Response of the Equality and Human Rights Commission to Consultation:

Consultation details

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<tr>
<th>Title:</th>
<th>NHRI Contributions to an OHCHR study on young people and human rights</th>
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<td>Source of consultation:</td>
<td>Office of the High Commissioner of Human Rights</td>
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<td>Date:</td>
<td>08/02/18</td>
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For more information please contact

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The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an ‘A status’ National Human Rights Institution.

1. Main challenges faced by young people in Britain; and
2. Examples of discrimination against young people in the exercise of their rights

In our evidence to the UN Committee on the Rights of the Child (2015 and 2016) and our triennial review Is Britain Fairer? (2015),¹ we have identified the following issues faced by children and young people in Great Britain:

- **Barriers in access to justice:**

  The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed many social welfare law cases from the scope of legal aid. This included most cases concerning housing, benefits, debt, immigration and family law.

  LASPO has had a particular impact on access to justice for children. A 2017 report by the Law Society highlights the particular effects this legislation has had on children who have been separated from their families and children who have been indirectly affected by the removal of private family law from the scope of legal aid.²

  In Scotland, under the Education (Scotland) Act 2016, children aged 12-15 will be able to apply in person to the Additional Support Needs Tribunal regarding decisions about their Coordinated Support Plan (providing additional support for children with learning difficulties) and other issues. However, the Act includes a capacity assessment by the education authority that all children will have to undergo when seeking to exercise this right. This removes the presumption that children already have capacity. Children aged 12 and over are presumed to be able to instruct their own solicitor to help them with legal problems, without the need for parental permission. While the Commission recognises the Scottish Government’s aim of allowing extending children’s rights and allowing children to exercise their rights independently, it believes that this could potentially limit

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¹ Available at: https://www.equalityhumanrights.com/en/britain-fairer
children’s right to access to justice by reducing their ability to enforce their rights. \(^3\) The Commission considers the Act to be non-compliant in human rights in its current form.

- **Child poverty and the impact of recent social security reforms:**
  
  The Department of Work and Pension’s (DWP) analysis in 2017 found that, in England, the percentage of children living in relative income poverty is just over 29 per cent, but it is 37 per cent in London, the highest anywhere in Great Britain. \(^4\)

  According to recent estimates, child poverty is likely to further increase in the next five years, despite overall absolute poverty declining slightly in the same period. This is primarily due to the combined impact of inflation and recent social security reforms. \(^5,6\)

  In Scotland, relative child poverty (after housing costs) increased from 22 percent after housing costs in 2014/15 to 26 per cent in 2015/16. This means that at that time, around 260,000 children across Scotland were living in relative poverty. \(^7\)

  Wales has the highest poverty rate in the UK; children are particularly affected. Child poverty remained the same for 2006 to 2016 (31 per cent) and working families and children in Wales were at greater risk of poverty in 2016 than they were a decade ago. \(^8\)

- **Homelessness and substandard housing:**
  
  Government statistics for England, Scotland and Wales indicated that 105,000 children in Britain were homeless or living in temporary accommodation at the end of June 2015. 2016 research from Shelter, a housing and homelessness charity, suggested that living in non-self-contained temporary accommodation with shared facilities, such as hostels and ‘bed and breakfast’ accommodation, may have a negative impact on children’s mental and physical health, and on their educational attainment. \(^9\) Despite a ban in England on local authorities accommodating homeless families and pregnant women in ‘bed and breakfast’ accommodation for longer than six weeks, government statistics show that 2,710 families were in this situation at the end of June 2017. \(^10\)

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\(^8\) National Assembly for Wales Research Service (2016), ‘New Publication: Key Issues for the Fifth Assembly’. Available at: https://seneddresearch.blog/2016/05/12/new-publication-key-issues-for-the-fifth-assembly-2/ [accessed: 29 December 2017].


Identity-based bullying in schools:

Bullying, often on the grounds of race, ethnicity, religion, disability, sexual orientation or gender identity, is a widespread concern throughout Britain’s schools. It can greatly impact on pupils’ wellbeing, attendance and educational attainment. There is evidence that cyber-bullying is increasing; under-reporting is also a problem.11

Inequalities in educational attainment:

Our 2015 analysis found persistent, and in some cases widening, educational attainment gaps.12 Gender, ethnicity, socio-economic status, and placement in the care of a local authority, have all been shown to impact a child’s educational attainment in GCSEs (national exams at the end of compulsory education) in England and Wales. Moreover, the lower participation rate of disabled young people in education, employment and training gives rise to concerns.13 The Children’s Rights Alliance for England found that inclusive education (i.e. attending mainstream schools) for disabled children is declining in England.14

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.15 The Children’s Rights Alliance for England highlighted that mental health services for children in and leaving care are inadequate, and there is a continuing lack of specialist in-patient mental health provision.16

