felt they had the time to form positive relationships with the children living on their unit.

- CCTV footage demonstrated poor de-escalation techniques.
- Health care staff did not always undertake a physical examination of a child after the use of restraint.

105 The National Preventive Mechanism also found that in STCs, isolation often occurred following the use of restraint, and alternative means of managing disturbed behaviour included increased use of medication (chemical restraint), or the use of restraining garments (prolonged manual restraint or mechanical restraint).¹⁴¹

106 The continued and increasing use of restraint on children in detention raises serious concerns about the UK's implementation of Article 37(c) of the CRC, which protects the right of children deprived of their liberty to be treated with humanity and respect for their inherent dignity. Although policy guidelines state that restraint should only ever be used against children as a last resort,¹⁴² these guidelines are not consistently followed in practice. The ability for officials to use restraint in circumstances where a child does not pose an imminent threat of injury to him or herself or others, and to use restraint where other means of control have not been exhausted, is a particular concern.

6.2.1 Allegations of abuses in privately-run secure training centres

107 In January 2016, a documentary was aired on BBC which made a number of allegations of abuse at the Medway secure training centre (STC) in Kent.¹⁴³ The STC is run by G4S, a private security company. Staff members in the centre have been accused of abusing children under their care, including through the unnecessary and excessive use of physical restraint, and of falsifying records of their use of force.¹⁴⁴

¹⁴¹ National Preventive Mechanism, Monitoring Places of Detention: Sixth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2014 - 31 March 2015. Available at: <http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/12/NPM-Annual-Report-2014-15-web.pdf>

¹⁴² Ministry of Justice, Use of restraint policy framework for the under-18 secure estate, December 2012. Available at: <http://webarchive.nationalarchives.gov.uk/20140715125548/http://www.justice.gov.uk/downloads/youth-justice/custody/mmpr/use-restraint-policy-framework.pdf>

¹⁴³ BBC, Teenage prison abuse exposed, <http://www.bbc.co.uk/programmes/b06ymzly>

¹⁴⁴ BBC, Panorama G4S young offenders centre probe: Four arrested, 13/01/16. Available at: <http://www.bbc.co.uk/news/uk-england-35302948>

The Youth Justice Board has responded by increasing monitoring and support available to children and young people at three STCs currently run by G4S.¹⁴⁵

108 In a subsequent inspection of Medway STC, HMIP found that the immediate response to the allegations was in line with safeguarding procedures, but highlighted significant concerns in relation to:

- the fact that a number of staff must have been aware of unacceptable behaviour;
- the failure of managerial oversight to protect young people from harm; and
- poor practice being carried out in areas not covered by CCTV.¹⁴⁶

6.3 Segregation in the Youth Justice System in England and Wales (list of issues para 19 and part III, para 2(n))

109 In *Children's rights in the UK*, the EHRC highlighted the high incidence of segregation and the fact that all forms of youth justice permit its use, including 'for purposes of good order and discipline'.¹⁴⁷ The EHRC reflected findings of the National Preventive Mechanism that some children in Young Offenders Institutions spend 22 hours or more in their cells each day for considerable periods. This constitutes solitary confinement¹⁴⁸ and poses risks to the mental health of children.

110 Since then, the Children's Commissioner for England has found an even higher incidence of the use of segregation in England, with around a third of those detained subject to its use.¹⁴⁹ This is not reflected in the statistical information provided by the UK Government in its response to the UN CRC's list of issues.¹⁵⁰ The Children's Commissioner's findings raise the question as to whether the secure estate is

¹⁴⁵ Youth Justice Board for England and Wales, Action taken by the YJB to safeguard young people at secure training centres, 11/01/16. Available at: <https://www.gov.uk/government/news/action-taken-by-the-yjb-to-safeguard-young-people-at-secure-training-centres>

¹⁴⁶ HMIP, Inspection report: Medway Secure Training Centre, 11/01/16. Available at: <https://www.justiceinspectors.gov.uk/hmiprisons/inspections/medway-secure-training-centre-4/>

