



Submission by the Children's Rights Alliance for England,
Together (Scottish Alliance for Children's Rights)
and the Wales UNCRC Monitoring Group

**United Kingdom of Great Britain and Northern Ireland
Universal Periodic Review (UPR) - 3rd Cycle – May 2017**

About the Children's Rights Alliance for England

The Children's Rights Alliance for England (CRAE) works with over 150 organisational and individual members to promote children's rights. We believe that human rights are a powerful tool in making life better for children. We fight for children's rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

About Together Scottish Alliance for Children's Rights

Together (Scottish Alliance for Children's Rights) is an alliance of children's organisations that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 320 members including large international and national non-governmental organisations through to volunteer-led playgroups and after school clubs. Together consults widely with its membership through seminars, meetings and other ongoing communications. Every year, we research and publish an annual State of Children's Rights report to set out the progress made to implement the UNCRC in Scotland. We worked closely with the UN Committee on the Rights of the Child in relation to its 2016 examination of the UK and its resulting recommendations to the UK and devolved governments, which reflect very many of the concerns of Together's members.

About the Wales UNCRC Monitoring Group

The Wales UNCRC Monitoring Group is a national alliance of non-governmental and academic agencies, tasked with monitoring and promoting the United Nations Convention on the Rights of the Child in Wales. The UNCRC Monitoring Group was established in 2002 and is presently facilitated by Children in Wales, the national umbrella organisation. Since 2002, the Group has worked with the UN Committee on the Rights of the Child and submitted civil society reports to inform successive UK State Party Examinations.

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1. INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF CHILDREN'S HUMAN RIGHTS IN THE UK

1.1 GENERAL MEASURES OF IMPLEMENTATION (GMI) OF UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Introduction

1. CRC articles 4, 42 and 44.6 set out what States are required to do to ensure full CRC implementation. In its 2016 Concluding Observations (COs), the UN Committee issued 25 recommendations in relation to the GMI.ⁱ

Reservations and Declarations to the CRC and ratification of Optional Protocols (recommendations 110.4, 110.5, 110.7 and 110.8).

2. **Recommendations 110.4 and 110.8 not met:** On ratifying OPAC, UK Government placed a declaration setting out circumstances when it might not be possible to prevent deployment of under-18s in hostilities. Although the UK no longer routinely deploys children to war zones, it has done so 'in error' on at least 22 occasions since 2003.
3. **Recommendation 110.7 not fully met:** Despite removing its reservation to Article 37(c)ⁱⁱ the Military Corrective Training Centre still accommodates minors and adults together.
4. Many police stations do not have separate cells for children, meaning that children may come into contact with adults.ⁱⁱⁱ

The Declaration on OPAC should be amended to ensure that child recruits cannot take part in hostilities in any circumstances; UK Government should ensure it meets its obligations under CRC article 37(c) by ensuring that children are not detained at the Military Corrective Training Centre and that children do not come into contact with other adults at police stations.

5. **No progress on recommendation 110.5.** UK Government has stated that it had not signed the Third Optional Protocol as "*the UK already has strong and effective laws under which individuals may seek enforceable remedies in the courts or tribunals.*"^{iv}

UK Government should set out a participative process to consider the merits of the 3rd Optional Protocol for the UK with a timeframe in place for a decision to sign and ratify it. This should start immediately and in consultation with devolved governments.

Incorporation of the CRC into domestic law (recommendation 110.9)

6. **No progress on recommendation 110.9 at UK level:** While some aspects of the CRC are replicated in UK and devolved legislation, this piecemeal approach is not satisfactory.
7. The National Assembly for Wales has passed a general and one sectoral legislative measure of implementation: the Rights of Children and Young Persons (Wales) Measure 2011^v and

section 7 of the Social Services and Well-being (Wales) Act 2014.^{vi} The 2011 Measure brings the text of the CRC into the law applicable to Wales. The Scottish Parliament has passed a general legislative measure of implementation: the Children and Young People (Scotland) Act 2014. Whilst welcome, it doesn't place a firm duty on Scottish Ministers to '*strengthen implementation of the UNCRC*', as it is left to Ministers' discretion as to whether they '*consider it appropriate to do so*'.^{vii} Scotland's First Minister recently stated that she is open to '*exploring implementing and incorporating into Scots law some of the key international human rights treaties*', including the CRC. Scottish Government has pledged to use the Scottish Parliament's new powers to establish social and economic rights and further embed the European Convention on Human Rights (ECHR).^{viii} The effect of the Welsh legislation is to introduce the possibility of judicial review of an exercise of a function by a Welsh Minister or social services in Wales if the decision fails to pay due regard to the CRC.

8. There remains no specific legal redress for children in England, Wales or Scotland whose CRC rights are violated.

Expedite bringing domestic legislation in line with the CRC at both national and devolved level to ensure that the principles and provisions of the CRC are directly applicable and judiciable under domestic law.