In Scotland, in 2016, over 7,000 children and young people were turned away from the Child and Adolescent Mental Health Services despite a referral to access these services.17 The Scottish Government has announced a review into the issue.18

Youth justice:

The UN Committee on the Rights of the Child, the UN Committee against Torture and the UN Human Rights Committee have made recommendations for the UK Government to raise the minimum age of criminal responsibility, to bring it into line with international standards.19 In England and Wales, the minimum age is 10 years.20 The Scottish Government has announced its intention to increase the

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18 Ibid.
19 UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland adopted by the Committee at its fifth session (6-31 May 2013), CAT/C/GBR/CO/5, para. 27. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5 &Lang=en [accessed on 17.01.2018].
minimum age of criminal responsibility from eight to 12.\textsuperscript{21} Many children’s organisations, including the Commissioner for Children and Young People Scotland, believe that a further rise should be considered.\textsuperscript{22}

The Commission is concerned by the continued use of restraint on young people in custody, and the number of injuries caused as a result. Official statistics show the use of restraint, levels of assault and self-harming rose to a five year high in 2015/16.\textsuperscript{23} Research has found that policy guidelines on use of restraint only as a last resort,\textsuperscript{24} are not followed in practice.\textsuperscript{25}

Poor practice regarding restraint and seclusion of children in school remains an issue across Scotland. The Commissioner for Children and Young People found that relevant staff often do not have the necessary training and skills to understand children with communication and language needs or learning difficulties.\textsuperscript{26} This results in children being unintentionally scared or even injured. The UN Committee on the Rights of the Child expressed strong concern about this issue and urged government to abolish all restraint methods for disciplinary purposes in all institutional settings. This would ensure that restraint is only ever used as a last resort.\textsuperscript{27}

- **Immigration detention:**

  The Commission is concerned that the age assessment of young asylum seekers continues to be carried out on a subjective basis by immigration officers. We agree with the recommendation of the CRC that the UK Government should “conduct age assessments only in cases of serious doubt through multidisciplinary and transparent procedures”.\textsuperscript{28}

  We have also repeatedly called upon the UK Government to only detain asylum seeking and migrant children as a last resort and for the shortest possible period of time. We call on the UK Government to renew its commitment to ending immigration detention of children.\textsuperscript{29}

- **Use of ‘mosquito devices’ in Scotland:**

\textsuperscript{22} Children and Young People’s Commissioner, Scotland (2016), *Briefing: the Age of Criminal Responsibility*. Available at: https://www.cypcs.org.uk/ufiles/Age-of-Criminal-Responsibility-briefing.pdf
\textsuperscript{23} Ministry of Justice/ Youth Justice Board (2017) Youth Justice Statistics for England and Wales 2015/16.
\textsuperscript{26} Scotland’s Commissioner for Children and Young People (2015), *Petition PE1548 (National Guidance on Restraint and Seclusion in Schools)*. Available at: https://www.cypcs.org.uk/policy/evidence [accessed on 17.01.2018].
\textsuperscript{28} EHRC (2016), ‘Children’s rights in the UK’, p. 44.
One of the Concluding Observations of the UN Committee on the Rights of the Child in 2016 was to ask for the prohibition of the use of ‘mosquito devices’ in public spaces. These devices emit high-pitched sounds that usually only young people under the age of 25 are able to hear. They are used as a tool for dispersing groups of children and young people with the supposed aim of curtailing antisocial behaviour. The use of these devices has been documented in public spaces, including railway stations. While the Scottish Government has stated that it does not support the use of mosquito devices, it has not yet adhered to calls banning the use of them.

3. Examples of policies and programmes aimed at supporting young people to realise their rights

The UK Government has not directly incorporated the UN Convention on the Rights of the Child (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 the Committee on the Rights of the Child. The commitment made by the UK Government to pay due consideration to the CRC when developing new policy or legislation has, in practice, been inconsistent. Following the examination of the UK under CRC, the Department for Education set out a ‘framework of actions’ in response to the UN recommendations. This framework of actions includes carrying out child rights impact assessments of Government policy and legislation, and raising awareness of child rights within the Department for Education (DfE), and across the public sector. Together with civil society organisations, the DfE set up the ‘CRC Action Group’, which is currently exploring ways to implement this framework of action.

In Scotland, several policies and programmes aimed at supporting young people and their rights have been introduced over the last few years. The Children and Young People (Scotland) Act 2016 places specific duties on the Scottish Government, local authorities and health boards to consider how their work and policies will help to promote the rights of children and young people in Scotland. Public bodies have to report every three years on what actions they have taken to improve children and young people’s rights. Scottish Ministers also have to report to Parliament every three years on the progress that they have made to meet their duties and how they plan to meet them for the following three years.