¹⁴⁷ EHRC, *Children's rights in the UK*, p. 74

¹⁴⁸ As defined in: United Nations Commission on Crime Prevention and Criminal Justice, Istanbul Statement on the Use and Effects of Solitary Confinement, 09/12/2007. Available at: <http://www.solitaryconfinement.org/istanbul>

¹⁴⁹ Office of the Children's Commissioner for England, *Unlocking Potential: A study of the isolation of children in custody in England*, October 2015, p.2. Available at: <https://www.childrenscommissioner.gov.uk/publications/unlocking-potential>

¹⁵⁰ Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues, CRC/C/GBR/Q/5/Add.1, 02/03/16, para. 118(n). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en

capable of adequately safeguarding imprisoned children and promoting their reintegration into mainstream society.

111 Analysis by the Children's Commissioner for England found that children with certain characteristics are at increased risk of isolation:

- Black and mixed heritage children are three times as likely to be subjected to isolation as children in the White British and White (Other) groups.
- Children with a recorded disability are two-thirds more likely to be subjected to isolation compared with children with no disability.
- Looked-after children are almost two-thirds more likely to be subjected to isolation compared with other children.
- Children assessed as a suicide risk are 42% more likely than other children to be subjected to isolation¹⁵¹.

112 UN CRC has held that solitary confinement as a disciplinary measure is a violation of article 37 CRC and must be strictly forbidden.¹⁵² The OCC report concluded that isolation was most appropriately used in secure children's homes and least appropriately used in YOIs.¹⁵³ Secure Training Centres, and particularly secure children's homes, tend to use isolation as a 'cooling off' mechanism, working towards reintegration at the earliest point possible. Within Young Offenders Institutions, it is more often used as a punishment, with less emphasis on ensuring its use for the minimum necessary period.

¹⁵¹ Office of the Children's Commissioner for England, Research Report: Isolation and solitary confinement of children in the English youth justice secure estate, September 2015, pp. 22-244. Available at: <http://www.childrenscommissioner.gov.uk/publications/unlocking-potential-supporting-research>

¹⁵² UN CRC, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25/04/2007, para. 89. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en

¹⁵³ Office of the Children's Commissioner for England, Unlocking Potential: A study of the isolation of children in custody in England, October 2015, p.4. Available at: <https://www.childrenscommissioner.gov.uk/publications/unlocking-potential>

Section 7

Special protection measures: Immigration and asylum (Article 22 CRC)

7.1 Age assessment of asylum seekers (list of issues para 18)

- 113 Home Office (HO) policy on assessing the age of asylum applicants states that applicants who have no documentary evidence as to their age will be “treated as children unless their physical appearance/demeanour very strongly suggests they are significantly over 18.”¹⁵⁴
- 114 This policy allows immigration officials, who receive no training on age assessments, to make a visual assessment of age. The Royal College of Paediatrics and Child Health has characterized the guidance to immigration staff as “unsafe and unhelpful” and has emphasized that age assessment should only be made in the context of a holistic examination of the child.¹⁵⁵ The EHRC has applied to intervene in a judicial review to challenge the lawfulness of the HO's policy.¹⁵⁶ It will argue that the detention of a person who is in fact a child on the basis of a demonstrably unreliable age assessment is arbitrary and as such infringes Article 5(1) of the European Convention on Human Rights which protects the right to liberty and security. The case will be heard in October 2016.
- 115 It is the position of the EHRC that the HO policy of assessing the age of asylum seekers on the basis of their physical appearance cannot be said to be scientific, child-sensitive or fair, nor does it accord the individual the benefit of the doubt in age-disputed cases. As a result, the policy risks bringing the UK Government in breach of

¹⁵⁴ UK Visas and Immigration, Assessing age: instruction, 15/06/15, p. 6. Available at: <https://www.gov.uk/government/publications/assessing-age-instruction>

¹⁵⁵ Royal College of Paediatrics and Child Health, Refugee and unaccompanied asylum seeking children and young people: age assessment and children in detention. Available at: <http://www.rcpch.ac.uk/improving-child-health/child-protection/refugee-and-unaccompanied-asylum-seeking-cyp/age-assessment>

¹⁵⁶ Queen on the Application of BF v Secretary of State for the Home Department - Case No. C2/2014/2661

its obligations under Article 22 CRC, as detailed in the CRC's General comment number 6.¹⁵⁷

¹⁵⁷ UN Committee on the Rights of the Child, General comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 01/09/05, para 31. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2005%2f6&Lang=en

Annex A

Equality and Human Rights Commission recommendations to improve implementation of the Convention on the Rights of the Child in the UK

Recommendation 1

National action plan on human rights

The EHRC recommends that the UK Government adopt a National Action Plan for Human Rights which include concrete steps to implement recommendations of UN treaty bodies and human rights mechanisms including the concluding observations of the UN Committee on the Rights of the Child.