UK Bill of Rights and the Human Rights Act (recommendation 110.32)

9. **Recommendation 110.32 is at serious risk:** There is real concern about UK Government plans to repeal the Human Rights Act 1998 (HRA) and replace it with a "British Bill of Rights". Scottish and Welsh Governments strongly oppose the repeal of the HRA,^{ix} promising to make every effort to block any repeal, and describing the proposal as "*dangerous*".^x A recent UN report warned that repealing the HRA could lead to decreased levels of human rights protection.^{xi}
10. UK Government has wrongly asserted that the HRA has led to '*abuse*'.^{xii} There is ample evidence of its positive effect on children's rights. Through the HRA, courts use the CRC as an aid to interpret the ECHR.^{xiii} The duty on public authorities to comply with the ECHR has led to positive changes to children's rights protection without the need to go to court.^{xiv}

The Human Rights Act 1998 must be retained and the vital role it plays in protecting children's universal human rights, including key provisions in the CRC, should be recognised.

Implementation of the CRC (recommendation 110.10)

11. **Some welcome developments of recommendation 110.10 but more progress needed:** It cannot be concluded that UK and devolved governments have taken "*all measures necessary to fully implement the CRC*". The plethora of issues raised in recent CRC reporting shows that much action is needed before the CRC is fully implemented across GB.^{xv}

Child Rights Impact Assessment

12. The UK Ministerial commitment to give “*due consideration*” to the CRC when making law and policy in England^{xvi} is welcome but analysis shows implementation is inadequate.^{xvii}
13. In Wales and Scotland, the legislation referred to above has resulted in the use of child rights impact assessments (CRIA) within the Welsh and Scottish Government, although this can be sporadic. In Wales, an independent evaluation of CRIA has recently been undertaken with officials now tasked with progressing recommendations^{xviii} and a programme for children based on CRC principles has been published.^{xix} These welcome steps should be adopted and developed throughout GB.

A transparent system of CRIA for all new policy, legislation and budgetary decision-making should be mandatory across the UK; widespread training must be implemented to ensure that officials have the necessary skills, knowledge and understanding to undertake CRIA; all CRIAs must be published.

CRC coordination

14. More needs to be done to ensure adequate coordination of CRC implementation. Inadequate political leadership on children’s rights has led to their invisibility across UK government, the consequences of which are evident. There has been no Cabinet-level Minister since 2010 with direct responsibility for children and their rights. The recent Ministerial reshuffle renamed the Minister for Children, the Minister for Vulnerable Children and Families. Day to day responsibility for implementation falls within a small team in the Department for Education, which lacks the capacity and authority needed to effectively coordinate CRC implementation.
15. Following May 2016 Scottish Parliamentary elections, the Deputy First Minister was appointed Cabinet Secretary for Education and Skills to reflect a commitment to tackle the educational attainment gap. The Minister for Children and Young People was replaced with a Minister for Childcare and Early Years. This refocus of Ministerial roles is seen to have left a gap with no overt responsibility for coordinating CRC implementation at Ministerial level, particularly in relation to older children.
16. The Welsh Government appointed a Cabinet Secretary for Children and Communities following National Assembly elections in May 2016. The Cabinet Secretary has specific ministerial responsibility for children’s rights, considered a positive development.^{xx} There is only a small team responsible for coordinating CRC implementation across Welsh Government.

Legal aid

17. There are grave concerns about the impact of changes to legal aid in England and Wales, with ample evidence of its adverse impact on children.^{xxi} Exceptional case funding (ECF) fails as a safeguard for children or families with immigration claims.^{xxii} The Court Of Appeal has

found that guidance governing ECF is too restrictive and not always in accordance with the law.^{xxiii} UK Government has committed to reviewing the impact of changes to civil legal aid within 3-5 years of implementation. As changes were introduced in 2013, a review should be forthcoming. There has been no announcement on when it will commence.

18. In Scotland, the manner in which eligibility for civil legal aid is assessed is reducing access to justice. Children's eligibility is based on parental income, rather than their own (as prior to 2010).^{xxiv} Some children who would have been eligible to instruct their own solicitor are no longer able to do so, which can make the difference between their views being heard or not.

UK and devolved governments should ensure all children have access to confidential, independent legal aid and assistance and can access justice and challenge decisions which affect their welfare and rights. An urgent review of legal aid should be undertaken

Child Rights Action Plans (recommendation 110.46)

19. **Limited progress on recommendation 110.46:** England has not had a CRC action plan since 2010. Both Scottish and Welsh Governments produced CRC action plans in 2009 setting out priorities in response to the UN Committee's 2008 COs. NGOs in Scotland raised concerns about the lack of specificity in both the 2009 action plan and subsequent progress report.^{xxv} In Wales, concerns focused on the lack of quantifiable goals and a monitoring framework.^{xxvi} To date, none of the Scottish, Welsh or Westminster Governments have made firm commitments to produce CRC action plans to take forward the UN Committee's 2016 COs.

UK Government and devolved governments should each develop a child rights action plan, in consultation with stakeholders. This should set out how recommendations from the UN Committee and UPR will be addressed, and include clear, resourced, time-bound actions and a monitoring framework. Progress should be reviewed on an annual basis.

Reform of the Children's Commissioners (recommendations 110.36, 110.38)

20. **Some progress of recommendation 110.36:** The independent review of the Children's Commissioner for Wales called for powers to enable the Commissioner to respond to any matter affecting a child and to be accountable to the National Assembly rather than the Welsh Government.^{xxvii} Whilst the powers of the Children's Commissioner for Scotland have been extended to cover investigations concerning individual children, concerns remain over funding.