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32 Alan Simpson (2017), Fresh calls to ban mosquito devices after they are installed at three Scots stations, The Herald. Available at: http://www.heraldscotland.com/news/15637541.Fresh_calls_to_ban_sonic_devices_used_to_disperse_teens gangs/ [accessed on 17.01.2018].
In 2017, the Scottish Government stated its support for a ban of the use of physical punishment of children Scotland.\textsuperscript{35} And as part of its Themed Years, the Scottish Government has declared 2018 the Year of Young People.\textsuperscript{36} Events and activities, often co-designed with young people, will be organised across Scotland.

However, other key concerns highlighted by civil society organisations, NHRIs and the UN Committee on the Rights of the Child have not been adequately addressed, as highlighted above, in answers to questions 1 and 2.

In 2011, Wales became the first of the UK’s devolved nations to incorporate children’s rights into domestic law, through the introduction of the Rights of Children and Young Persons (Wales) Measure 2011. This measure now requires Welsh Ministers to have due regard to children’s rights whenever they exercise any of their functions. The Measure also states that Welsh Ministers must produce a Children’s Rights Scheme identifying the arrangements in place to ensure compliance with the duties of the Measure.

**Information on how youth organisations or youth-led structures are involved in developing, implementing, monitoring and/or evaluating policies and programmes on youth**

The role of the Children’s Commissioner for England was established in 2004, with the responsibility for promoting awareness of the views and interests of children. The Children and Families Act 2014 further strengthened the Commissioner’s remit, powers and independence, and changes the primary function of the Commissioner from one of ‘promoting awareness of the views and interests of children in England’ to one of ‘promoting and protecting the rights of children in England’. The Children’s Commissioner must have particular regard to promoting and protecting the rights of children receiving social care services or who live away from home for significant periods of time.

The Equality and Human Rights Commission is the national human rights institution for England and Wales. We have the responsibility for safeguarding and enforcing the laws that protect people’s rights. This includes monitoring and reporting on Britain’s progress in implementing international conventions, including the CRC.

The Children’s Rights Alliance for England (CRAE) is one of the civil society organisations promoting children’s rights in England. CRAE aims to protect the human rights of children by lobbying government, by raising awareness of children’s human rights, and by undertaking research about children’s access to their rights. CRAE also work with children and young people to take action to promote and protect children’s human rights.

In Scotland, the Commissioner for Children and Young People was established in 2003 to enhance and protect the rights of children and young people under the age of 18, as well as young people under the age of 21, who are, or have been looked after by a local authority. The Commissioner has specific statutory duties, including promoting understanding and awareness of children and young people’s rights, and


to actively engage children and young people in decision-making. The Children’s Commissioner can conduct a formal investigation to examine whether the rights of a group of young people or children were breached.

In Scotland, the EHRC shares its mandate to promote and protect human rights with the Scottish Human Rights Commission (SHRC), but maintains responsibility for equality. As national human rights institutions, the Commission and the SHRC actively engage with children and young people’s rights in Scotland, developing, implementing, monitoring and evaluating policies and programmes on youth and human rights.

There are many third sector organisations working on improving the rights of young people across Scotland by engaging with the Scottish Government, Parliament and public bodies and working together with children and young people. The Scottish Youth Parliament represents Scotland’s children and young people. Members of the Scottish Youth Parliament are between the ages of 14 and 25 and are elected every two years to represent their constituencies.

‘Together’ is an alliance of Scottish third sector organisations that aim to improve people’s understanding and the implementation of the CRC.38

The Welsh Government has set out its strategy for ensuring the participation of children and young people on its website, and considers the participation of children and young people is key in the development and delivery of our legislation, policies and programmes.39

Established in 2000, the Children’s Commissioner for Wales is an independent children’s human rights institution. The Commissioner’s remit is laid down in the Children’s Commissioner for Wales Act 2001. The principal aim of the Commissioner is to safeguard and promote the rights and welfare of children. In carrying out her work, the Commissioner must have regard to the CRC.

Children in Wales is a coalition of organisations and individuals who work with children, young people and their families in Wales to encourage participation by children and young people in policy development and to enable them to respond to Welsh Government consultations. Moreover, a youth parliament is currently being set up for Wales.40

4. Measures that can be taken at international level to facilitate/support the realisation of young people’s rights

We recommend that increased pressure is applied by the UN Committee on the Rights of the Child to Governments, not only during the reporting stages, but also in the context of follow-up activities to state examinations (possibly jointly with NHRLs, Children's Commissioners and civil society organisations);

We recommend regular visits by UN mandate holders of special procedures, to highlight any persistent concerns in relation to children’s rights.

40 https://www.youthparliament.wales/.