This would enable the UK Government to:

- operate far more strategically, ensuring its efforts were streamlined and better co-ordinated across the UK Parliament and at a local level
- facilitate the sharing of best practice initiatives
- improve the way it measures and evidences human rights progress on the ground, and
- improve coordination, preparation and timely submission of state reports to the Human Rights Council and treaty bodies.

Recommendation 2

Enhancing the status of the Convention of the Rights of the Child (CRC) in UK domestic law and policy (Article 3(1))

With a view to giving full effect to all of the provisions in CRC, particularly the obligation under Article 3 (1) for the best interests of the child to be a primary consideration in all actions concerning children, the Equality and Human Rights Commission (EHRC) recommends that the UK Government consider and publish options for enhancing the status of the CRC in domestic law. It should do so as part of a wide-ranging consultation on proposals for a Bill of Rights, which seeks the views of children and young people.

Options for consideration should include:

- instruments such as the Rights of Children and Young Persons (Wales) Measure 2011 and the Children and Young People (Scotland) Act 2014, which enhance the status of the CRC in Scotland and Wales;
- access to a domestic remedy for children who allege that their rights under the CRC have been breached;
- a mechanism for scrutiny of policy and legislation to ensure compliance with the CRC, and
- robust mechanisms to hold decision-makers to account when it has been demonstrated that their actions or omissions have breached the CRC.

Recommendation 3

Children's access to civil law justice in England and Wales (Article 12(2))

In order to give full effect to the rights of children to be heard in any judicial and administrative proceedings which affect them as protected by Article 12 (2) CRC, and children's rights to non-discrimination, and for their best interests to be taken as a primary consideration under Articles 2 and 3 CRC, the EHRC considers that the UK Government should:

- monitor the impact of reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on access to justice for rights protected by CRC, including for non-asylum immigration, education, prison law and private family law cases, and conduct a post-implementation review of the reforms, within one year of the public examination by UN CRC;

- review the operation of the exceptional cases funding scheme to ensure that its application process and eligibility criteria are providing a human rights 'safety net', as intended; and
- withdraw proposals for a residence test for civil legal aid.

Recommendation 4

Violence against children in the UK (Article 19)

To ensure increased compliance and improved implementation of Article 19 CRC in the UK to protect the child from all forms of physical or mental violence, the EHRC recommends the UK Government implement the recommendations of the Joint Committee on Human Rights inquiry into violence against women and children (VAWG), including:

- the establishment of an adequately resourced full-time coordinating body with a UK-wide strategy, action plan and centralised budget to address VAWG; and
- the implementation of a comprehensive, coordinated and properly funded female genital mutilation strategy, whereby relevant organisations are held to account.

Comprehensive and co-ordinated strategies need to be implemented by the UK Government and devolved administrations to prevent and combat VAWG, with robust monitoring and accountability mechanisms to monitor their impact and ensure the provision of services for victims.

Recommendation 5

Financial decision-making and children's adequate standard of living in the UK (Articles 3, 4, 26 and 27)

With a view to using the 'maximum available resources' to realise progressively the economic, social and cultural rights of children in line with Article 4 of the CRC and to improve implementation of Articles 3, 26 and 27 CRC, related to the best interests of the child and children's rights to social security and an adequate standard of living, the EHRC recommends that the UK Government implement the recommendations of our Future Fair Financial Decision Making report, including:

- taking steps to improve the coverage of evidence and analysis in the Equalities Impact Statement that is published alongside Spending Reviews;
- reviewing its approach to impact assessment by extending its impact analysis to include the cumulative impact of decisions on children; and

- monitoring the impact of Spending Review measures in order to better understand where mitigations are needed, and to inform the next round of spending decisions.