Strengthen the independence of Children's Commissioners in line with the Paris Principles, and enable them to receive and investigate complaints from or on behalf of children concerning rights violations.

Knowledge of children's human rights

21. Knowledge of children's rights remains poor throughout GB. Rights training is inadequate for professionals working with and for children and rights education in schools remains patchy.^{xxviii}

UK and devolved governments should prepare a comprehensive strategy that encompasses and coordinates activities to ensure all CRC provisions are widely known and understood by adults and children.

2. IMPLEMENTATION OF HUMAN RIGHTS OBLIGATIONS IN RELATION TO CHILDREN

The UN Committee COs with 150 recommendations show that immediate action is needed by UK and devolved governments. In this section, we highlight key issues.

2.1 GENERAL PRINCIPLES

Discrimination (recommendations 110.53, 110.56, 110.57, 110.58, 110.119, 110.120, 110.121)

22. The Equality Act 2010 explicitly excludes children from its age discrimination provisions, despite evidence that children experience discrimination on that basis.^{xxix} Nonetheless it contains important protections for children and must remain in place.
23. **Little progress on recommendation 110.53:** A recent report^{xxx} highlights that Black, Asian and Minority Ethnic (BAME) people, including children *"are over-represented in almost all areas of the criminal justice system."* This is particularly stark in relation to children in the youth secure estate in England and Wales. Figures^{xxxi} for April 2016 show BAME children make up 45% of the youth custody population. Positively, UK Government has commissioned a review of racism in the criminal justice system in England and Wales
24. **Some progress on recommendations 110.56 and 110.57:** Although there is no available data in Scotland to indicate that Stop and Search is disproportionately targeted at BAME communities, it's a concern to communities themselves. Scottish Government has recognised that methods of data collection are not fully effective and have committed to address this.^{xxxii} In England and Wales, stop and search has fallen overall, but it is disproportionately used against BAME children (over half of all stop and searches).^{xxxiii}
25. Disproportionate levels of Stop and Search have been used against children in Scotland^{xxxiv}, England and Wales.^{xxxv}
26. The CERD Committee raised deep concerns that the EU referendum campaign was marked by *'divisive, anti-immigrant and xenophobic rhetoric'*.^{xxxvi} In England and Wales, post-

referendum hate crime reports peaked at nearly 60 per cent in July 2016 and is still 14 per cent higher than at the same point last year.^{xxxvii} Although not reflected in Scotland, across GB children are reporting an increase in bullying in relation to the EU referendum.^{xxxviii}

27. No progress has been made on recommendations 110.58, 110.119, 110.120 and 110.121:

Although the current version of Government's counterterrorism Prevent Strategy^{xxxix} does not explicitly target Muslims, in reality most reported cases involve Muslims. UK Government publishes little statistical information to aid assessment; but Muslim communities are clear that they perceive themselves as the target.^{xl} The UK's Independent Reviewer of Terrorism Legislation raised concerns that "*aspects of the programme are ineffective or being applied in an insensitive or discriminatory manner*".^{xli} Reported incidents under Prevent back up this assertion.^{xlii} The CERD Committee concluded that Prevent had created "*an atmosphere of suspicion towards members of the Muslim community*".^{xliii}

UK Government should amend existing equalities legislation to ensure all children have equal legislative protection from age discrimination

UK and devolved governments should address discrimination and hate crime experienced by BAME children, including investing in training, education and accountability systems; proactively monitoring the media; and evaluating how BAME children are able to have their view taken into account.

UK and devolved governments should assess measures taken to counter terrorism to ensure they do not breach children's rights. Measures should be developed in collaboration with children most likely to be affected and be monitored, evaluated and continually reviewed.

Participation

28. Many children feel that they are not listened to or provided with feedback by professionals in decision making processes. Across GB, there is no permanent structure or action plan to facilitate systematic participation and involvement of children in policy-making. Provision for under-11s is particularly patchy, as are adequate participation structures at a local level. Wales is without a Youth Parliament

UK and devolved governments should ensure permanent structures to facilitate the systematic participation and involvement of children in national and local policy making and scrutiny, such as child and youth parliaments and other accountability mechanisms.

2.2 EDUCATION

Exclusions (recommendation 110.106)

29. **Little progress on recommendation 110.106:** Exclusion levels have decreased in recent years in England and Scotland, and remained static in Wales^{xliv} but disproportionately affect certain groups: looked after children^{xlv}, children with special educational needs^{xlvi}, boys, or

children of Gypsy/Roma and Travellers. Concerns remain around the increased use of informal exclusions across England^{xlvii} and Scotland^{xlviii}, despite Scottish Government guidance that informal exclusions should never take place.^{xlix} Children in England don't have the right to appeal their exclusion. In Scotland, there are concerns that the Education (Scotland) Act 2016 may create a legal loophole that allows effective exclusion of pupils from school without any right of appeal or review.^l In Wales, there are concerns about the considerable variation in rates of exclusion between local authorities and between schools, suggesting statutory guidance is applied inconsistently.^{li}

UK and devolved governments should reduce school exclusions; ensure permanent or temporary exclusion is used as a last resort; address over-representation of particular groups of children; and ensure children have a statutory right to appeal against exclusions with legal advice and representation for those without means.

