

Socio-Economic Rights in the UK

Annex 2.

Children's Rights in the UK: Equality and Human Rights Commission Submission to the United Nations Committee on the Rights of the Child on the United Kingdom's Implementation of the Convention on the Rights of the Child

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Section 1.

Introduction

1. This submission aims to provide the UN Committee on the Rights of the Child (UN CRC) with information on the implementation of the rights set out in the Convention on the Rights of the Child (CRC),¹ in the United Kingdom (UK), since UN CRC last reviewed the UK in 2008.²
2. This submission aims to cover England and Wales for all of the thematic areas, and Scotland for issues which are reserved to Westminster. 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, over which the Equality and Human Rights Commission (EHRC) does not have a mandate.
3. The Children's Commissioners of England, Wales, Scotland and Northern Ireland have submitted a joint shadow report.³ The EHRC has also supported the Children's Rights Alliance (England) to coordinate the children's sector's shadow report⁴ and is supporting them to bring a delegation of children and young people to present their own report to the UN CRC later this year.⁵
4. The specific recommendations in this submission are addressed to the UK and Welsh Governments. 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 realise the rights set out in CRC.

¹Convention on the Rights of the Child, available at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [accessed on 7 August 2015, as were all other weblinks in this submission]

² UN CRC, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, October 2008, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f4&Lang=en (Hereafter UN CRC, Concluding Observations on the UK, 2008)

³ Report of the UK Children's Commissioners, UN Committee on the Rights of the Child: Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland, July 2015, available at:

<http://www.childrenscommissioner.gov.uk/sites/default/files/publications/Report%20to%20the%20UNCRC.pdf>

⁴ Children's Rights Alliance for England, UK implementation of the UN Convention on the Rights of the Child: civil society alternative report 2015 to the UN Committee - England, July 2015, available at:

http://www.crae.org.uk/media/78665/crae_civil_society_report_to_un_web.pdf

⁵ See it, say it, change it: submission to the UN Committee on the Rights of the Child from children in England, July 2015, available at: http://www.crae.org.uk/media/78664/crae_seeit-sayit-changeit_web.pdf

1.1 The role of the EHRC

5. 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”.⁶
6. 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 the UK has chosen to ratify, both within the European Convention on Human Rights and other international human rights treaties.⁷ The EHRC works with its colleague National Human Rights Institutions (NHRIs) in the UK and with government departments and agencies to fulfil this role.

1.2 Summary of this submission

7. The EHRC recognises the progress made by the UK and devolved Governments in the implementation of children’s rights since it was last reviewed.
8. For example, we welcome:
 - the engagement of the UK Government with the EHRC on improving financial decision making to ensure it is in accordance with the Public Sector Equality Duty (PSED) in relation to children
 - initiatives to improve access to education and attainment, for example free early education or childcare places and the pupil premium, and
 - the significant progress in setting out a legal framework to help bring an end to child trafficking through the Modern Slavery Act (MSA) 2015 and policy developments to support its implementation.
9. Nevertheless, the EHRC also focusses on areas in which there has been insufficient progress, or emerging challenges in the realisation of children’s rights. For example, we raise concerns in relation to:
 - the impact of social security reform on children, in particular the impact of the household benefit cap on the best interests of the child and persistent levels of child poverty

⁶ Section 9(1)(b) of the Equality Act 2006, available at <http://www.legislation.gov.uk/ukpga/2006/3/section/9>

⁷ Section 9(2) of the Equality Act 2006, available at <http://www.legislation.gov.uk/ukpga/2006/3/section/9>

- shortcomings in relation to children's mental health, in particular in relation to access to services, funding and the continued use of police detention, and
 - the impact of reforms to the legal aid system on areas of law crucial for the realisation of children's rights.
10. Our submission also makes specific recommendations to support the UK and devolved Governments to use the CRC reporting process as a means for strengthening their efforts to realise all rights for all children in the UK.

1.3 Children's rights in the UK and devolution

11. The National Assembly for Wales was established by the Government of Wales Act 1998.⁸ 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.⁹ Issues relevant to children's rights devolved to the National Assembly for Wales and the Government of Wales include economic development, education and training, health and health services, local government, public administration, and social welfare.¹⁰
12. The Scottish Parliament was created by the Scotland Act 1998.¹¹ Its powers were extended by the Scotland Act 2012.¹² Matters of relevance to children's rights devolved to the Scottish Parliament and Government include education and training, health and social services, housing and local government.¹³

⁸ Government of Wales Act 1998, available at: <http://www.legislation.gov.uk/ukpga/1998/38/contents>

⁹ National Assembly for Wales, Information pack, available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx#an>

¹⁰ The National Assembly for Wales was established by the Government of Wales Act 1998, available at: <http://www.legislation.gov.uk/ukpga/1998/38/contents>. 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 (see <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx>)

¹¹ Scotland Act 1998, available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents>

¹² Scotland Act 2012, available at: <http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted>

¹³ The Scottish Parliament was created by the Scotland Act 1998, available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents>. Its powers were extended by the Scotland Act 2012, available at: <http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted>

Section 2.

General measures of implementation

2.1 CRC in domestic law and policy

13. The UK Government has not directly incorporated the CRC into domestic law, so that neither its general principles, nor its substantive provisions can be enforced by domestic courts. The UK Government has not signed or ratified the third optional protocol to the UN CRC, which would allow children in the UK to bring individual complaints to the UN CRC.
14. While the UK Government has committed to paying the CRC due consideration in the development of new policy or legislation, this commitment is contained in non-binding guidelines that recognise that “the Government and the [UN CRC] may at times disagree on what compliance with certain articles entails.”¹⁴ However, this commitment and guidance has not been consistently applied, for example the EHRC’s 2014 submission to the UN CRC on the Optional Protocol on the Sale of the Child noted there was no evidence the Home Office had paid due consideration to the CRC when preparing the Modern Slavery Bill.¹⁵
15. A recent UK Supreme Court judgment, which considered the best interests of the child under Article 3 (1) in relation to a claim about the household benefit cap, demonstrates the difficulties of non-incorporation of the CRC into UK law.¹⁶ As will be seen below, although serious concerns regarding whether the Secretary of State had met his obligations under Article 3 (1) of the CRC were raised, the majority held that the best interests of the child did not have to be considered to determine the outcome of the claim because UN CRC had not been directly incorporated into UK law. Dissenting, Lord Kerr argued that the

¹⁴ 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

¹⁵ EHRC, Submission to UN CRC on UK's Compliance with the Optional Protocol on the sale of children, child prostitution and child pornography, April 2014, available at: http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/uncrc-op_submission_28-04-14.pdf

¹⁶ *R (on the application of SG and others (previously JS and others)) (Appellants) v Secretary of State for Work and Pensions (Respondent)*, Judgment of 18 March 2015, available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf

CRC was directly enforceable, as there is “no logical reason to deny to UK citizens domestic law’s vindication of the rights that [international human rights treaties] proclaim”.¹⁷ It is very likely, based on the judgment in this case, that the implementation of the benefit cap would have been held by the Supreme Court to be in breach of the UK’s international human rights obligations under the CRC, had those obligations been directly enforceable in the UK.

16. It is clear from the evidence put forward in this submission that judicial remedies are by no means the only way of securing children’s rights; Government decision-making processes can have a huge impact on the realisation of children’s rights, as can the mainstreaming of human rights principles into children’s services. Nevertheless, examples such as the recent judgment on the household benefit cap and the failure to fully consider children’s rights in the development of the MSA 2015 demonstrate the need for enhancing the status of the CRC in UK domestic law and policy.

2.2 A British Bill of Rights and children’s rights

17. The Human Rights Act (HRA) 1998, which incorporates the European Convention on Human Rights (ECHR), is of great importance in providing children with a remedy when their rights have been violated. However, the HRA does not provide a mechanism for ensuring that the best interests of the child are taken as a primary consideration in actions concerning children, nor for children to enforce their economic, social and cultural rights (ESCR) in domestic courts.
18. The UK Government has committed to bringing forward proposals on a Bill of Rights.¹⁸ While the EHRC has welcomed a debate on this, we would not support a reversal of the leading global role Britain has long played in protecting and promoting human rights, nor a reduction in the protections of rights that we all currently enjoy under the HRA. In addition, we have noted that “any changes might offer an opportunity to consider the case for bringing

¹⁷ *R (on the application of SG and others (previously JS and others)) (Appellants) v Secretary of State for Work and Pensions (Respondent)*, Judgment of 18 March 2015, paras 255-6, available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf

¹⁸ Cabinet Office and Prime Minister's Office, Queen's speech 2015: background briefing notes, p. 75, available at: <https://www.gov.uk/government/publications/queens-speech-2015-background-briefing-notes>

additional rights (such as those protected by UN treaties) into our laws, or for strengthening arrangements for the enforcement of current rights.”¹⁹

19. We consider that a public consultation, which also seeks the views of children and young people, on a Bill of Rights could provide an opportunity for considering options for better protecting children's rights in the UK.

2.3 Enhancing the status of the CRC in domestic law – learning from Scotland and Wales

20. The Rights of Children and Young Persons (Wales) Measure 2011 placed a duty on all Welsh Ministers to have due regard to the CRC when exercising any of their functions.²⁰ In particular, Welsh Ministers must;
- consider how to avoid or minimise negative impacts on children
 - consider how they can exercise their functions to improve the fulfilment of children's rights.²¹
 - prepare and publish a children's scheme, which sets out how they plan to give due regard to the CRC,
 - report on how they have done so in practice, and²²
 - promote knowledge and understanding of the CRC.²³
21. According to the Welsh Minister for Communities and Tackling Poverty, the measure has led to changes in Welsh Government actions, for example the amendments that were made to the Human Transplantation (Wales) Act 2013 to give greater effect to the CRC by ensuring “that competent children should be afforded the choice of appointing a representative to express consent to organ donation.”²⁴

¹⁹ EHRC, Letter to the Joint Committee on Human Rights, March 2015, CEXEC/MF/351francis, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/EHRC%20Letter%20to%20the%20Joint%20Committee%20on%20Human%20Rights.pdf>

²⁰ Available at: <http://www.legislation.gov.uk/mwa/2011/2/contents>. For information on the measure, see <http://gov.wales/topics/people-and-communities/people/children-and-young-people/rights/uncrc/?lang=en>

²¹ Welsh Government, Children's rights scheme 2014, April 2014, p. 6, available at: <http://gov.wales/docs/dsjlg/publications/cyp/140501-childrens-rights-scheme-2014-en.pdf>

²² The Rights of Children and Young Persons (Wales) Measure 2011, ss2-4, available at: <http://www.legislation.gov.uk/mwa/2011/2/contents>

²³ The Rights of Children and Young Persons (Wales) Measure 2011, s5, available at: <http://www.legislation.gov.uk/mwa/2011/2/contents>

²⁴ Minister for Communities and Tackling Poverty, Jeff Cuthbert, Written Statement - Further implementation of the Rights of Children and Young Persons (Wales) Measure 2011 and the revised Children's Rights Scheme 2014, 1 May 2014, available at: <http://gov.wales/about/cabinet/cabinetstatements/2014/rightsofchildren/?lang=en>

22. The Children and Young People (Scotland) Act 2014 sets out a duty for Scottish Ministers to keep under consideration whether there are steps they could take which might further children's rights as set out in the CRC, and for public bodies to publish periodic reports on what steps they have taken in this regard.²⁵ The Act also gives Scotland's Commissioner for Children and Young People the power to investigate cases affecting individual children for the first time.²⁶

2.3.1 Recommendations

23. 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 EHRC recommends the UK Government considers and publishes 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 those established in Scotland and Wales, and:
- access to a domestic remedy for children who allege 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.

²⁵ The Children and Young People (Scotland) Act 2014 Sections 1 and 2, available at: <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

²⁶ Scotland's Commissioner for Children and Young People, The Children and Young People (Scotland Act) 2012, available at: <http://www.sccyp.org.uk/policy/children-young-people-scotland-act>

Section 3.

General principles: access to civil law justice – Article 12

24. UN CRC has confirmed that children should have 'access to independent complaints procedures and to the courts with necessary legal and other assistance'.²⁷
25. The UK Government has introduced a number of changes to the legal aid system in England and Wales. The reasons for these changes included the need to significantly reduce public spending.²⁸ Access to justice, including legal aid, is a devolved matter in Scotland.
26. The EHRC outlines its analysis of these changes more broadly, in particular how they may impact upon women, ethnic minorities and disabled people in a range of different areas in our submission to UN Committee on Economic, Social and Cultural Rights (CESCR).²⁹

3.1 The impact of reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012

3.1.1 Restricting the scope of legal aid

27. In April 2013, the LASPO Act 2012 narrowed the scope of civil legal aid in England and Wales.

²⁷ UN CRC, General Comment No 5: General measures of implementation of the Convention on the Rights of the Child (Articles 4, 42 and 44, para 6), CRC/GC/2003/5, 27 November 2003, para 24, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en

²⁸ Ministry of Justice, Proposals for the reform of legal aid in England and Wales, Consultation Paper CP12/10, November 2010, paras 1.3 - 1.4, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf

²⁹ EHRC, Socio-Economic Rights in the UK, August 2015, pp.75-85

28. In 2013, the UK Government proposed further reforms to legal aid.³⁰ Some of these proposals have now been implemented, including the exclusion from scope of most cases relating to the treatment of prisoners, which are categorised as criminal rather than civil law matters (discussed below).
29. **Non-asylum immigration cases** have been removed from the scope of legal aid, with certain exceptions including cases of detention. The House of Commons Justice Committee was 'particularly concerned by evidence that trafficked and separated children are struggling to access immigration advice and assistance'.³¹ For example, applications by unaccompanied child migrants, who either have not made a claim for asylum, or whose claim has been unsuccessful even after appeal, will fall out of scope for legal aid purposes, except when fresh claims for asylum are submitted.³²
30. Education cases have been removed from the scope of legal aid, except those involving discrimination or special educational needs. In April 2013, the UK Government introduced a mandatory telephone advice gateway as the only route to legal aid for special educational needs and discrimination cases (as well as for debt matters).³³ In the first year of operation, the volume of special educational needs cases receiving advice via the gateway service fell short of predictions by around 45%.³⁴
31. The JCHR heard evidence of about the implications of the UK Government's decision³⁵ not to make exceptions to its proposed limitations on legal aid for **prison law** for offenders under the age of 18, particularly around

³⁰ Ministry of Justice consultation paper, Transforming Legal Aid: delivering a more credible and efficient system, 2013, available at: <https://www.gov.uk/government/consultations/transforming-legal-aid-delivering-a-more-credible-and-efficient-system>

³¹ House of Commons Justice Committee, Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012: eighth report of session 2014-15, March 2015, para 62, available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>

³² Meyler, F. and Woodhouse, S., 2013, Changing the immigration rules and withdrawing the 'currency' of legal aid: the impact of LASPO 2012 on migrants and their families, *Journal of Social Welfare and Family Law*, 2013, Vol. 35 (1), London: Routledge, p. 67

³³ Children are not required to use the telephone gateway service and may obtain face-to-face advice. However, advice about a problem relating to special education needs or discrimination in education must be sought by a parent, who is required to use the telephone gateway.

³⁴ Public Law Project, 2015, Keys to the gateway – an independent review of the mandatory Civil Legal Advice Gateway, available at: <http://www.publiclawproject.org.uk/resources/199/an-independent-review-of-the-mandatory-civil-legal-advice-gateway>

³⁵ Following the 'Transforming legal aid: delivering a more credible and efficient system' consultation, available at: <https://www.gov.uk/government/consultations/transforming-legal-aid-delivering-a-more-credible-and-efficient-system>

resettlement.³⁶ The UK Government is of the view that these are not legal matters, and advocacy and complaint mechanisms are sufficient.³⁷ The JCHR's analysis is that the resettlement issues facing young offenders may involve matters of housing, social care and public law of such complexity that they require access to legal advice and should therefore remain within the scope of legal aid.³⁸

32. **Private family law** cases have been removed from the scope of civil legal aid except where there is evidence of domestic violence or abuse within the previous two years. Rights of Women, Women's Aid Federation of England and Welsh Women's Aid emphasised the impact legal aid reforms would have 'on the safety and justice of these women and their children'.³⁹

3.1.2 Exceptional cases funding (ECF) scheme

33. The ECF scheme was designed to allow funding for areas of law normally excluded from legal aid, where a failure to provide funding would be, or would result in, a breach of the individual's human rights under the ECHR or rights under European law. However, evidence suggests that the scheme is still not functioning as intended, both because of its demanding application process and the strict interpretation of its eligibility criteria.⁴⁰ The Office of the Children's Commissioner (OCC) has suggested that most children would find it impossible to prepare a successful application under the ECF scheme

³⁶ Joint Committee on Human Rights, The Implications on access to justice of the UK Government's proposals to reform legal aid, Seventh Report of Session 2013-2014, para 201, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm>

³⁷ Ministry of Justice, Government response to the Joint Committee on Human Rights: The implications for access to justice of the Government's proposals to reform legal aid, February 2014, pp. 21-22, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285666/8821-government-response-to-jchr.pdf

³⁸ Joint Committee on Human Rights, The Implications on access to justice of the UK Government's proposals to reform legal aid, Seventh Report of Session 2013-2014, paras 206-207, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm>

³⁹ See Welsh Women's Aid, Rights of Women, Women's Aid, Evidencing domestic violence: reviewing the amended regulations, 2014, section 4.7, available at: <http://rightsofwomen.org.uk/wp-content/uploads/2014/12/Evidencing-domestic-violence-IV.pdf>. This report was based on an online survey completed by 182 respondents.

⁴⁰ See the concerns of Joint Committee on Human Rights, The Implications on access to justice of the UK Government's proposals to reform legal aid, Seventh Report of Session 2013-2014, para 140, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm> and the House of Commons Justice Committee, para 45. See www.justice.gov.uk/downloads/forms/legal-aid/civil-forms/ecf1.pdf and The Public Law Project, which assists with exceptional funding applications, has concluded that the process is onerous and complex, and ill-suited to applications made in person: response to Transforming Legal Aid proposals, *Judicial Review*, Vol. 18, No. 3, July 2013, p. 80.

without legal assistance.⁴¹ From the available data, in the period October 2013 to September 2014, only three children made successful applications to the ECF scheme.⁴²

34. The High Court has held that, as currently operated, the ECF scheme is not providing the human rights safety net promised by Ministers and is therefore not in accordance with Section 10 of the LASPO Act 2012.⁴³

3.2 Impact of the proposed residence test

35. The UK Government had planned to introduce a residence test for civil legal aid.⁴⁴ With certain exceptions, for example, asylum seekers with pending applications, the test was designed to limit funding to people who are lawfully resident in the UK and who, at some point, have been lawfully resident for at least 12 months continuously.
36. Although this is a test of residence rather than nationality, the EHRC argued it would unjustifiably discriminate against certain non-UK nationals and amount to a violation of Article 6 (1) ECHR (the right to a fair trial), read with Article 14 (freedom from discrimination in the enjoyment of other ECHR rights).⁴⁵ The JCHR has concluded the application of the residence test will 'inevitably lead to breaches by the United Kingdom of the [CRC] because it will in practice prevent children from being effectively represented in legal proceedings which affect them'.⁴⁶

⁴¹ Witness statement of Maggie Atkinson, Office of the Children's Commissioner, available at: <http://www.childrenscommissioner.gov.uk/news/children%E2%80%99s-commissioner-welcomes-judgment-legal-aid-residence-test-unlawful>

⁴² Response by Mr Shailesh Vara MP to Parliamentary Question 223099, House of Commons, 10 February 2015, available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons%2cords&uin=223099>

⁴³ IS – v- (1) Director of Legal Aid Casework (2) Lord Chancellor [2015] EWHC 1965 (Admin)

⁴⁴ Ministry of Justice consultation paper: Transforming Legal Aid: delivering a more credible and efficient system, 2013, available at: <https://www.gov.uk/government/consultations/transforming-legal-aid-delivering-a-more-credible-and-efficient-system>

⁴⁵ The EHRC's response to the Joint Committee on Human Rights Inquiry into the implications for access to justice of the government's proposed judicial review reforms covers its analysis of the residence test, and is available at: <http://www.equalityhumanrights.com/legal-and-policy/consultation-responses/inquiry-into-the-implications-for-access-to-justice-of-the-government-s-proposed-judicial-review-reforms/> The UK Parliament's Joint Committee on Human Rights has suggested the UK Government may not have given consideration to its obligations under Article 2 of the UNCRC (see Joint Committee on Human Rights, 2013, The implications for access to justice of the Government's proposed legal aid reforms, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm>)

⁴⁶ Joint Committee on Human Rights, Legal aid: children and the residence test, First Report of Session 2014-15, para 23, available at: <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/14/14.pdf>

37. Following a public consultation, the UK Government announced further exceptions to the residence test including for children under 12 months of age and cases involving particularly vulnerable individuals or the protection of children. For successful asylum seekers, the continuous period of lawful residence would begin from the date they submit their asylum claim, rather than the date when that claim is accepted.⁴⁷ A further concession was made in February 2014 for cases under Sections 17 and 20 of the Children Act 1989 (provision of services/provision of accommodation to children in need), although applications for judicial review to enforce these provisions would still be excluded.⁴⁸
38. However, there remain other categories of vulnerable children who would fail the test, or would probably be unable to prove that they satisfy it, for example:
- unaccompanied children who have been granted limited leave to remain rather than asylum are not exempt from the residence test and would be unable to access legal aid for 12 months, even to resolve an ongoing dispute about their age, and⁴⁹
 - undocumented children who qualify for legal aid may also be unable to satisfy the residence test, for example if they have difficulty gaining access to documents because they are street homeless.⁵⁰
39. The UK Government has signalled that it will introduce flexibility into this process by allowing the Director of Legal Aid Casework to find a child to have satisfied the residence test in certain circumstances, where it is impracticable for the child to provide the evidence required.⁵¹ However, this safeguard is

⁴⁷ Ministry of Justice, 2013, Transforming Legal Aid: next steps, available at: https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/supporting_documents/transforminglegalaidnextsteps.pdf

⁴⁸ Ministry of Justice, Government response to the Joint Committee on Human Rights: the implications for access to justice of the Government's proposals to reform legal aid, February 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285666/8821-government-response-to-jchr.pdf

⁴⁹ Joint Committee on Human Rights, Legal aid: children and the residence test, para 49, available at: <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/14/14.pdf>

⁵⁰ Joint Committee on Human Rights, Legal aid: children and the residence test, para 55, available at: <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/14/14.pdf>

⁵¹ Set out in the draft Civil Legal Aid (Procedure) (Amendment) (No. 2) Regulations 2014, and discussed in Ministry of Justice, Government response to the Joint Committee on Human Rights – Legal aid: children and the residence test, September 2014, p.13, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/350592/cm8936-government-response-to-jchr-legal-aid-children-and-residence.pdf

restricted by the limited direction in the regulations on the 'impracticable' circumstances which demand this flexibility.⁵²

40. The JCHR concluded that if children are unable to satisfy the residence test and are therefore not eligible for civil legal aid, this may be in breach of Article 12 CRC. The residence test may also be contrary to Articles 2 and 3 of the CRC as 'children will rarely be capable of representing themselves in legal proceedings in which their best interests are at stake, as they may be unable to access a litigation friend, or a legal representative and will not have the capacity to represent themselves effectively'.⁵³ The UK Government has rejected the JCHR's conclusions.⁵⁴
41. The UK Government has signalled that children excluded from legal aid as a result of the residence test would be entitled to apply for exceptional funding.⁵⁵ Given that the ECF is not working in the way that was intended, exceptional funding may not, in practice, be available to mitigate the impact of the residence test on children.
42. In July 2014 the High Court ruled that the Lord Chancellor had acted outside of its powers under the LASPO Act 2012 by laying the regulations to introduce the residence test. The court also held that the residence test was in breach of Article 14 read with Article 6 ECHR and thus discriminatory.⁵⁶ The UK Government has appealed against this decision. The case is listed for hearing in the Court of Appeal in October 2015. Meanwhile, implementation of the residence test has been delayed.

