

# **Children's Rights Alliance**

for England

## **State of Children's Rights in England 2004**

**Annual review of UK Government action on  
2002 Concluding Observations of the  
United Nations Committee on the Rights of the Child**

**November 2004**

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## **Introduction**

On October 4<sup>th</sup> 2002, the UN Committee on the Rights of the Child issued a comprehensive report on the UK's implementation of the Convention on the Rights of the Child. The Committee's 'concluding observations' set out actions required by government to make a reality of children's human rights in the UK.

This was the second time the UK had been examined by the UN - the first time was in February 1995, when the Department of Health led the UK Government delegation to Geneva.

The Committee's report in 2002 was on the whole extremely critical of the UK's children's rights record. There was a real sense of optimism and potential, though, with the Children and Young People's Unit now taking on responsibility to co-ordinate the implementation of the Convention across the UK. The Unit was disbanded in autumn 2003.

This report summarises key developments – positive as well as negative – in children's human rights in England over the past 12 months. The review has been undertaken by the Children's Rights Alliance for England in collaboration with several member organisations. It follows our comprehensive submission to the Committee on the Rights of the Child in 2002, which was supported by 100+ non-governmental organisations (NGOs) including all the major children's charities. Not all our member organisations will necessarily agree with all of the assessments made in this report.

We have paraphrased and shortened each concluding observation; we have not included those observations specifically relating to Scotland or Northern Ireland. For easy reference, we have signposted each assessment of progress using the following symbols:

⇓ This indicates deterioration in law or policy.

⇑ This indicates progress in law or policy.

↔ This indicates no significant change in law or policy.

Throughout this report we use the term children to refer to children and young people under the age of 18 years.

## **Background**

Eleven years ago, the UK with all-party support ratified the Convention on the Rights of the Child, and in doing so took on obligations under international law to implement the full range of economic, social, cultural and civil and political rights of children. Since its adoption by the UN General Assembly in November 1989, the Convention has become the most ratified of all international human rights treaties – accepted by 191 states – all except the US and Somalia. The Convention's detailed principles and standards are binding on States which have ratified it. The Vienna Convention on the Law of Treaties of 1969 underlines: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

There are 54 Articles in the Convention: 40 of these ascribe direct rights to children, the remaining 14 relate to the measures States Parties must take to implement the treaty. In

1991 the Committee on the Rights of the Child published guidelines for States Parties on preparing progress reports on implementation. These allocated the Articles of the Convention into eight clusters, dealing with general measures of implementation, definition of the child, general principles, civil rights and freedoms, family environment and alternative care, basic health and welfare, education, leisure and cultural activities and special measures of protection.

The Committee on the Rights of the Child is an international body of 18 children's rights experts elected by States Parties to monitor and report on the progress of each country that has ratified the Convention. Current membership of the Committee is:

Mr. Ibrahim Abdul Aziz AL-SHEDDI – Saudi Arabia  
Ms. Ghalia Mohd. Bin Hamad AL-THANI – Qatar  
Ms. Joyce ALUOCH – Kenya  
Ms. Saisuree CHUTIKUL – Thailand  
Mr. Luigi CITARELLA – Italy  
Mr. Jacob Egbert DOEK (Chairperson) – The Netherlands  
Mr. Kamel FILALI – Algeria  
Ms. Moushira KHATTAB – Egypt  
Mr. Hatem KOTRANE – Tunisia  
Mr. Lothar Friedrich KRAPPMANN – Germany  
Ms. Yanghee LEE – Republic of Korea  
Mr. Norberto LIWSKI – Argentina  
Ms. Rosa María ORTIZ – Paraguay  
Ms. Awa N'Deye OUEDRAOGO – Burkina Faso  
Ms. Marilia SARDENBERG – Brazil  
Ms. Lucy SMITH – Norway  
Ms. Marjorie TAYLOR – Jamaica  
Ms. Nevena VUCKOVIC-SAHOVIC – Serbia and Montenegro

The Committee on the Rights of the Child will next examine the UK in January 2009; the UK Government's next periodic report on implementation of the Convention on the Rights of the Child is due to be submitted to the Committee in July 2007.

*All documents relating to the UK's examination by the Committee on the Rights of the Child can be accessed on CRAE's website [www.crae.org.uk](http://www.crae.org.uk) or on the website of the UN High Commissioner for Human Rights [www.unhchr.ch/html/menu2/6/crc](http://www.unhchr.ch/html/menu2/6/crc)*

## **Summary of progress in meeting human rights obligations to children**

This has been a bad year for children's human rights.

A year ago there was much excitement and anticipation about England's Children's Commissioner. Then came the Children Bill in March 2004. Part 1, dealing with the Children's Commissioner, was widely and strongly criticised. The *Every Child Matters* Green Paper had promised a powerful children's champion independent of Government. Yet the legislation was set to establish a Commissioner with no independent power, and an optional link with the Convention on the Rights of the Child. Children's charities and Parliamentarians were, inevitably, perplexed, shocked and angry.

There were many improvements made to the Bill, as it passed through Parliament. However, the five references to children's rights that were deleted by the Children's Minister were never put back. Unlike other Commissioners in the UK and the rest of Europe, England's Children's Commissioner must narrowly promote awareness of the views and interests of children, rather than promote and protect their rights.

England's Commissioner has been dubbed 'rights-lite'. But this is not the only policy area where children's human rights have been denigrated.

The Convention on the Rights of the Child requires a distinctive juvenile justice system, with children's best interests being a paramount consideration in all actions concerning them. Children's views must be given "due weight" and custody should be only used as a last resort and for the shortest period possible. Children's privacy must be always protected. Yet this past year has seen more than 6,000 children incarcerated – our country has the highest rate of child imprisonment of most industrialised, democratic countries. Two children have died in custody this year, both in privately run secure training centres. This brings the total number of children to die in custody since 1990 to 27.

Fifteen year-old Gareth Myatt died after being restrained and 14 year-old Adam Rickwood hanged himself.

The mother of 16 year-old Joseph Scholes, who hanged himself at Stoke Heath young offender institution in 2002, is still seeking justice for her son. Joseph was a deeply troubled boy, with a history of sexual abuse and self-harm. He had been in care before receiving a custodial sentence for being involved in a street robbery. The prison knew he was a suicide risk. That is why he spent the last days of his life in a 'strip cell', wearing a loose-fitting garment that has been described as something like a 'horse blanket'. The Home Secretary has refused a public inquiry.

High levels of restraint continue – 12 to 14 year-olds have been restrained 11,593 times in secure training centres in the past four years. A Prisons Inspectorate / Youth Justice Board report this year showed that a quarter of children in young offender institutions had not received a family visit in the previous 12 months. Children in custody are still excluded from the statutory right to education. A Prison Service census showed that *during the census week* every child in a young offender institution received 15 hours education. In March this year, Prisons Minister Paul Goggins informed Parliament that 'inmates' of young offender institutions (aged 21 and under) received on average 7.1 hours per week education the previous year.

The age of criminal responsibility in England is one of the lowest in the world – 10 years. The Youth Justice Board has this year teamed up with the Ministry of Defence to pilot 'boot camps' for children from the age of six. Apparently, the hope is that this will also aid recruitment to the Armed Forces. Other criminal justice programmes aim to prevent children as young as eight from getting involved in crime. A decade ago this was the task of social services and other welfare agencies. The parliamentary joint committee on human rights has warned the Government that the criminal justice system is the "wrong tool" to intervene in young children's lives, as *"it invites a criminal label both in terms of those who deal with the child and the child's own self-image – which is not easily shaken off."*

At least eighty-one children have been locked up for breaching an anti-social behaviour order, which is a civil offence. The Government has changed the law so that there is a presumption that children's details will be publicised in the local and national press, when they have been issued with an anti-social behaviour order. The move has been described as 'medieval': the modern-day equivalent to the stocks.

This was the year that babies and children could have finally got the same legal protection from assault as adults. An amendment was tabled to the Children Bill that would have removed completely the 'reasonable chastisement defence', as recommended by the Committee on the Rights of the Child, the parliamentary joint committee on human rights and other international human rights bodies. The Government refused to allow a free vote, and backed an amendment that leaves the defence intact for common assault. In the Lords, human rights lawyer Lord Lester of Herne Hill said that 'smacking' is not violence. Children say otherwise.

The *Every Child Matters* Green Paper recognised that unaccompanied asylum seeking children are among the most vulnerable in our society. Yet the Children Act 2004 excludes immigration bodies from the new (relatively weak) duty of having to have regard to children's welfare. The Court of Appeal has given the go ahead to the country's first accommodation centre: asylum-seeking children in these centres will be excluded from the statutory right to education and will, instead, be educated within the institution. Parents of asylum-seeking children still get up to 30% less benefits than other destitute claimants, and the Prime Minister has set a monthly target of asylum refusals that is less than the number of failed applications. A new offence has been introduced of entering the country without a valid immigration document, carrying a two-year sentence, and the State can now refuse all financial assistance to families whose asylum claims have finally failed.

Black Caribbean boys are three times more likely to be permanently excluded from school than white children. Children with special educational needs are nine times more likely to be permanently excluded than other children. Even infants are thrown out of school – 160 four to six year-olds were permanently excluded from primary schools during the past year. Segregated education continues for about 100,000 disabled children.

There are still 3.6 million children living in poverty, in a country that boasts the fourth richest economy in the world. One hundred thousand children live in overcrowded housing; Muslim children are almost four times more likely to live in overcrowded accommodation. A Barnardo's report this year showed that parents reliant on free school meals struggle in the summer holidays to feed their children. The loan-based

social fund has still not been reformed, with poor families continuing to have to borrow from the State to purchase essential items such as cookers, beds and children's coats and shoes.

The Convention on the Rights of the Child is the international standard for meeting all of the needs of babies and children. It places clear legal obligations on governments; it is not an optional extra or a document that Ministers need only look at once or twice a decade. It is meant to inform all our laws, policies and interventions.

We have a government that is passionate about children, with unprecedented activity and investment. It is also passionate about human rights – it introduced the Human Rights Act in 1998; it established the Disability Rights Commission; and it is now creating a Commission for Equality and Human Rights. The *Fairness for All* White Paper this year stressed that public services must be founded on respect for human rights.