In satisfying the specific equality duty in Wales to assess the equality impacts of policies and practices, the Welsh Government should continue to build on the recommendations made by EHRC in its report on the 'Welsh Government's Approach to Assessing Equality Impacts of its Budget'.

In particular, it should:

- give greater consideration to the need for cumulative impact assessments of budget decisions;
- **improve the quality, robustness and consistency of equality impact assessments; and;**
- consider how budgetary decisions impact particularly on children facing socio-economic disadvantage.

Recommendation 6

Impact of changes introduced through the Welfare Reform and Work Act in the UK (Articles 3(1), 26 and 27)

To ensure compliance with its CRC obligations – in particular Article 3(1) on the best interests of the child, Article 4 on appropriate measures for implementing the rights recognised in the CRC, Article 26 concerning social security, and Article 27 on children's rights to an adequate standard of living – the EHRC recommends that the UK Government:

- monitor the actual impact of the welfare reform measures introduced through the Welfare Reform and Work Act 2016 against its UN CRC obligations, and review the legislation in line with any identified adverse impacts;
- conduct further analysis of the impact of the benefit cap on children's right to an adequate standard of living, including children in particular groups who may face indirect discrimination;
- following the repeal of statutory targets for the reduction of child poverty, consider alternative ways of focussing UK Government action to reduce child poverty and provide accountability for progress; and
- delay implementation of the two-child limit to the entitlement to child tax credits or the child element of Universal Credit until a full impact assessment is conducted. This impact assessment should address:

- the potential impact of these changes on people from certain ethnic minorities and on families of a particular religion or belief,
- how the aims of the public sector equality duty will be achieved, and
- how the impact will be monitored and how it will be tackled if adverse impact is identified after implementation.

Recommendation 7

Impact of social security reform on children in the UK (Articles 3(1), 4, 26 and 27)

In order to determine how and whether the UK Government is acting in compliance with Articles 3(1), 4, 26 and 27 CRC, the EHRC considers that the UK Government should conduct a cumulative impact assessment of the full range of social security reforms introduced between 2010 and 2015 on children, including on those who have a disability or are in an ethnic minority group.

The UK Government should consider these impacts carefully, as well as the concerns raised in a 2015 UK Supreme Court case decision regarding the compliance of the household benefit cap with Article 3 (1) CRC on the best interests of the child in all future financial decision-making.

Recommendation 8

Child poverty in the UK (Articles 4 and 27)

In order to realise progressively children's right to an adequate standard of living, as required by Articles 4 and 27 CRC, and in line with recommendations made by the Office of the Children's Commissioner and the Social Mobility and Child Poverty Commission, the UK Government should ensure that efforts to address in-work poverty, and improvements to conditions of work are central elements of its response to child poverty.

The EHRC recommends that the Welsh Government use the levers at its disposal to address the key challenge identified in the EHRC's *Is Wales Fairer?* report to improve living conditions in cohesive communities, with priority given to reducing poverty amongst children.

Recommendation 9

Food poverty (Articles 6, 24, 27 and 28)

With a view to respecting, protecting and fulfilling the right to adequate food, as part of the right of children to an adequate standard of living as protected by Article 27 CRC, the EHRC recommends that the UK Government reflect further on the benefits of the universal provision of free school meals (FSM) in England. This would be in line with the recommendation made in the School Food Plan and would also contribute to improving implementation of children's rights to development, health and education under Articles 6, 24 and 28 CRC. At a minimum, it should implement the recommendation of the All-Party Parliamentary Group on Hunger to better target provision of FSM at those children most in need, including poor children from working families.