3.3 Recommendations

43. 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

⁵² For example, the only 'personal circumstances' listed to be considered by the Director of Legal Aid Casework include a child being homeless, their age and disability. See draft Civil Legal Aid (Procedure) (Amendment) (No. 2) Regulations 2014, clause 15J.

⁵³ Joint Committee on Human Rights, Legal aid: children and the residence test, First Report of Session 2014-15, para 21, available at <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/14/14.pdf>

⁵⁴ Government response to the Joint Committee on Human Rights report on Legal aid: children and the residence test, September 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/350592/cm8936-government-response-to-jchr-legal-aid-children-and-residence.pdf

⁵⁵ See, for example, Ministry of Justice, Government response to the Joint Committee on Human Rights – Legal aid: children and the residence test, September 2014, p. 12.

⁵⁶ *R(Public Law Project) v Secretary of State for Justice* [2014] EWHC 2365 (Admin), available at: <http://www.judiciary.gov.uk/wp-content/uploads/2014/07/plp-v-ssj-and-other.pdf>

(2) CRC, and their rights under Articles 2 and 3 CRC, the EHRC considers that the UK Government should:

- monitor the impact of reforms introduced by the LASPO Act 2012 on access to justice for rights protected by CRC, including for non-asylum immigration, education, prison law and private family law cases
- review the operation of the exceptional cases funding (ECF) scheme to address its shortcomings, including those identified by the High Court, and
- withdraw proposals for a residence test for civil legal aid.

Section 4.

Violence against children – Article 19

44. UN CRC recommended the UK establish mechanisms to: monitor the number of cases and extent of violence, sexual abuse, neglect, maltreatment or exploitation; train public officials; and strengthen victim support services and recovery programmes.⁵⁷ In the year to September 2014, about 6% of 10 to 15 year olds in England and Wales reported to be victims of violent crime.⁵⁸
45. Following her visit to the UK in 2014, the UN Special Rapporteur on Violence Against Women recommended action to address the accountability deficit in relation to violence against women and girls (VAWG) and adverse impacts of changes in funding and services.⁵⁹ The EHRC, along with the JCHR, has focused its attention on the ratification and implementation of the Istanbul Convention (Convention on preventing and combating violence against women and domestic violence).⁶⁰
46. The Istanbul Convention is a dedicated framework that can help the UK Government to implement its human rights obligations to address VAWG, including by addressing all forms of VAWG systematically and by taking the necessary measures to ensure victims of VAWG have access to required support services.⁶¹

⁵⁷ UN CRC, Concluding Observations on the UK, 2008, para 51

⁵⁸ ONS, Crime in England and Wales, Year ending September 2014, available at: <http://www.ons.gov.uk/ons/taxonomy/search/index.html?nscl=Crime+in+England+and+Wales&nscl-orig=Crime+in+England+and+Wales&content-type=Dataset&content-type=Reference+table&sortDirection=DESCENDING&sortBy=pubdate>

⁵⁹ Special Rapporteur on violence against women, Special Rapporteur on violence against women finalizes country mission to the United Kingdom and Northern Ireland and calls for urgent action to address the accountability deficit and also the adverse impacts of changes in funding and services, 15 April 2014, available at: <http://www.ohchr.org/en/newsevents/pages/displaynews.aspx?newsid=14514&#sthash.2cWhg0Dm.dpuf>

⁶⁰ The Istanbul Convention, available at: <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>

⁶¹ For further information see EHRC, Submission to the United Nations Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, 2014, (PSWG Submission), pp. 55-57, available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights>

and EHRC, Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, pp. 65-69, available at:

47. The Council of Europe has stated that as it is not only women who suffer domestic violence, national protective frameworks should also apply to children who are exposed to violence within the family or domestic unit.⁶² Ratification and full implementation of the Istanbul Convention would lead to a greater level of compliance with Article 19 CRC.⁶³
48. The UK has signed, but is yet to ratify, the Istanbul Convention. Although most of its obligations are or soon will be implemented through British legislation,⁶⁴ further actions are required to avoid non-compliance with the Istanbul Convention.⁶⁵ For example:
- improvements to data collection and analysis on all forms of VAWG alongside population surveys to determine the prevalence of such crimes
 - the establishment of an adequately resourced, full-time coordinating body with a UK-wide strategy and action plan.⁶⁶
49. In this context, the EHRC welcomes the VAWG strategies of the UK, Wales and Scotland Governments, and the passing of the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Act 2015.⁶⁷ Whilst individual national strategies are crucial, there remains a strong argument for a UK-wide strategy and coordinating body.

<http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights>

⁶² Council of Europe. About the Istanbul Convention, available at:

http://www.coe.int/t/dghl/standardsetting/convention-violence/about_en.asp

⁶³ Council of Europe, About the Istanbul Convention, available at:

http://www.coe.int/t/dghl/standardsetting/convention-violence/about_en.asp The Council of Europe have stated that “[b]ecause it is not only women who suffer domestic violence, parties to the convention are encouraged to apply the protective framework it creates to men, children and the elderly who are exposed to violence within the family or domestic unit.”

⁶⁴ For example, a prohibition on simulated rape pornography (Article 12) is now addressed through the Criminal Justice and Courts Act 2015 and the criminalisation of forced marriage (Article 37) is addressed through the Anti-Social Behaviour, Crime and Policing Act 2014.

⁶⁵ PSWG Submission, p 55. For further analysis see EHRC, 2014, Response of the EHRC to the Joint Committee on Human Rights inquiry into violence against women and girls, available at:

<http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against>

⁶⁶ EHRC, 2014, Response of the EHRC to the Joint Committee on Human Rights inquiry into violence against women and girls, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against>

⁶⁷ HM Government, 2014, A Call to End Violence against Women and Girls, Action Plan 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287758/VAWG_Action_Plan.pdf; Welsh Government, 2010, The Right to be Safe, available at: <http://gov.wales/topics/people-and-communities/communities/safety/domesticabuse/publications/besafe/?lang=en>; The Scottish Government, 2014, Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls, available at: <http://www.gov.scot/Resource/0045/00454152.pdf>

4.1 Female Genital Mutilation (FGM)

50. The UK Government has taken steps to address FGM. FGM is criminalised in England and Wales by the Female Genital Mutilation Act 2003.⁶⁸ This law has been extended by the Serious Crime Act 2015 (SCA) which introduced a power to make a protection order to protect potential or actual victims of FGM.⁶⁹
51. FGM when performed on children is a form of child abuse, violence against girls, and amounts to torture.⁷⁰ We welcome the concerted efforts by the UK Government to tackle FGM. Recent positive developments include the establishment of the UK Government's specialist FGM unit.⁷¹
52. The EHRC considers victims of FGM are likely to be better served by more effective implementation of existing requirements⁷² and stronger mechanisms of accountability for meeting safeguarding and reporting obligations, rather than specific and separate arrangements for this particular form of child abuse. Existing legal frameworks are sufficient, if the authorities responsible were to make full and proactive use of their powers to act.⁷³

4.1.1 Mandatory reporting requirement

53. The SCA includes a mandatory reporting duty on teachers, healthcare professionals and social care professionals in England and Wales to notify the police of any known case of FGM on a girl who is under 18 years old.⁷⁴ The

⁶⁸ This replaced the UK-wide Prohibition of Female Circumcision Act 1985. The Female Genital Mutilation Act 2003 applies to England, Wales and Northern Ireland. See Female Genital Mutilation Act 2003, available at: <http://www.legislation.gov.uk/ukpga/2003/31/contents>

⁶⁹ Serious Crime Act 2015, s 73, available at: <http://www.legislation.gov.uk/ukpga/2015/9/contents/enacted>

⁷⁰ EHRC, 2014, Response of the Equality and Human Rights Commission to the Home Affairs Select Committee Inquiry on Female Genital Mutilation, para 5, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/submission-home-affairs-select-committee-inquiry-female-genital-mutilation>

⁷¹ See HM Government, 2015, A Call to End Violence against Women and Girls: Progress Report 2010-15, p. 34, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409510/VAWG_Progress_Report_2010-2015.pdf

⁷² See, for example, child protection obligations, EHRC, 2014, Response of the Equality and Human Rights Commission to the Home Affairs Select Committee Inquiry on Female Genital Mutilation, paras 10-12, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/submission-home-affairs-select-committee-inquiry-female-genital-mutilation>

⁷³ EHRC, 2014, Response of the Equality and Human Rights Commission to the Home Affairs Select Committee Inquiry on Female Genital Mutilation, para 8, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/submission-home-affairs-select-committee-inquiry-female-genital-mutilation>

⁷⁴ Serious Crime Act 2015, s 74, available at: <http://www.legislation.gov.uk/ukpga/2015/9/contents/enacted>

EHRC considers that, in order to fulfil this requirement, relevant professionals should receive mandatory training and have better access to guidance to enable them to identify girls at risk as well as FGM survivors. This is vital to enable relevant professionals (such as teachers, health and social care staff, the police, immigration officers and non-government organisations working with children and young people) to help girls and young women access appropriate support services. A FGM e-learning programme has been developed for health care professionals,⁷⁵ and the EHRC considers the UK Government should ensure appropriate training should be available to all relevant public officials.

4.1.2 A comprehensive strategy

54. In order to fulfil its obligations to protect potential victims and support those who have been subjected to FGM, the UK Government should implement a comprehensive, coordinated and properly funded strategy, and hold relevant organisations and authorities to account for delivering high standards in protecting women and girls. The EHRC would be well placed to monitor the delivery of such a strategy.⁷⁶
55. This strategy should:
- set clear objectives and accountabilities within the UK and devolved Governments
 - establish clear standards against which implementation will be measured
 - involve relevant communities and non-government organisations (NGOs)
 - be properly resourced and co-ordinated, and
 - deliver a coherent approach across England, Wales, Scotland and Northern Ireland.

4.1.3 Data collection

56. 3,963 newly identified FGM survivors were treated over the period of September 2013 to March 2015.⁷⁷ However, this only represents those who

⁷⁵ Available at: <http://www.e-lfh.org.uk/programmes/female-genital-mutilation/>

⁷⁶ EHRC, 2014, Response of the Equality and Human Rights Commission to the Home Affairs Select Committee Inquiry on Female Genital Mutilation, para 34, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/submission-home-affairs-select-committee-inquiry-female-genital-mutilation>

⁷⁷ Health and Social Care Information Centre, 2015, Female Genital Mutilation – February 2015, Experimental Statistics, available at: <http://www.hscic.gov.uk/searchcatalogue?productid=17686&q=%22female+genital+mutilation%22&sort=Relevance&size=10&page=1#top>

have received medical care, who are likely to be a minority of victims. The EHRC notes there is currently no distinct classification for FGM offences for the purposes of crime reporting.

4.2 Recommendations

57. In line with the UK's obligation to protect the child from all forms of physical or mental violence under Article 19 CRC, the EHRC welcomes the UK Government's commitment to working towards the ratification and implementation of the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence.
58. To ensure increased compliance and improved implementation of Article 19 CRC in the UK, the EHRC recommends the UK Government implement the recommendations of the Joint Committee on Human Rights (JCHR) inquiry into violence against women and children (VAWG), including:
 - establishing an adequately resourced full-time coordinating body with a UK-wide strategy, action plan and centralised budget to address VAWG, and
 - implementing a comprehensive, coordinated and properly funded female genital mutilation (FGM) strategy, whereby relevant organisations are held to account.
59. There is also a need for the ongoing implementation of comprehensive and co-ordinated strategies by the UK Government and devolved administrations to prevent and combat VAWG, introducing robust monitoring and accountability mechanisms to monitor the impact of these strategies, and ensuring the provision of services for victims.⁷⁸

⁷⁸ See also EHRC, Oral statement on the Special Rapporteur on violence against women country report (video statement delivered by Baroness Onora O'Neill, Chair of the EHRC, for the 29th Session of the Human Rights Council, June 2015, available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/united-nations/un-human-rights-council>)

Section 5.

Disability, basic health and welfare: adequate standard of living and social security – Articles 26 and 27

5.1 Introduction: adequate standard of living

60. UN CRC recommended the UK implement legislation aimed at achieving the target of ending child poverty by 2020, prioritise those children most in need of support and provide material support programmes for children on nutrition, clothing and housing.⁷⁹ Welfare remains a reserved matter, with law and policy determined by the UK Government. Nevertheless, social security legislation and policy interact with policy areas which have been devolved to the Scottish and Welsh Governments.
61. Since the UK was last reviewed by the Committee, the Child Poverty Act 2010⁸⁰ and the Welfare Reform Act 2012⁸¹ have been passed, and their implementation commenced. Both acts have had an impact on children's rights to an adequate standard of living and social security.
62. The UK Government introduced a series of reforms to the social security system, which have had an impact on the realisation of children's rights.⁸²
63. Following the General Election in May 2015, the new UK Government has outlined further reforms to the social security system in the Full Employment and Welfare Benefits Bill that would apply to England, Scotland and Wales, which would 'freeze the main rates of the majority of working-age benefits,

⁷⁹ UN CRC, Concluding Observations on the UK, 2008, para 65

⁸⁰ Child Poverty Act 2010, available at: <http://www.legislation.gov.uk/ukpga/2010/9/contents>

⁸¹ Welfare Reform Act 2012, available at: <http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted/data.htm>

⁸² For an overview of these measures see DWP, Policy paper, 2010 to 2015 government policy: welfare reform, available at: <https://www.gov.uk/government/publications/2010-to-2015-government-policy-welfare-reform/2010-to-2015-government-policy-welfare-reform>

tax-credits and Child Benefit for two years from 2016-17' and lower the benefit cap.⁸³

5.2 Financial decision making and equality impact assessments

64. The way in which decisions are made can have a significant impact on the realisation of children's rights as protected by the CRC. The PSED is a statutory duty on all public authorities to have due regard when exercising their functions to the need to eliminate discrimination, advance equality of opportunity, and foster good relations by minimising disadvantages shared by persons with protected characteristics and taking steps to meet the needs of people who share protected characteristics.⁸⁴ Specific equality duties have been introduced in England, Scotland and Wales.⁸⁵
65. The EHRC considers that UK Government financial decisions which are made on the basis of a process that is compliant with the PSED will be more likely to be consistent with the obligations the UK has under Articles 3 and 4 CRC, taken in conjunction with Articles 26 and 27.
66. The EHRC's assessment of the UK Government's Spending Review 2010 found that some spending decisions made were fully in accord with the requirements of the duties.⁸⁶ For example, equality impact assessments undertaken by the UK Government contributed to policies such as the pupil premium (see pp.58-59 below), which reduced inequality and drove forward the progressive realisation of children's right to education.⁸⁷

⁸³ Prime Minister's Office, the Queen's Speech 2015: background briefing notes, pp. 13-17, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FINAL_NEW_2.pdf

⁸⁴ The Equality Act 2010, s149, available at: <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

⁸⁵ See the Equality Act 2010 (Specific Duties) Regulations 2011, available at: <http://www.legislation.gov.uk/uksi/2011/2260/made>; the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, available at: <http://www.legislation.gov.uk/ssi/2012/162/contents/made>; and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, available at: <http://www.legislation.gov.uk/wsi/2011/1064/contents/made>

⁸⁶ EHRC, Making fair financial decisions: An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31> The Equality Act 2010, which introduced a single, public sector equality, did not come into legal force until October 2010, so the previous public sector equality duties for race, gender and disability formed the basis of our assessment.

⁸⁷ EHRC, Making fair financial decisions: An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, pp. 81-85, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31>

67. In other cases, the EHRC's analysis identified weaknesses in the decision-making process and compliance with the PSED. One example is the introduction of the cap for total household benefit payments, for which there was no evidence of an analysis of the potential impact of this policy on women.⁸⁸ As will be seen below, the policy has been found to have an adverse impact on children.
68. EHRC Wales conducted an appreciative inquiry of the Welsh Government's approach to assessing the equality impacts of its budget. The findings of the inquiry confirmed the Welsh Government's commitment to improving the equality assessment of its budget and confirmed that improvement has taken place during recent years. This report recommended some areas for improvement which required solutions to be developed by the Welsh Government.⁸⁹

5.2.1 Improving compliance with the Public Sector Equality Duty (PSED) – data collection

69. To improve compliance with the PSED, the EHRC recommended ongoing monitoring to understand the actual impact on individuals sharing protected characteristics, including the impact on individuals within households, such as lone parents and other sub-groups.⁹⁰
70. The EHRC considered HM Treasury's Equalities Analysis report for the 2013 Spending Review⁹¹ and suggested further improvements in relation to data collection, including the identification of key areas of spending or tax where the Treasury considers an impact on people sharing protected characteristics is likely, but where data is inadequate.⁹² Systematic collection of statistical

⁸⁸ EHRC, Making fair financial decisions: An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, pp. 7 and 50-55, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31>

⁸⁹ EHRC Wales, Appreciative Inquiry Report: Welsh Government's Approach to Assessing Equality Impacts of its Budget, November 2012, available at: <http://www.equalityhumanrights.com/about-us/devolved-authorities/the-commission-in-wales/equality-impact-assessments/appreciative-inquiry-report>

⁹⁰ EHRC, Making fair financial decisions: An assessment of HM Treasury's 2010 Spending Review conducted under Section 31 of the 2006 Equality Act, pp. 7 and 54, available at: <http://www.equalityhumanrights.com/publication/making-fair-financial-decisions-assessment-hm-treasurys-2010-spending-review-s31>

⁹¹ HM Treasury, 2013, Impact on equalities: analysis to accompany Spending Round 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209039/spending-round-2013_impact_on_equalities.pdf

⁹² EHRC, Future fair financial decision-making, February 2015, pp. 4 and 8, available at: <http://www.equalityhumanrights.com/publication/future-fair-financial-decision-making>

data would allow the UK to 'indicate the resources available and the proportion allocated to children, disaggregated by sectors', as recommended by the UN CRC.⁹³

5.2.2 Improving compliance with the PSED – cumulative children's rights impact assessments

71. One key improvement in compliance with the PSED could be brought about if the UK Government assessed and monitored the aggregate impact of policies on potentially vulnerable or marginalised groups, including children.
72. An EHRC-funded study by Landman Economics and the National Institute of Economic and Social Research (NIESR) has found that cumulative impact assessments which look at impacts on individuals who share a characteristic protected under the Equality Act 2010 ('protected group') are feasible and practicable.⁹⁴
73. Conducting a cumulative impact assessment in relation to the impact on children of present and future social security reforms would help the UK;
 - predict "the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights"⁹⁵ and
 - Identify 'the differential impact of measures on certain categories of children who suffer from discrimination.'⁹⁶

5.2.3 Recommendations

74. In order to improve implementation of Articles 3, 4, 26 and 27 CRC, and in line with its Future Fair Financial Decision Making Report, the EHRC recommends that the UK Government:
 - take steps to improve the coverage of evidence and analysis in the Equalities Impact Statement, published alongside Spending Reviews

⁹³ UN CRC, Days of general discussion, Resources for the rights of the child - responsibility of States, Recommendations, 21/09/2007, para 34, available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>

⁹⁴ 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

⁹⁵ UN CRC, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27/11/2003, para 45, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

⁹⁶ UN High Commissioner for Human Rights, Annual Report: Towards a better investment in the rights of the child, 19/12/2014, A/HRC/28/33, para 51, available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>

- review its approach to impact assessment by extending its impact analysis to include the cumulative impact of decisions on children sharing different protected characteristics, and
- monitors the impact of Spending Review measures in order to better understand where mitigations are needed and to inform the next round of spending decisions.