But when it comes to children's human rights, there is huge reticence. During the passage of the Children Act 2004, the Children's Minister claimed, remarkably, that the five new 'outcome goals' for children are much broader than the Convention on the Rights of the Child. A list of five goals set against 40 human rights standards, covering everything from the right to health care to education to play and rest to protection from violence and exploitation. No competition.

There is much talk about a cultural transformation, of putting children firmly at the centre of services and decision-making, yet Ministers still shy away from the Convention. On the ground, the past decade has seen children and adults forging new ways of working together that have succeeded because of a genuine commitment to children's human rights. The Convention on the Rights of the Child requires equality for all children, and it entitles each and every child to the best possible childhood. It gives special protection to those most vulnerable to discrimination, disadvantage and exploitation. It excludes no child.

This report shows a catalogue of failures and missed opportunities in the past 12 months. If the Government is serious about making laws, policies and services that are truly child-centred, and if it wants every child to matter *in real life*, it must embrace the Convention on the Rights of the Child. It is now 15 years since the United Nations adopted the Convention, and 13 years since the UK ratified it. We should have more to show.

**Children's Rights Alliance for England**  
**November 29th 2004**

## 1. General measures of implementation

⇔ ***Take all necessary measures to end the detention of children in the same facilities as adults and withdraw its article 37(c) reservation.***

In April 2004, the Home Secretary announced that five specialist units would be built for girls (at a cost of £16 million), on the grounds of adult prisons. They should become operational in 2006. However, this will not prevent children from mixing with adults, nor remove them from the adult prison regime. In January 2004, the High Court judged that the best interests of a 16 year-old girl were not met at Eastwood Park prison, even though she was detained in the young offender institution part of the prison. The girl mixed regularly with adults - during education, evening association and dining.<sup>1</sup>

If the Government intends for these specialist units to be entirely separate from adult prisons – with specially trained staff, separate education, dining and recreation, and distinct visiting and health care facilities – why is it building them on the grounds of adult prisons?

Moreover, it is doubtful whether in building five new prison establishments for girls the Government is showing any regard for the human rights standard that children should only be imprisoned as a last resort and for the shortest period possible (article 37(b)).

In July 2004, the Department of Constitutional Affairs published a report of the inter-departmental review of international human rights instruments. The review determined that the reservation to article 37(c) should not be withdrawn. The explanation given was:

*The reservation continues to be required because although the vast majority of juveniles are held separately from adults ... there is a minority of cases where it remains operationally necessary to hold juveniles in adult accommodation ... In addition, in the Armed Forces, the exigencies of Service life may make it impossible to segregate juvenile offenders (who will not be below 16 years of age in the case of the Armed forces) from adults.*

*The reservation needs to be retained for Scotland because children of 16 and over are routinely detained alongside people up to the age of 21 in Scottish young offender institutions.*

*In Northern Ireland juveniles are segregated wherever possible from adults but, for operational reasons, this is not always possible. This is particularly true of women prisoners, given the small numbers of women – between 15 and 20 – in prison in Northern Ireland at any one time.”<sup>2</sup>*

Refugee children (who have not committed any criminal offence) continue to be detained with adults. In June 2004, 60 asylum-seeking children were being detained in removal or ‘reception’ centres.<sup>3</sup> Unsuccessful attempts were made to end the detention of asylum-seeking children, during the passage of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. During House of Commons Committee Stage, in January 2004, the Home Office Minister Beverley Hughes rejected two amendments

– one would have ended the detention of children in immigration removal centres, the other would have placed an upper limit of 28 days detention for children. She said:

*“I do not believe that a blanket inability ever to detain an adult where they have a child attached is the right way forward; nor, equally, while there is tremendous pressure in the system to keep both the numbers down and the length of stay down, is the imposition of what would be inevitably arbitrary but well-meaning time limits.”<sup>4</sup>*

⇔ ***Reconsider reservation to article 22 [relating to immigration and nationality rights] with a view to withdrawing it.***

In July 2004, the Department of Constitutional Affairs published a report of the inter-departmental review of international human rights instruments. The review determined that the general reservation to article 22 should not be withdrawn. The explanation given was:

*“The interests of asylum-seeking children and young people are fully respected. The basic human rights of children are protected under the Human rights Act, which applies to all children in the UK without exception. Children are also protected under the 1951 UN Convention on Refugees and the European Convention on Human Rights.*

*“The UNCRC was not designed to provide new immigration and nationality rights and the UK Government believes that our reservation to the Convention is necessary in the interest of effective immigration control. The Government supports the Convention on the Rights of the Child, and believes that the domestic measures in place to ensure the protection of children are entirely consistent with it.*

*“However, this does not prevent the UK from having regard to the Convention on its care and treatment of children. The UK Government believes that, given its commitment to the welfare of children, having the Reservation should not lead to neglect of their care and welfare. It considers that, notwithstanding the Reservation, there are sufficient social and legal mechanisms in place to ensure that children receive a generous level of protection and care whilst they are in the UK.”<sup>5</sup>*

⇔ ***Incorporate into domestic law the rights, principles and provisions of the Convention.***

Part 1 of the Children Act 2004, relating to the Children’s Commissioner, introduces into primary legislation (in England and Wales) for the first time the Convention on the Rights of the Child. The Government, in October 2004, removed the remaining five references to 'rights'. Labour backbencher, Hilton Dawson MP, tried unsuccessfully to introduce a provision into the Act requiring the Government to 'rights-proof' legislation affecting children.<sup>6</sup>

At the same time as children in England were being denied a “rights-based” Commissioner, children in Wales looked like they might get their Convention rights promoted broadly. Welsh parliamentarians sought an amendment to the Children Bill that would have placed a duty on children’s services authorities in Wales, and their partners, to have regard to the United Nations Convention on the Rights of the Child.

## **Children's rights in England and Wales: what the Children's Minister said in Parliament<sup>7</sup>**

### **The Convention on the Rights of the Child and English children**

*"On new clause 13 [requiring government to assess the extent to which legislation complies with the Convention on the Rights of the Child and the 'outcome goals'], Ministers are required to state that legislation is compatible with the Human Rights Act 1998, which incorporates the European convention on human rights into UK law. Children and young people are therefore already covered by that assurance, so the requirement to comply with the 1998 Act covers the childproofing element of all our legislation. Both my job and the task of the commissioner, once that post is established, is to provide further assurance that legislation on planning, housing or whatever has the interests of children at heart."*

### **The Convention on the Rights and Welsh children**

*"My hon. Friend the Member for Cardiff, North, who tabled new clause 15 [requiring Welsh children's services authorities and their partners to have regard to the Convention on the Rights of the Child], knows that we are working with the Assembly to find a way of writing that into the Bill. The Assembly, however, has yet to find a way in which they can change the law so that it would work in practice. The policy is utterly devolved, so it is totally open to the Assembly to come back to us, which it can do even on Report if it manages to devise a mechanism. We would then willingly incorporate the new clause into the Bill."*

- ⇔ ***Ensure transparent analysis of budgets across the State party and in the devolved administrations to show the proportion spent on children, to identify priorities and to allocate resources to the "maximum extent of available resources". Apply this principle in the activities of the Department for International Development.***

There is no requirement on public bodies to show the proportion of budgets spent on children.

The Children Act 2004 requires children's services authorities to publish a three-yearly Children and Young People's Plan, from April 1<sup>st</sup> 2006. This will cover all local services and interventions, and take in the views of local children and young people. ("Excellent" children's services authorities will not be required to develop a Children and Young People's Plan.) It will show progress on meeting the national 'outcome goals', as well as any local goals. Regulations will be provided, covering what should be in the Plans. Clearly this is an opportunity to require ongoing budget analysis.

The Department for International Development publishes an annual report, Statistics on International Development (SID). Its framework is the UN Millennium Development Goals, agreed in September 2000.

The 39<sup>th</sup> edition of SID, published in October 2004, notes that the Government expects to meet by 2013 the international goal of 0.7% GNI to official development assistance (the UN General Assembly endorsed the target in 1970).<sup>8</sup>

↓ ***Assign coordination of the implementation of the Convention to a highly visible and easily identifiable permanent body working across the UK.***

The Children and Young People's Unit served this function until autumn 2003, when the Children, Young People's and Families Directorate was established in the Department for Education and Skills. The International Team, which had the role of co-ordinating the implementation of the Convention on the Rights of the Child, was disbanded soon after the new Directorate was established.

↓ ***Prepare a comprehensive plan of action for the implementation of the Convention in all parts of the State party, taking into account the WFFC and paying special attention to vulnerable children.***

England's new change for children programme is based on five "outcome goals", enshrined in the Children Act 2004.

A version of the "outcome goals" first appeared in the draft national children's strategy, in 2001. The principles of the draft national children's strategy were "developed to take into account the UN Convention on the Rights of the Child and successful children and young people's strategies that have been developed locally and internationally".<sup>9</sup>

The Government does not claim that the Children Act 2004 'outcome goals' have been developed with the Convention on the Rights of the Child in mind. Indeed, the Children's Minister has insisted the 'outcome goals' are broader than the Convention on the Rights of the Child.

When questioned by the parliamentary joint committee on human rights about the interplay between the "outcome goals" and the Convention on the Rights of the Child in the Commissioner legislation, the Children's Minister had this to say:

*"If you had a Commissioner whose only remit was to implement that rather narrower UNCRC policing of individual rights I do not think that the Commissioner would have the time or the resources to address that much wider agenda which children have told us mattered to them and which is reflected in those outcomes ... I find it difficult to think of any issue that impacts on children that could not be covered by these broad outcomes and we have deliberately not given any detail within it."<sup>10</sup>*

In House of Commons Standing Committee, during the passage of the Children Bill, the Children's Minister said:

*"In putting the stress on his working in respect of the outcomes that children have told us are important to them, we have tried to ensure that the commissioner does not spend his time policing children's individual rights which flow simply from having the sole function in relation to the UNCRC, but considers the wider policies and interests of children ...*

*The two notions—having regard to the UNCRC, and focusing on a much broader picture—are not conflicting, but complementary, and I put it to my hon. Friend and to Opposition Members, that if we focused simply on rights, it would limit the work that the commissioner could do on behalf of children. That is why I genuinely believe that we are establishing a much better commissioner than those elsewhere."<sup>11</sup>*

*... if we had an entirely rights-based commissioner without the broader focus on the outcomes that children have said are important to them, the role would be entirely based around the UNCRC and entirely focused on the policing of individual rights ...<sup>12</sup>*

The 'outcome goals' and the change for children programme are no substitute for a national plan of action on the implementation of the Convention on the Rights of the Child.