Recommendation 10

Childcare and flexible working (Article 27)

In order to meet the needs of all parents who require childcare to be able to work and, in so doing, to contribute to the fulfilment of children's right to an adequate standard of living as protected by Article 27 CRC, the UK Government should take further steps to address the significant problems with the availability and affordability of properly regulated childcare, including by:

- the collection of data (disaggregated by protected characteristic) on children taking up free early education or childcare in England, and communicating the resulting findings back to schools and local authorities to help them to target interventions designed to promote free education and childcare to those who would most benefit from it (such as those from poor socio-economic backgrounds and some ethnic minorities);
- the introduction of a truly flexible parental leave scheme in which mothers and fathers each have their own exclusive entitlement, and ensuring more equal access to and take-up of parental leave, as set out in the EHRC submission on the Children and Families Bill (including making shared parental leave a right which does not depend on length of service, allowing new leave to be taken flexibly, and reviewing the decision not to reserve rights for fathers); and
- ensuring that the proposed increased provision of childcare for three- and four-year olds in England is adequately funded and delivers high-quality childcare for all children, including disabled children and children sharing other protected characteristics.

The EHRC recommends that the Welsh Government address the key challenge identified in *Is Wales Fairer?*, to increase access to care (including childcare) for children. For this to be achieved, childcare in Wales needs to be adequately funded and deliver high-quality childcare for all children, including children with protected characteristics.

Recommendation 11

Children's right to housing (Article 27)

In order to realise children's right to an adequate standard of living, including the right to adequate housing under Article 27 CRC, and to respond to the concerns raised by the UN CRC in its List of Issues on the UK, the UK Government should take steps to:

- reduce the number of families with children living in shared temporary accommodation, including B & B accommodation and hostels, and ensure that local authorities provide more suitable accommodation within the six week time limit provided by law;
- ensure that local authorities in England no longer place households headed by 16- and 17-year olds in Bed and Breakfast accommodation; and
- improve data collection on homelessness among 16- and 17-year-olds, including the number presenting as homeless to their local authority and the support that they receive.

Recommendation 12

Children's access to mental health services (Articles 23, 24 and 25)

In order to address gaps in the implementation of children's rights to health under Articles 23, 24 and 25 CRC with regards to children's access to mental health services and police detention of children under the Mental Health Act 1983, the EHRC recommends that the UK Government:

- ensure that funding for clinical commissioning groups to provide Child and Adolescent Mental Health Services matches (rising) demand in England;
- implement the recommendations of the House of Commons Health Committee, including on the availability of data on children's mental health, the prioritisation of early intervention, and improving outpatient services in England; and

- amend the Mental Health Act 1983 so that it is no longer possible to detain children in police cells under Section 135 or Section 136 of that Act.

The EHRC recommends that the Welsh Government respond to the challenge to improve access to mental health services and support people experiencing poor mental health, as set out in the *Is Wales Fairer?* report, ensuring that Child and Adolescent Mental Health Services match demand.

Recommendation 13

Right to education: In-year admissions in England (Articles 3, 28 and 29)

With a view to improving implementation of children's rights to education under Articles 28 and 29 CRC, and for their best interests to be taken as a primary consideration under Article 3, the EHRC considers the UK Government should work with schools and local authorities in England to collect data about the prevalence of in-year admissions in England, disaggregated by protected characteristic free school meals eligibility, and the length of and reasons for placement delays.

The EHRC suggests that the UK Government work with relevant authorities to analyse the collected data, identify connections with other service provision (such as housing) and amend policies accordingly to ensure that they are in line with Articles 3, 28 and 29 CRC.

Recommendation 14

Right to education: 16-19 Bursary Fund in England (Article 28)

In order to improve the implementation of the right of the child to education on the basis of equal opportunity as protected by Article 28 CRC, the UK Government should ensure that English education institutions which receive bursary allocations complete the student support data fields in the Individualised Learner Record (for further education) and the school census, thus enabling the reliable monitoring of take-up by students with protected characteristics.

Recommendation 15

Right to education: Children with disabilities and special educational needs in England (Articles 23, 28 and 29)

In order to improve the implementation of Articles 23, 28 and 29 CRC with regards to the right to education of children with Special Educational Needs and Disabilities (SEND) the EHRC recommends that the UK Government conduct a review of the SEND Code of Practice within five years of it coming into effect. This review should aim to evaluate whether the improvements set out in the SEND Code of Practice and the Children and Families Act 2014 are secured in practice, and should cover its implementation in youth justice settings. The UK Government should swiftly act on the findings of this review. This should include the implementation of any necessary amendments to the SEND Code of Practice and the Children and Families Act 2014.