5.3 Impact of social security reform on children

75. The OCC (England) raised serious concerns about the impact of proposed reforms to the social security system on the UK's compliance with Articles 26 and 27 CRC.⁹⁷ It found that the benefit cap and changes to housing benefit would likely cause an increase in child poverty, particularly for children in larger families, with associated poor health, educational and other outcomes,⁹⁸ and Universal Credit would likely have a disproportionate impact on children with disabilities and children of lone parents with disabilities.⁹⁹
76. In its assessment of the cumulative impact of tax, benefit and tax credit changes implemented between May 2010 and April 2015, the OCC found that couples with children experienced the largest cash losses, lone parent families experienced the largest percentage losses¹⁰⁰ and 'low income families with children lose more as a percentage of net income than high income families.'¹⁰¹ This evidence suggests the UK Government may not have:
- made children a priority in budgetary allocations, or ensured all relevant Government departments are able to demonstrate how their programmes

⁹⁷ Office of the Children's Commissioner, A Child Rights Impact Assessment of the Welfare Reform Bill, January 2012, available at: <http://www.childrenscommissioner.gov.uk/publications/child-rights-impact-assessment-welfare-reform-bill>

⁹⁸ Office of the Children's Commissioner, A Child Rights Impact Assessment of the Welfare Reform Bill, January 2012, pp. 8 and 14, available at: <http://www.childrenscommissioner.gov.uk/publications/child-rights-impact-assessment-welfare-reform-bill>

⁹⁹ Office of the Children's Commissioner, A Child Rights Impact Assessment of the Welfare Reform Bill, January 2012, p. 19, available at: <http://www.childrenscommissioner.gov.uk/publications/child-rights-impact-assessment-welfare-reform-bill> See also EHRC, Cumulative impact assessment: a research report by Landman Economics and the National Institute of Economic and Social Research for the EHRC, 2014, available at: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Cumulative%20Impact%20Assessment%20Full%20report%2030-07-14.pdf

¹⁰⁰ Office of the Children's Commissioner, A Child Rights Impact Assessment of Budget Decisions, June 2013, p. 23, available at: http://dera.ioe.ac.uk/18034/1/A_Child_Rights_Impact_Assessment_of_Budget_Decisions.pdf

¹⁰¹ Office of the Children's Commissioner, A Child Rights Impact Assessment of Budget Decisions, June 2013, p. 6, available at: http://dera.ioe.ac.uk/18034/1/A_Child_Rights_Impact_Assessment_of_Budget_Decisions.pdf

are consistent with the realisation of children's ESCR, as recommended by the UN Committee on the Rights of the Child,¹⁰² or

- given precedence to children's rights where resources are limited, or directed special funds 'towards the most marginalized and vulnerable groups of children and families', as recommended recently by the UN High Commissioner for Human Rights.¹⁰³

5.3.1 Impact of the household benefit cap on the best interests of the child

77. The UK Supreme Court recently considered the best interests of the child under Article 3 (1) CRC when examining a claim concerning the household benefit cap, which limits the maximum level of welfare benefits for non-working households to the median earnings of working households.¹⁰⁴
78. In dissent with the majority, Lady Hale and Lord Kerr held that the best interests of children were a relevant and decisive consideration on the question of justifying the discriminatory effect of the measure upon non-working female lone parents. The UK Government's failure to treat the best interests of the child as a primary consideration meant the measure was not capable of being justified under the ECHR.
79. Lord Carnwath held that the Secretary of State failed in his obligation under Article 3 (1) CRC to carry out an evaluation which adequately considered the interests of children in general, those directly affected, and how those interests were weighed against other considerations.¹⁰⁵ Lady Hale concluded that '[i]t cannot possibly be in the best interests of the children affected by the cap to deprive them of the means to provide them with adequate food, clothing, warmth and housing, the basic necessities of life. It is not enough

¹⁰² UN CRC, Days of general discussion: Resources for the rights of the child - responsibility of States, Recommendations, 21/09/2007, para 30, available at: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx> See also, UN CRC, General Comment No. 15, CRC/C/GC/15, April 2013, para 107, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en

¹⁰³ UN High Commissioner for Human Rights, Annual Report: Towards a better investment in the rights of the child, 19/12/2014, A/HRC/28/33, para 67(c), available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>

¹⁰⁴ *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

¹⁰⁵ *R (on the application of SG and others) v Secretary of State for Work and Pensions*, paras 108-9, available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf

that children in general, now or in the future, may benefit by a shift in welfare culture.¹⁰⁶

5.3.2 Recommendations

80. 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 those who have a disability or are an ethnic minority.
81. In all future financial decision-making, the UK Government should consider these impacts carefully, as well as the recent UK Supreme Court case in which concerns were raised regarding the compliance of the household benefit cap with Article 3 (1) CRC.

5.4 Child poverty

82. The Child Poverty Act 2010 (CPA) places a duty on the Secretary of State to meet four child poverty targets by 2020 in relation to relative low income, combined low income and material deprivation, absolute low income, and persistent poverty.¹⁰⁷
83. The Department for Work and Pensions (DWP) announced on 1st July 2015 that it would be replacing the CPA with new legislation that would measure child poverty on the basis of indicators related to the proportion of children living in workless households and educational attainment, describing the current relative low income child poverty measure as 'deeply flawed'.¹⁰⁸
84. In a response to the announcement, the Social Mobility and Child Poverty Commission (SMCPC) acknowledged the sense in taking greater account of causal risk factors, but emphasised the lack of credibility of an approach which does not acknowledge 'the most obvious symptom of poverty, lack of money'.¹⁰⁹ The EHRC considers that measures of relative income poverty as

¹⁰⁶ *R (on the application of SG and others) v Secretary of State for Work and Pensions*, para 226, available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0079_Judgment.pdf

¹⁰⁷ Child Poverty Act 2010, Sections 2-6, available at: <http://www.legislation.gov.uk/ukpga/2010/9/contents>

¹⁰⁸ DWP, Press release, Government to strengthen child poverty measure, 1 July 2015, available at: <https://www.gov.uk/government/news/government-to-strengthen-child-poverty-measure>

¹⁰⁹ Social Mobility and Child Poverty Commission, Press release, Response to government child poverty statement, 1 July 2015, available at: <https://www.gov.uk/government/news/response-to-government-child-poverty-statement> See also Children's Commissioner for England, Press release, Statement on the repeal of the

well as measures of material deprivation, as set out in the CPA, are necessary to give a clear picture of child poverty in the UK. It concurs with SMCP's assessment that the key issue is 'less how child poverty is measured and more how it is tackled'.¹¹⁰

85. All figures below are taken from the DWP's 2013/14 Households Below Average Income (HBAI) release, which is based on the Family Resources Survey.¹¹¹

5.4.1 Relative child poverty¹¹²

86. In 2007/08, 23% of children in the UK lived in a relative low income household. By 2013/14, this proportion had reduced to 17%. This equates to a reduction of the number of children living in poverty according to this measure from 2.9 million to 2.3 million. While this reduction of 600,000 children is welcome, the proportion of children living in poverty by this measure continues to be some way from the 10% target set for 2020 in the CPA. In order to achieve this target, the rate of progress must increase significantly over the next 5 years.
87. Although not relevant for the targets set in the CPA, the EHRC also considers that measures of child poverty after housing costs warrant attention because housing is such a significant part of household expenses, particularly for those on low incomes and because housing costs vary considerably throughout Britain. Relative child poverty levels after housing costs are considerably higher than those before housing costs. 32% or 4.1 million children in 2007/08 and 28% or 3.7 million children in 2013/14 lived in relative child poverty by this measure.

Child Poverty Act, 1 July 2015, available at: <https://www.childrenscommissioner.gov.uk/news/statement-repeal-child-poverty-act>

¹¹⁰ Social Mobility and Child Poverty Commission, Press release, Response to government child poverty statement, 1 July 2015, available at: <https://www.gov.uk/government/news/response-to-government-child-poverty-statement>

¹¹¹ DWP, Households Below Average Income: an analysis of the income distribution 1994/95 - 2013/14, June 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437246/households-below-average-income-1994-95-to-2013-14.pdf (See in particular summary tables 4a, 4b and 4c on pp. 52-54)

¹¹² Relative low income is measured on the basis of the number and proportion of individuals in households with income that is less than 60% of median contemporary income. The relative child poverty target set out in the CPA is that less than 10% of children live in households with a relative low income before housing costs by 2020/21 (CPA, s3).

5.4.2 Absolute child poverty¹¹³

88. In 2007/08, 22% of children lived in households with an absolute low income. By 2013/14, this proportion had decreased to 19%. This equates to a decrease in the number of children living in poverty according to this measure from 2.7 million children to 2.6 million. While this reduction of 100,000 children living in poverty according to this measure is welcome, the proportion of children living in poverty by this measure continues to be some way from the 5% target set for 2020 in the CPA. In order to achieve this target, the rate of progress must increase significantly over the next 5 years.
89. Absolute child poverty measures which look at household income after housing costs show an increase in the proportion of children living in poverty over the same period, from 29% or 3.8 million children in 2007/08 to 31% or 4.1 million children in 2013/14.

5.4.3 Low income and material deprivation¹¹⁴

90. In 2007/08, 17% of children (2.2 million) lived in households with low income and which experienced material deprivation. By 2013/14, 13% of children (1.7 million) lived in poverty according to this measure. This leaves the UK Government some way from achieving the target of 5% of all children by 2020, as set in the CPA. In order to achieve this target, the rate of progress must increase significantly over the next 5 years.

5.4.4 UK and Welsh Government action to end child poverty

91. The UK Government's 2014-17 Child Poverty Strategy aims to tackle child poverty by helping families into work and increasing their earnings, improving

¹¹³ Absolute low income is measured on the basis of the number and proportion of individuals in households with income that is less than 60% of median income at 2010/11 levels, adjusted for inflation. It provides an indication of how "changes in income for the lowest income households compare to changes in the cost of living." (DWP, Households Below Average Income: an analysis of the income distribution 1994/95 - 2013/14, June 2015, p. 12) The absolute child poverty target set out in the CPA is that less than 5% of children live in households with an absolute low income before housing costs by 2020/21 (CPA, s5).

¹¹⁴ Material deprivation is a measure of what households can and can't afford, and so better reflects the standard of living than a measure of income alone. It can also pick up deprivation that is linked to the way resources are distributed within households, and takes into account extra costs that may be faced by, for example, people with disabilities. The CPA creates a combined material deprivation and low-income target for child poverty, that less than 5% of children live in households with income that is less than 70% of median contemporary income before housing costs, and that experience material deprivation by 2020/21 (CPA, s4). For material deprivation amongst children and young people, respondents were asked to report whether they had 21 goods and services including child, adult and household items. The original list was amended in the 2010/11 FRS when four additional items were added whereas in 2011/12, four questions from the original suite were removed. As a result, the rates of low income and material deprivation are not directly comparable for 2007/08 and 2013/14.

living standards, and raising the educational attainment of poor children.¹¹⁵

The OCC notes levels of in-work poverty are at their highest since 1996/7 and that this long-term strategy 'does little to help alleviate the immediate effects on the youngest children of living in poverty.'¹¹⁶ Whilst the SMCPG has commended the UK Government for getting more people into work, it notes that in order to offset the falls in benefit and tax credit income, greater effort needs to be made to get people into better paid work.¹¹⁷ This is especially important as independent experts expect child poverty to rise significantly.¹¹⁸

92. The Welsh Government's 2011 strategy aimed to reduce the number of families in workless households, improve the skills of those in low income households and reduce health, education and economic inequalities.¹¹⁹ On publishing its report to the UN CRC, the Children's Commissioner for Wales emphasised the 'urgent need to address in-work poverty.' She noted that '[m]any families are struggling with a combination of low wages and high childcare, housing and heating costs. Wales now has more low income working families living in poverty than there are non-working ones.'¹²⁰

5.4.5 Recommendations

93. In order to realise progressively children's right to an adequate standard of living, as required by Articles 4 and 27 CRC, and in light of the announcements by the Department for Work and Pensions regarding proposed changes to the ways in which child poverty is measured, the UK Government should:

- ensure that any new measures of child poverty address relative and absolute income poverty, and material deprivation, as well as taking into account causal risks that contribute to the perpetuation of poverty, and

¹¹⁵ Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324103/Child_poverty_strategy.pdf

¹¹⁶ OCC, Review of policies and interventions for low-income families with young children summary p.9, available at: <http://www.childrenscommissioner.gov.uk/publications/review-policies-and-interventions-low-income-families-young-children-summary>

¹¹⁷ SMCPG, State of the Nation 2014: Social Mobility and Child Poverty in Great Britain, Foreword, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365765/State_of_Nation_2014_Main_Report.pdf

¹¹⁸ SMCPG, State of the Nation 2014: Social Mobility and Child Poverty in Great Britain, Foreword, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365765/State_of_Nation_2014_Main_Report.pdf

¹¹⁹ Available at: <https://www.npted.org/section/youth-service/Downloads/Child%20Poverty%20Strategy.pdf>

¹²⁰ Children's Commissioner for Wales, Children's Commissioner for Wales delivers stark message to the UN Committee on the Rights of the Child, 1 July 2015, available at: <http://www.childcomwales.org.uk/en/ccfw-news/?news=33>

- in line with recommendations made by the Office of the Children's Commissioner, the Social Mobility and Child Poverty Commission, and the EHRC in its submission on ICESCR¹²¹, ensure that efforts to address in-work poverty, and the improvement of conditions of work are central parts of its response to child poverty.

5.5 Food poverty

94. Across the UK, children are increasingly finding it necessary to rely on food banks to provide them with adequate nutrition. In 2009/10, 40,898 people in the UK received three days' emergency food; by 2014/15 this had risen to 1,084,604, 396,997 of whom were children.¹²²
95. For more information on people's experiences of food poverty since the UK's last review by the UN CRC, including recommendations for the UK Government, please refer to the EHRC's recent submission to the UN Committee on Economic, Social and Cultural Rights. The submission sets out:
- the effect of the increase in living costs on the right to adequate food
 - the increasing use of food banks
 - the failure of the UK Government to collect evidence about food poverty, which hinders its ability to develop effective strategies to tackle the issue, and
 - the connection between the use of food banks and spending cuts in local authorities, as well as reforms to the social security system.

5.5.1 The right to food in schools

96. Paying for school meals can have a significant effect on family budgets; recent estimates place the cost of school meals at around £400 per year for those whose children do not receive free school meals (FSM).¹²³ The Children's Commission on Poverty found that 70% of parents surveyed had struggled with the costs of school meals.¹²⁴ Evidence suggests this kind of experience can affect children's participation in educational activities,

¹²¹ EHRC, Socio-Economic Rights in the UK, August 2015, p.26

¹²² The Trussel Trust, UK Foodbank Statistics, available at: <http://www.trusselltrust.org/foodbank-projects>

¹²³ Through young eyes: the Children's Commission on Poverty, At what cost? Exposing the impact of poverty on school life, October 2014, p. 31, available at: <https://www.childrenssociety.org.uk/sites/default/files/At%20What%20Cost%20Exposing%20the%20impact%20of%20poverty%20on%20school%20life%20-%20Full%20Report.pdf>

¹²⁴ Through young eyes: the Children's Commission on Poverty, At what cost? Exposing the impact of poverty on school life, October 2014, p. 32, available at: <https://www.childrenssociety.org.uk/sites/default/files/At%20What%20Cost%20Exposing%20the%20impact%20of%20poverty%20on%20school%20life%20-%20Full%20Report.pdf>

educational attainment, and can have 'emotional impacts like embarrassment, stigma and bullying'.¹²⁵

97. The Children and Families Act 2014 makes provision for free school lunches to be provided for all pupils in English maintained schools and academies in Reception, Year 1 and Year 2.¹²⁶ The UK Government has provided the budget to the Welsh Government to emulate this scheme if it chooses; all primary school children are already entitled to a free school breakfast in Wales under the School Standards and Organisation (Wales) Act 2013.¹²⁷ In Scotland, all children in Primary 1-3 are entitled to FSM.¹²⁸ Older children in both England and Wales may also be entitled to a free school meal if they or their household are claimants of a range of social security benefits.¹²⁹
98. The UK Government appointed independent experts to produce The School Food Plan¹³⁰ and Ministers agreed to implement all of its recommendations immediately, except for the extension of FSM to 'all primary school children, beginning with the local authorities with the highest percentage of children already eligible for [them].'¹³¹ The EHRC recognises that the cost implications of universal FSM in addition to the current provision for infants in Reception, Year 1 and Year 2 are considerable.¹³² Even lower end figures would represent 3.3% of the entire education budget for 2014/15.¹³³
99. Nevertheless, it is disappointing that the UK Government decided not to fully implement this recommendation due to resource constraints. The Department

¹²⁵ Through young eyes: the Children's Commission on Poverty, At what cost? Exposing the impact of poverty on school life, October 2014, p. 16, available at: <https://www.childrensociety.org.uk/sites/default/files/At%20What%20Cost%20Exposing%20the%20impact%20of%20poverty%20on%20school%20life%20-%20Full%20Report.pdf>

¹²⁶ Children and Families Act 2014, Section 106, available at: <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

¹²⁷ Sections 88 – 90 of the School Standards and Organisation (Wales) Act 2013, available at <http://www.legislation.gov.uk/anaw/2013/1/contents/enacted>

¹²⁸ The Scottish Government, Free School Meals, available at: <http://www.gov.scot/Topics/Education/Schools/HLivi/schoolmeals/FreeSchoolMeals>

¹²⁹ Apply for Free School Meals, July 2015, available at: <https://www.gov.uk/apply-free-school-meals>

¹³⁰ Dimpleby, H., and Vincent, J., The School Food Plan, July 2013, available at: http://www.schoolfoodplan.com/wp-content/uploads/2013/07/School_Food_Plan_2013.pdf

¹³¹ Department for Education, The School Food Plan, July 2013, p.12, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251020/The_School_Food_Plan.pdf

¹³² Department for Education, The School Food Plan, July 2013, p.125, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251020/The_School_Food_Plan.pdf

¹³³ Department for Education, Press release, Department for Education spending review, October 2010, available at: <https://www.gov.uk/government/news/department-for-education-spending-review>

for Education 's (DFE) evaluation of a pilot for universal FSM in primary schools in three local authorities found a number of benefits including a 35% increase in the take-up of school meals and an increase in the proportion of children reaching target levels in English and Maths, especially children from low income families.¹³⁴

5.5.2 Recommendations

100. 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 considers the UK Government should reflect further on the benefits of the universal provision of free school meals (FSM) in line with the recommendation made in the School Food Plan as part of improving implementation of Articles 6, 24 and 27 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.¹³⁵

5.6 Childcare and flexible working arrangements

101. UN CRC has emphasised 'the importance of systematically supporting parents and families which are among the most important "available resources" for children.'¹³⁶

5.6.1 Affordability and availability of childcare

102. The Childcare Act 2006 requires English local authorities to ensure, so far as is reasonable and practicable, that the provision of childcare (by them or others) is sufficient to meet the needs of parents who require it to enable them to work or undertake education or training that will help them to obtain work.¹³⁷ In 2015, just 43% of councils in England offered sufficient childcare.¹³⁸ Childcare provision for children with disabilities is particularly oversubscribed,

¹³⁴ Department for Education, Evaluation of the Free Schools Pilot: Impact Report, January 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/184047/DFE-RR227.pdf

¹³⁵ APPG Hunger, Feeding Britain, p. 31, available at: <https://foodpovertyinquiry.files.wordpress.com/2014/12/food-poverty-feeding-britain-final.pdf>

¹³⁶ UN CRC, Days of general discussion: Resources for the rights of the child - responsibility of States, Recommendations, 21/09/2007, para 25.