⇔ ***Establish independent human rights institutions across the UK and at national level compliant with the UN Paris Principles to monitor, protect and promote all the rights of the Convention for all children.***

At the time of the last annual review (October 2003), other countries in the UK had, or were soon to have, independent human rights institutions for children. The Green Paper had announced the creation of a champion for England's children.

The Children Act 2004 provides for the establishment of a Children's Commissioner in England. The new Children's Commissioner has the weakest general function in the UK and Europe – promoting awareness of children's views and interests, rather than promoting and safeguarding their rights. Ministers can 'direct' the Commissioner to undertake an inquiry.

The legislation was improved considerably as it passed through Parliament, but it still does not comply with the UN Paris Principles or the Committee on the Rights of the Child's General Comment on independent human rights institutions for children.

Nigel Williams, Northern Ireland Commissioner for Children and Young People, took up post in October 2003. Scotland's Commissioner for Children and Young People, Kathleen Marshall, took up post in April 2004.

Children in Wales, Northern Ireland and Scotland still do not have Commissioners that can protect all of their rights. The English commissioner, instead, will deal with non-devolved or reserved matters.

The Children Act 2004 gives the Welsh Children's Commissioner the general power of entry to institutions.

⇔ ***Systematically collect information on all persons under 18 years for all areas covered by the Convention, including the most vulnerable groups, and use this data to assess progress and design policies to implement the Convention.***

The information databases being established by the Children Act 2004 will collect data on all under 18 year-olds in the country, apparently, to ensure they get access to the universal and specialist services to which they are entitled. A national register of unaccompanied child refugees is also being established.

The Government has not said it will use the data from either of these databases to assess progress and design policies to implement the Convention.

⇔ ***Substantially expand dissemination of information on the Convention among children and parents, civil society and all sectors and levels of government, including initiatives to reach vulnerable groups.***

A distinct government children's rights website has been in preparation for nearly two years, and is expected to be launched in November 2004.

When Hilton Dawson MP tried to get an amendment to the Children Bill to provide for children's services authorities to promote the Convention on the Rights of the Child, Children's Minister Margaret Hodge responded:

*"I hope that my hon. Friend the Member for Lancaster and Wyre will accept that the tragedies that led to the Laming inquiry and hence to this Bill were invariably due to systemic failure and not to a lack of knowledge of rights. Although we would encourage awareness of rights, I do not think that it should have a statutory basis ... We want those who work with children to focus on processes and outcomes ... we are keen for children and those who care for them to learn about the convention. We have therefore created a departmental website to inform children of their rights under the convention, which we hope will soon be operational. If children's services authorities choose to do something similar, so much the better. As I have said before, the aim of the Bill is to focus on outcomes, not rights."<sup>13</sup>*

⇔ ***Develop human rights training programmes on human rights, including children's rights, for all professional groups working for and with children.***

The Government has made no progress in providing or sponsoring general training courses for professional groups on children's human rights. However, the Children's Rights Alliance for England has received a grant from the Department for Education and Skills to develop training and tools to support children's effective participation in decision-making. These will be based on the Convention on the Rights of the Child.

## 2. General principles

- ⇔ ***Monitor the situation of children who are exposed to discrimination, in particular children with disabilities, children from poor families, Irish and Roma travellers' children, asylum and refugee children, children of minority groups, children in the care system, detained children, and children aged between 16 and 18 years.***

There is no-one responsible within government for monitoring the situation of children exposed to discrimination.

Since October 2003, the Government has published a range of reports that provide statistical and other information about children who are exposed to discrimination.

These include:

- Young people in Britain: The attitudes and experiences of 12 to 19 year-olds (DfES research report – August 2004)
- Defining and measuring anti-social behaviour (Home Office research report – August 2004)
- Child poverty review (HM Treasury – July 2004)
- Statistics on race and the criminal justice system – 2003 (Home Office research report – July 2004)
- Offenders of the future? Assessing the risk of children and young people becoming involved in criminal or antisocial behaviour (DfES research report – July 2004)
- Mental health and social exclusion (Social Exclusion Unit – June 2004)
- Getting serious about play. A review of children's play (DCMS – January 2004)
- Implementing race equality in prisons. A shared agenda for change (HM Prison Service and the Commission for Racial Equality – December 2003)
- Public perception of education (DfES research report – December 2003)

Non-governmental bodies have published in the past 12 months several reports that show the discrimination faced by different groups of children:

- Plugging Britain's skills gap: challenging gender segregation in training and work. Report of phase one of the Equal Opportunities Commission's investigation into gender segregation and Modern Apprenticeships (Equal Opportunities Commission – May 2004)
- Occupational segregation, gender gaps and skill gaps (Institute for Employment Studies for the Equal Opportunities Commission – May 2004)
- Achievement of Bangladeshi heritage pupils (Ofsted – May 2004)
- Juveniles in custody (HM Inspectorate of Prisons – April 2004)
- Girls in prison. The education and training of under-18s serving detention and training orders. A thematic report by the Office of Standards in Education in consultation with HM Chief Inspector of Prisons (April 2004)
- Differences or discrimination. Minority ethnic young people in the youth justice system (Youth Justice Board – 2004)
- Provision and support for Traveller pupils (Office for Standards in Education – December 2003)
- The Implementation of the Disability Discrimination Act Part 4 in educational establishments: some evidence from case studies (National Foundation for Educational Research for the Disability Rights Commission – October 2003)

↓ ***Monitor in a comparative way the enjoyment by children of their rights in England, Scotland, Northern Ireland and Wales.***

The International Team in the Department for Education Skills, which had this role, was disbanded last year.

Whenever advances in children's rights in Wales, Northern Ireland and Scotland expose the lack of progress on implementing the Convention on the Rights of the Child in England, the Government's response is that this is a natural and welcome feature of devolution.

↔ ***Develop comprehensive strategies aimed at eliminating all forms of discrimination.***

The Government does not use a human rights or anti-discriminatory framework for children's policy and service development.

For example, a major area of discrimination is the continued practice of segregated education for young disabled people, affecting more than 100,000 children in England.

The Government is still, apparently, committed to inclusive education, though not for all disabled children. Its five-year strategy for children and other learners, published in July 2004, states, "*We want to break down the divide between mainstream and special schools to create a unified system which meets the needs of all children. Special schools have an important role to play in educating those children with the most complex and severe special educational needs and in sharing their expertise with other schools to support inclusion.*"<sup>14</sup>

↔ ***Amend the nationality law to allow transmission of nationality through unmarried as well as married fathers.***

This concluding observation was achieved on paper in November 2002, when the Nationality, Immigration and Asylum Act 2002 gained Royal Assent. Section 9 removes the distinction in nationality law between legitimate and illegitimate children. However, the new provision is dependent upon an order being made under section 162(5) of the 2002 Act. This has not been done: as the Immigration and Nationality Directorate states, "the provisions are, at present, without practical effect."<sup>15</sup>

↓ ***Establish throughout the State party the best interests of the child as a paramount consideration in all legislation and policy affecting children, notably within juvenile justice and immigration practices.***

Section 44 of the Children and Young Persons Act 1933 requires the criminal court to have regard to the welfare of the child. The draft youth justice Bill is expected to weaken rather than strengthen this provision. In March 2004, the Government declared:

*We unreservedly accept that welfare is an important consideration when a court has to make a decision on the appropriate sentence for a young offender. But we believe that the main purpose of a sentence imposed by a court on conviction of a criminal offence by a juvenile should be to prevent their further offending and we shall legislate to clarify this in law.*"<sup>16</sup>

The Government resisted amendments to the Children Bill that would have extended the duty to immigration bodies to have regard to the need to safeguard and promote the

welfare of children. The parliamentary joint committee on human rights described the Government's exclusion of immigration as “unjustifiable discrimination”.<sup>17</sup>

More positively, the Government has resisted calls from some fathers' organisations to dilute the best interests principle in decision-making about child residence and child contact after parental separation. The child contact Green Paper states:

*The law, as set out in the Children Act 1989, makes clear that the welfare of the child is the paramount consideration in any court decision concerning a child's upbringing. The Government believes that this principle should be sustained, without qualification, in order that there continues to be the clearest possible focus on the needs of children.*<sup>18</sup>

⇔ **Abolish the use of plastic baton rounds as a means of riot control.**

There has been no progress since October 2002 (Plastic bullets were first introduced in Northern Ireland in 1981; their first use in other parts of the UK was in February 2002, in North Wales).

↑ ***Take further steps to promote, facilitate and monitor children's effective participation, including in schools.***

A new children and youth board has been established to advise the Children's Minister on policy and service developments, and to take an active role in the recruitment of England's first Children's Commissioner. It had its first meeting in September 2004.

The 'learning to listen' initiative established by the Children and Young People's Unit in 2001 continues with each Government department producing an annual report on progress in involving children and young people in policy and service development.

The National Service Framework for Children, Young People and Maternity Services promotes strongly children's effective participation in decision-making.

The Government continues to fund a range of participatory programmes and activities: the development of the participation practice centre; the development of training and tools to support effective participation in decision-making; the consultation fund; training for early years workers on listening to young children; and so on.

Despite this increasing activity inside and outside of government, there is a noticeable reluctance within government to tackle schools. The five-year strategy on children and other learners makes no reference to children's participation in decision-making. The Working Together (pupil participation) statutory guidance, published in April 2004, is not mentioned at all. Schools have not been sent the pupil participation guidance, though it is available on the DfES website.

↑ ***Consistently reflect the obligations of both paragraphs of article 12 in legislation, and ensure in courts and administrative proceedings that a child capable of forming his/her own views has the right to express those views and that they are given due weight.***

The Children Act 2004 includes amendments to sections 17 and 47 of the Children Act 1989. These give 'children in need' and children involved in child protection enquiries the legal right to have their views given due consideration.