Recommendation 16

Right to education: Looked-after children (LAC) in England (Articles 12 and 28)

With a view to improving the implementation of the right to education on the basis of equal opportunity, in line with Article 28 CRC, the EHRC recommends that the UK Government endeavour to ascertain the causes of the disparity between LAC who have achieved at least five A*-C grade GCSEs compared with non-LAC, and implement Section 58 of the Children and Families Act 2014 to allow for pilots to be developed to enable and support children to appeal against Special Educational Needs decisions and take forward disability discrimination claims. This would also help fulfil children's right to be heard in proceedings which affect them, in line with Article 12 CRC.

Recommendation 17

Right to education: Gypsy, Roma and Traveller children in the UK (Article 28)

With a view to improving the implementation of the right to education on the basis of equal opportunity, in line with Article 28 CRC, the EHRC recommends that the UK Government:

- consider further steps to renew the commitments made by the cross-government Ministerial Working Group on reducing inequalities experienced by Gypsies and

Travellers, in particular to address persistent educational attainment gaps between Gypsy, Roma and Traveller children as compared with the national average; and

- adopt a national Roma integration strategy focused on access to education, employment, healthcare and housing, in collaboration and coordination with the devolved administrations. This strategy should complement the commitments made at the EU level on Roma integration, and should set out clear and measurable objectives to improve the lives of Roma and be embedded in national, regional and local government programme plans.

Recommendation 18

Right to education: Educational attainment in Wales

With a view to reducing inequality in Wales, the EHRC recommends that the Welsh Government take action to respond to the key educational challenge identified in 'Is Wales Fairer?', to close attainment gaps in education, with a particular focus on closing attainment gaps by raising attainment levels of children receiving Free School Meals, children with Special Educational Needs (SEN), looked-after children and Gypsy and Traveller children.

Recommendation 19

School exclusions and alternative provision in England (Articles 3, 12, 28 and 29)

In line with Articles 3, 28 and 29 CRC, the EHRC recommends that the disciplinary measure of permanent or temporary exclusion only be used as a means of 'last resort' and that the UK Government make this explicit in any guidance it issues.

The process for providing alternative education to excluded pupils must be prompt, transparent and effective, and be in the 'best interests of the child'. The UK Government should establish a central record of all children in England who are not accessing education in the usual way. This should include all educational establishments, including academies and free schools, to ensure that the needs of all children are being met.

In line with Articles 3, 12, 28 and 29 CRC, the EHRC recommends that the UK Government extend to children under 16 the right to be heard before exclusion and to appeal against both temporary and permanent exclusions. Such children should

be provided with legal advice and assistance throughout the appeal or claim process which is independent from local authorities and properly resourced.

Recommendation 20

Identity-based bullying in schools in England (Article 29)

In order to support implementation of the UN CRC General Comment 1 on the aims of education as set out in Article 29 CRC, the EHRC recommends that the UK Government:

- require schools in England to collect qualitative and quantitative data on identity-based bullying for all protected characteristics;
- ensure that head teachers in England make targeted interventions to tackle the specific kinds of identity-based bullying occurring in their schools; and
- assess the impact of interventions, revising guidance and requirements as appropriate, monitoring progress, and communicating these to local authorities.

Recommendation 21

Personal, social and health education in England (Article 29)

In order to support implementation of the CRC General Comment 1 on the aims of education as set out in Article 29 CRC, the EHRC recommends that the UK Government:

- make Personal, Social and Health Education (PSHE) a statutory subject, and part of the National Curriculum in England;
- improve the quality of PSHE and ensure that it promotes knowledge and understanding of children's rights under the Convention, including those in relation to violence against women and girls;
- evaluate existing work in this area, with the lessons learned shared across the UK to ensure future interventions are effective.