¹³⁷ Childcare Act 2006, Section 6, available at: <http://www.legislation.gov.uk/ukpga/2006/21/contents>

¹³⁸ Rutter, J., Family and Childcare Trust, Childcare costs survey 2015, p. 3, available at: <http://www.familyandchildcaretrust.org/childcare-cost-survey-2015>

with only 21% of local authorities in England and 7% in Wales having sufficient childcare for this group.¹³⁹ An EHRC review of childcare provision found that despite increases in childcare places under the National Childcare Strategy, 93% of local authorities reported gaps in childcare provision.¹⁴⁰

103. Early education has seen some positive developments, with the 40% most disadvantaged two year olds (including all looked after two year olds and two year olds who qualify for FSM) have been entitled to 15 hours of free early education since September 2014.¹⁴¹ In practice, take-up of this entitlement varies between local authorities with the result that around 110,000 children who are eligible for this education are not receiving it.¹⁴² Evidence in the DFE's Equality Impact Assessment shows that while take-up of these offers is improving, the children who need these interventions the most, that is those from the poorest families and some ethnic minorities, are less likely to participate.¹⁴³
104. In England, every three to four year old is entitled to an optional 15 hours per week of free early education or childcare. The EHRC welcomes the UK Government's stated commitment to setting out a Childcare Bill which would increase this provision to 30 hours a week of free childcare for three and four year olds from families where all parents are working.¹⁴⁴
105. In Wales, three and four year olds are entitled to an optional, free, part-time pre-school place of a minimum of 10 hours per week. Some two year olds

¹³⁹ Rutter, J., Family and Childcare Trust, Childcare costs survey 2015, p. 3, available at: <http://www.familyandchildcaretrust.org/childcare-cost-survey-2015>

¹⁴⁰ Campbell-Barr, V. and Garnham, A., 2010, Childcare: A Review of What Parents Want, EHRC Research Report 66, available at:

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

¹⁴¹ UK Government, Press release, Number of 2-year-olds eligible for free childcare to double, 26 August 2014, available at: <https://www.gov.uk/government/news/number-of-2-year-olds-eligible-for-free-childcare-to-double> and Department for Education, Policy, Childcare and early education, available at:

<https://www.gov.uk/government/policies/improving-the-quality-and-range-of-education-and-childcare-from-birth-to-5-years>

¹⁴² Rutter, J., Family and Childcare Trust, Childcare costs survey 2015, p. 3, available at: <http://www.familyandchildcaretrust.org/childcare-cost-survey-2015>

¹⁴³ Department for Education, Equality Impact Assessment, April 2012, available at:

<https://www.education.gov.uk/consultations/downloadableDocs/Equalities%20impact%20assessment%20two%20year%20old%20entitlement.pdf>

¹⁴⁴ Prime Minister's Office, the Queen's Speech 2015: background briefing notes, p. 25, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FINAL_NEW_2.pdf

may also be eligible for a free pre-school place if they live in a 'Flying Start'¹⁴⁵ area, as part of the Welsh Government's early interventions programme.¹⁴⁵

106. The UK has among the highest costs of any Organisation for Economic Cooperation and Development (OECD) country for childcare.¹⁴⁶ Moreover, in 2011, the UK Government cut support within the tax credit system from 80% to 70% of eligible childcare costs. This will be increased to 85% for some families receiving the new Universal Credit benefit, except for those on the lowest incomes who do not pay income tax. Between 2007 and 2012, 36% to 39% of parents perceived childcare affordability to be poor or very poor.¹⁴⁷ Recent data demonstrates that the cost of a part-time nursery place for a child under two has increased by 32.8% over the last five years, and by 5.1% since 2014. These costs have continued to rise above the rate of inflation.¹⁴⁸

5.6.2 Shared Parental Leave Regulations 2014

107. In December 2014, the Shared Parental Leave Regulations 2014 came into force for parents of children born or adopted on or after 5 April 2015.¹⁴⁹ The new system will allow parents to choose how and whether they want to share the 50 weeks of maternity leave following the two weeks immediately after the birth or adoption of a child.
108. Although this system is an improvement on the pre-existing system, as it extends the existing system of transferable maternity leave, an opportunity has been missed to progress towards a system of flexible (as opposed to shared) parental leave and pay, in which mothers and fathers each have their own exclusive entitlement.¹⁵⁰

¹⁴⁵ Welsh Government, Flying Start, March 2014, available at:

<http://www.assembly.wales/Research%20Documents/Flying%20Start%20-%20Research%20note-03032014-254185/rn14-005-English.pdf>

¹⁴⁶ OECD, 2011, Doing Better for Families, available at: <http://www.oecd.org/els/soc/doingbetterforfamilies.htm>

¹⁴⁷ Department for Education, Childcare and early years survey of parents: 2012 to 2013, available at <https://www.gov.uk/government/statistics/childcare-and-early-years-survey-of-parents-2012-to-2013>

¹⁴⁸ Family and Childcare Trust, Childcare costs survey 2015, pp. 1 and 3, available at: <http://www.familyandchildcaretrust.org/childcare-cost-survey-2015>

¹⁴⁹ Shared Parental Leave Regulations 2014, available at <http://www.legislation.gov.uk/ukdsi/2014/9780111118856> Parental leave is also governed by the Statutory Shared Parental Pay (General) Regulations 2014, available at: <http://www.legislation.gov.uk/uksi/2014/3051/contents/made>

¹⁵⁰ EHRC, Children and Families Bill 2013, House of Lords Committee Stage Briefing, October 2013, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/children-and-families-bill-2013-house-of-lords-committee-stage-briefing>

5.6.3 Recommendations

109. In order to meet the needs of all parents who require childcare to be able to work, and in doing so 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 grave problems in terms of the availability and affordability of childcare, including by:
- collecting data (disaggregated by protected characteristic) about those children taking up free early education or childcare in England, and feeding the findings back to schools and local authorities to identify appropriate interventions to promote access to this free education and childcare to the children who would most benefit from it, such as those from poor socio-economic backgrounds and some ethnic minorities
 - introducing 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,¹⁵¹ including making shared parental leave a day-one right, allowing new leave to be taken flexibly, and reviewing the decision not to reserve rights for fathers.

¹⁵¹ EHRC, Children and Families Bill 2013, House of Lords Committee Stage Briefing, October 2013, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/children-and-families-bill-2013-house-of-lords-committee-stage-briefing>

Section 6.

Disability, basic health and welfare: right to health – Articles 24 and 25

6.1 Legal and regulatory framework

6.1.1 Devolution and healthcare

110. Since 1999, health has been a devolved matter in Scotland and Wales, with the Scottish Government and Welsh Government determining both the budget for most health care and how services are organised.

6.1.2 Legislative developments

111. There have been a number of legislative developments since the UK was last reviewed by UN CRC, the implications of which are set out in the EHRC's submission on ICESCR.¹⁵² They include:

- the Health and Social Care Act 2012¹⁵³
- the Equality Act 2010¹⁵⁴
- the Equality Act 2010 (Specific Duties) Regulations 2011¹⁵⁵
- the NHS Outcomes Framework¹⁵⁶
- the Equality Delivery System (EDS) 2¹⁵⁷
- The Care Act 2014¹⁵⁸
- the Criminal Justice and Courts Act 2015, and¹⁵⁹

¹⁵² See EHRC, Socio-Economic Rights in the UK, August 2015

¹⁵³ Health and Social Care Act 2012, available at: <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

¹⁵⁴ Equality Act 2010, s149(1), available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents>

¹⁵⁵ The Equality Act 2010 (Specific Duties) Regulations 2011, s2/3, available at: http://www.legislation.gov.uk/uksi/2011/2260/pdfs/uksi_20112260_en.pdf

¹⁵⁶ NHS Outcomes Framework 2014 to 2015, available at: <https://www.gov.uk/government/publications/nhs-outcomes-framework-2014-to-2015>

¹⁵⁷ A refreshed Equality Delivery System for the NHS, November 2013, available at: <http://www.england.nhs.uk/wp-content/uploads/2013/11/eds-nov131.pdf>

¹⁵⁸ Care Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

¹⁵⁹ Section 20(1) of the Criminal Justice and Courts Act 2015, available at: <http://www.legislation.gov.uk/ukpga/2015/2/contents/enacted>

- the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.¹⁶⁰

6.2 Access to mental health services

112. In a recent report, the House of Commons Health Committee concludes that there are serious and deeply ingrained problems with the commissioning and provision of Children's and adolescents' mental health services.¹⁶¹
113. These problems included:
- lack of data on children's mental health and mental health services
 - inadequate access to inpatient mental health services
 - cuts to early intervention services
 - detentions in police cells under the Mental Health Act 1983 (MHA), and
 - increased waiting times for Child and Adolescent Mental Health Services (CAMHS) and increased referral thresholds.
114. These shortcomings suggest the UK may not be complying with its obligation to 'address mental ill-health among children and adults and to invest in primary care approaches that facilitate the early detection and treatment of children's psychosocial, emotional and mental problems.'¹⁶² They may also demonstrate a failure to make decisions in the best interests of children with disabilities, which are best served when they are 'cared for, as far as possible, in the community in a family setting and preferably within their own family with the necessary supports made available to the family and the child.'¹⁶³
115. In Wales, the Mental Health (Wales) Measure 2010 aimed to ensure there is appropriate care in place across Wales and focus on people's mental health needs, regardless of age,¹⁶⁴ and the School Standards and Organisation

¹⁶⁰ Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, available at: <http://www.legislation.gov.uk/uksi/2014/2936/contents/made>

¹⁶¹ House of Commons Health Committee, Third report of session 2014-15: Children's and adolescents' mental health and CAMHS, p. 98, available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhealth/342/342.pdf>

¹⁶² UN CRC, General Comment No. 15: on the right of the child to the enjoyment of the highest attainable standard of health (Article 24), CRC/C/GC/15, para 38, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en

¹⁶³ UN CRC, General Comment No. 15: on the right of the child to the enjoyment of the highest attainable standard of health (Article 24), CRC/C/GC/15, para 15, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en

¹⁶⁴ Welsh Government, Mental Health (Wales) Measure 2010, available at: <http://gov.wales/topics/health/nhswales/healthservice/mental-health-services/measure/?lang=en>

(Wales) Act 2013 introduced a duty on local authorities to provide independent counselling services for children.¹⁶⁵

6.2.1 Funding for children's mental health services

116. Additional funding has been allocated in some areas of CAMHS in the period since the last review of the UK by UN CRC.¹⁶⁶ Following a review of in-patient CAMHS, NHS England announced funding for up to 50 extra in-patient beds and the recruitment of additional staff.¹⁶⁷ In addition to this, the Department of Health (DH) and NHS England committed to allocating an additional £7 million in 2014/15 'to end the practice of young people being admitted to mental health beds far away from where they live, or from being inappropriately admitted to adult wards'.¹⁶⁸
117. Nevertheless, the Health Committee notes that 'whilst demand for mental health services for children and adolescents appears to be rising, many [Clinical Commissioning Groups] report having frozen or cut their budgets'.¹⁶⁹ It recommends that investments should be focussed on early intervention, so that support is provided to prevent mental health problems becoming entrenched.¹⁷⁰ The Chief Medical Officer for England has also emphasised the reduction in funding for CAMHS between 2011 and 2013, which has led to a 'consequent reduction in service provision'.¹⁷¹
118. This freezing of funding or budget cuts could amount to retrogressive steps in terms of the implementation of the right to health of children unless the

¹⁶⁵ School Standards and Organisation Act (Wales) Act 2013, available at: <http://www.legislation.gov.uk/anaw/2013/1/contents/enacted>

¹⁶⁶ See HM Government, The Fifth Periodic Report to the UN CRC, May 2014, p. 36 for details, including funding for the Children and Young People's Improving Access to Psychological Therapies programme, and for CAMHS in the secure youth estate. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/The%20UK's%20Fifth%20Periodic%20Review%20Report%20on%20the%20UNCRC.pdf>

¹⁶⁷ NHS England, 2014, Child and Adolescent Mental Health Services (CAMHS) Tier 4 Report, available at: <http://www.england.nhs.uk/wp-content/uploads/2014/07/camhs-tier-4-rep.pdf>; and NHS England, 2014, NHS England takes action to improve access to specialised mental health services for children and young people, available at: <http://www.england.nhs.uk/2014/07/10/camhs-report/>

¹⁶⁸ DH and NHS England, 2014, Achieving better access to mental health services by 2020, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361648/mental-health-access.pdf

¹⁶⁹ Health Committee, 3rd Report, p. 99, available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhealth/23/2302.htm>

¹⁷⁰ Health Committee, 3rd Report, p. 98, available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhealth/23/2302.htm>

¹⁷¹ Annual Report of the Chief Medical Officer 2013, Public Mental Health Priorities: Investing in the Evidence, p.104, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413196/CMO_web_doc.pdf

measures can be objectively justified by the UK Government. It may also indicate that the UK Government has failed to guarantee that its budget allocation and spending 'ensures availability, accessibility, acceptability and quality of essential children's health services for all, without discrimination.'¹⁷²

6.2.2 Police detention of children under the MHA

119. Children in contact with the criminal justice system are generally accepted to have significantly increased incidence of mental health problems.¹⁷³ In 2013/14, 753 children were detained under Section 136 of the MHA, and 236 of these were detained in a police cell.¹⁷⁴ While this represents a small reduction in absolute terms compared with the figures for 2012/13, the Health Committee notes that '[i]t is wholly unacceptable that so many children and young people suffering a mental health crisis face detention under Section 136 of the MHA in police cells rather than in an appropriate place of safety.'¹⁷⁵
120. The Home Office and the DH's review of Section 135 and Section 136 of the MHA recommended amending the Act so that 'children and young people aged under 18 are never taken to police cells if detained under S135 or S136'.¹⁷⁶ In this regard, the EHRC welcomes the announcement in May 2015 by the Home Secretary that the UK Government will allocate 'up to £15 million of new funding to deliver health-based places of safety in England and a

¹⁷² UN CRC, General Comment No. 15: on the right of the child to the enjoyment of the highest attainable standard of health (Article 24), CRC/C/GC/15, para 104, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en

¹⁷³ See, for example, Dent, M., Peto, L., Griffin, M., and Hindley, N., 2015, Community-based forensic child and adolescent mental health services in England, Scotland and Wales: a national mapping exercise, *The Journal of Forensic Psychiatry and Psychology*, Vol. 26, Issue 3, available at: <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFjAAahUKEwuoayG5aXHAhXBqxoKHbZ2B2E&url=http%3A%2F%2Fwww.chimat.org.uk%2Fresource%2Fview.aspx%3FRID%3D151814&ei=PGnMVA6TLcHXarbtYgG&usq=AFQjCNEhCAzuWqAOe2dAWdZajcibogLDzA&bvm=bv.99804247,d.d2s>. This summarises evidence from a range of other sources and finds that 18-20% of adolescents in the community have a mental health condition, compared with 80% of adolescents who offend, in community and custodial settings.

¹⁷⁴ Health and Social Care Information Centre, Inpatients Formally Detained in Hospitals Under the Mental Health Act 1983 and Patients Subject to Supervised Community Treatment, England - 2013-2014, Annual figures, available at: <http://www.hscic.gov.uk/catalogue/PUB15812>

¹⁷⁵ Health Committee, 3rd Report, p.100, available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhealth/23/2302.htm>

¹⁷⁶ Department of Health and Home Office, Review of the Operation of Sections 135 and 136 of the Mental Health Act 1983: Report Summary and Recommendations, p. 9, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389248/S135_and_S136_of_the_Mental_Health_Act_-_executive_summary.pdf

guarantee from this government that no person with mental health problems will be detained by the police due to the lack of a suitable alternative.¹⁷⁷

6.3 Violence against children and the right to health

121. Violence against children is a public health issue. There is a need for greater prioritisation and investment by the NHS England and NHS Wales in tackling it. In 2010, the report of the Taskforce on the Health Aspects of Violence against Women and Children set out 23 recommendations to enable the NHS to effectively address violence against children as a public health issue.¹⁷⁸
122. The UK Government has since initiated its action plan on ending VAWG.¹⁷⁹ The implementation of this action plan has included initiatives such as the DH's national FGM prevention programme, in partnership with NHS England, which is supported by £1.4million in funding.¹⁸⁰ The DH has also developed guidelines for commissioning services to support women and girls with FGM.¹⁸¹ Ongoing implementation of the Taskforce's recommendations through greater prioritisation by the NHS of VAWG could transform the provision of care and support for victims of violence.

6.3.1 Recommendations

123. In order to respond to concerns regarding the implementation of 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:

¹⁷⁷ Theresa May, Home Secretary's Police Federation 2015 speech, 20 May 2015, available at: <https://www.gov.uk/government/speeches/home-secretarys-police-federation-2015-speech>

¹⁷⁸ Taskforce on the Health Aspects of Violence Against Women and Children, 2010, Responding to violence against women and children – the role of the NHS, available at: http://www.health.org.uk/sites/default/files/RespondingtoViolenceAgainstWomenAndChildrenTheRoleofTheNHS_guide.pdf

¹⁷⁹ The current iteration is 2014, available at: <https://www.gov.uk/government/publications/a-call-to-end-violence-against-women-and-girls-action-plan-2014>

¹⁸⁰ HM Government, 2015, A Call to End Violence against Women and Girls: Progress Report 2010 – 15, p. 34, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409510/VAWG_Progress_Report_2010-2015.pdf

¹⁸¹ Department of Health, 2015, Commissioning services to support women and girls with female genital mutilation, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418549/2903842_DH_FGM_Commissioning_Accessible.pdf

- ensure that funding for clinical commissioning groups to provide Child and Adolescent Mental Health Services matches rising demands
- consider how to 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, 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.

Section 7.

Education, leisure and cultural activities: educational attainment – Articles 28 and 29

124. In 2008, UN CRC recommended the UK 'reduce the effects of the social background of children on their achievement in school'¹⁸² and made recommendations about inclusive education, out of school care, exclusions, bullying and children's participation in matters relating to school.¹⁸³ Education is a devolved matter in Scotland and Wales.

7.1 Access to education

125. As a proportion of GDP, education spending has been at its highest since the mid-1970s and is now above the level of most European Union (EU) countries and the OECD average, though it is lower than some comparator countries, such as the United States and Canada.¹⁸⁴ Since 2009/10, the UK Government has maintained its commitment to 'ringfence' current expenditure on education by schools. However, the OCC notes that 'the ringfence only applies to the *current* expenditure budget; *capital* expenditure on schools is not ringfenced and has been cut sharply as part of the effort to reduce the deficit, implying an 11% cut in overall spending by 2015.'¹⁸⁵

126. Local authorities must find a free school place for all children who are of a compulsory school age (five to 16) even for those only living in the area

¹⁸² UN CRC, Concluding Observations on the UK, 2008, para 67(a)

¹⁸³ UN CRC, Concluding Observations on the UK, 2008, para 67(b)-(j)

¹⁸⁴ House of Commons Library, Education Spending in the UK, December 2014, SN/SG/1078, available at: <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&ved=0CEoQFjAG&url=http%3A%2F%2Fwww.parliament.uk%2Fbriefing-papers%2Fsn01078.pdf&ei=EmFCVcybGoXdaryEgeAP&usq=AFQjCNFo1fIRc5582ai95UWnbX1zWtzVew>

¹⁸⁵ OCC, A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the cumulative impact of tax-benefit reforms and reductions in spending on public services 2010 – 2015, June 2013, p. 44, available at: <http://www.childrenscommissioner.gov.uk/publications/child-rights-impact-assessment-budget-decisions-including-2013-budget-and-cumulative-0>

temporarily.¹⁸⁶ Both the Welsh and English Schools Admissions Codes place a statutory duty on schools to be clear, fair and impartial, and to take parents' views into account as far as possible.¹⁸⁷

7.1.1 In year admissions

127. Schools cannot be directed by a local authority to take a child and have discretion about accepting 'in year' applications and, perhaps as a consequence, lower attaining schools receive a disproportionate number of in year movers. 61% of in year movers were either eligible for the pupil premium, or had Special Educational Needs (SEN), or both, and 25% belong to the White Other ethnic group, which includes Eastern Europeans.¹⁸⁸ Of these, up to 20,000 children remain unplaced after a full school term.
128. The Admissions Code, aligned with other policy changes,¹⁸⁹ has stimulated a more collaborative approach to in year admissions across an authority.¹⁹⁰ However, there is little consistent guidance to support and facilitate these fledgling partnerships. In addition, the UK Government's Schools Admissions Code places a duty on local authorities to report on how admission arrangements 'serve the interests of looked after children and previously looked after children, children with disabilities and children with special educational needs'.¹⁹¹ However, it does not set out a reporting requirement for children who share other protected characteristics.

7.1.2 Recommendations

129. With a view to improved implementation of Articles 3, 28 and 29 CRC, the EHRC considers the UK Government should work with schools and local authorities in England to collect data about the prevalence of in year

¹⁸⁶ Education Act 1996, s8, available at: <http://www.legislation.gov.uk/ukpga/1996/56/contents>

¹⁸⁷ UK Government, Schools Admissions Code, updated December 2014, available at: <https://www.gov.uk/government/publications/school-admissions-code--2>; Welsh Government, Welsh School Admissions Code, updated October 2014, available at: <http://gov.wales/topics/educationandskills/schoolshome/admissions-and-appeals-code/?lang=en>

¹⁸⁸ Royal Society of Arts, Between the Cracks, July 2013, p.5, available at: <https://www.thersa.org/discover/publications-and-articles/reports/between-the-cracks/>

¹⁸⁹ See, for example, Department for Education, Guidance, Fair access protocols in school admissions, updated February 2014, available at: <https://www.gov.uk/government/publications/fair-access-protocols-in-school-admissions>

¹⁹⁰ Royal Society of Arts, Between the Cracks, July 2013, p.6, available at: <https://www.thersa.org/discover/publications-and-articles/reports/between-the-cracks/>

¹⁹¹ UK Government, Schools Admissions Code, updated December 2014, para 3.23, available at: <https://www.gov.uk/government/publications/school-admissions-code--2>

admissions in England, disaggregated by protected characteristic and by those on free school meals, and the length and reasons of placement delays. The EHRC suggests the UK Government works with relevant authorities to analyse this data, identify connections with other service provision, such as housing, and amend policies accordingly to ensure they are in line with Articles 3, 28 and 29 CRC.