The Adoption and Children Act 2002, which received Royal Assent in November 2002, provided for court rules to be prepared on the separate representation of children in family proceedings (section 122(2)). In April 2004, the Children's Minister, in a written answer to a Parliamentary Question from Hilton Dawson MP, stated:

*I wish to use this opportunity to clarify something I said to the hon. Member at the Westminster Hall debate on 23 October 2003 [that the provisions would be effective by the end of 2004]. The Department for Constitutional Affairs will be consulting on the court rules for placement and adoption this spring. The regulations, court rules and guidance should be in place by the end of 2004. Section 122 is included in this package. After a period for preparation and training, we expect the legislation to come into force in September 2005.<sup>19</sup>*

Draft court rules for the Adoption and Children Act were published by the Department of Constitutional Affairs in June 2004. Section 122(2) of the Act was not referred to. In its response to the DCA draft court rules, NAGALRO urges that children in adoption and contact applications should have party status and be represented by a children's guardian in all cases, unless the court is satisfied that this is unnecessary. It states, "*We believe it is a matter of human rights that children should have access to legal advice and welfare representation in court proceedings which will make the most fundamental decision about them, i.e. irrevocably making and breaking their legal family ties.*"<sup>20</sup>

A revised President's Direction on Representation in Family Proceedings was published in April 2004. This advice for judges makes no reference to section 122(2) of the Adoption and Children Act 2002. It states, "*Making the child a party to the proceedings is a step that will be taken only in cases which involve an issue of significant difficulty and consequently will occur in only a minority of cases.*"

### 3. Civil rights and freedoms

⇔ ***Undertake all necessary measures to allow all children irrespective of the circumstances of their birth or adoptive children to obtain information on the identity of their parents as far as possible.***

In July 2004, regulations came into force that allow children conceived using donated sperm, eggs or embryos to obtain information about the identity of their biological parents, once they reach 18 years. Donors must supply the following information from April 1<sup>st</sup> 2005 (it will be 2023, before adults begin to get access to such information).

**Access to donor information: on reaching 18, children conceived after April 2005 will be able to obtain the following information:**

- (a) the sex, height, weight, ethnic group, eye colour, hair colour, skin colour, year of birth, country of birth and marital status of the donor;
- (b) whether the donor was adopted;
- (c) the ethnic group or groups of the donor's parents;
- (d) the screening tests carried out on the donor and information on his personal and family medical history;
- (e) where the donor has a child, the sex of that child and where the donor has children, the number of those children and the sex of each of them;
- (f) the donor's religion, occupation, interests and skills and why the donor provided sperm, eggs or embryos;
- (g) matters contained in any description of himself as a person which the donor has provided;
- (h) any additional matter which the donor has provided with the intention that it be made available to an applicant.

⇔ ***Review the use of restraint and solitary confinement in custody, education, health and welfare institutions.***

In May 2004, the National Children's Bureau published its review of the use of physical restraint in a range of settings, showing that children in young offender institutions can be held indefinitely in an unfurnished cell and restrained through the use of a painful arm lock. It called for an urgent review of the use of child restraint across the range of educational, health and penal settings.<sup>21</sup> In the absence of this, the Howard League for Penal Reform has set up an inquiry, led by Lord Carlisle, to consider the use of restraint, strip-searching and segregation of children in penal custody.

The Youth Justice Board is developing a code of practice on the use of restraint in young offender institutions, secure training centres and local authority secure children's homes. It will prohibit the use of restraint methods that use pain.

↓ ***With urgency adopt legislation throughout the State party to remove the "reasonable chastisement" defence.***

The Government allowed a free vote on an amendment to the Children Bill which leaves the defence of "reasonable chastisement" intact in relation to the offence of common assault, removing it only in relation to more severe charges such as actual and grievous bodily harm and wounding. This means that parents appearing in court on a charge of common assault of a baby or child can still use the archaic defence. The Children's Minister, in giving evidence to the joint committee on human rights, said she wanted to find a "middle way" on 'reasonable chastisement'.

⇔ ***Prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation.***

Corporal punishment has not been prohibited in the family.

Regulations prohibiting corporal punishment in all forms of day care including childminding came into force in September 2003.<sup>22</sup>

⇔ ***Promote positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, engaging with children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.***

In the past 12 months, there have been no Government led or sponsored initiatives to raise awareness among parents and the public about children's human rights and discipline.

The National Service Framework for Children, Young People and Maternity Services Core Standards requires the publication of information to parents by health, education and social care agencies. The document includes a comprehensive list of information to be promoted, including breastfeeding and not smoking during pregnancy. Setting appropriate boundaries and managing behaviour effectively is included, but there is no reference to non-violent parenting.<sup>23</sup>

## 4. Family environment and alternative care

### ⇔ ***Introduce a system of statutory child death inquiries.***

The Children Act 2004 establishes statutory Local Safeguarding Children Boards. Regulations will prescribe the functions of the Boards. However, it is unlikely the Boards will systematically review all deaths of local children.

### ⇔ ***Develop a strategy for the reduction of child deaths as a result of violence and the reduction of all forms of violence against children.***

In the past 12 months, there has been no announcement on the development of a national Government strategy for the reduction of child deaths.

The Government announced in the *Every Child Matters* Green Paper (September 2003) that it would undertake a national overview of serious case reviews, which “*may point to the need for public health or child safety campaigns.*” The National Children’s Bureau had the previous year completed an overview of serious case reviews for the Department of Health.<sup>24</sup>

### ↑ ***Ensure consistent legal protection for all children in alternative care, including those who are privately fostered.***

The Children Act 2004 provides for the Secretary of State to issue regulations to improve the safeguards for children in private foster care.

However, the Act allows the establishment of a registration system four years after Royal Assent (November 2004), should the notification scheme not work. The British Association for Adoption and Fostering has urged the establishment of a private fostering register in each children’s services authority, arguing that, “*Every report the Government has commissioned in the last five years confirms that privately fostered children are very vulnerable ...*”<sup>25</sup>

### ⇔ ***Carry out public education campaigns and programmes (including through schools) on reducing child death and child abuse with information on the role of statutory and other services.***

There has been no announcement in the past 12 months of any Government-led public education campaign or programme on reducing child death and child abuse.

### ↑ ***Establish effective child protection procedures and support for children, ensuring the abused child is not victimised in legal proceedings and that her/his privacy is protected.***

Children consistently ask for two things in child protection – that they can access confidential adult advice and support, and that their wishes and feelings will be treated seriously.<sup>26</sup>

Providing children who are abused with confidential advice and support is not being addressed through the Children Act 2004, though it may feature in the forthcoming Youth Green Paper.

After lobbying by the Children’s Rights Alliance for England and The Children’s Society, the Children Act 2004 now includes a provision for children’s wishes and

feelings to be given due consideration during child protection enquiries (amendment to section 47 of the Children Act 1989).

⇔ ***Strengthen the reporting system and train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill treatment.***

The information databases provided for in the Children Act 2004 are meant to ensure children at risk are identified and supported. The proposal has been widely and strongly criticised. As the legislation was passing through Parliament, Dr Eileen Munro, an expert in child protection at the London School of Economics, warned of “substantial, unintended adverse effects”:

- Children who are at risk of abuse or neglect could be lost in a computerised system that tracks every child;
- Children could become even more reluctant to speak to professionals;
- Parents could become even more reluctant to approach professionals for help, knowing that contact with a professional could be logged onto a local or national database;
- Professionals could become more defensive, logging all concerns, however minor, onto the database to avoid retribution if things go wrong;
- There are huge technical risks as seen by other large databases (the Metropolitan Police did an audit of all its computerised records and concluded that 86% of records contained errors).<sup>27</sup>

Barnardo’s has described children’s concerns about the information-sharing proposals. Following consultation with more than 150 children and young people, it reported:

*[The] disjunction between government policy and children's views is even more acute in relation to information sharing, specifically identification, referral and tracking. So one respondent said: "We should have all our personal records scrapped and started again - I need mine scrapped."*

*... In contrast to government proposals, children were adamant that they should decide who knows what about them - that children with the support of a worker should control information sharing ... There is a danger that the government's proposals see information as a commodity that if transferred efficiently can have protective or preventive outcomes. For the children and young people we spoke to information was highly personal, and information sharing was a process embedded in relationships.<sup>28</sup>*

⇔ ***Record in the British Crime Survey all crimes committed against children.***

When the UK was examined in Geneva in 2002, officials reported to the Committee that the survey for 2002/03 *would* include children. It did not include children – neither did the survey for 2003/04.

## 5. Basic health and welfare

⇔ *Take all appropriate measures to reduce inequalities in health and access to health services.*

Health inequalities continue to be marked.

Government figures continue to show serious geographical disparity in life expectancy. For men, there is nearly a ten-year age difference between the highest life expectancy rate (Rutland – 79.5 years) and the lowest (Manchester – 71 years). For women, there is nearly a seven-year difference between the highest (Kensington and Chelsea – 84.1 years) and the lowest (Manchester 77.3 years).<sup>29</sup>

The difference in infant mortality rates between the most deprived areas and the most affluent areas of England and Wales is 70%.<sup>30</sup>

In 2003, Birmingham and the Black Country had the highest infant mortality (babies under one year) rates in England (8.6 deaths per thousand live births) compared with the lowest in Dorset and Somerset, whose rate was 3.3 deaths per thousand.<sup>31</sup>

The number of stillbirths in 2003 rose to 3,585 - up 213 from 2002. The number of deaths within seven days of birth in 2003 rose to 1,734 - up 114 from 2002.<sup>32</sup>

The sudden infant death rate for babies with fathers with manual occupations is three times higher than for babies whose fathers are in managerial and professional occupations.<sup>33</sup>

The proportion of low birth rate babies (less than 2,500 grams) born in the UK is highest among mothers born in East Africa, India, Pakistan and Bangladesh.<sup>34</sup>

A report by the National Consumer Council concluded that the founding ethos of the NHS – that people's access to health care is based on clinical need rather than how much they can afford – is gradually being eroded.<sup>35</sup>

People who live in the UK's most deprived areas find it most difficult to access healthcare, for example, the rate of consultation for preventative care was 37% lower in men aged 16-24 from the poorest communities compared to men in the richest socio-economic groups.<sup>36</sup>

In August 2004, a survey of 155 dental practices revealed that 88% (133) had closed their books to new NHS patients. Research has found that in some areas children's decay levels are as bad as they were 15 years ago. In July 2004 the Government pledged extra funds to widen access to NHS dentists.<sup>37</sup>

A recent Government consultation includes proposals to exclude overseas visitors from eligibility to free NHS primary medical services. The proposals exclude children whose families are at the end of the asylum process or whose immigration status is unclear, from access to free primary health care, except in emergency situations.<sup>38</sup> This follows the move to end free hospital care for failed asylum seekers, which came into force in April 2004.