Educational attainment

30. A child's socio-economic background has a negative impact on educational achievement. In England, only 33.1% of pupils entitled to Free School Meals achieve more than 5 good GCSEs compared to 60.9% of their peers.^{lii} Concerns are shared across the political spectrum on proposals to lift the ban on new English grammar schools.^{liii} Grammar schools select children by educational attainment at age 10 and 11 and exacerbate the achievement gap.^{liv} In Scotland, persistent inequalities continue to be faced by particular groups of children, including those with additional support needs^{lv} and looked after children.^{lvi} Scottish Government has recognised this and set out a priority to address it. Although the attainment gap has decreased slightly in recent years in Wales, it remains higher than in 2008 for older pupils.^{lvii}

UK and devolved governments should intensify efforts to reduce the effects of children's social background on their achievement at school, focusing on the early years, and parental engagement.

Sex and relationship education

31. Sex and relationship education continues to be unsatisfactory across GB and is still not a compulsory subject.^{lviii}

UK and devolved governments should make sex and relationship education statutory, securing for pupils a legal entitlement to health education, and improve quality. This should be inclusive (for example covering same-sex families and health and relationships issues for lesbian, gay, bisexual and transgender young people) with no opt outs for particular schools, and no parental right of withdrawal.

2.3 PROTECTION FROM ALL FORMS OF VIOLENCE

Corporal punishment (recommendations 110.78, 110.79, 110.80)

32. **No progress on recommendations 110.78, 110.79 and 110.80:** Children still don't have the same level of protection from violence as adults. Welsh Government has committed to take forward legislation to remove the reasonable chastisement defence.^{lix}

UK and devolved governments should prohibit corporal punishment in the family, and repeal all legal defences as a matter of priority.

Use of Taser

33. The use of Taser on children continues to rise. From January 2014 to December 2015, 28 out of 43 police forces in England and Wales^{lx} had used Tasers against children more than 407 times, including 57 times against under-15s.^{lxi} Insufficient centralised data continues to be a problem across GB.

UK and devolved governments should prohibit the use of Tasers on children and regularly publish fully disaggregated national data.

Use of force

34. Restraint is not used as a last resort.^{lxii} In July 2012, a new system of restraint in England and Wales was introduced which still includes pain distraction techniques. Restraint can be used on children in Young Offender Institutions (YOIs) for "*good order and discipline*". Despite numbers of children in prison falling, use of restraint continues to rise. Statistics for year ending March 2015 show that use of force was used on children 2,475 times across five secure establishments. In Scotland, there is no guidance on use of restraint within non-residential educational settings.^{lxiii} Restraint and seclusion in schools for children with disabilities continues to be of concern and is inadequately monitored.

UK and devolved governments should ensure restraint against children is only used as a last resort, exclusively to prevent harm to the child or others, and never to deliberately inflict pain. All methods of restraint for disciplinary purposes should be abolished.

Strip searching

35. Children are strip-searched in police stations and in custodial institutions in England and Wales. No data is available for Scotland.^{lxiv} Routine strip searching of children in YOIs in England ended in 2014 and replaced by risk-based strip searching. However, there are concerns that children are still being unnecessarily strip searched in detention and by the police.^{lxv}

UK and devolved governments should ensure children are not subject to strip searching unless absolutely necessary, and only in the presence of an appropriate adult.

Mechanical restraint and spit hoods

36. Use of mechanical restraints on children can be used in police custody in England and Wales. In June 2016, it emerged that an 11-year-old with a disability was put in leg restraints with a spit hood over her head.^{lxvi} Official figures on how many children have been hooded are lacking. FOI requests suggest it is used by a significant number of forces.^{lxvii}

Date must be publicly available on the use of mechanical restraints and spit hoods and their use on children must be banned.

2.4 FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Children of prisoners (recommendation 110.96)

37. **Some progress on recommendation 110.96:** A set of minimum standards for encouraging family contact became operational on 1 April 2013 in Scotland.^{lxviii} All prisons now have children's visits as a right of the child, and there are good practice examples in NGO service provision.^{lxix} In 2013, the Scottish Prison Service announced their aim that every prison in Scotland should have a Visitors' Centre.^{lxx} Out of 15 prisons in Scotland, 8 still do not offer this service, and those that do exist vary significantly in terms of their resources and capacity.^{lxxi} Although Scottish Government has now committed to address this.^{lxxii}

38. Routine use of Child and Family Impact Assessments at key stages in the criminal justice system is still needed.^{lxxiii} These would ensure a focus on the rights of the child.^{lxxiv} Crucially, they ensure appropriate support is put in place.^{lxxv} Some progress has been made with a new duty (yet to be commenced^{lxxvi}) on Scottish Ministers to ensure that a newly admitted prisoner is asked whether he or she is a parent and, if so, for details of any children.^{lxxvii}

The UK and devolved governments should ensure routine assessment of impact on rights of children affected by the imprisonment of a carer before sentencing and at all stages of the criminal justice process; legislate to ensure Courts have due regard to the best interests of children when sentencing parents; review sentencing guidelines for persons who are primary care-givers when convicted of low level crimes; ensure adequate child-friendly visiting facilities; and put in place training and guidance for professionals working with children on how to identify children affected by imprisonment of a family member.