7.2 16 to 18 year olds not in education, employment or training

130. In England, it is compulsory for young people to continue in some form of education, apprenticeship or training up to the age of 18.¹⁹²
131. In 2013, young people in Britain who had never worked or were long-term unemployed were the most likely to be recorded as not in education, employment or training (NEET) (61.5%). Young people with a longstanding limiting illness or disability (LLID) continued to be more likely (12.7%) than those without an LLID to be NEET (6.8%).¹⁹³ Although compulsory education in Wales ends at 16, many young people continue on to further education. Students from low-income families in Wales continue their education with the support of an Education Maintenance Allowance (EMA).

7.2.1 16 to 19 Bursary Fund

132. The Education Maintenance Allowance (EMA) in England was closed in 2010 and replaced with the 16 to 19 Bursary Fund which mainly provides centrally managed annual bursaries of £1,200 to LAC, those on Income Support or Universal Credit and young people with disabilities in receipt of both Employment Support Allowance and Disability Living Allowance (DLA) or Personal Independence Payment (PIP).¹⁹⁴
133. EHRC analysis found the decision to close the EMA may not have been in full accord with the PSED. DFE had evidence which showed its closure would disproportionately impact on young people with disabilities, who have SEN, or

¹⁹² Education and Skills Act 2008, available at: <http://www.legislation.gov.uk/ukpga/2008/25/contents>. This came into force for 16 year olds in September 2013 and will enter into force for 17 year olds from September 2015.

¹⁹³ All data from ONS Labour Force Survey, 2008 and 2013, quarters 1-4, available at: <http://www.ons.gov.uk/ons/guide-method/method-quality/specific/labour-market/labour-market-statistics/index.html>

¹⁹⁴ UK Government, 16-19 Bursary Fund, available at: <https://www.gov.uk/1619-bursary-fund/overview>

are from an ethnic minority, but 'no full and rigorous equality analysis' was carried out in advance of any decision to replace the EMA.¹⁹⁵

134. The DFE acted upon EHRC's recommendation to collect and feedback data disaggregated by protected characteristic in relation to applications and awards of discretionary bursaries.¹⁹⁶ The DFE's year 2 evaluation report found that of non-vulnerable learners surveyed,¹⁹⁷ 57% of non-White learners were likely to apply for a Bursary, compared with 33% of White learners. Similarly, young people from non-White ethnic groups (84%) were more likely to be successful in their Bursary application than White young people (64%).¹⁹⁸ The analysis does not take into account differences in other circumstances between the two groups such as economic circumstances, which may explain the apparent difference in successful Bursary applications. However, this disaggregated data is helpful in identifying where further research is required to improve targeting and decision making with regards to the Bursary Fund.

7.2.2 Recommendations

135. 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 that receive bursary allocations should complete the student support data fields in the Individualised Learner Record (for further education) and the school census to enable monitoring of take-up by students with protected characteristics.

¹⁹⁵ EHRC, Making Fair Financial Decisions – an assessment of HM Treasury's 2010 spending review S31, May 2012, p.63, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/section-31-assessment-hm-treasury/section-31-assessment-report>

¹⁹⁶ EHRC, Fair financial decision-making 2014 progress report, p. 42, available at:

<http://www.equalityhumanrights.com/publication/fair-financial-decision-making-2014-progress-report>

¹⁹⁷ Young people who do not fit into one of the following categories: those in care (including unaccompanied asylum seekers); care leavers; young people receiving Income Support; and young people receiving both Disability Living Allowance and Employment Support Allowance.

¹⁹⁸ Department for Education, The 16 to 19 Bursary Fund: Year 2 Process Evaluation Research report, April 2014, pp. 51-52, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307118/RR345_-_The_16_to_19_Bursary_Process_Evaluation.pdf

7.3 Children with disabilities and those with special educational needs

136. Article 2 Optional Protocol of ECHR, when read with Article 14 ECHR, requires member states to facilitate an inclusive education, equally and without discrimination.¹⁹⁹

7.3.1 Inclusive education

137. In 2008, CRC recommended the UK Government invest additional resources in ensuring the right of all children to a 'truly inclusive education', notably children with SEN.²⁰⁰ Nevertheless, the UK Government has retained an interpretive declaration on Article 24 (2) (a) Committee on the Rights of Persons with Disabilities (CRPD), which emphasises that the 'General Education System in the United Kingdom includes mainstream and special schools, which the UK Government understands is allowed under the Convention.'²⁰¹ The UK's Independent Mechanism on CRPD has criticised this interpretative declaration as it suggests 'an acceptance of a fixed and permanent role for separate special schools.'²⁰²

138. The ECHR therefore welcomes a recent statement by the UK Government that it 'is committed to inclusive education of children with disabilities and young people and the progressive removal of barriers to learning and participation in mainstream education.'²⁰³

139. Section 85(6) of the Equality Act 2010 sets out a duty for schools in England, Wales and Scotland to make reasonable adjustments to ensure pupils with disabilities can fully participate in the education. In 2014, the EHRC supported

¹⁹⁹ See Belgian Linguistics case ((No2) (1968) 1 EHRR 252) 638, available at:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57525#{"itemid":\["001-57525"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57525#{)

²⁰⁰ UN CRC, Concluding Observations for the UK, 2008, para 67(b)-(j), available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f4&Lang=en

²⁰¹ Convention on the Rights of Persons with Disabilities, Status as at 17-07-2015, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en

²⁰² UKIM, Monitoring the Implementation of the UN Convention on the Rights of Persons with Disabilities –

Interim Report, December 2014, p.69, available at: <http://www.equalityhumanrights.com/publication/monitoring-implementation-un-convention-rights-persons-disabilities>

²⁰³ Department for Education, Special Educational Needs and Disability Code of Practice 0-25 years, 2015, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

a case²⁰⁴ in which a child of six with autism and behavioural problems had been repeatedly excluded by a school. The Upper Tribunal for SEN found that the circumstances in which a child with a disability who has a 'tendency to physical abuse'²⁰⁵ can be excluded for behavioural problems require a much greater degree of consideration of factors such as:

- the need for there to be evidence of violent conduct
- the stage of the child's development
- whether there is any misuse of power or coercion, and
- whether there is a real tendency to violent behaviour (supported by medical evidence).

7.3.2 Education of children with disabilities and SEN in detention

140. In 2008, the CRC recommended the UK Government "provide for a statutory right to education for all children deprived of their liberty."²⁰⁶ In England and Wales, the Apprenticeships, Skills, Children and Learning Act 2009²⁰⁷ now provides for a statutory right to education for detained young offenders, in accordance with Article 28 CRC. Responses to the UK Government's 'Transforming Youth Custody' consultation suggest that young offenders with SEN may not be able to access education that meets their needs, abilities and interests.²⁰⁸ The UK Government responded by introducing a number of new duties under sections 70 to 75 of the Children and Families Act 2014, requiring a range of public bodies to work together to assess and address the needs of young offenders with SEN.²⁰⁹

²⁰⁴ *X v the Governing Body of a School* [2015] UKUT 0007 (AAC) [2015] E.L.R. 133 available at: <http://www.education11kbw.com/wp-content/uploads/2015/01/X-v-GB-of-a-school.pdf>

²⁰⁵ The Equality Act 2010 (Disability) Regulations 2010, available at: http://www.legislation.gov.uk/ukxi/2010/2128/pdfs/ukxi_20102128_en.pdf

²⁰⁶ UN CRC, Concluding Observations on the UK, 2008, para 78(e)

²⁰⁷ Apprenticeships, Skills, Children and Learning Act 2009 available at: <http://www.legislation.gov.uk/ukpga/2009/22/contents>

²⁰⁸ Ministry of Justice, Transforming Youth Custody: Government Response to the Consultation, January 2014, p.1, available at: <https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/results/transforming-youth-custody-consultation-response.pdf>

²⁰⁹ SEND Code of Practice, op. cit., pp. 223 – 224, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

141. In Wales, the statutory guidance “Learning for children and young people in a youth custody setting in Wales” sets out Welsh local authorities’ duties towards children and young people detained in youth custody.²¹⁰

7.3.3 The Special Educational Needs and Disability Code of Practice (SEND Code)

142. The Children and Families Act 2014 provides new protections to children with Special Educational Needs and Disability (SEND) in England,²¹¹ which are set out in the SEND Code, including:

- a duty to include children and their parents in discussions and decisions about individual support and local provision
- a coordinated assessment process and a new 0 to 25 Education, Health and Care plan, and
- mediation arrangements to help resolve disagreements without recourse to a Tribunal.²¹²

143. Local authorities also have a number of strategic duties towards children with disabilities, as part of their wider SEND duties, with a duty to cooperate with schools. A local authority must ensure it:

- identifies all children and young people in its area who have a disability
- makes joint commissioning arrangements about education, health and social care provision for children who have a disability
- publishes information about the services available in its area for children and young people who have a disability, and
- provides advice and information to children and young people with disabilities in its area.

144. The Children and Families Act 2014 and SEND Code have strengthened the compliance of the UK’s legal framework with Articles 28 and 29 CRC.²¹³

²¹⁰ Welsh Government, Learning for children and young people in a youth custody setting in Wales – Statutory guidance, 2011, available at:

<http://gov.wales/topics/educationandskills/publications/guidance/youthcustody/?lang=en>

²¹¹ Children and Families Act 2014, Part 3, available at:

<http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

²¹² 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

²¹³ EHRC, Children and Families Bill 2012-13, Briefing on Part 3, October 2013, available at:

<http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/children-and-families-bill-2012-2013>

Nevertheless, it is too soon to assess their impact, which will be dependent upon the extent to which schools and local authorities understand and implement their new duties.

145. In Wales, non-statutory guidance on 'Inclusion and Pupil Support' sets out schools' obligations in respect of children with additional learning needs.²¹⁴ In October 2014, the Welsh Assembly published a consultation on a White Paper on Legislative Proposals for Special Educational Needs, which proposed to implement Individual Development Plans (IDPs) that create 'one system of working together so that all services can step in early to assist with educational access'.²¹⁵

7.4 Educational Outcomes

7.4.1 Statistical overview

146. While the general pattern of educational attainment for children with particular protected characteristics hasn't changed significantly since 2008, there have been some subtle and significant changes:
- while girls continue to do better than boys at all stages, the gap by GCSE is widening, with 65.7% of girls achieving five A*- C grades (up 11.3%) and 55.6% of boys (up 8.5%)
 - ethnicity continues to have an impact on the achievement of at least five A*- C grades at GCSE level. There have been improvements across the board since 2008, for example the decreasing gap between White pupils and Pakistani, Bangladeshi, African, Caribbean and Black pupils. Although the attainment gap by GCSE between those on FSM (37.9%) and those not (64.6%) has narrowed since 2008, it stood at a significant 26.7% in 2013.²¹⁶
 - in 2014, 12% of LAC in England achieved at least five A*- C grade GCSEs. This was an increase of 1.8% on 2008, but there is still a 40% attainment gap between LAC and other children,²¹⁷ and

²¹⁴ Wales Government, Inclusion and Pupil Support, October 2006, available at:

<http://learning.wales.gov.uk/docs/learningwales/publications/121128inclusionen.pdf>

²¹⁵ Welsh Government, Consultation, Legislative Proposals for Additional Learning Needs – White paper, available at: <http://gov.wales/consultations/education/proposals-for-additional-learning-needs-white-paper/?lang=en>

²¹⁶ All data from Department for Education EYFSP attainment by pupil characteristics: 2013 to 2014, available at: <https://www.gov.uk/government/statistics/eyfsp-attainment-by-pupil-characteristics-2013-to-2014>

- in 2013/14, Gypsy/Roma (19.1%) and Traveller children (30.9%) were less likely to achieve 'a good level of development' at the foundational stage compared with White children (61.8%), and²¹⁸
- in 2013/14, 8.2% of Gypsy/Roma pupils and 14% of Traveller of Irish Heritage pupils attained five or more A*-C grade GCSEs, including English and maths. This compares to the national average for all pupils of 56.6%.²¹⁹

147. These patterns are also evident in Wales, but fewer pupils in Wales (52.7%) attained five or more A*-C grade GCSEs than equivalent pupils in England (59%). Low skills and qualifications also disadvantage adults in Wales more than in most other parts of Britain.²²⁰ In 2013, children with SEN in Wales were significantly less likely to achieve at least five A*- C GCSEs compared to children without SEN (16.8% compared to 63.2%). The gap between the two groups has widened since 2009, with children with SEN not progressing as much as those without SEN.²²¹

7.4.2 Recommendations

148. The EHRC recommends that the UK Government conduct an evaluation and review of the Special Educational Needs and Disability Code of Practice (the SEND Code) within five years of it coming into effect. The review and evaluation should aim to secure in practice the improvements set out in the SEND Code and the Children and Families Act 2014 in the implementation of Articles 23, 28 and 29 CRC, with regards to the right to education of children with SEND, and should cover implementation in youth justice settings. The UK Government should act on any findings swiftly, including making any necessary amendments to the SEND Code and Children and Families Act 2014.

7.4.3 Looked after children (LAC)

149. Section 20 of the Children and Young Persons Act 2008 requires governing bodies of maintained schools in England and Wales to appoint and ensure

²¹⁸ All data from Department for Education EYFSP attainment by pupil characteristics, available at: <https://www.gov.uk/government/statistics/eyfsp-attainment-by-pupil-characteristics-2013-to-2014>

²¹⁹ SFR, Revised GCSEs and equivalent results in England: 2013 to 2014, available at: <https://www.gov.uk/government/statistics/revised-gcse-and-equivalent-results-in-england-2013-to-2014>

²²⁰ Welsh Government, Academic Achievement by Pupil Characteristics, 2012, available at: <http://gov.wales/docs/statistics/2012/120328sb272012en.pdf>

²²¹ Welsh Government, Academic Achievement by Pupil Characteristics, 2012, available at: <http://gov.wales/docs/statistics/2012/120328sb272012en.pdf>

appropriate training is given to a designated teacher to promote the educational achievement of LAC.²²² In England, these requirements apply to academies through their funding agreements. Section 99 of the Children and Families Act 2014 and the Social Services and Wellbeing Act (Wales) 2014²²³ introduced further specific statutory duties. The duty in England requires local authorities to appoint a 'Virtual School Head' (VSH), whose responsibility is to monitor and track the educational progress of LAC, including the implementation of the pupil premium.²²⁴

150. The Wales Audit Office has found that some Welsh Local Authorities have voluntarily introduced VSHs and we concur with their recommendation to the Welsh Government to extend this good practice nationwide.²²⁵ The Wales Audit Office also criticised the policy framework for LAC in Wales, suggesting it lacked clearly defined outcomes and the delivery of services was inconsistent. The Welsh Government is currently consulting on raising the educational attainment of LAC.²²⁶
151. While there is a general provision for LACs to make a complaint about their care, there is not an explicit provision for them to raise a complaint about their access to education, unless they have a disability. The JCHR has, in principle, welcomed a direct right of appeal in the Children and Families Act 2014 as strengthening 'the UK's implementation of Article 12 of UNCRC, particularly for LAC, whose legal "parent" is the very body against whom such appeals are made.'²²⁷ Section 58 of the Children and Families Act 2014 gives the Secretary of State the power to run pilots giving children the right to appeal SEN cases and make disability discrimination claims to the Tribunal. However, it would appear this provision has not been taken forward.

²²² Children and Young Persons Act 2008, available at: <http://www.legislation.gov.uk/ukpga/2008/23/contents>

²²³ Social Services and Wellbeing (Wales) Act 2014, available at: http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

²²⁴ Department for Education, Pupil premium: virtual school heads' responsibilities, updated March 2015, available at: <https://www.gov.uk/pupil-premium-virtual-school-heads-responsibilities>

²²⁵ Wales Audit Office, The Educational Attainment of Looked After Children and Young People, August 2012, available at: <http://www.wao.gov.uk/publication/educational-attainment-looked-after-children-and-young-people>

²²⁶ Wales Government, Raising the ambitions and educational attainment of looked after children in Wales, March 2015, available at: <http://gov.wales/consultations/education/raising-the-ambitions-and-educational-attainment-of-children/?lang=en>

²²⁷ Joint Committee on Human Rights, Legislative Scrutiny, Children and Families Bill, p.22, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/29/29.pdf>

7.4.4 Recommendations

152. 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 Welsh Government consider extending the voluntary introduction of virtual school heads to monitor the progress of looked after children (LAC) and to clearly define objectives with regards to their educational outcomes and monitor the achievement of these objectives
- 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
- the UK Government 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.

7.4.5 Gypsy, Roma and Traveller children

153. The CRC's recommendations about ensuring a truly 'inclusive education' is particularly relevant to Gypsy, Roma and Traveller children. For example, the UN Committee on the Elimination of Racial Discrimination (UN CERD) and UN Committee on the Elimination of All Forms of Discrimination Against Women (UN CEDAW) have recently recommended the UK improve the access to education for Gypsy, Roma and Traveller children to enable an overall improvement to their livelihoods.²²⁸

154. As seen above in the statistical overview of educational outcomes, Gypsy, Roma and Traveller children in England have lower attainment compared to White children at foundational and GCSE stage. One of the main reasons for low attainment for Gypsy, Roma and Traveller children is their poor attendance; figures from 2008 demonstrate that absence rates in primary

²²⁸ UN CERD, Concluding Observations for the United Kingdom, 2011, para 24, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2fCO%2f18-20&Lang=en; and UN CEDAW, Concluding Observations for the UK, 2013, para 61, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f7&Lang=en

schools are around four times higher for Gypsy, Roma and Traveller children than for all pupils.²²⁹

155. The Welsh Government was the first UK administration to launch a Gypsy and Travellers framework in 2011.²³⁰ The progress update in November 2013 includes a commitment to prioritise secondary school pupils for the Gypsy and Traveller Education Grant.²³¹ In 2010, the UK Government established a cross-government Ministerial Working Group on reducing inequalities experienced by Gypsies and Travellers in England, which published a progress report setting out 28 commitments from across government. In relation to education, it committed to piloting a VSH scheme in four local authorities. This was delivered between 2012 and 2014.²³²
156. The UK Government is yet to develop a dedicated Roma Strategy. Instead, it is taking forward Roma integration through wider social inclusion policies in line with commitments made by EU Member States including the Council Conclusions on Roma integration²³³ adopted in May 2011 and the Council Recommendation adopted in December 2013.²³⁴

7.4.6 Recommendation

157. 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 what further steps need to be taken 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. The UK

²²⁹ Department for Education, Improving the outcomes for Gypsy, Roma and Traveller pupils: final report, 2010, p. 20, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181669/DFE-RR043.pdf

²³⁰ Welsh Government, Travelling to a Better Future, September 2011, available at: <http://learning.gov.wales/docs/learningwales/publications/121115gypsytravelleren.pdf>

²³¹ Welsh Government, Travelling to a Better Future, Progress Report, November 2013, p.13, available at: <http://gov.wales/docs/dsjlg/publications/equality/131105gypsy-trav-framework-en.pdf>

²³² Department for Communities and Local Government, Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers, April 2012, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6287/2124046.pdf

²³³ Council of the European Union, Council Conclusions on an EU Framework for National Roma Integration Strategies up to 2020, available at: http://ec.europa.eu/justice/discrimination/files/cc3089_en.pdf

²³⁴ Council of the European Union, Council Recommendation on Effective Roma Integration in Member States, December 2013, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf

Government, in collaboration and coordination with the devolved administrations, should adopt a national Roma integration strategy focused on access to education, employment, healthcare and housing. The strategies should set out clear and measurable objectives to improve the lives of Roma and be embedded in national, regional and local government programme plans.²³⁵

7.4.7 Pupil premium (PP)

158. The PP was introduced in 2011 to provide additional funding to public education providers to raise the attainment of disadvantaged pupils, notably those on FSM and LAC, and to close the gap between them and their peers.²³⁶
159. It may be too soon to judge the impact of the PP on the educational outcomes of targeted children, including the attainment gap between those children and other pupils. However, in July 2014 the Office for Standards in Education, Children's Services and Skills (Ofsted) reported that:
- school leaders are spending the PP more effectively
 - good leaders and teachers are helping to increase outcomes for pupils eligible for the PP, and
 - weak leadership and governance remain obstacles to narrowing the attainment gap.²³⁷
160. The EHRC's analysis highlights the potential for using the sophisticated attainment data now available for pupils sharing protected characteristics, alongside FSM data, to provide better targeted interventions and value for money from the PP.²³⁸
161. In January 2015, DFE introduced the early years pupil premium (EYPP). EYPP is an additional provision for nursery age children in order to 'help the most disadvantaged children receive high-quality early education'.²³⁹ Worth

²³⁵ EHRC, NIHRC, Joint oral statement on the adoption of National Roma Integration Strategies, video statement delivered by Mark Hammond, Chief Executive of the EHRC, for the 29th session of the Human Rights Council, June 2015, available at: <https://www.youtube.com/watch?v=ev2CQ6tYh0k&feature=youtu.be>

²³⁶ UK Government, Pupil premium: funding and accountability for schools, available at: <https://www.gov.uk/pupil-premium-information-for-schools-and-alternative-provision-settings>

²³⁷ Ofsted: T pupil premium: an update, July 2014, available at: <https://www.gov.uk/government/publications/the-pupil-premium-an-update>

²³⁸ 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>

²³⁹ 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>

approximately £300 extra per year for each disadvantaged child, the full £50 million EYPP was rolled out throughout England in April 2015. It is too soon to determine its impact.