Immigration officers, detention or 'reception' centres and the National Asylum Support Service are not included in the new Children Act 2004 duty, requiring agencies and some individuals to have regard to the need to safeguard and promote the welfare of children.

The National Service Framework for Children, Young People and Maternity Services was published in September 2004<sup>39</sup> and has eleven core standards:

- Promoting health and well-being, identifying needs and intervening early
- Supporting parents
- Making services child, young person and family-centred
- Growing up into adulthood (providing access to age-appropriate services)
- Safeguarding and promoting the welfare of children and young people
- Children and young people who are ill (providing access to appropriate advice and effective services)
- Children and young people in hospital (providing high quality, evidence based hospital care)
- Disabled children and young people and those with complex health needs
- The mental health and psychological well-being of children and young people
- Medicines for children and young people
- Maternity services.

The Framework is a ten-year programme for improving the health of babies, children and pregnant women. It is mandatory for all health trusts.

A recent Health Select Committee report criticised the Government and the NHS for not doing enough to address the 'obesity crisis' and noted the "*desperate inadequacy of treatment and support services for obese children*". It warned that if the rapid acceleration in childhood obesity in the last decade continues, the prevalence in children will be in excess of 50% in 2020. The report notes that less than half of the child population is meeting the target of two hours of physical activity per week, which the Committee recommended should be increased to three hours per week.<sup>40</sup>

Research commissioned by the Soil Association has found primary school dinners served in schools in England and Wales contain significantly higher levels of fat, sugar and salt than recommended by nutritionists, while still meeting the Government's standards for school meals. Children eating school meals for five days would consume 40% more sodium (salt), 28% more saturated fat and 20% more sugar than is recommended. Children would also only receive 80% of the amount of iron needed and 70% of the recommended level of zinc.<sup>41</sup>

The Government has set a target of halting the year on year rise in obesity among children under 11 by the end of decade.

The Health Select Committee also condemned the food industry for continuing to promote 'junk food' to young children.

The Public Health White Paper was published in November 2004.<sup>42</sup> It states there is a "strong case" for restricting advertising and promotion to children (including in schools) of foods and drinks that are high in salt, sugar and fat. Other proposals include: the redesign of the welfare food scheme so that, from 2005, eligible pregnant women,

breastfeeding mothers and young children in low income families will be given vouchers that can be exchanged for fresh fruit and vegetables and milk and infant formula; establishing a cycle training and curriculum body to implement the new national standard for cycle training for children; extending confidential advice for young people on sexual health matters; and new funding so that, by 2010, every primary care trust has at least one qualified nurse working with local clusters of schools.

In September 2004, the Government launched its Healthy Living Blueprint for schools (see below). As part of this, the Government is investing over £1 million to improve the nutritional value of school meals.<sup>43</sup>

A recent study of 11-15 year olds in 35 countries found that young people in the UK had the highest rate for drinking alcohol - 56% of boys in England and 49% of girls drink alcohol on a weekly basis. One in five 15 year-old girls and one in seven boys smoke cigarettes every day.<sup>44</sup>

⇔ ***Promote Breastfeeding and adopt the International Code of Marketing of Breast-Milk substitutes.***

The Government has set targets for increasing breastfeeding initiation rates by 2% per year in England – focusing on women in disadvantaged groups.<sup>45</sup> No targets have yet been set for duration of breastfeeding. There continues to be no effective breastfeeding strategy in England, unlike in Scotland, Wales and Northern Ireland.

The Government continues to promote breastfeeding through its annual National Breastfeeding Awareness Week. A survey carried as part of the awareness week found that 34% of women still believe that modern infant formula milks are very similar or the same as breast milk; 20% of 15-24 year olds think breastfeeding will ruin the shape of their breasts/bodies; and 67% of women believe that the general public find breastfeeding in public unacceptable.<sup>46</sup> The Government issued press releases debunking these myths.

A UNICEF report found that women giving birth in England are less likely to receive effective breastfeeding while in hospital than mothers in any other part of the UK. Only 11% of hospitals in England have been awarded UNICEF's Baby Friendly Accreditation Scheme - awarded when hospitals give adequate support to mothers who want to breastfeed their babies, compared to 48% in Scotland, 36% in Wales and 29% in Northern Ireland.<sup>47</sup>

There has been no progress in adopting the World Health Assembly's International Code, established in October 2002. The Government has still not banned the promotion of breast-milk substitutes despite the Baby Feeding Law Group calling for a ban since 1983. Monitoring carried out between September 2003 and September 2004 found numerous examples of company promotion violating the Code, but being within UK law. The survey also revealed a surprising amount of illegal promotion.<sup>48</sup>

↑ ***Enforce through educational and other measures the prohibition of female genital mutilation.***

The Female Genital Mutilation Act 2003, which came into force in March 2004, confirms current law and makes it illegal for parents to take girls abroad for FGM even if it is legal practice in that country. The Act increases the maximum sentence for

performing or procuring female genital mutilation from five years to 14 years imprisonment.

To coincide with the Act coming into force the Department for Education and Skills issued to all local authority social services a fact sheet about FGM and additional information about safeguarding children from FGM, in support of guidance issued in 1999.<sup>49</sup>

Information about the new Act was included in the Chief Medical Officers update sent to all doctors. It also urged doctors to read the British Medical Association guidance issued in February 2004.<sup>50</sup>

↑ ***Take further action to reduce the rate of teenage pregnancies.***

Between 2001 and 2002, there was a 2.2% rise in teenage conceptions (latest figures available). In 2002, 39,268 teenage pregnancies were recorded – these rates suggest that the Government is well short of its target set in 1999 (the Department of Health PSA to reduce the under-18s conception rate by 50% by 2010).

At the end of 2003, the Government set a target of achieving local teenage conception reduction targets while reducing the gap in rates between the worst bottom fifth of wards and the average by at least a quarter, in line with national targets.<sup>51</sup>

↔ ***Make health education part of the school curriculum, ensuring the inclusion of sex education to all children and the availability of free protection measures.***

Health education is still not part of the national curriculum. The Government has this year rejected the Independent Advisory Group on Teenage Pregnancy's recommendation to make Personal, Social and Health Education a statutory part of the national curriculum.<sup>52</sup>

The Department for Education and Skills launched the Healthy Living Blueprint in September 2004. It aims to help schools support children in eating sensibly and leading a healthy lifestyle. The Blueprint intends to improve children's health by teaching about nutrition, ensuring healthy food and drink choices, providing high quality physical education, developing safe walk and cycle routes to school, and promoting an understanding of lifelong health.<sup>53</sup>

Parents can still remove their children from sex education classes at school.

A World Health Organisation's study of 11-15 year olds in 35 countries found that young people in the UK have the second highest rate for unprotected sex.<sup>54</sup> The report found that 40% of 15 year olds have had sexual intercourse. Of these, 29% does not use a condom.

↔ ***Improve access to confidential and adolescent-sensitive advice, information and support.***

The Sexual Offences Act 2003 came into force in May 2004. Section 9 creates a new offence of 'sexual touching', which carries for children a maximum five years' prison sentence. When the legislation was passing through Parliament, Ministers conceded that sexual touching included kissing.

Home Office guidance on the legislation states that a prosecution would probably not be in the public interest “*where the two parties were close in age ... and had engaged in mutually agreed sexual activity*”. But this will not prevent children from being questioned or charged by the police – or being threatened with such action.<sup>55</sup>

The Act has been severely criticised because of the harm that could be caused to individual children engaged in consensual sexual behaviour who are brought to the attention of the police and other authorities; and for the likely negative impact on children seeking advice, information and support on sexual health matters. The Independent Advisory Group recommended that in formulating such legislation the Government must ensure that a balance is found between protecting young people from abuse and exploitation whilst ensuring they can access the services they need without fear of prosecution.<sup>56</sup>

Following the implementation of Sexual Offences Act 2003, the Government published new guidance for health professionals giving advice on contraception, sexual, and reproductive health treatments to under-16s.

The guidance affirms a young person’s right to confidential sexual health treatment and highlights for the first time that, “*doctors should establish a rapport with a young person and give the young person the time and support to make an informed choice.*”<sup>57</sup>

Doctors and other health professionals are able to provide contraceptive, sexual or reproductive health advice to under-16s without parental knowledge provided that the implications are understood and the advice or treatment is the person’s best interests.

In May 2004, the Government publicly supported the school nurse in the Mansfield case, where a 14 year-old from Nottinghamshire was given a confidential abortion.

The Adoption and Children Act 2002 amended the Children Act 1989 to place a duty on local authorities to make arrangements for the provision of advocacy for children or young people in care or care leavers, who want to make a complaint under the Children Act procedures. This came into force in April 2004.

There has been no review of the national advocacy standards, published by the Department of Health in November 2002. The confidentiality standard puts a child approaching an advocate in exactly the same position as if they had approached their class teacher or social worker. The advocate must refer on any concerns that the child is suffering, or is likely to suffer, significant harm.

The National Children’s Advocacy Consortium – a coalition of the major advocacy providers such as Barnardo’s, the NSPCC, The Children’s Society, Voice for the Child in Care and the National Youth Advocacy Service – pressed, instead, for a confidentiality standard similar to ChildLine’s where children who have sufficient understanding can access a completely confidential service, with breach of confidentiality only occurring to prevent risk to life or serious immediate harm (or if the child manifestly lacks sufficient understanding).

⇔ ***Review differential policies for young mothers under the age of 16 years with regard to benefit entitlements and parenting courses.***

There has been no review in the past 12 months.

↑ ***Strengthen mental health and counselling services; and undertake studies on the cases and backgrounds of suicides.***

The National Service Framework for Children Young People and Maternity Services includes a core standard on the mental health and psychological well-being of children and young people.<sup>58</sup> It states that all children and young people from birth to 18 years, who have mental health problems and disorders, should have:

*access to timely, integrated, high quality, multi-disciplinary mental health services to ensure effective assessment, treatment and support, for them and their families.*<sup>59</sup>

Its proposals include: all staff working with children and young people to have sufficient ability to promote their psychological well-being; children and young people should be able to receive urgent mental health care when required, leading to a specialist mental health assessment where necessary within 24 hours or the next working day; children and young people who require admission to hospital for mental health care should have access to appropriate care in an environment suited to their age and development; a flexibility for 16 and 17 year-olds to decide whether they want to be treated within adult services or within Children and Adolescent Mental Health Services (currently many CAMHS do not offer services for 16 and 17 year-olds).