2.5 BASIC HEALTH AND WELFARE

Child poverty (recommendations 110.41, 110.101)

39. **The situation has worsened in relation to recommendations 110.41 and 101.101:** Despite strong UPR and UN Committee recommendations, 3.9 million children were living in poverty in the UK in 2014-15 - an increase of 200,000 children than in 2013-14.^{lxxviii} Two thirds of children in poverty live in a family where at least once member is working. Welfare changes and cuts to benefits have undermined both in-work and out-of-work support for families with children.^{lxxix}
40. UK Government has removed the Child Poverty Act 2010 statutory duty to report on four key targets for ending child poverty by 2020. The previous Welsh Government explicitly retained its commitment to this target^{lxxx} although the future of this commitment remains uncertain. Scottish Government is currently consulting on proposals to do likewise.^{lxxxi} UK and devolved governments haven't adequately impact assessed their budgets on the effect on children for at least two years, despite the 'due regard' duty in Wales (see above). Scottish and Welsh Child Poverty Strategies^{lxxxii} can only focus on devolved matters and cannot tackle some root causes of poverty. The Welsh Child Poverty Strategy has a strong focus on children's rights, yet there is no specific delivery plan.

UK and devolved governments should make the elimination of child poverty a national priority and ensure progress continues against the indicators in the 2010 Act. They should develop, fund and implement a plan to reduce the number of children in poverty year-on-year for the next 5 years.

Homelessness (recommendation 101.103)

41. **Progress is needed to take forward recommendation 101.103:** In England, there's been a sharp rise in families in Bed & Breakfasts (B&Bs) beyond the six-week legal limit. As at 21 December 2015, there were 2,270 families with children in B&B accommodation - an increase of 11 per cent from 2,040 a year earlier. Of these households, 870 had been there for more than six weeks - an increase of 12 per cent since the end of the same quarter last year.^{lxxxiii} Statutory guidance was strengthened in 2014 to ensure 16-17-year-old care leavers are only placed in B&Bs in exceptional circumstances and for no more than 48 hours but anecdotal evidence shows that local authorities break this guidance. Approximately 8,400 children aged 16 or 17 are living in unsuitable accommodation.^{lxxxiv}
42. In Scotland, there's been a steady increase in the number of homeless children living in temporary accommodation - a 13% increase as of 31 December 2015.^{lxxxv} Children are spending longer periods of time in temporary accommodation. There's a significant lack of culturally sensitive accommodation for Gypsy/Traveller children and a continued inequality between standards of housing for those in fixed accommodation and those living on sites.^{lxxxvi}

43. In Wales, legal duties placed on local government to prevent homelessness have resulted in decreases in formal homelessness. There are concerns over homeless 16 and 17-year-old young offenders being placed in unsafe or unsuitable accommodation, and calls for the ending of the use of B&Bs for 16-17-year-olds. In March 2016, Welsh Government issued guidance in relation to accommodating 16-17-year-olds and care leavers aged 18-21 in B&Bs, stressing its unsuitability and that use should be kept to an absolute minimum.^{lxxxvii}

UK and devolved governments should end the use of inappropriate bed and breakfast accommodation for 16 and 17 year-olds and homeless families, with action taken against those that continue to house families with children in B&Bs beyond the six week legal limit. A strengthened requirement for local authorities to commission sufficient alternative emergency facilities should be adopted into law. Any temporary accommodation used for families must be child -friendly, clean and safe.

Children's mental health

44. Mental health is not given the same priority as physical health despite increased financial commitments and strategies across GB. There are concerns about the capacity and capability of English health commissioners to deliver the intended transformation of Child and Adolescent Mental Health Services (CAMHS)^{lxxxviii} and continuing instances of children with mental health needs being cared for in non-specialist or adult settings, failures in diagnosis, overly medicalised approaches, and delays.^{lxxxix} In Scotland, the new waiting time target for CAMHS is welcome although recent statistics show that this has not been met in 24% of all referrals^{xc} In Wales, between 2010 and 2014, the number of children referred to CAMHS doubled, lengthy waiting times and referral rates are problematic.

UK and devolved governments should invest in universal preventative and early intervention children's services to prevent an increase in mental ill health among children and ensure adequate resources are in place to enable safe, effective and accessible CAMHS.

2.6 SPECIAL PROTECTION MEASURES

Overnight detention in police custody

45. In England and Wales, children continue to be held overnight in police cells despite a duty to transfer them to local authority accommodation.^{xc} In Scotland, figures on the number of children held overnight are unavailable.

UK and devolved governments should ensure overnight police detention is only used as a last resort, and that there is sufficient local authority accommodation to accommodate children. Improved data needs to be publicly available.

Age of criminal responsibility (recommendations 110.94 and 110.95)

46. **Recommendations 110.94 and 110.95 have not been met:** The UN Committee has consistently raised concerns about the low age of criminal responsibility - 8 years in Scotland and 10 years in England and Wales^{xcii} - yet there has been no progress.
47. In Scotland, an independent advisory group was set up in November 2015 to explore the implications of raising the age of criminal responsibility to 12 years, presenting evidence to Ministers in March 2016 that the age of criminal responsibility should be raised to 12 “*at the earliest opportunity*”.^{xciii} Scottish Government has issued a consultation which concluded in June 2016.