7.4.8 Recommendations

162. 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 implement the EHRC's recommendation to use the sophisticated attainment data now available for pupils sharing protected characteristics, alongside free school meal data, to provide better targeted interventions and value for money from the pupil premium and early years pupil premium in England.

7.5 School exclusions and alternative provision

163. In 2008, the CRC encouraged the use of disciplinary measures of exclusion as a means of 'last resort only'.²⁴⁰ In January 2015, the DFE published new guidance on school exclusions in England, which removed the stipulation that schools should use permanent exclusion only 'as a last resort'. In February 2015, the Minister for School Reform withdrew the guidance in response to a legal challenge from an NGO. DFE noted that the guidance needed to be reconsidered to ensure that all relevant matters, including equalities issues were taken into account.²⁴¹
164. In England, the number of children with permanent or fixed-period exclusion from school fell from 49.7 exclusions per 1,000 pupils in 2008/09 to 35.8 in 2012/13. Fixed-period exclusions account for the majority of total exclusions (35.2 per 1,000 pupils) and this decrease explains the overall reduction over time. While the rate of permanent exclusions also fell, from 0.9 to 0.6 exclusions per 1,000 pupils, this fall contributed much less to the overall reduction. However, pupils with lower educational outcomes continue to be the most likely to be excluded from school, whether permanently or for a fixed term:
- pupils with SEN (116.2 per 1,000 pupils)

²⁴⁰ UN CRC, Concluding Observations on the UK, 2008, para 78(d)

²⁴¹ Just for Kids Law, Press release, Just for Kids Law welcomes withdrawal of Department for Education guidance making it easier for schools to permanently exclude pupils, 2 February 2015, available at: <http://www.justforkidslaw.org/news-events/press-coverage/just-for-kids-law-welcomes-withdrawal-of-department-for-education-guidance-making-it-easier-for-schools-to-permanently-exclude-pupils-2>

- those eligible for FSM (85.9 per 1,000 pupils), and
 - Gypsy and Roma (136.7 per 1,000 pupils), and Traveller children (169.0 per 1,000 pupils).
165. In both England and Wales, boys were more likely to be excluded than girls. In Wales in 2012/13, Black and Mixed pupils had exclusion rates that were similar to those of White pupils, whereas previously the rates were much higher than those for White pupils. In England, Black and Mixed pupils continue to be more likely to be excluded than White pupils, though the gaps are narrowing.²⁴²
166. In 2012, through the Universal Periodic Review (UPR) process, it was recommended that the UK 'adopt a strategy so that children of vulnerable groups are not excluded from the education system.'²⁴³ The UK Government highlighted the role of the PSED in achieving this aim,²⁴⁴ and the EHRC has noted the positive impact the PSED has had in ensuring interventions are targeted to the children who can most benefit from them.²⁴⁵
167. Alternative provision for excluded children was subject to 'serious concerns' by Ofsted, the Schools Inspectorate, in England in 2011.²⁴⁶ In 2012, the Taylor Review to assess alternative provision in England recommended the overall process be more transparent, effective and identify the child's needs.²⁴⁷ The EHRC agrees with the JCHR that the review should have gone

²⁴² All data from: Department for Education, Permanent and fixed period exclusions in England, 2010 and 2013, available at: <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-from-schools-in-england-academic-year-2009-to-2010>; <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-2012-to-2013>; and Welsh Government, Exclusions from School 2012-13, available at: <http://gov.wales/statistics-and-research/exclusions-schools/?lang=en>

²⁴³ UN Human Rights Council, Universal Periodic Review of the United Kingdom, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/gbssession1.aspx>

²⁴⁴ Ministry of Justice, Universal Periodic Review Mid-Term Report, 2014, p.139, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418272/uk-upr-mid-term-report-2014.pdf

²⁴⁵ EHRC, Fair Financial Decision-Making 2014 Progress Report, June 2014, 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>

²⁴⁶ Ofsted, Alternative school provision: findings of three-year survey, June 2011, available at: <https://www.gov.uk/government/publications/alternative-provision-a-report-on-the-findings-from-the-first-year-of-a-three-year-survey>

²⁴⁷ Taylor, C., Improving Alternate Provision, 2012, p. 24, available at: <https://www.gov.uk/government/publications/improving-alternative-provision>

further to recommend that 'best interests of the child' be placed at the heart of this process, consistent with the UK's obligations under UNCRC.²⁴⁸

7.5.1 Appealing a school exclusion

168. In 2008, UN CRC recommended that children under 16 have the right to be heard before exclusion and to appeal against temporary and permanent exclusion themselves.²⁴⁹ The UK Government has not implemented this recommendation, other than for children with disabilities. The EHRC considers extending the right to be heard and appeal exclusion decisions to children under 16 would be consistent with Article 28 CRC. Practically, it would ensure that, where parents are unwilling or unable to initiate an appeal, the child is able to do so themselves.
169. Under the Education Act 2011,²⁵⁰ parents or excluded pupils over 18 years old in England can dispute a decision of a governing body to uphold a permanent exclusion and ask for this to be reviewed by an independent review panel. This replaces a previous system of independent appeal panels.²⁵¹ Following a parliamentary briefing by the EHRC²⁵² and pre-legislative scrutiny by the JCHR, the appeal process was split into two parallel processes: an Independent Review Panel and the First-tier Tribunal (Special Educational Needs and Disability). A recent High Court judgment placed the 'best interests of the child' at the centre of this appeals process.²⁵³
170. New guidance from the Welsh Government reaffirms that 'the best interests of the child' need to be at the core of exclusion procedures.²⁵⁴ This guidance provides children and their carers the right of independent Appeal for permanent exclusions; it does not for fixed term exclusion.

²⁴⁸ Joint Committee on Human Rights, Pre-legislative Scrutiny Education Bill, 2011, available at: <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/154/15404.htm>

²⁴⁹ UN CRC, Concluding Observations on the UK, 2008, para 78(h)

²⁵⁰ See Part 2, Section 4 available at: <http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>, which creates a new Section 51A into the Education Act 2002

²⁵¹ Education Act 2011, available at: <http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>

²⁵² EHRC, Education Bill, Committee Stage Briefing, House of Lords, 28th June 2011, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/education-bill>

²⁵³ *SA v Camden LBC Independent Appeal Panel* [2013] EWHC 3152 (admin), available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2013/3152.html> The judgment relied on the authority of *ZH (Tanzania) v Secretary of State for the Home Department* which found that for 'all actions concerning children, the best interests of the child shall be a primary consideration.'*(ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC4, available at: https://www.supremecourt.uk/decided-cases/docs/UKSC_2010_0002_Judgment.pdf)

²⁵⁴ Welsh Government, Exclusion from Schools and Pupil Referral Units, April 2015, available at: <http://gov.wales/docs/dcells/publications/150423-exclusion-guide-en.pdf>

7.5.2 Recommendations

171. 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 the UK and Welsh Governments should make this explicit in any guidance they issue. 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 not accessing education in the usual way for all educational establishments, including academies and free schools, to ensure their needs are being met.
172. In line with Articles, 3, 12, 28 and 29 CRC, the EHRC recommends that the UK and Welsh Governments 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 and, where appropriate, independent representation should be provided, in particular for looked after children and those with special educational needs.

7.6 Identity-based bullying in schools

173. In 2008, the CRC recommended the UK Government intensify its efforts to tackle bullying and violence, and highlighted the need for awareness raising and training to ensure the school environment reflects the principles of human rights.²⁵⁵ The UK State report sets out a number of initiatives to this end.²⁵⁶ Recent initiatives include awarding £1.3million to three anti-bullying organisations and a £2million programme to build schools' knowledge and capacity to prevent and tackle homophobic, biphobic and transphobic bullying.²⁵⁷
174. The Longitudinal Study of Young People in England (LSYPE) found the number of Year 9 pupils who had been bullied decreased from 45% in 2004 to

²⁵⁵ UN CRC, Concluding Observations on the UK, 2008, para 67

²⁵⁶ Department for Education, The Fifth Periodic Report to the UN Committee on the Rights of the Child, p.44, available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/The%20UK's%20Fifth%20Periodic%20Review%20Report%20on%20the%20UNCRC.pdf>

²⁵⁷ Department for Education, Press release, £25 million injection to help 'life changing' children's services, March 2015, available at: <https://www.gov.uk/government/news/25-million-injection-to-help-life-changing-childrens-services>

40% in 2013.²⁵⁸ Young people with disabilities and SEN are more likely to experience all forms of bullying than other children.²⁵⁹ Evidence also points to a high level of lesbian, gay, bisexual and transgender (LGBT) young people being subjected to bullying.²⁶⁰ Under Section 89 of the Education and Inspections Act 2006, schools have a duty to prevent bullying. Under Section 10 of the Children Act 2004, local authorities must cooperate with schools and other public bodies to ensure the physical and mental health and emotional well-being of the child are protected. In 2011, the EHRC highlighted a lack of measures in the Education Bill to address prejudice-based bullying.²⁶¹ We recommended schools be required to collect data on incidents of identity-based bullying to drive action and monitor progress, and considered that existing monitoring systems in schools be adapted to ensure no additional burdens or bureaucracy.

175. In response, as part of the UK Government's new 'Measuring Progress on Bullying' initiative, the Ofsted inspection framework was strengthened so that inspectors now have to seek evidence on: "types, rates and patterns of bullying and the effectiveness of the school's actions to prevent and tackle all forms of bullying and harassment, including cyber-bullying and prejudice-based bullying related to special educational need, sexual orientation, sex, race, religion and belief, gender reassignment or disability."²⁶²
176. However, the EHRC does not consider this to be sufficient and our position remains that schools themselves need to collect data on identity-based bullying, to monitor progress and report to their local authority.

7.6.1 Recommendations

177. 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 UK Government should implement the EHRC'S recommendations to:

²⁵⁸ Department for Education, Longitudinal Study of Young People in England, 2013, available at: <https://www.education.gov.uk/ilsype/workspaces/public/wiki/LSYPE>

²⁵⁹ Department for Education, Longitudinal Study of Young People in England, 2013, available at: <https://www.education.gov.uk/ilsype/workspaces/public/wiki/LSYPE>

²⁶⁰ Stonewall, The experiences of young gay people in Britain's schools, 2007, available at: http://www.stonewall.org.uk/documents/school_report.pdf; and 2012, available at: [http://www.stonewall.org.uk/documents/school_report_2012\(2\).pdf](http://www.stonewall.org.uk/documents/school_report_2012(2).pdf)

²⁶¹ EHRC, Education Bill, Committee Stage Briefing, House of Lords, 28th June 2011, p.4, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/education-bill>

²⁶² Department for Education, School Inspection Handbook, January 2015, p.54, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/391531/School_inspection_handbook.pdf

- require schools in England to collect qualitative and quantitative data on identity-based bullying across all the protected characteristics
- ensure head teachers make targeted interventions to tackle the specific kinds of bullying in their schools
- assess the impact of those interventions and revise as appropriate, and
- monitor progress and report to the local authority.

7.7 Personal, social and health education

178. In its 2013 examination of the UK, UN CEDAW noted its concerns that personal, social and health education (PSHE), and education on sexual relationships was not compulsory in all schools.²⁶³
179. PSHE was not included as a statutory subject in the National Curriculum for English Schools as part of the Children and Families Act 2014.²⁶⁴ Ofsted found that PSHE required improvement or was inadequate in 40% of the English schools it surveyed.²⁶⁵ The Education Committee recommended that PSHE have statutory status.²⁶⁶ The JCHR also concluded that the national curriculum should include issues relating to violence against women and girls,²⁶⁷ and the EHRC concurs that this should be part of a broader programme of education in schools about children's rights.²⁶⁸
180. In the report of her recent visit to the UK, the UN Special Rapporteur on violence against women recommended that the UK Government ensure 'a holistic approach to prevention of violence against women and girls by

²⁶³ UN CEDAW, Concluding Observations for the UK, 2013, para 44, Article 29. CRC requires education of children to be directed to the preparation of the child for responsible life in a free society, including an understanding of the equality of the sexes.

²⁶⁴ Children and Families Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

²⁶⁵ Ofsted, Not Yet Good Enough: Personal, Social, Health and Economic Education in Schools, p.6, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370027/Not_yet_good_enough_personal_social_health_and_economic_education_in_schools.pdf

²⁶⁶ House of Commons Education Committee, Life lessons: PSHE and SRE in schools, Fifth report of session 2014-15, para 147, available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeduc/145/145.pdf>

²⁶⁷ JCHR, Violence against women and girls, Sixth report of session 2014-15, para 67, available at: <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/106/106.pdf>

²⁶⁸ EHRC, Submission to JCHR's VAWG inquiry, March 2014, p.5, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against>

including appropriate and comprehensive sex and relationship education in schools as a compulsory subject'.²⁶⁹

181. The EHRC welcomes the Welsh Government's Violence against Women, Domestic Abuse and Sexual Violence Act 2015, which acknowledges the importance of education in tackling VAWG.²⁷⁰ Nevertheless, in the absence of specific reference to the role of schools in the Act, the EHRC considers it is important that the Welsh Government fulfils its commitment to take forward its 'healthy relationships' agenda in schools through statutory guidance.

7.7.1 Recommendations

182. 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 and Welsh Government include Personal, Social and Health Education (PSHE) as a statutory subject part of the National Curriculum in England and Wales. It also recommends that these Governments improve the quality of PSHE and ensure it promotes knowledge and understanding of children's rights under the Convention, including those in relation to violence against women and girls. Existing work in this area should be evaluated, with the lessons learned shared across the State Party to ensure future interventions are effective.

²⁶⁹ Manjoo, R. (Special Rapporteur on violence against women), 2015, Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United Kingdom of Great Britain and Northern Ireland, para 107, available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>

²⁷⁰ Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, available at: <http://www.legislation.gov.uk/anaw/2015/3/contents/enacted>

Section 8.

Special protection measures: youth justice – Articles 37 and 40

8.1 Age of criminal responsibility (Article 40)

183. In England and Wales, the age of criminal responsibility is 10 years old. Any child below the age of 10 is not considered to have the capacity to infringe the criminal law. UN CRC has held that setting the age of criminal responsibility below 12 is 'not acceptable'²⁷¹ and urged the UK to raise the age limit accordingly.²⁷² The Committee Against Torture (CAT) also made this recommendation.²⁷³ This year the UK confirmed that it has no plans to increase the minimum age of criminal responsibility.²⁷⁴ The EHRC notes that the Scottish Government is giving consideration to raising the age of criminal responsibility.²⁷⁵ The age of criminal responsibility in England and Wales is lower than many countries; in Scotland it is 12 years, in China and Russia it is 14 years, and in France and Brazil it is 18 years.²⁷⁶

²⁷¹ UN CRC, General Comment No. 10: children's rights in juvenile justice, 2007, para 32, available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

²⁷² UNCRRC, October 2008, Committee on the Rights of the Child, Concluding Observations, CRC/C/GBR/CO/420, para 78, available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

²⁷³ Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013), para 27, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en The Council of Europe Commissioner for Human Rights has also recommended that the UK increase the age of criminal responsibility 'to bring it in line with the rest of Europe, where the average age of criminal responsibility is 14 or 15' (Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom (5-8 February and 31 March-2 April 2008), Rights of the child with focus on juvenile justice, CommDH (2008) 27, Strasbourg, 17 October 2008).

²⁷⁴ Human Rights Committee, 114th session, 29 June-24 July 2015, Replies of United Kingdom, British Overseas Territories and Crown Dependencies to the list of issues, para 205, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/082/66/PDF/G1508266.pdf?OpenElement>

²⁷⁵ See 3rd Report, 2014: Stage 1 Report on the Criminal Justice (Scotland) Bill, available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/72893.aspx>

²⁷⁶ Prison Reform Trust, June 2011, Bromley Briefings Prison Factfile, p. 34, available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefing%20December%202011.pdf>

184. It is difficult to know the scale of this problem in the absence of data which aggregates the number of prosecutions of children in the youth and adult court systems.

8.2 Children in courts (Articles 3, 12, 37 and 40)

185. Ministry of Justice (MOJ) data shows that 71,918 children were formally dealt with by the youth justice system in England and Wales in 2013/14.²⁷⁷ Of those, 45,893 children faced court proceedings in youth courts, 33,902 received a court sentence, and 2,226 received a custodial sentence.²⁷⁸ This represents a reduction of 61% in the number of children who received a court sentence, and a reduction of 59% in the number of children who received a custodial sentence between 2008/09 and 2013/14.²⁷⁹
186. The state has an obligation under Article 6 ECHR to ensure that the justice system takes into account the age, level of maturity and intellectual and emotional capacity of child defendants,²⁸⁰ and that the process allows a child defendant to participate effectively in the trial by protecting them from feeling intimidated and inhibited from giving evidence in a public trial, operating modified procedures regarding public attendance and media reporting, and implementing special measures to promote the child's understanding of the proceedings.²⁸¹ For these reasons, most children charged with a criminal offence are dealt with by a specialist youth courts. Nevertheless, as mentioned above, statistics on the use of ordinary courts for trials involving children are not available.

²⁷⁷ Ministry of Justice and Youth Justice Board, Youth Justice Statistics 2013/14, p. 14, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf

²⁷⁸ Ministry of Justice and Youth Justice Board, Youth Justice Statistics 2013/14, p. 14, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf

²⁷⁹ Ministry of Justice, Youth Justice Annual Statistics 2013 to 2014: supplementary volumes, Ch5 – Young People Sentenced, available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2013-to-2014>

²⁸⁰ ECtHR, *T. v the United Kingdom* and *V. v the United Kingdom* [1999] 30 EHRR 121, para 84, available at: [http://hudoc.echr.coe.int/eng#{"itemid":\["001-58593"\]}](http://hudoc.echr.coe.int/eng#{)

²⁸¹ ECtHR, *Stanford v UK*, 23 February 1994, Series A No. 282-A and *T. v the United Kingdom* and *V. v the United Kingdom* [1999] 30 EHRR 121, available at: [http://hudoc.echr.coe.int/eng#{"languageisocode":\["ENG"\],"appno":\["16757/90"\],"itemid":\["001-57874"\]}](http://hudoc.echr.coe.int/eng#{)

8.2.1 Use of ordinary courts for trials involving children

187. In 2008, the UN CRC recommended to the UK that children alleged to have broken criminal law and charged with an offence should always be dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are alleged to have committed.²⁸²

In practice though, there continue to be circumstances where children are tried in adult settings, including:

- homicide
- grave crimes where the youth court has determined that, if convicted, a sentence beyond its extensive sentencing powers should be available
- firearms possession by 16 to 17 year olds
- offences that would attract at least four years' custody under the dangerousness provisions, and
- where it is necessary in the interests of justice to try a youth and adult together.