The Government announced in July 2004 that mental illness would be officially recognised as a disability in the forthcoming Disability Discrimination Bill.

The draft Mental Health Bill was published in September 2004. It includes new safeguards for children, treated under parental consent. For example, the patient will have an individual care plan, with external scrutiny by a registered medical practitioner; a review of the care plan at least every three months; representation by a nominated person; the right to apply to the Tribunal to challenge lawfulness of detention in hospital or for a review of the care plan; and access to an 'independent' mental health advocate (the Bill only requires that 'as far as possible' the advocate should be independent of the person responsible for the patient's treatment).

The draft Bill does not prevent compulsory treatment for children who are capable of making their own decisions. It does not require the child's wishes and feelings to be given due weight by the medical expert appointed to advise a Mental Health Tribunal of whether a child under 16 should be given electro-convulsive therapy (ECT). It fails to include a new duty on health authorities to provide age-related mental health accommodation for children admitted for mental health treatment; it continues to allow children to be admitted to adult psychiatric wards (213 under 18s were placed on adult mental health wards in 2002/3<sup>60</sup>); and it fails to take into account children's educational needs in mental health settings.

In July 2004, the Department for Education and Skills published a research report on what works in promoting children's mental health.<sup>61</sup>

The National Institute for Clinical Excellence (NICE) has reported that more than 170,000 people each year – mainly teenagers and young adults – seek hospital treatment following self-harm. NICE issued guidance on the treatment of those that self-harm, including specific guidance on the treatment of under-16s.<sup>62</sup>

An interim report by the National Inquiry into Self-Harm, published in September 2004, suggests there has been considerable escalation in self-harm among children. Evidence submitted to the Inquiry from ChildLine, reported that calls relating to self-harm have increased by 65% in the last two years.<sup>63</sup>

↑ ***Provide adequate information and support to homosexual and transsexual young people and repeal section 28 of the Local Government Act 1988.***

In March 2004, Connexions issued guidance to its advisors on engaging gay, lesbian and bisexual young people in the service.<sup>64</sup>

The Department of Health and the Department for Education and Skills will be issuing joint guidance – ‘Stand up for us’ – at the end of November to help schools tackle homophobic bullying. The guidance will make it clear that anti-bullying action plans will have to include measures to tackle homophobia.

Section 28 of the Local Government act 1988 was repealed in September 2003. However, this has not stopped local authorities from promoting homophobia. Kent County Council’s policy on sex education states that: *“The council shall not publish, purchase or distribute to children inappropriate material for any sex education, including the intentional promotion of homosexuality...”*<sup>65</sup>

↔ ***Use the maximum extent of available resources to accelerate the elimination of child poverty.***

The UK has the fourth richest economy in the world. The extent of child poverty – and increasing inequality – show that this recommendation is still not being acted on.

In 2002/03 (latest figures available) 3.6 million children, or 28% of all children, were living in income poverty (below 60 per cent of median income after housing costs).<sup>66</sup> In 2003, around 2.2 million children, or 17% of all children, relied on income support.<sup>67</sup>

The July Spending Review, which set the short to medium term spending priorities, reaffirmed the Government’s commitment to tackling child poverty with a view to eradicating child poverty by 2020. A new Public Service Agreement was set to replace the 2001-2004 PSA:

***Department for Work and Pensions and HM Treasury Public Service Agreements 2001-2004 and 2005-2008***

<b>PSA 2001-2004</b>	<b>PSA 2005-2008</b>
Make substantial progress towards eradicating child poverty by reducing the number of children in poverty by at least a quarter by 2004.	Halve the number of children in relative low-income households between 1998-99 and 2010-11.

**Source: HM Treasury: Spending Review 2000: Public Service Agreements 2001-2004 and Spending Review 2004: Public Service Agreements 2005-2008**

However, the measure used in the new PSA has been changed so that it only relies on before housing cost data. This substantially reduces the headline number of children counted as poor. A further PSA has been promised based on a measure of poverty

derived from material deprivation data.<sup>68</sup> Hopefully, this will be announced with the next Spending Review.

Alongside the Spending Review, the Child Poverty Review<sup>69</sup> was published in July 2004, bringing together the official strategy on child poverty. The review is a welcome document, detailing the progress and strategy so far. However, it does not provide for any major changes in policy towards achieving the halving of child poverty and doubts have been raised over the long-term sustainability of the Government's approach – primarily driven by tax credits and increased employment– since it may be increasingly difficult to continue to increase the employment rate.

Following the July 2004 Spending Review, the Institute for Fiscal Studies expressed doubts about the Government meeting its target of halving child poverty by the end of the decade. The Child Poverty Action Group said there was no doubt the Government had made progress towards its 20-year target to end child poverty, but argued the need to “*push child poverty higher up the political agenda*”.<sup>70</sup>

The Government has promised to increase the per child element of the child tax credit (CTC) in line with earnings until the end of this Parliament. In April 2004, the per child element increased by £180 a year – this is £130 above average earnings growth. However, the family element of the CTC has been fixed at April 2003 levels, cut in real terms, and the Institute for Fiscal Studies has speculated that that this could be the case indefinitely (with only the per child element increasing with average earnings).<sup>71</sup> In contrast to social security benefits, there is no requirement in law to ensure that CTCs are reviewed annually to ensure that they retain their relative value vis a vis general price levels (although the annual benefit review does not mean that benefit levels are increased automatically).

More than three years have passed since the Social Security Select Committee (now called the Committee for Work and Pensions) recommended that the social fund be reformed<sup>72</sup>, and reiterated in a recent Work and Pensions Committee report on Child Poverty.<sup>73</sup> The Child Poverty Review announced several measures, notably the removal of the ‘double debt’ rule, which restricts access to the fund but no substantial reform has been announced.<sup>74</sup>

The Child Trust Fund Act 2004 will provide every child with an initial endowment of £280. Children from the poorest third of families will receive £500. This will be backdated to include all children that were born from September 2002. A further top up is proposed at age seven, but at an amount not yet specified. Parents and other family members will be able to make additional contributions up to a limit of £1,200 per year. Although the aims of the Fund are commendable, in reality it is likely that the poorest families will not be able to contribute to the fund, and indeed to do so may be unwise, given the forgone spending on more pressing necessities for their children. Lobbying to ensure adequate Inland Revenue contributions for looked after children were unsuccessful.

The tax relief on funds may actually benefit the better off disproportionately, as they will be more likely to add to the fund. There is a risk, therefore, that this may in fact worsen wealth inequalities amongst young adults.

A Barnardo's report this year shows how the loss of free school meals during school holidays leaves parents struggling to feed their children.<sup>75</sup>

Research shows that social class and ethnicity still play a significant role in influencing life chances. Between 1990 and 2000, the percentage of wealth held by the richest 10 per cent of the population increased from 47 per cent to 54 per cent.<sup>76</sup>

More than one million children are living in overcrowded, unfit or emergency housing.<sup>77</sup>

A new report by Shelter concludes that almost a million children live in overcrowded housing because the Government is not providing enough social housing for lower income families.<sup>78</sup>

Muslim children in Britain are almost four times as likely to live in overcrowded conditions according to a recent study conducted by the Oxford Centre for Islamic Studies. By looking at data from the 2001 census, the study reported that nationally 12% of children live in overcrowded homes. Among Muslim households, the proportion is 42% and rising to 53% in London. The study also found that 28% of Muslims live in council housing, compared to 20% of the wider population; and only 50% of Muslims own their own home compared to 69% of the wider population.<sup>79</sup> Pakistani and Bangladeshi children face an extremely high risk of income poverty – three out of four being income poor compared to a national average of 28 per cent.<sup>80</sup>

Over three million households spend more than 10% of their total income on energy (the official definition used for fuel poverty). Two-thirds are from vulnerable households – families with young children, the elderly, disabled or chronically ill. In 2003, there were 17,334 energy disconnections. It can take up to three months for those disconnected for debt to be reconnected. One in four of the 5.7 million customers on prepayment energy meters choose to self-disconnect.<sup>81</sup>

People on low incomes, and those living in areas where the regional monopoly providers charge more, risk having unaffordable water bills, when water rates rise by 13% between April 2005 and 2010, following Ofwat's price review. This is despite Ofwat's duty under the Water Act 2003 to promote the interests of disadvantaged consumers.<sup>82</sup>

On May 20 2004, the Court of Appeal upheld the High Court ruling that the Government breached article 3 of the European Convention on Human Rights, by denying shelter to three asylum seekers under section 55 of the Nationality, Immigration and Asylum Act 2002 because they had not made their asylum claim within three days of their arrival in the UK. Although section 55 does not directly affect children or apply to those with dependent children or who are visibly pregnant, it could affect age disputed cases or women who are in the early stages of pregnancy. At the end of June 2004, the Government announced it would now support asylum seekers in line with the Court of Appeal's judgement, though it hopes to reverse the judgement in the House of Lords (an appeal has been granted).

Section 9 of the Immigration (Treatment of Claimants etc. Act 2003) provides for the removal of all financial assistance from families with children whose asylum claim has failed and are then deemed in a position to leave the country. There is a real risk of

children being separated from their parents by being taken into care or families having to avoid contact with public agencies.

⇔ ***Tackle the causes and consequences of youth homelessness.***

Research commissioned by Centrepoin estimates there could be as many as 11,631 homeless young people aged between 16 and 17 years. The figure could actually be much higher as this does not include the ‘hidden’ youth homelessness that is not represented in local authority or other administrative statistics. The research found that 16 and 17 year-old females are more likely to be homeless than males of the same age. Factors related to youth homelessness included unemployment and socio-economic marginalisation, a disrupted family life during childhood, experience of parental neglect, abuse or violence, being asked to leave or being thrown out of the parental home, and experience of the care system.<sup>83</sup>

The report notes that Scottish local authorities report more detailed information on the extent of youth homelessness than English local authorities.