Legislation to increase the mandatory age of criminal responsibility should be introduced at the earliest opportunity.

Numbers of children in prison (recommendation 110.87)

48. **Some progress on recommendation 110.87:** In Scotland, the detention of children under 16 who were deemed ‘unruly’ in prisons or YOIs was prohibited by the Scottish Parliament in 2010.^{xciv} Detention is not used as a last resort in England and Wales. Children can be held in YOIs, large prison-like institutions, and privately run Secure Training Centres (STCs) - both inappropriate models to meet rights standards – and Secure Children’s Homes (SCHs). In the year ending March 2015 in England and Wales there were 1,037 under-18s in the secure estate, down 15% from the previous year.^{xcv} Although this decline is welcome, England and Wales still has the highest child custody rate in Western Europe.^{xcvi} Detained children are not adequately safeguarded and do not have their needs met, experiencing high levels of bullying, assaults, little time outside their cells and poor quality care. A 2012 report highlighted that 31 children aged 14 to 17 died in prison from 1990 to 2011, 29 of which were self-inflicted deaths.^{xcvii} A further three have died since.^{xcviii} There is a high prevalence of emotional and mental health problems among children in prison: with 1,315 incidents of self-harm in the year ending March 2015 an increase of 17% since the previous year.^{xcix} A Parliamentary Question revealed that the use of segregation is wide-spread. Between October 2013 and October September 2014 children spent 7,979 days in segregation units.^c
49. Although criminal justice in Wales is the responsibility of UK Government, Welsh Government has significant responsibilities in health, education, housing and substance misuse. Whilst the majority of children from Wales who serve custodial sentences are held in Wales, there are no facilities in Wales for girls, who are held in STCs in England. This places additional challenge in terms of visits and maintaining connections upon which they might depend after release.^{ci} The need for and quality of Welsh language support should be evaluated and data collected improved. In March 2014, the Silk Commission recommended the devolution of the youth justice system (for 10 and 17-year-olds) and a study to investigate the possible devolution of justice and prisons.^{cii}

Embed in law that children will only be deprived of their liberty as a last resort; abolish any prison-like detention and develop a new, distinct secure estate with an emphasis on child-centred therapeutic environments and interventions for the minority of children who do need to be detained; Children in custody should have a statutory right to independent advocacy; Ensure that such children have equitable care and protection with other vulnerable children, both in and after custody, by having a “looked after” legal status; Solitary confinement should be banned.

Immigration and migration (recommendations 110.113, 110.114, 110.115)

50. **The situation has worsened in relation to recommendations 110.113, 110.114 and 110.115.** UK Government has recently announced the closure of Cedars, the Specialist Family Detention Unit. This is likely to mean that rather than fewer children being detained they will be detained in unsuitable facilities, a backward step following the 2010 commitment to end the detention of children for immigration purposes.
51. Concerns have been raised in respect of the implications of the Immigration Act (2016) which removed the entitlement of separated children with unresolved immigration status to leaving care support services upon turning 18 and has adopted the ‘deport first, appeal later’ system which allows migrants to appeal against the refusal of their stay only from outside of the UK. It also removes financial and housing support for asylum-seeking families who have been unsuccessful in their application to stay, leaving more families with children destitute and homeless.
52. Migrant and trafficked children are regularly disbelieved about their age (there has been a 141% increase^{ciii}) leaving them facing protracted age disputes. If a child is wrongly considered to be an adult, they will not be supported by children’s services and may be detained or accommodated with adults.^{civ}
53. UK and Welsh Government continues to refuse to introduce guardianship for all separated children in England and Wales despite repeated calls from human rights bodies^{cv} and UK Government has not rolled out its scheme of Independent Trafficking Advocates. The National Referral Mechanism for trafficked children is weak, and fails to embed identification and safeguarding into existing child protecting processes.^{cvi}
54. Separated children within and outside the UK face restrictions on family reunification and a lack of consistency in access to basic health and education services, including language provision.
55. The current refugee crisis has been described as the greatest humanitarian challenge to face the EU with the UK Governments reluctant to relocate sufficient numbers of children, including separated children living in camps in mainland Europe.^{cvi} Unaccompanied children are particularly vulnerable to sexual violence, sexual exploitation and trafficking.

UK Government should ensure that immigration law, policy and practice reflects the UK's obligations under the CRC; that children are granted appropriate forms of leave to resolve their long-term legal status and enable a durable solution to be found that is in the child's best interests; that detention of asylum seeking and migrant children should end. UK and devolved governments should put in place a consistent system of legal, independent guardianship for all separated migrant children

Children in armed conflict - recruitment age (recommendations 110.6 and 110.34)

56. **Recommendation 110.6 and 110.34 not met:** The UK continues to recruit 16-year-olds despite many challenges, refuses to conduct a review, and intends to expand the recruitment of children in order to "*alleviate the risk of undermanning*".^{c.viii}
57. Recruitment of the armed forces is concentrated in socio-economically deprived regions, particularly within the north of England and Scotland. 74% of the Army Foundation College's intake for non-technical roles in March 2015 were assessed of having a reading age below 12 years, with 7% as low as five years. The minimum period of service applied to children at enlistment into the army is longer (up to six years) than that applied to adult recruits (four years).