188. In addition to these circumstances, the Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court received evidence that 'children are increasingly likely to appear in adult magistrates' courts following overnight police detention, owing to the reduction in youth court sittings.'²⁸³

8.2.2 Effective participation in proceedings

189. A child's age and lack of maturity may contribute to difficulties in participating in proceedings, for example in understanding and responding to ordinary questions and especially legal questions.²⁸⁴ To protect a child's right to a fair trial, courts are obliged to ensure that each child can understand the charges against them, as well as consequences and penalties, so that they can participate effectively in the proceedings.²⁸⁵

²⁸² UN CRC, Concluding Observations on the UK, 2008, para 78(c)

²⁸³ Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, June 2014, p. 58, available at: http://www.ncb.org.uk/media/1148432/independent_parliamentarians_inquiry_into_the_operation_and_effectiveness_of_the_youth_court.pdf

²⁸⁴ EHRC. 2012, Human Rights Review, available at: www.equalityhumanrights.com/sites/default/files/documents/humanrights/hrr_article_6.pdf

²⁸⁵ UN CRC, General Comment No. 10: Children's Rights in Juvenile Justice, para 46, interpreting Article 40(2)(b)(iv) of the CRC. See, for example, *T. v the United Kingdom* and *V. v the United Kingdom* [1999] 30 EHRR

190. While the UK Government has taken positive steps in this area, there are still a number of areas in which progress must be made. For example, while the UK Government has updated trial rules to make the Crown Court as similar as possible to a youth court, these guidelines are not binding on the Court.²⁸⁶ In addition, while magistrates and district judges in youth proceedings must undergo specialist youth training to support children facing criminal charges, there are no such requirements for defence practitioners or Crown Court judges.²⁸⁷
191. Children witnesses in UK courts have a number of special measures available to them with the agreement of the court, including screens, televised links so that they do not have to appear in the courtroom in person, and the possibility to give evidence in private or by video-recorded interview.²⁸⁸
192. Child victims and witnesses are entitled to access a Registered Intermediary²⁸⁹ to support them through legal proceedings, but there is no requirement to provide Registered Intermediaries to support child defendants facing criminal charges. This is despite a practice direction for magistrates and Crown Courts emphasising that those under 18 should be treated as vulnerable defendants.²⁹⁰
193. In June 2014, the High Court ruled that a defendant with a learning disability and Asperger's Syndrome needed to be provided by the State with a trained Registered Intermediary for the purposes of the giving of evidence only.²⁹¹ In this case, a trained Registered Intermediary was requested by the defendant

121, the Youth Justice and Criminal Evidence Act 1999, available at:

<http://www.legislation.gov.uk/ukpga/1999/23/contents>

²⁸⁶ Ministry of Justice, Part III: Further Practice Directions Applying in The Crown Court And Magistrates' Courts - Criminal Procedure Rules, III.30, Treatment of Vulnerable Defendants, available at:

<http://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/part3#id6328221>

²⁸⁷ Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, June 2014, available at:

[http://www.ncb.org.uk/media/1148432/independent-parliamentarians_inquiry-into-the-operation-and-effectiveness-of-the-youth-court.pdf](http://www.ncb.org.uk/media/1148432/independent-parliamentarians-inquiry-into-the-operation-and-effectiveness-of-the-youth-court.pdf)

²⁸⁸ Crown Prosecution Service, Special Measures, available at:

http://www.cps.gov.uk/legal/s_to_u/special_measures/#a02

²⁸⁹ Registered Intermediaries facilitate 'two-way communication between the witness and any other participants in the criminal justice process to ensure that communication with the witness is as complete, coherent and accurate as possible'. (Ministry of Justice, The registered intermediary procedural guidance manual, 2012, p. 9, available at: http://www.cps.gov.uk/publications/docs/ri_proceduralguidancemanual_2012.pdf)

²⁹⁰ Ministry of Justice, Part III: Further Practice Directions Applying in The Crown Court And Magistrates' Courts - Criminal Procedure Rules, III.30, TREATMENT OF VULNERABLE DEFENDANTS, available at:

<http://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/part3#id6328221>

²⁹¹ *R (on the application of OP) v Secretary of State for Justice* [2014] EWHC 1944 (Admin), June 2014, available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2014/1944.html>

and the district judge for the defendant. The High Court ruled that the intermediary was necessary to ensure equality of arms between the parties and prevent a perception of unfairness, both of which are necessary for a fair trial.

194. The EHRC welcomes this decision, in light of the impact that it could have on guaranteeing children's effective participation in trials where they face criminal charges. Nevertheless, we consider a child defendant needs such support throughout the whole process and not just when giving evidence.²⁹²
195. The difficulties children face in participating effectively in proceedings is compounded by the prevalence of mental health, learning difficulties, disabilities and communications problems among children in the youth justice system.²⁹³ One-third of young people in custody have special educational needs²⁹⁴ and 60% of children who offend have a communication disability.²⁹⁵ Evidence to the Independent Parliamentarian's Inquiry into the Operation and Effectiveness of the Youth Court highlighted the lack of any systematic court process to identify these needs effectively before the hearing.²⁹⁶

8.2.3 Use of youth courts

196. There are competing interests that need to be balanced between ensuring that justice is served and ensuring that the process takes into account the fact that the defendant is a child. The EHRC supports the recommendation of Lord Carlile that there should be a presumption, in law, that all children should be

²⁹² See, for example, Just for Kids Law, Press release, High court rules vulnerable defendants must get same level of help in court as prosecution witnesses, available at: <http://www.justforkidslaw.org/news-events/press-coverage/high-court-rules-vulnerable-defendants-must-get-same-level-of-help-in-court-as-prosecution-witnesses> and Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, June 2014, available at:

<http://www.ncb.org.uk/media/1148432/independent-parliamentarians-inquiry-into-the-operation-and-effectiveness-of-the-youth-court.pdf>

²⁹³ EHRC, 2012, Human Rights Review, available at: www.equalityhumanrights.com/sites/default/files/documents/humanrights/hrr_article_6.pdf

²⁹⁴ Youth Justice Board, Young people and the secure estate: needs and interventions, available at: <http://www.icpr.org.uk/media/34265/young-people-secure-estate.pdf>

²⁹⁵ Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, June 2014, available at: <http://www.ncb.org.uk/media/1148432/independent-parliamentarians-inquiry-into-the-operation-and-effectiveness-of-the-youth-court.pdf>

²⁹⁶ Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, June 2014, available at: <http://www.ncb.org.uk/media/1148432/independent-parliamentarians-inquiry-into-the-operation-and-effectiveness-of-the-youth-court.pdf>

dealt with in youth courts, and that cases heard in the Crown Court should be exceptional and determined on a case-by-case basis.²⁹⁷ Even with the updated trial rules and the specialist youth training offered to magistrates and district judges, the Crown Court may not be a suitable setting for children to have a fair trial and the UK Government is at risk of breaching Articles 3, 12, 37 and 40 UN CRC.

197. The EHRC supports the piloting of a 'problem-solving approach' in youth courts which could include 'judicial monitoring, addressing the link between underlying needs and offending, multi-disciplinary team working, and consensual decision-making.'²⁹⁸ Applying this approach in youth courts could better meet the aims of youth proceedings to prevent offending and have due regard to the welfare of the child. In this regard, the UK Government could learn from the Scottish approach to dealing with offences committed by children. This system seeks ways to support the child and move them away from re-offending, and is based on the principle that children who commit offences often need care and protection.²⁹⁹

8.3 Alternatives to child custody (Article 37)

198. Article 37(b) UN CRC and Rule 13 of the Beijing Rules call for the use of detention of children only as a last resort and for the shortest appropriate period of time.³⁰⁰ The EHRC commends the UK Government for the continued reduction in the number of children sentenced to custody. In April 2015, there were 999 under-18 year olds in secure settings in England and Wales, a 10% decrease on the previous year.³⁰¹ We consider more can be done to ensure that detention is used as a last resort and that a welfare-based approach is taken to dealing with children in the criminal justice system. For example, 62%

²⁹⁷ Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, June 2014, available at: <http://www.ncb.org.uk/media/1148432/independent-parliamentarians-inquiry-into-the-operation-and-effectiveness-of-the-youth-court.pdf>

²⁹⁸ Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, June 2014, available at: <http://www.ncb.org.uk/media/1148432/independent-parliamentarians-inquiry-into-the-operation-and-effectiveness-of-the-youth-court.pdf>

²⁹⁹ Children's Hearings Scotland, The Children's Hearings System, available at: <http://www.chscotland.gov.uk/the-childrens-hearings-system/>

³⁰⁰ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly resolution 40/33, annex), available at: www.un.org/documents/ga/res/40/a40r033.htm

³⁰¹ Ministry of Justice, Youth custody report, May 2015, available at: <https://www.gov.uk/government/statistics/youth-custody-data>

of all children and young people who were remanded into custody in 2013/14 did not go on to receive custodial sentences.³⁰² This suggests that for the majority of young people, detention was not necessary and an alternative would have been preferable.

8.3.1 Demographics of children in detention

199. Children who have been in local authority care, those from ethnic minority backgrounds, and those with disabilities are disproportionately represented in youth detention settings. In Young Offender Institutions (YOIs) in 2015, 38% of offenders had been in local authority care, 45% were from an ethnic minority background and 15% considered themselves to have a disability.³⁰³ In secure training centres (STCs) in 2014, 43% were from an ethnic minority background and 22% considered themselves to have a disability.³⁰⁴
200. In addition, MOJ statistics show that children with mental health problems, who have tried to harm themselves, and those with neuro-developmental disorders, are disproportionately represented in custody compared with the general population, as are children with low educational attainment, SEN and those who have been subject to exclusions.³⁰⁵ According to one survey, 51% of young people in custody came from deprived or unsuitable accommodation.³⁰⁶
201. The overrepresentation of particular groups of children suggest there may be root causes related to children's health, education and welfare that may contribute to the likelihood of children committing criminal offences.

³⁰² 25% of those are acquitted and over one-third (37%) receive other court convictions. See Youth Justice Statistics 2013/14 England and Wales, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399379/youth-justice-annual-stats-13-14.pdf

³⁰³ HM Chief Inspector of Prisons for England and Wales, Annual Report 2014-15, July 2015, p. 80, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444785/hmip-2014-15.pdf

³⁰⁴ HM Inspectorate of Prisons, Youth Justice Board, Children in Custody 2013-14: An analysis of 12-18 year olds' perceptions of their experience in secure training centres and young offending institutions, 2014, available at: <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/12/HMIP-Children-in-custody-2013-14-web.pdf>

³⁰⁵ Ministry of Justice, Transforming youth custody: putting education at the heart of detention, Consultation Paper CP4/2013, February 2013, p. 10, available at: https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/supporting_documents/transformingyouthcustody.pdf

³⁰⁶ HM Inspectorate of Prisons, Youth Justice Board, Children in Custody 2013-14: An analysis of 12-18 year olds' perceptions of their experience in secure training centres and young offending institutions, 2014, available at: <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/12/HMIP-Children-in-custody-2013-14-web.pdf>

8.4 Use of restraint in the secure youth estate

202. The UK's National Preventive Mechanism (NPM) has expressed concern that 'restraint in children's custodial settings is sanctioned to prevent non-imminent threats of injury, damage to property or escape and, in YOIs, to promote "good order and discipline"'.³⁰⁷
203. The number of restrictive physical interventions (RPIs) in the secure youth estate per 100 young people increased by 39% from 2010/11 to 2013/14 (20.5 RPIs per 100 young people to 28.4 in 2013/14).³⁰⁸
204. Her Majesty's Inspectorate of Prisons (HMIP) reported that their inspections of YOIs 'continued to find evidence of the use of "pain compliance", an approved technique that we regard as unnecessary and unacceptable for this age group.'³⁰⁹ A new system called 'minimising and managing physical restraint', which aims to 'minimise the use of restraint through the application of behaviour management techniques, de-escalation and communication', had only been introduced in one out of five YOIs inspected by HMIP in 2014/15.³¹⁰
205. The increase in the number of RPIs is all the more pertinent given the provision in Schedule 10 of the Criminal Justice and Courts Act 2015, which provides for the use of reasonable force on young offenders in Secure Colleges where necessary to ensure good order and discipline.³¹¹ The EHRC has advised the UK Government and Parliament that the UN CRC³¹² and UN Convention Against Torture (CAT)³¹³ have recommended that restraint against children should be a last resort and exclusively to prevent harm to the

³⁰⁷ UK National Preventive Mechanism, Submission to the UN Human Rights Committee's Seventh Periodic Review of the United Kingdom at the Committee's 114th session, available at:

<http://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/07/UK-NPM-Submission-to-the-UN-Human-Rights-Committee-FINAL.pdf>

³⁰⁸ Ministry of Justice and Youth Justice Board for England and Wales, Youth justice annual statistics: 2013-14, p. 48, available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2013-to-2014>

³⁰⁹ HM Inspectorate of Prisons, Annual Report 2014-15, July 2015, p. 82, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444785/hmip-2014-15.pdf

³¹⁰ HM Chief Inspectorate of Prisons, Annual Report 2014/15, July 2015, p. 82, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444785/hmip-2014-15.pdf

³¹¹ Criminal Justice and Courts Act 2015, available at: <http://www.legislation.gov.uk/ukpga/2015/2/schedule/10/enacted>

³¹² UN CRC, Concluding Observations on the UK, 2008, para 39

³¹³ UN Committee against Torture, Concluding observations on the fifth periodic report of the United Kingdom, CAT/C/GBR/5, para 28, available at: <https://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

child or others.³¹⁴ The EHRC has indicated that this provision may not be compatible with Articles 3 (freedom from torture, inhuman or degrading treatment or punishment) and 8 (right to respect for privacy and family life) of the ECHR.³¹⁵

206. In 2008, the Court of Appeal upheld the High Court's decision to quash rules relating to physical restraint of detainees in STCs.³¹⁶ In particular those rules, which extended use of restraint to maintain good order and discipline in a STC, were held to be in breach of Article 3 ECHR on the prohibition of torture or inhuman or degrading treatment or punishment, and Article 8 on the right to respect for private life.³¹⁷ The test for inhuman and degrading treatment of children deprived of their liberty needed to be interpreted in light of Article 37 (c) CRC.³¹⁸ Nor could it be held that the use of restraint was strictly necessary to impose good order and discipline.³¹⁹ The JCHR concurred with this assessment and called for the provision to be amended in the Bill, so that force could only be used as a last resort.³²⁰ The UK Government did not agree to amend the Bill before it was enacted, as it held that:

- there are some situations in which the use of some reasonable force to ensure good order and discipline (in limited and clearly defined

³¹⁴ EHRC, Briefing in support of amendment relating to use of physical restraint in secure colleges, October 2014, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/criminal-justice-and-courts-bill-2014-use-physical-restraint-secure-colleges>

³¹⁵ EHRC, Briefing in support of amendment relating to use of physical restraint in secure colleges, October 2014, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/criminal-justice-and-courts-bill-2014-use-physical-restraint-secure-colleges>

³¹⁶ *R(C) v Secretary of State for Justice* [2008] EWCA Civ 882, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2008/882.html>. Secure Training Centre (Amendment) Rules 2007 issued by the Secretary of State for Justice were also unlawful because the Secretary of State did not carry out the required Race Equality Impact Assessment at the appropriate time and he did not adequately consult the Children's Commissioner.

³¹⁷ *R(C) v Secretary of State for Justice* [2008] EWCA Civ 882, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2008/882.html>

³¹⁸ *R(C) v Secretary of State for Justice* [2008] EWCA Civ 882, paras 58 and 60, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2008/882.html>

³¹⁹ *R(C) v Secretary of State for Justice* [2008] EWCA Civ 882, para 79 and paras 20 to 34, available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2008/882.html>

³²⁰ JCHR, May 2014, Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill, Fourteenth Report of Session 2013-14, available at: www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf; EHRC, Briefing in support of amendment relating to use of physical restraint in secure colleges, October 2014, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/criminal-justice-and-courts-bill-2014-use-physical-restraint-secure-colleges>

circumstances) will be necessary, and that the relevant primary legislation should allow for that possibility.³²¹

8.5 Segregation

207. The UK NPM emphasised that ‘all forms of youth justice custody permit the use of “single separation” or “segregation”, including for purposes of “good order and discipline”. In YOIs this can lead to children spending 22 hours or more in their cell each day for considerable periods of time.’³²²
208. HMIP reported that in the YOIs it inspected in 2014/15, over a quarter of boys had spent a night in a segregation unit, which does not represent ‘a suitable response to the complex needs of many of the boys held.’³²³ In one case, a boy had spent 133 days in such a unit. Although relationships between staff and boys were generally good in these units, boys had limited educational input.

8.6 Secure colleges

209. Section 38 of the Criminal Justice and Courts Act 2015 amends Section 43 of the Prison Act 1952. It provides discretionary powers to the Secretary of State to detain young offenders in secure colleges (SCs) in addition to YOIs and STCs.³²⁴
210. Although the EHRC welcomes the focus of SCs on meeting the education, health and welfare needs of children while in custody,³²⁵ we believe that the use of large, secure colleges would undermine some of the intended benefits. The Chief Inspector of Prisons has questioned whether SCs would be able to provide young offenders with a better education than that delivered in YOIs,

³²¹ JCHR, Legislative scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill, Fourteenth Report of Session 2013-14, para 1.62, available at:

<http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf>

³²² UK National Preventive Mechanism, Submission to the UN Human Rights Committee’s Seventh Periodic Review of the United Kingdom at the Committee’s 114th session, available at:

<http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/07/UK-NPM-Submission-to-the-UN-Human-Rights-Committee-FINAL.pdf>

³²³ HM Inspectorate of Prisons, Annual Report 2014/15, July 2015, pp. 82-3, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444785/hmip-2014-15.pdf

³²⁴ Criminal Justice and Courts Act, 2015, available at: <http://www.legislation.gov.uk/ukpga/2015/2/part/2/enacted>

³²⁵ Ministry of Justice, Transforming youth custody: putting education at the heart of detention, Consultation Paper CP4/2013, February 2013, available at: https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/supporting_documents/transformingyouthcustody.pdf

where provision has recently improved.³²⁶ The UK Parliament's Justice Committee has also maintained that small units are safer and more humane for young people.³²⁷

211. The MOJ announced on 9 July 2015 that it is not proceeding with the creation of the first SC because the youth custody population has fallen in the last two years and it would be inappropriate to hold one-third of this population in a single location. They also do not consider the cost is justified at present.³²⁸
212. The EHRC welcomes this development. However, we are concerned that there remains provision in legislation for SCs to be established and for restraint to be used on children there for the purpose of good order and discipline. Also of concern is that the MOJ is still of the view that SCs could be desirable if the youth custody population was larger.³²⁹

8.7 Recommendations

213. The EHRC recommends that the UK Government:
- reconsider raising the age of criminal responsibility in line with Article 40(3) CRC and recommendations by CRC, and implement the recommendations of the Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, 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

³²⁶ HM Inspectorate of Prisons, Annual Report 2013-14, October 2014, available at:

www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf

³²⁷ House of Commons Justice Committee, 18 March 2015, Prisons: planning and policies, Ninth Report of Session 2014-15, HC 309, available at:

www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/309.pdf

³²⁸ Secure Colleges: Written question - 5710, July 2015, available at:

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-07-06/5710/>

³²⁹ Secure Colleges: Written question - 5710, July 2015, available at:

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-07-06/5710/>

- 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 the 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 with Article 37 (c) CRC.

Section 9.

Special protection measures: immigration detention of children – Article 37

214. In 2008, the UN CRC called on the UK to '[i]ntensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time.'³³⁰ UN CRC has also held that 'all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.'³³¹ The UK Government has made a number of changes which have contributed to the reduction in the number of children detained under Immigration Act powers from 1,119 in 2009 to 121 in 2015.³³² In doing so, it has furthered the implementation of this concluding observation as well as Article 37 (b) of the CRC, but some compliance issues remain.
215. Section 55 of the Borders, Citizenship and Immigration Act 2009, and the enforcement instructions and guidance of the UK Visas and Immigration and Immigration Enforcement require the Home Office to carry out its functions in relation to immigration having regard to the need to safeguard and promote the welfare of children who are in the UK.³³³
216. In June 2010, the UK Government announced it would end the detention of children for immigration purposes.³³⁴ To this end, it closed the family unit at

³³⁰ UN CRC, Concluding Observations on the UK, 2008, para 71(a)

³³¹ UN CRC, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, September 2005, para 61, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2005%2f6&Lang=en

³³² Home Office, Immigration statistics, January to March 2015, para 13.4, available at: <https://www.gov.uk/government/statistics/immigration-statistics-january-to-march-2015>

³³³ Borders, Citizenship and Immigration Act 2009, available at: <http://www.legislation.gov.uk/ukpga/2009/11/contents> and UK Visas and Immigration, Enforcement Instructions and Guidance, December 2014, available at: <https://www.gov.uk/government/collections/enforcement-instructions-and-guidance>

³³⁴ Deputy Prime Minister's speech on children and families, 17 June 2010, available at: <https://www.gov.uk/government/speeches/deputy-pms-speech-on-children-and-families>

Yarl's Wood Immigration Removal Centre (IRC), the only IRC at which children had been detained.³³⁵

217. The UK Government developed a new policy on family removals, aspects of which are enshrined in the Immigration Act 2014.³³⁶ Under the policy, families with children are encouraged to leave voluntarily following a case conference at which they discuss their case with the Home Office.³³⁷
218. Immigration and asylum are reserved matters (see Schedule 5 of the Scotland Act 1998) but issues have been raised regarding asylum seekers' rights to access devolved services in Scotland.³³⁸

9.1 Cedars pre-departure accommodation

219. If families refuse to cooperate with removal, and as a last resort, they can be required to stay in Cedars, Immigration Enforcement's secure pre-departure accommodation, for up to one week.³³⁹ Cedars may also be used for families 'for whom other return options are not suitable.'³⁴⁰ Over the past three full years since Cedars opened, there has been a decrease in the number of children and families held there; in 2012, 121 children were held there and in 2014, 32 children were held there.³⁴¹ The children's charity Barnardo's provides the welfare and support services for Cedars and the facility has been regarded as a significant improvement to the previous arrangement at Yarl's Wood.³⁴²

³³⁵ Home Office, Review into Ending the Detention of Children for Immigration Purposes, December 2010, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275349/child-detention-conclusions.pdf

³³⁶ Sections 2, 3, 5, 6, Immigration Act 2014, available at: <http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>

³³⁷ House of Commons Library, 2014, Standard Note, Ending Child Immigration Detention, available at: www.parliament.uk/business/publications/research/briefing-papers/SN05591/ending-child-immigration-detention

³³⁸ The Scottish Government, Asylum Seekers in Scotland, February 2003, available at: <http://www.gov.scot/Publications/2003/02/16400/18347>

³³⁹ Immigration Enforcement, Cedars pre-departure accommodation information, February 2014, available at: <https://www.gov.uk/government/publications/guidance-on-cedars-pre-departure-accommodation/cedars-pre-departure-accommodation-information>

³⁴⁰ Home Office, Enforcement Instructions and Guidance, Chapter 45 Section (b) Family returns process operational guidance, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398601/CH45b_v3_EXT.pdf

³⁴¹ Home Office statistics, February 2015, Table dt_09, available at: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2014/immigration-statistics-october-to-december-2014#detention-1>

³⁴² HMCIP, Report on an unannounced inspection of Cedars Pre-Departure Accommodation 30 April - 25 May 2012, available at: <http://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/cedars->

220. In March 2015, Barnardo's made seven recommendations for an incoming UK government in order to improve the pre-departure process, including that physical intervention should not be used with children or pregnant women except to prevent harm to self or others, and children should never be separated from their parents for the purposes of immigration control, except if there is a safeguarding or welfare concern.³⁴³

9.2 Immigration detention in other settings

221. The UK Government did not commit to ending detention of children in short term holding facilities (STHF) at UK points of entry. In 2010, the Home Office stated that such short term detention would only affect a 'few dozen families each year, usually for less than 24 hours.'³⁴⁴ However, evidence indicates that considerably more children have been held in these facilities.
222. Data provided in answer to a freedom of information (FOI) request showed that 610 children were held in detention at English ports between April and July 2013. 474 were held as part of a family group and 136 were unaccompanied children. 65 were held for over 12 hours. 132 were granted leave to enter the UK and a further 367 were granted Temporary Admission.³⁴⁵
223. According to official published figures, 570 children were held in immigration detention from the start of 2012 to the end of 2014. 318 (55.8%) were held at Tinsley House IRC or a STHF.³⁴⁶ The remainder were held at Cedars. While most of these children were held for three days or less in Tinsley House IRC

[2012.pdf](#) and HMCIP, Report on an unannounced inspection of Cedars pre-departure accommodation and overseas family escort 6 – 27 January 2014, available at: <https://www.justice.gov.uk/about/hmi-prisons/?a=101086>

³⁴³ Barnardo's, March 2015, Recommendations for a new government, available at: http://www.barnardos.org.uk/cedars_report_2015.pdf

³⁴⁴ UKBA, 2010, Review into ending the detention of children for immigration purposes, available at: www.gov.uk/government/publications/review-to-end-the-immigration-detention-of-children-consultation-conclusion

³⁴⁵ House of Commons Library, 2014, Standard Note, Ending Child Immigration Detention, available at: www.parliament.uk/business/publications/research/briefing-papers/SN05591/ending-child-immigration-detention

³⁴⁶ Home Office statistics, February 2015, Table dt_09, available at: www.gov.uk/government/publications/immigration-statistics-october-to-december-2014/immigration-statistics-october-to-december-2014#detention-1

or another STHF, 73 children (23%) were held anywhere from four days to over three months.³⁴⁷

9.2.1 Recommendations

224. Given that the continued detention of children in immigration settings, such as short-term holding facilities, could be inconsistent with 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.