In a survey of 400 families, Shelter found that over two-thirds reported that their children had problems at school, half described their children as often unhappy or depressed and almost all said that their health or their families health had suffered by being in temporary accommodation.<sup>84</sup>

A recent report into young runaways concluded that young people who run away are being forced into extremely vulnerable situations because of fragmented services unevenly spread throughout the country. It also found that only one in seven local authorities has appointed a senior liaison officer for runaways, despite Government guidance in 2002.<sup>85</sup>

Research by The Children’s Society found that 15,000 under 16 year-olds are forced to leave their family home each year in the UK. One in five of these children are physically or sexually assaulted while away from home; and few children are ever reported as missing to the police. Many children feel forced to resort to prostitution or to selling drugs in order to survive, as they are reluctant to seek help from the authorities.<sup>86</sup>

↑ ***Review law and policy concerning benefits and social security benefits allowances for 16 and 17 year-olds.***

Following a joint- review carried out by the Treasury and the Department for Work and Pensions in 2003, the Government has recently finished consulting on different options to financially support 16-19 year olds.<sup>87</sup> The consultation document did not propose to reinstate benefits for 16 and 17 year-olds per se, though it included proposals for making the process of proving estrangement easier for young people.

There is no mention of the financial needs of 16 and 17 year-old refugees and asylum-seekers, except a statement that asylum-seekers and those given temporary leave to remain will not be eligible for financial incentives to participate in education and training.<sup>88</sup>

## 6. Education, leisure and cultural activities

⇔ ***Ensure that legislation throughout the State party respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline.***

The first ever statutory guidance on pupil participation was published in April 2004. The guidance does not give children any rights to have their views given "due weight" in individual decision-making. The new Children's Commissioner for England has been prohibited in law from assisting an individual child.

⇔ ***Reduce temporary or permanent exclusions.***

There has been a small drop in permanent exclusions, in line with the fall in the overall school population.

There were 9,290 permanent exclusions in England in 2002/03 (9,540 in 2001/02; 9,140 in 2000/01).<sup>89</sup>

Of the 9,290 permanent exclusions, 82% were boys (same as last year) and 160 were aged between four and six years (down from 216 the previous year). Three hundred children in 'special' schools were permanently excluded in 2002/03.

This year, numbers of fixed term exclusions were published for the first time. Provisionally, there were said to be 80,000 fixed term exclusions during the 2003 summer term.<sup>90</sup>

⇔ ***Ensure that children have the right to be heard before exclusion and have the right to appeal against temporary and permanent exclusion.***

Children in England have no rights to be a party in the exclusion appeal process. Statutory guidance states that they should normally be allowed to attend the hearing and to speak on their own behalf if they wish to **and** if their parent agrees.

⇔ ***Ensure that children who are excluded do continue to have access to full time education.***

Since September 2002, local education authorities have been expected (there is no statutory obligation) to provide all permanently excluded children with alternative full-time education. The Government does not publish annual statistics showing whether this is being achieved.

However, in December 2003, the Local Government Association published an interim report on the extent to which LEAs can meet the target.<sup>91</sup> From an audit of 60 LEAs, the Local Government Association found:

- 30% of LEAs had no capacity to provide full-time education to excluded Key Stage 1 students (aged 5 to 7)
- 21% of LEAs had no capacity to provide full-time education to excluded Key stage 2 students (aged 7 to 11)
- Only 2% (one LEA) had no capacity to provide full-time education to excluded Key Stage 3 students (aged 11 to 14)
- All LEAs had some capacity to provide full-time education to excluded Key stage 4 students (aged 14 to 16).

⇔ ***Remove the inequalities in educational achievement and in exclusion rates between children.***

During 2003/04, children with special educational needs were nine times more likely to be excluded than those in mainstream schools; and Black Caribbean children were more than three times likely to be excluded than White children.<sup>92</sup> Boys continue to be massively over-represented in permanent school exclusion figures.

The Commission for Racial Equality has shown that there are three times more Black young people in prison than there are attending university.

Exclusion rates are highest for Traveller children of Irish heritage (51 in every 10,000), Black Caribbean (37 in every 10,000) and Gypsy / Roma (36 in every 10,000) compared to the average of 16 per 10,000.<sup>93</sup>

⇔ ***Ensure that children in detention have equal statutory right to education and improve education in care.***

Children in custody continue to be excluded from the statutory right to education. In 2002-03, the Youth Justice Board (YJB) set a target of 30 hours purposeful activity, including 15 hours education, each week for children in young offender institutions. There were difficulties in calculating whether this target was achieved, because the YJB and Prison Service define different activities as ‘purposeful’. So, for example, the Prison Service defines work as purposeful, but not unstructured time such as playing games or watching television while on association. The YJB includes unstructured time, but not work. The National Audit Office reported in January 2004 that a national Prison Service census had revealed that all but one institution had met the 15 hours education target *in the census week*.<sup>94</sup>

The Audit Commission has this year recommended that schools retain responsibility for the education of children remanded and sentenced to custody. It says funding should follow the child to the custodial institution, and only return to the school when the child does. The Commission also urges the Government to consider introducing a PSA target for schools on inclusion, with detailed guidance on how to achieve it.<sup>95</sup>

Legislation now enables the State to provide segregated education to asylum-seeking children. Section 36 of the Nationality, Immigration and Asylum Act 2002 states that a child who is “*a resident of an accommodation centre shall not be treated as part of the population of a local education authority’s area*”. At the end of October 2004, the court of appeal gave the Government permission to build its first accommodation centre. The centre will be in Bicester, Oxfordshire, and will accommodate 750 asylum-seekers, including children.<sup>96</sup>

The Government resisted an amendment to the Children Bill that would have required school governors to promote the education of children in care. It has included in the admissions statutory code of practice a requirement that children in care should (not must) be given top priority in schools’ oversubscription criteria.

↑ ***Prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies.***

In July 2004, the Government announced £470,000 funding to the anti-bullying Alliance, based at the National Children’s Bureau. The grant will fund a new web

portal, a National Anti-Bullying Week in November, and a regional network of co-ordinators (all adults). It is not yet clear how children are to be directly involved in the initiatives.

⇔ ***Include the Convention and human rights education in the curricula in all primary and secondary schools and teacher training;***

There has been no progress since October 2002. (The citizenship curriculum includes some information on human rights generally, but not on the Convention on the Rights of the Child).

↑ ***Develop educational programmes for teenage mothers.***

The Government in August 2003 introduced a new pilot scheme – *Care to Learn?* – to support young parents in education. In September 2004, the scheme was extended to all young parents in learning or training up to age 19.

A survey by the Young Women’s Christian Association found that less than half of local education authorities could provide the full national curriculum to young mothers.<sup>97</sup>

⇔ ***Evaluate the impact of privatisation of schools on the right of children to education.***

There has been no Government evaluation of the impact of privatisation on the right to education.

## 7. Special protection measures

↓ ***Refrain as a matter of policy from detaining unaccompanied minors and ensure the right to speedily challenge the legality of detention. In any case detention must always be a measure of last resort and for the shortest period of time.***

There has been no progress in cutting back the detention of asylum-seeking children with their families.

Recent Home Office asylum statistics show that the detention of asylum-seeking children has increased six-fold in the last six months. In June 2004, 60 asylum-seeker children were detained in removal or 'reception' centres.<sup>98</sup> This was double the number of children detained in March 2004 and six times as many as in December 2003. The number of children detained with their families is likely to continue to increase, as the Government is expanding its 'detention estate' including the number of family bed spaces.

Of the 60 children detained in June, 16% had been detained for longer than 14 days, five (8%) had been detained for between 15 and 29 days and five (8%) for between one and two days. The other 50 children (84%) had been detained for less than 14 days.

There is growing concern about the number of separated children whose age has been disputed and who end up in detention as 'adults'. Between September 2002 and September 2003, the Refugee Council's Children's Panel received 192 referrals from age disputed children.

The safeguard of ministerial authorisation has been shown to be inadequate in limiting the detention time of children. In the Konan case,<sup>99</sup> a woman was detained with her baby daughter, who had been born shortly after she entered the country, for more than six months. This period of detention was ruled to be unlawful, apart from the initial two-week period, despite repeated ministerial authorisation.

Attempts failed to include provisions in the the Asylum and Immigration (Treatment of Claimants etc) Act 2004, that would have prevented the detention of children, or at least limited it to a maximum of 28 days.

↓ ***Ensure that refugee and asylum-seeker children have access to basic services, such as education and health and that there is no discrimination in benefit entitlements for asylum-seeking families, which could affect children.***

In its *Integration Matters* consultation document, published in July 2004, the Government states a commitment to ensure that refugees have adequate access to mainstream education and health services, which meet the needs of individual refugees. However, this commitment does not extend to asylum-seekers.<sup>100</sup>

### *Education*

An Ofsted report in October 2003 criticised the negative effects that asylum policy has on the education of asylum-seeker children. It raised concerns about the Government's dispersal system noting that its impact on local education authorities (LEAS) and schools was rarely thought through.

Ofsted's investigation found that some schools in dispersal areas struggled initially to meet the educational needs of the students and some teachers lacked basic knowledge about the linguistic, cultural and educational experiences of young asylum-seekers. In some instances, information was not passed on to LEAs by the Home Office and the Nationality and Immigration Support Service (NASS), which resulted in admissions and induction taking longer than necessary.

Despite the difficulties, the report found that many asylum-seeker children made good progress in mainstream schools and that for very many schools the arrival of asylum-seekers resulted in a more inclusive ethos.<sup>101</sup>

### *Health*

The Government is proposing to exclude many of those who are subject to immigration control from eligibility to free NHS primary medical services. The proposals exclude from access to free primary health care children whose families are at the end of the asylum process or whose immigration status is unclear.<sup>102</sup>

### *Benefit entitlement*

Asylum-seeking families continue to receive much less financial support from the State than other destitute families. The average adult rate is still just 70% of benefits given to non asylum-seeking adult claimants.

Regulations, which came into force in June 2004, removed the right of asylum-seekers to apply for a single additional payment (SAP), every six months, of £50 for essential "living needs."<sup>103</sup> SAP payments were originally introduced following criticism that NASS support was inadequate.

Section 12 of the Asylum (Treatment of Claimants etc.) Act 2004 removes the right of refugees to receive back payments of support once they have been granted refugee status (see below).