UK Government must raise the minimum age for armed forces recruitment to 18 years and in the interim, strengthen its safeguards to meet the standards required by Article 3 of OPAC.

i UN Committee on the Rights of the Child (2016) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, Paragraphs 5-18

ii UNCRC Article 37(c) - the requirement to detain children separately from adults

iii All Party Parliamentary Group for Children (2014) "It's all about trust": Building good relationships between children and the police, National Children's Bureau

iv UK Government (2014) 5th UK Periodic Report to the UN Committee on the Rights of the Child, Paragraph 17

v Welsh Government (2011) Rights of Children and Young Persons (Wales) Measure 2011
<http://www.legislation.gov.uk/mwa/2011/2/contents>

vi Welsh Government (2014) Social Services and Well-being (Wales) Act 2014
http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

vii Children and Young People (Scotland) Act 2014 pt.1, s1.1(b)

viii Pg. 22. Scottish National Party Manifesto 2016
<https://drive.google.com/file/d/0B8Tu6kHw0HUMdXZyb0RHNHdRSzQ/view>

ix See speech from Scotland's First Minister on 23/09/2015 <http://news.scotland.gov.uk/News/Protecting-human-rights-1d79.aspx> Written evidence from the Welsh Government to the House of Lords European Union Committee inquiry into The UK, the EU and a British Bill of Rights (report published 09/05/2016)

x <http://www.walesonline.co.uk/news/wales-news/welsh-government-everything-can-block-9279496>

xi UN Committee on the Elimination of All Forms of Racial Discrimination (2016) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland: 90 Session
http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf

xii UN Committee on the Rights of the Child (2016) List of issues in relation to the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues

xiii See examples illustrated by Children's Rights Alliance for England (2015) UK Implementation of the UN Convention on the Rights of the Child: Civil Society alternative report 2015 to the UN Committee; Wales UNCRC Monitoring Group (2015) Report to the United Nations Committee on the Rights of the Child; Together (Scottish Alliance for Children's Rights) (2015) Implementation of the UN Convention on the Rights of the Child – Scotland: Report to the United Nations Committee on the Rights of the Child

xiv For example it has enabled a disabled girl to access transport to get to school, prevented a new born baby and her mum have from being made homeless and enabled a young person to have a voice in order to be rehoused following abuse

xv See UN Committee on the Rights of the Child (2016) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, Children's Rights Alliance for England (2015) UK implementation of the UN convention on the Rights of the Child: Civil society alternative report 2015 to the UN Committee – England

xvi HC Deb 6 December 2010, col 17WS

xvii Children's Rights Alliance for England (2015) UK implementation of the UN convention on the Rights of the Child: Civil society alternative report 2015 to the UN Committee – England

xviii Welsh Government paper from the Cabinet Secretary for Communities and Children to the NAFW Children, Young People and Education Committee (31.08.2016) <http://www.senedd.assembly.wales/documents/s52930/CYPE5-03-16%20-%20Paper%2010%20-%20to%20note.pdf>

xix Welsh Government (2015) Programme for Children and Young People

<http://gov.wales/docs/dsilg/publications/cyp/151106-core-aims-comprehensive-version-en.pdf>

^{xx} National Children's Charities Manifesto for the National Assembly for Wales Elections 2016
<http://www.childreninwales.org.uk/policy-document/national-childrens-charities-manifesto-national-assembly-wales-elections-2016-240216-w/>

^{xxi} See Office of the Children's Commissioner, Legal Aid changes since April 2013: Child Rights Impact Assessment, 2014; Joint Committee on Human Rights, The UK's Compliance with the UN Convention on the Rights of the Child, 18 March 2015 www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/14410.htm; Justice Select Committee, Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, March 2015, at www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/31102.htm

^{xxii} Between October 2013 and September 2015, only 20 applications for exceptional case funding were made on behalf of child applicants with immigration cases aged under 18, and only 9 were granted. For young people aged 18-24, there were 70 applications and 19 grants. For adults aged over 25, there were 514 applications and 145 grants. These are not high numbers and taken as a whole demonstrate a 28% success rate.

^{xxiii} *Gudanaviciene and Ors v Director of Legal Aid Casework*,

^{xxiv} Civil Legal Aid (Scotland) Amendment Regulations 2010

^{xxv} Together (Scottish Alliance for Children's Rights) (2015) Implementation of the UN Convention on the Rights of the Child – Scotland: Report to the United Nations Committee on the Rights of the Child

^{xxvi} Wales UNCRC Monitoring Group (2014) Policy Briefing :25th Anniversary of the United Nations Convention on the Rights of the Child: <http://www.childreninwales.org.uk/.../UNCRC-25th-Anniversary-BriefingNov-12-1.pdf>

^{xxvii} The Independent Review of the Role and Functions of the Children's Commissioner for Wales
<http://gov.wales/docs/dsilg/publications/cyp/141210-childrens-commissioner-reportv3-en.pdf>