³⁴⁷ Home Office statistics, February 2015, Table dt_09, available at: www.gov.uk/government/publications/immigration-statistics-october-to-december-2014/immigration-statistics-october-to-december-2014#detention-1

Section 10.

Special protection measures: child trafficking - Article 35

225. As it outlines in its 2014 State Report³⁴⁸, the UK Government has made significant progress in implementing the UN CRC's 2008 Concluding Observation in relation to the sale, trafficking and abduction of children.³⁴⁹ The UK ratified the Council of Europe Convention on Action against Trafficking in Human Beings in 2008,³⁵⁰ the UN Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) in 2009, and the European Directive on preventing and combating trafficking in human beings in 2013 (EU Trafficking Directive).³⁵¹
226. In 2014, the UK NRM received 2,340 referrals of potential victims of trafficking; this represents a 34% increase on 2013. Of these, 671 (29%) were referred for exploitation as a minor. The potential victims were reported to be from 96 countries of origin.³⁵² However, the EHRC notes these figures may not be wholly representative and they may underestimate the scale of the problem in the UK, for example because trafficking is a covert crime, victims are hidden and child victims are particularly difficult to identify.

³⁴⁸ Department for Education, Fifth Periodic Report to the UN Committee on the Rights of the Child, February 2014, pp.53-54, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2f5&Lang=en

³⁴⁹ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom, October 2008, paras 75 and 76, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f4&Lang=en

³⁵⁰ Council of Europe Convention on Action against Trafficking in Human Beings, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

³⁵¹ European Commission, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0036>

³⁵² National Crime Agency, National Referral Mechanism Statistics – End of Year Summary 2014, available at: <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/502-national-referral-mechanism-statistics-end-of-year-summary-2014/file>

10.1 Modern Slavery Act (MSA) 2015

227. In 2014, the UK Government introduced a draft Modern Slavery Bill to implement international anti-trafficking standards in England and Wales, including Article 4 ECHR (prohibition on trafficking). The EHRC's submission to the UN CRC's 2014 examination of the UK's implementation of OPSC highlighted the areas of improvement needed for the draft legislation to meet those standards.³⁵³ We welcomed that the UN CRC's subsequent concluding observations reflected the great majority of our recommendations.³⁵⁴
228. Significant progress has been made in applying the UN CRC's concluding observations through the MSA 2015³⁵⁵ and policy developments to support its implementation, including:
- clearly defining a child as being under the age of 18 and requiring a presumption that a person is under 18 until age is otherwise determined (Section 51 MSA 2015)³⁵⁶
 - making provision for a pilot scheme for independent child trafficking advocates to represent and support children who may be victims of human trafficking (Section 48 MSA 2015)³⁵⁷
 - a review of the UKNRM³⁵⁸ and provision for regulations to address the identification and support of victims of slavery or trafficking (Section 50 MSA 2015)³⁵⁹

³⁵³ EHRC, Submission to the UN Committee on the Rights of the Child on the UK's compliance with the Optional Protocol on the Sale of children, child prostitution and child pornography, April 2014, available at: http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/uncrc-op_submission_28-04-14.pdf

³⁵⁴ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom on Optional Protocol on the Sale of children, child prostitution and child pornography, June 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en

³⁵⁵ Modern Slavery Act 2015, available at: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

³⁵⁶ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom on Optional Protocol on the Sale of children, child prostitution and child pornography, June 2014, para 29, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en

³⁵⁷ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom on Optional Protocol on the Sale of children, child prostitution and child pornography, June 2014, para 39, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en

³⁵⁸ Home Office, Review of the National Referral Mechanism for victims of human trafficking, November 2014, available at: <http://webarchive.nationalarchives.gov.uk/20141202113128/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>

³⁵⁹ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom on Optional Protocol on the Sale of children, child prostitution and child pornography, June 2014, para 39(b) available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en

- strengthening the public accountability and transparency of the Anti-Slavery Commissioners and their role in providing assistance and support to victims of slavery (Part IV MSA 2015),³⁶⁰ and
- statutory guidance and strengthened regulations to improve local authorities' care planning for child victims, and set standards for care homes.³⁶¹

229. However, some gaps in the implementation of international anti-trafficking standards remain, including in relation to children, for example lack of detail in provisions to identify and provide support to victims, gaps in criminal offences, and weaknesses in the powers of the Anti-Slavery Commissioner and the resources available to them.

230. At the time of writing, the Scottish Parliament is considering the Human Trafficking and Exploitation (Scotland) Bill which will consolidate and clarify the law on trafficking in Scotland, emphasise the needs of victims and set out new legal measures to identify and disrupt human trafficking activity.

10.2 The National Referral Mechanism (NRM)

231. The UK introduced the NRM in 2009 to meet its obligations under the 2005 Council of Europe Trafficking Convention. The NRM is the framework for identifying victims of trafficking, slavery, servitude and forced labour in the UK and ensuring they receive appropriate care. The Home Office published its review of the NRM in November 2014.³⁶² The UK Government's Modern Slavery Strategy outlines its acceptance, in principle, all of the review's recommendations.³⁶³ The Strategy notes that the UK Government intends to initiate two pilot schemes to test whether they provide robust solutions to the problems identified.³⁶⁴ The outcome of these pilots will inform the regulations,

³⁶⁰ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom on Optional Protocol on the Sale of children, child prostitution and child pornography, June 2014, para 18, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en

³⁶¹ HM Government, Modern Slavery Strategy, November 2014, p.63, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf

³⁶² Home Office, Review of the National Referral Mechanism for victims of human trafficking, November 2014, available at: <http://webarchive.nationalarchives.gov.uk/20141202113128/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>

³⁶³ HM Government, Modern Slavery Strategy, November 2014, available at: <https://www.gov.uk/government/publications/modern-slavery-strategy>

³⁶⁴ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom on Optional Protocol on the Sale of children, child prostitution and child pornography, June 2014, para 39, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en

provided for in the MSA 2015, to address the identification and support of victims of slavery and trafficking. The NRM review made some recommendations, specifically in respect of children, that the EHRC considers the Regulations should address, namely:

- awareness raising with Chairs of Local Safeguarding Children Boards (LSCBs) and local authorities on the importance of the identification and support of child victims, including the role of clear indicators
- establishing multi-disciplinary regional panels to decide who is a victim, rather than UK Visas and Immigration and the National Crime Agency being the sole decision-makers, and a comprehensive strategy to increase the identification of victims and the centralisation of case management, and
- consideration of the appropriateness of social workers and children's legal representatives applying for permanent immigration status.³⁶⁵

232. The EHRC considers that there are a number of gaps in the MSA 2015 and NRM review that still need to be addressed, including the provision of:

- an appeals process
- a clear statutory duty (rather than just statutory guidance) to record and report trafficked children who go missing from care, and, as committed, to consider what further steps are required,³⁶⁶ and
- explicit citation in the regulations of all relevant authorities that are likely to come into contact with victims of trafficking and slavery (and therefore have a duty to report), including health authorities, schools, prisons, probation services and voluntary organisations performing a public function.

10.3 Prosecution of all involved in trafficking except victims

233. The EHRC's analysis suggests that the MSA 2015 may have missed opportunities to prosecute all those involved in trafficking and to ensure that victims of trafficking are treated as victims rather than criminals within the justice system. For example:

³⁶⁵ Home Office, Review of the National Referral Mechanism, November 2014 pp. 47-48, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372960/Review_of_the_National_Referral_Mechanism_for_victims_of_human_trafficking.pdf

³⁶⁶ HM Government, Modern Slavery Strategy, November 2014, p.52, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf

- the MSA 2015 does not establish a clear obligation of non-prosecution of child victims or make it clear that a child cannot consent to their own exploitation. The EHRC considers the definitive question as to whether a crime has been committed is whether or not a child has been exploited³⁶⁷
- the MSA 2015 continues to link trafficking offences to the movement of victims, so that the legislation may not capture those in the trafficking chain who facilitate or arrange exploitation, and
- the MSA 2015 does not make it a criminal offence to use coercion, fraud, abuse of power or payment, such as debt bondage, to secure the compliance of a trafficking victim.

10.4 Anti-Slavery Commissioner

234. While there have been positive changes in the MSA 2015 to:

- Increase the independence of the Anti-Slavery Commissioner³⁶⁸
- specify which bodies are under a duty to cooperate with the Anti-Slavery Commissioner (Section 43 MSA 2015), and
- include the provision of assistance and support to victims within the Anti-Slavery Commissioner's remit (Section 41(4) MSA 2015).

235. The EHRC notes that the Commissioner's office could be strengthened further by:

- reporting directly to Parliament rather than Ministers
- extending the powers and resources available to it,³⁶⁹ and
- extending the range of public authorities under a duty to cooperate with the Anti-Slavery Commissioner to include schools, prisons, probation services and voluntary organisations performing a public function.

³⁶⁷ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom on Optional Protocol on the Sale of children, child prostitution and child pornography, June 2014, para 39(a), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en

³⁶⁸ UN Committee on the Rights of the Child, Concluding Observations for the United Kingdom on Optional Protocol on the Sale of children, child prostitution and child pornography, June 2014, para 18, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en

³⁶⁹ EHRC, Submission to the UN Committee on the Rights of the Child on the UK's compliance with the Optional Protocol on the Sale of children, child prostitution and child pornography, April 2014, pp.8-9, available at: http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/uncrc-op_submission_28-04-14.pdf

10.5 Recommendations

236. In order to fill some of the gaps that remain in the Modern Slavery Act (MSA) 2015, and improve compliance with 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 MSA 2015, including the powers of the Anti-Slavery Commissioner, within five years of its commencement to ascertain whether it is functioning as intended and, if evidence suggests that gaps in compliance with the UK Government's international human rights obligations remain, then it should bring forward amendments to the legislation
- expedite implementation of the pilot schemes to address the recommendations of the review of the National Referral Mechanism, including the provision of legal advice from the point at which a potential victim of trafficking is 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 that only a credible suspicion 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.

Annex A.

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

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

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 the UK Government considers and publishes 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 those established in Scotland and Wales, and:

- access to a domestic remedy for children who allege 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.

A.2 Children's access to civil law justice

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 their rights 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
- review the operation of the exceptional cases funding scheme to address its shortcomings, including those identified by the High Court, and
- withdraw proposals for a residence test for civil legal aid.

A.3 Violence against children

In line with the UK's obligation to protect the child from all forms of physical or mental violence under Article 19 CRC, the EHRC welcomes the UK Government's commitment to working towards the ratification and implementation of the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence.

To ensure increased compliance and improved implementation of Article 19 CRC in the UK, 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:

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

There is also a need for the ongoing implementation of comprehensive and co-ordinated strategies by the UK Government and devolved administrations to prevent and combat VAWG, introducing robust monitoring and accountability mechanisms to monitor the impact of these strategies, and ensuring the provision of services for victims.³⁷⁰

³⁷⁰ See also EHRC, Oral statement on the Special Rapporteur on violence against women country report (video statement delivered by Baroness Onora O'Neill, Chair of the EHRC, for the 29th Session of the Human Rights Council, June 2015, available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/united-nations/un-human-rights-council>)

A.4 Financial decision-making and children's adequate standard of living

In order to improve implementation of Articles 3, 4, 26 and 27 CRC, and in line with its Future Fair Financial Decision Making Report, the EHRC recommends that the UK Government:

- take steps to improve the coverage of evidence and analysis in the Equalities Impact Statement, published alongside Spending Reviews
- review its approach to impact assessment by extending its impact analysis to include the cumulative impact of decisions on children sharing different protected characteristics, and
- monitors the impact of Spending Review measures in order to better understand where mitigations are needed and to inform the next round of spending decisions.

A.5 Impact of social security reform on children

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 those who have a disability or are an ethnic minority.

In all future financial decision-making, the UK Government should consider these impacts carefully, as well as the recent UK Supreme Court case in which concerns were raised regarding the compliance of the household benefit cap with Article 3 (1) CRC.

A.6 Child poverty

In order to realise progressively children's right to an adequate standard of living, as required by Articles 4 and 27 CRC, and in light of the announcements by the Department for Work and Pensions regarding proposed changes to the ways in which child poverty is measured, the UK Government should:

- ensure that any new measures of child poverty address relative and absolute income poverty, and material deprivation, as well as taking into account causal risks that contribute to the perpetuation of poverty, and

- in line with recommendations made by the Office of the Children's Commissioner, the Social Mobility and Child Poverty Commission, and the EHRC in its submission on ICESCR, ensure that efforts to address in-work poverty, and the improvement of conditions of work are central parts of its response to child poverty.

A.7 Food poverty

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 considers the UK Government should reflect further on the benefits of the universal provision of free school meals (FSM) in line with the recommendation made in the School Food Plan as part of improving implementation of Articles 6, 24 and 27 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.³⁷¹

A.8 Childcare and flexible working

In order to meet the needs of all parents who require childcare to be able to work, and in doing so 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 grave problems in terms of the availability and affordability of childcare, including by:

- collecting data (disaggregated by protected characteristic) about those children taking up free early education or childcare in England, and feeding the findings back to schools and local authorities to identify appropriate interventions to promote access to this free education and childcare to the children who would most benefit from it, such as those from poor socio-economic backgrounds and some ethnic minorities
- introducing a truly flexible parental leave scheme, in which mothers and fathers each have their own exclusive entitlement, and

³⁷¹ APPG Hunger, Feeding Britain, p. 31, available at: <https://foodpovertyinquiry.files.wordpress.com/2014/12/food-poverty-feeding-britain-final.pdf>

- ensuring more equal access to and take-up of parental leave, as set out in the EHRC submission on the Children and Families Bill,³⁷² including making shared parental leave a day-one right, allowing new leave to be taken flexibly, and reviewing the decision not to reserve rights for fathers.

A.9 Children's access to mental health services

In order to respond to concerns regarding the implementation of 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 demands
- consider how to 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, 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.

A.10 Right to education – in year admissions

With a view to improved implementation of Articles 3, 28 and 29 CRC, 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 and by those on free school meals, and the length and reasons of placement delays. The EHRC suggests the UK Government works with relevant authorities to analyse this data, identify connections with other service provision, such as housing, and amend policies accordingly to ensure they are in line with Articles 3, 28 and 29 CRC.

³⁷² EHRC, Children and Families Bill 2013, House of Lords Committee Stage Briefing, October 2013, available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/children-and-families-bill-2013-house-of-lords-committee-stage-briefing>

A.11 Right to education – 16-19 Bursary Fund

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 that receive bursary allocations should complete the student support data fields in the Individualised Learner Record (for further education) and the school census to enable monitoring of take-up by students with protected characteristics.

A.12 Right to education – children with disabilities and special educational needs

The EHRC recommends that the UK Government conduct an evaluation and review of the Special Educational Needs and Disability Code of Practice (the SEND Code) within five years of it coming into effect. The review and evaluation should aim to secure in practice the improvements set out in the SEND Code and the Children and Families Act 2014 in the implementation of Articles 23, 28 and 29 CRC, with regards to the right to education of children with SEND, and should cover implementation in youth justice settings. The UK Government should act on any findings swiftly, including making any necessary amendments to the SEND Code and Children and Families Act 2014.

A.13 Right to education – looked after children

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 Welsh Government consider extending the voluntary introduction of virtual school heads to monitor the progress of looked after children (LAC) and to clearly define objectives with regards to their educational outcomes and monitor the achievement of these objectives
- 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
- the UK Government 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.

A.14 Right to education – Gypsy, Roma and Traveller children

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 what further steps need to be taken 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
- the UK Government, in collaboration and coordination with the devolved administrations, should adopt a national Roma integration strategy focused on access to education, employment, healthcare and housing. The strategies should set out clear and measurable objectives to improve the lives of Roma and be embedded in national, regional and local government programme plans.³⁷³

A.15 Right to education – pupil premium

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 implement the EHRC's recommendation to use the sophisticated attainment data now available for pupils sharing protected characteristics, alongside free school meal data, to provide better targeted interventions and value for money from the pupil premium and early years pupil premium in England.

A.16 School exclusions and alternative provision

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 the UK and Welsh Governments should make this explicit in any guidance they issue. The process for providing alternative education to excluded

³⁷³ EHRC, NIHR, Joint oral statement on the adoption of National Roma Integration Strategies, video statement delivered by Mark Hammond, Chief Executive of the EHRC, for the 29th session of the Human Rights Council, June 2015, available at: <https://www.youtube.com/watch?v=ev2CQ6tYh0k&feature=youtu.be>

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 not accessing education in the usual way for all educational establishments, including academies and free schools, to ensure their needs are being met.

In line with Articles, 3, 12, 28 and 29 CRC, the EHRC recommends that the UK and Welsh Governments 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 and, where appropriate, independent representation should be provided, in particular for looked after children and those with special educational needs.

A.17 Identity-based bullying in schools

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 UK Government should implement the EHRC'S recommendations to:

- require schools in England to collect qualitative and quantitative data on identity-based bullying across all the protected characteristics
- ensure head teachers make targeted interventions to tackle the specific kinds of bullying in their schools
- assess the impact of those interventions and revise as appropriate, and
- monitor progress and report to the local authority.

A.18 Personal, social and health education

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 and Welsh Government include Personal, Social and Health Education (PSHE) as a statutory subject part of the National Curriculum in England and Wales. It also recommends that these Governments improve the quality of PSHE and ensure it promotes knowledge and understanding of children's rights under the Convention, including those in relation to violence against women and girls. Existing work in this area should be evaluated, with the lessons learned shared across the State Party to ensure future interventions are effective.

A.19 Youth justice

The EHRC recommends that the UK Government:

- reconsider raising the age of criminal responsibility in line with Article 40(3) CRC and recommendations by CRC, and implement the recommendations of the Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, 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 the 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 with Article 37 (c) CRC.

A.20 Immigration detention of children

Given that the continued detention of children in immigration settings, such as short-term holding facilities, could be inconsistent with 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.

A.21 Child trafficking

In order to fill some of the gaps that remain in the Modern Slavery Act (MSA) 2015, and improve compliance with 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 MSA 2015, including the powers of the Anti-Slavery Commissioner, within five years of its commencement to ascertain whether it is functioning as intended and, if evidence suggests that gaps in compliance with the UK Government's international human rights obligations remain, then it should bring forward amendments to the legislation
- expedite implementation of the pilot schemes to address the recommendations of the review of the National Referral Mechanism, including the provision of legal advice from the point at which a potential victim of trafficking is 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 that only a credible suspicion 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.