Recommendation 22

Youth justice in England and Wales (Articles 3, 12, 37 and 40)

The EHRC recommends that the UK Government:

- reconsider raising the age of criminal responsibility in England and Wales in line with Article 40(3) CRC;
- implement the recommendations of the Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, in relation to the English court system, in order to ensure full realisation of Articles 3, 12, 37 and 40 CRC. In particular it should:
 - ensure that child defendants are always heard in a youth court rather than an adult court,
 - implement statutory provisions and necessary resources to enable all children in youth courts to have the support to understand and fully participate in their hearings, and
 - pilot a problem-solving approach in youth courts which aims to address the underlying issues around a child's offending and have due regard to their welfare;
- make the practice directions on the treatment of vulnerable defendants binding on Crown Courts in respect of children who continue to be dealt with by the adult criminal justice system;
- offer specialist youth training to magistrates and district judges in the adult criminal justice system who continue to deal with children;
- remove the provision in the Criminal Justice and Courts Act 2015 which allows for the use of restraint in secure colleges for good order and discipline, in line with the Joint Committee on Human Rights, UN CRC and UN Convention Against Torture recommendations, as the use of this provision would present serious concerns for the implementation of Article 37 (c) CRC (the right of any child deprived of their liberty to be treated with humanity, dignity and respect);
- identify the causes of the increase in the use of restraint against children deprived of their liberty, and set out a strategy for addressing this increase in Young Offender Institutions and Secure Training Centres;
- conduct its own review of the implementation of the Minimising and managing physical restraint (MMPR) system of behaviour management, which addresses the concerns raised by HMIP regarding the MMPR system;
- implement HMIP's recommendations following the inspection of the Medway Secure Training Centre (STC) to:
 - establish a commissioner to provide additional external oversight of the governance of Medway STC, and
 - ensure that all staff in regular contact with children across the youth detention estate wear cameras, and are expected to record all 'use of force' incidents;

- implement the recommendations of the Children's Commissioner for England with regards to the segregation of children in detention. In particular, by:
 - prohibiting all practices which amount to solitary confinement;
 - ensuring that when isolation is used as a behaviour management measure it is used for the minimum period necessary;
 - ensuring that children in custody spend at least eight hours per day out of their cell or room and in contact with their peers. If the children present an immediate risk of serious harm to other children or themselves, they should spend at least eight hours per day out of their cell or room and in contact with staff, family and professional visitors; and
 - reviewing why certain groups of vulnerable children, including black and mixed heritage children, children with a disability, looked-after children and children at risk of committing suicide are over-represented among those children who experience segregation; and
- ensure that the ongoing review of the youth justice system in England and Wales starts from the principle that detention of children must only be used as a last resort, and takes into account the recommendations made here on the age of criminal responsibility, the use of youth courts and adult courts to try children, and the use of restraint and segregation in the youth justice system.

Recommendation 23

Immigration detention of children in the UK (Article 37)

Given that the continued detention of children in immigration settings, such as short-term holding facilities, could be inconsistent with the right of the child not to be deprived of their liberty unlawfully or arbitrarily under Article 37(b), the EHRC recommends that the UK Government:

- commit to ending the practice of detaining children in immigration settings, and
- take immediate steps to implement Barnardo's recommendations to improve the pre-departure process for children and families.

Recommendation 24

Child trafficking in England and Wales (Article 35 and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography)

In order to improve compliance with the State's duty to prevent the sale or trafficking in children under Article 35 CRC, and the Optional Protocol on the sale of children, child prostitution and child pornography, the EHRC recommends the UK Government:

- review the Modern Slavery Act 2015, including the powers of the Anti-Slavery Commissioner, within five years of its commencement to determine whether it is functioning as intended;
- amend the legislation as required to address persistent gaps in compliance with the UK Government's international human rights obligations identified by the review;
- expedite implementation of pilot schemes designed to test whether the UK Government's Modern Slavery Strategy provides robust solutions to the problems identified in the review of the National Referral Mechanism, including the provision of legal advice at the point where potential victims of trafficking are identified; and
- ensure the Regulations detailing the provisions for the identification and support of victims address the need for:
 - a formal appeals process;
 - a clear statutory duty to record and report trafficked children who go missing from care;
 - clarity on the point that a credible suspicion alone is required to trigger the provision of support and assistance (including legal aid) to victims; and
 - a requirement for public authorities (including health authorities, schools, prisons, probation services, competent authorities and voluntary organisations performing a public function) to record and report suspected victims of trafficking.

Contacts

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