^{xxviii} See for example Children's Rights Alliance for England (2015) UK Implementation of the UN Convention on the Rights of the Child: Civil Society alternative report 2015 to the UN Committee; Wales UNCRC Monitoring Group (2015) Report to the United Nations Committee on the Rights of the Child; Together (Scottish Alliance for Children's Rights) (2015) Implementation of the UN Convention on the Rights of the Child – Scotland: Report to the United Nations Committee on the Rights of the Child

^{xxix} See for example Children's Rights Alliance for England (2009) Making the case: Why children should be protection from age discrimination and how it can be done. Proposals for the Equality Bill

^{xxx} Runnymede Trust (2016) UK NGOs' Alternative Report Submission to the UN Committee on the Elimination of Racial Discrimination with

regard to the UK Government's 21st to 23rd Periodic Reports

^{xxxi} Ministry of Justice (2016) Youth Custody Data <https://www.gov.uk/government/statistics/youth-custody-data>

^{xxxii} Pg. 33. Scottish Government (2016) Race Equality Framework for Scotland
www.gov.scot/Resource/0049/00497601.pdf

^{xxxiii} See Children's Rights Alliance for England (2014) State of Children's Rights 2014

^{xxxiv} Murray, K. (2015) 'Stop and search in Scotland: A post-reform overview. Scrutiny and accountability' Scottish Centre for Crime and Justice Research. <http://www.sccjr.ac.uk/wp-content/uploads/2015/06/Stop-and-search-in-Scotland.-A-post-reform-overview-22ndJune2015.pdf>

^{xxxv} A Westminster parliamentary inquiry found that, between 2009 and 2013, more than a million stop and searches were carried out on children in 26 police forces in England and Wales.

^{xxxvi} Para. 15 Committee on the Elimination of Racial Discrimination (2016) Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom of Great Britain and Northern Ireland
tinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf

^{xxxvii} National Police Chiefs' Council (2016) Reported Hate Crime Statistics August 2016

^{xxxviii} As recognized in letter from Department for Education¹⁷ letter to Director of Children's Services (4th July 2016)
<http://cyps.northyorks.gov.uk/CHttpHandler.ashx?id=34409&p=0>

^{xxxix} Prevent Strategy (2011) HM Government
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf

xl The Tories may as well accept that new education proposals target Muslims alone, The Independent, 25 January 2016 at www.independent.co.uk/voices/the-tories-may-as-well-accept-that-new-education-proposals-target-muslims-alone-a6832436.html

xli David Anderson QC, supplemental written evidence to The Home Affairs Committee on Countering Extremism, 29 January 2016 at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/countering-extremism/written/27920.pdf>

xlii This includes a four-year old child who drew a picture of his father cutting a cucumber being considered at possible risk of radicalisation because his pronunciation was interpreted as 'cooker bomb'. Another Muslim boy discussed écoterrorisme in a French lesson and was referred under Prevent. Both incidents, among many others, reported by PreventWatch at www.preventwatch.org

xliii Para. 9. UN Committee on the Elimination of Racial Discrimination (2016) Concluding Observations to the United Kingdom http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf

xliv See <http://gov.wales/docs/statistics/2015/150929-permanent-fixed-term-exclusions-from-schools-2013-14-en.pdf> - The rate of Permanent Exclusions has remained static whilst the rate of Fixed-term Exclusions has been falling since 2011/12

xlvi <http://togetherscotland.org.uk/news-and-events/news/detail/?news=1116>

xlvii Stats taken from Scottish Government figures published bi-annually and available here: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/exclusiondatasets>

xlviii See Children's Rights Alliance for England (2015) UK Implementation of the UN Convention on the Rights of the Child Civil Society alternative report 2015 to the UN Committee – England

xlix See Together (Scottish Alliance for Children's Rights) (2016) UK Implementation of the UN Convention on the Rights of the Child Civil Society alternative report 2015 to the UN Committee – Scotland http://www.togetherscotland.org.uk/pdfs/UNCRC_Scotland_NGO_Alternative_Report_2015.pdf

l <http://www.gov.scot/Resource/Doc/345984/0115162.pdf>, para 71 at p 17

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lii Department for Education (2016) Statistical First Release 21st January 2016: Revised GCSE and equivalent results in England, 2014 to 2015

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liiii Institute for Fiscal Studies (2013) Entry into grammar schools in England, The Sutton Trust

lv <http://togetherscotland.org.uk/news-and-events/news/detail/?news=1096>

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lix Statement by the First Minister of Wales: Moving Wales Forward 18/05/2016 <http://gov.wales/newsroom/firstminister/2016/160518fmwales/?lang=en>

lx Police forces who provided a response to StopWatch Freedom of Information Request

lxi http://www.stop-watch.org/uploads/documents/UN_Report.pdf

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lxiii See evidence for Public Petitions to Scottish Parliament for National Guidance on Restraint and Seclusion in schools at

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<http://www.sccjr.ac.uk/wp-content/uploads/2015/06/Stop-and-search-in-Scotland.-A-post-reform-overview-22ndJune2015.pdf>

lxv https://www.ipcc.gov.uk/sites/default/files/Documents/speeches/APPG_Children_and_the_police.pdf

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