### **⇓ *Consider the appointment of guardians to unaccompanied asylum-seekers and refugee children.***

The Government missed the opportunity to include in the Children Act 2004 the provision for the appointment of guardians to unaccompanied asylum-seeker children. The Every Child Matters Green Paper asserted, "*Some of the children in greatest need are unaccompanied asylum seekers.*"

### **⇔ *Take all necessary measures to prevent the dispersal of children who have settled in a particular area when they reach 18.***

Unaccompanied children are not subject to dispersal. Children who are looked after under section 20 of the Children Act 1989 are protected from the dispersal scheme after they turn 18. However, local authorities are developing a proposal for 'safe case transfer' to allow London and South Eastern area local authorities to place unaccompanied children in other areas of the UK – an informal dispersal scheme.

In August 2003, the High Court ruled that three unaccompanied asylum-seeking young adults who had received support from Hillingdon Social Services under section 17 of the Children Act 1989, were entitled to support from the authority when they turned 18 ('the Hillingdon judgement'). There was an initial £10million Government grant to

local authorities (as part of a general £100million Safeguarding grant), to help them implement the judgement. Hillingdon Social services described the sum as “woefully inadequate”.<sup>104</sup>

Since Department of Health guidance<sup>105</sup> was issued in June 2003, most unaccompanied children should now receive support under section 20 of the Children Act 1989. However, for those children receiving support under section 17 there is still a risk of dispersal at 18 years.

There is no proposal to stop the dispersal of *all* young people at 18 in the Home Office consultation document *Integration matters: A national strategy for refugee integration*.<sup>106</sup>

↓ ***Speed up the procedure for asylum applications and avoid the placement of children in temporary accommodation, accommodating them instead as children in need under childcare legislation.***

Section 26 of the Asylum and Immigration (Treatment of Claimants) etc Act 2004 reformed the asylum appeals system to speed up the procedure for asylum applications. This is likely to lead to genuine refugees being returned. It abolishes the current two-tier appeals system and replaces it with a single tier tribunal – the Asylum and Immigration Tribunal (AIT). If there is an ‘error in law’ decisions can be referred to the High Court for a review of papers – no oral hearing – within five working days. Only some right of appeal to the Court of Appeal is retained.

The Government is planning to introduce a scheme of forced return for separated children under 18 whose asylum claims have failed. Current practice is to grant asylum-seeking children whose applications for asylum are refused discretionary leave to remain until they are 18. However, Home Office policy enables the return of these children if it believes adequate reception arrangements are available in the country of origin.

It is likely that returns will be made first to countries deemed to be generally safe. These include countries such as Albania, which is known to be a source country for child trafficking. The Government as yet has no system for obtaining either objective evidence of the situation in ‘safe countries’ for children, or a means of investigating whether an individual child could be returned safely to his or her parents or institutional care. The Government is trying to persuade NGOs to take part in ‘case conferences’ comprising the Immigration and Nationality Directorate, social services and NGOs, which will determine whether to send the child back without reference to the courts. It is crucial that children are only returned when their asylum claim has had a thorough and fair assessment *and* it is in their best interests to do so in line with article 3 of the Convention on the Rights of the Child.

Age-disputed cases (where the Home Office does not believe the claimant is under 18) are being processed through the ‘fast track’ procedures at Oakington removal centre and the ‘super fast track’ operating from Harmondsworth. Many of these cases will be asylum-seekers from one of the 24 ‘white list countries’ (supposedly ‘safe’ countries). During 2003-04 the Refugee Council recorded 276 age-disputed cases at Oakington and between May and the end of August 2004, a further 88 age-disputes were recorded.<sup>107</sup>

The Home Office has been reasonably flexible in extending the length of detention by a few days to allow age assessments by the local authority to take place. If the assessment concludes that the person is under-18 years the Home Office will release them from the fast track process and the asylum claim will be assessed through the normal procedure for unaccompanied children. However, 43% of age assessment requests made by legal organisations working in the 'fast track' centres are no longer needed by the time the local authority is able to make the assessment. This is likely to be due to the Home Office refusing to delay the fast track process to allow an age assessment to be made, so the person has probably already been returned to their country of origin.<sup>108</sup>

There is a real risk that fast tracking age-disputed cases will result in vulnerable children being returned to their countries of origin without the benefit of an in-country appeal and with no reception arrangements in place, since they are being treated the same as adults.

In September, the Government set itself the target that, by the end of 2005, it would remove more failed asylum seekers per month than the number of unfounded asylum claims made during the same month. If people are going to be removed at the end of the asylum process it is only right that this is at the end of a fair assessment process. Restricted access to legal advice, poor initial decisions, and an inadequate appeals system all contribute to the very real risk that people will be wrongly returned to their country of origin to face persecution, torture, and even death.

↓ ***Review the availability and effectiveness of legal representation and other forms of independent advocacy to unaccompanied minors and other children in the immigration and asylum systems.***

No review has been carried out but the recent reductions in Legal Services Commission funding for immigration and asylum work has driven many good quality solicitors out of business and encouraged others to provide a 'cost effective' service, to the detriment of vulnerable clients including children.<sup>109</sup>

Legal aid for appeals is now only available if it is perceived that the claimant has a 50% chance of winning. There is a real risk that asylum-seekers with a genuine claim are being denied the chance to appeal if they have failed the 50% 'merit test' and cannot afford to pay for legal costs.

The most recent Refugee Council statistics for the Children's Panel of Advisors show that out of the 6,404 referrals in 2002-03, only 1,500 were allocated a named advisor.<sup>110</sup>

↓ ***Address the particular situation of children in the ongoing reform of the immigration and asylum system to bring it into line with the principles and provisions of the Convention.***

The Asylum (Treatment of Claimants etc.) Act 2004, which received Royal Assent in July 2004, moved the system further away from the principles and provisions of the Convention.

**Section 2** introduces a new offence of entering the UK without a passport, carrying a maximum two-year custodial sentence. Guidance on section 2 provides little detail on the treatment of children. Procedures mainly rely on PACE codes of practice (Police and Criminal Evidence Act 1984) which, although they do give specific guidance on the treatment of children, were never designed to adequately address the specific needs of

asylum-seeking and other accompanied minors, and cover only children under 17 years of age. PACE safeguards would only be in place once criminal procedures had started, which means there is little guidance on the treatment of children prior to this stage.

**Section 8** sets out various actions that must be taken into account when assessing whether to believe a statement, which has been made in support of an asylum claim. For example, altering a travel document without a reasonable explanation for doing so.

**Section 9** provides for the removal of all financial assistance from families with children whose asylum claim has failed and are then deemed in a position to leave the country. There is a real risk of children being separated from their parents by being taken into care. The British Association of Social Workers condemned the move stating that social workers are charged with protecting the rights and interests of children and would only separate them from their parents where this is adjudged to be in their best interests and no other options are available.

**Section 12** removes the right of refugees to receive back payments of support once they have been granted refugee status. Currently, a refugee is allowed to claim back the differential between the cash element of support received from the Nationality and Asylum Support Service (NASS) and income support, backdated to when the asylum claim was first made. **Section 13** will replace this entitlement with an ‘integration loan’ to which refugees will be allowed to apply.

**Section 26** unifies the appeals system (see above).

**Section 35** creates a new offence of failing to comply with deportation or removal procedures and carries a 12-month custodial sentence.

The Government recently passed the Serious Crimes Order,<sup>111</sup> which extends the powers in Section 72 of the Nationality, Immigration and Asylum Act 2002. Section 72 sets out the ‘construction and application’ of Article 33(2) of the UN Convention on the Status of Refugees.

The parliamentary joint committee on human rights has raised concerns that, “*The inclusion of such a wide range of offences in the Order... undermines the important principle of non-refoulement*” enshrined in the Refugee Convention. Even if article 3 of the European Convention on Human Rights is relied upon to prevent deportation, asylum-seekers could still be denied refugee status and the benefits that brings.<sup>112</sup>

Article 33(2) sets out the exceptional circumstances when a country could return a refugee to their country of origin in spite of an accepted risk of persecution. These are if there are reasonable grounds for regarding her/him as a danger to the security of the country or if she/he has been convicted by a final judgement of a particularly dangerous crime that constitutes a danger to the community.

Previously, section 72 defined article 33(2) as applying if an asylum-seeker or refugee had been convicted of an offence in the UK, and sentenced to a period of imprisonment of at least two years. The new Order means that Article 33(2) will now apply when a refugee or asylum-seeker commits any of the offences listed in the Order, regardless of the length of sentence imposed.

When section 72 was enacted in February and March 2003, the UN High Commission for Refugees (UNHCR) expressed serious concerns that it enforces an approach to article 33 that is at odds with the Convention's objective and purpose. He recommended that decisions on the revocation of refugee status be taken with caution and in consultation with the UNHCR, following its guidance.

The Serious Crimes Order 2004 further diverges from the UNHCR's recommendations. Some of the crimes contained in it do not appear to be 'particularly serious' or likely to lead to a future danger to the community, for example, smoking or otherwise using opium (an offence under section 9(a) of the Offences under the Misuse of Drugs Act 1971) and concealing or acquiring criminal property (an offence under section 327(1) (a) and 329(91)(a) of the Offences under the Proceeds of Crime act 2002).

In July 2004, the Independent Race Monitor, Mary Coussey, criticised the continuing ill informed, hostile and inflammatory media coverage of asylum and immigration issues. Coussey states that such a negative atmosphere in the media could affect individual decision-making on asylum cases as it makes "*caution and suspicion more likely.*"<sup>113</sup>

↓ ***Irish and Roma Travellers – devise with these groups and their children a plan of action to tackle the obstacles to children enjoying their rights.***

The Government has not consulted with Irish and Roma Traveller communities (including children) or devised a plan of action to ensure that these children enjoy the same rights as other children.

In December 2003, an Ofsted report concluded that the provision of education for Traveller children must be improved considerably. Ofsted found that in all 11 local educational authorities taking part in the research, Traveller children generally performed worse than children from any other minority ethnic group. There was lack of flexibility in the curriculum to respond to Traveller children's needs. Many schools reported widespread prejudice and ignorance among local communities about Traveller people and their culture. Ofsted also found the average attendance rate for Traveller students to be around 75% – well below the average attendance rate and the worst attendance profile for any minority ethnic group.<sup>114</sup>

Section 60 of the Anti-social Behaviour Act 2003 introduced measures to move Traveller families if it is reasonably believed that there is space available at an approved site. There is no safeguard in the legislation to prevent a family being split up or any reference to the need to ensure that a child continues their education in the same school if their family is forced to move.

A Committee of MPs has this month recommended the reintroduction of the statutory duty on local councils to provide sites for Gypsies and Travellers, removed 10 years ago by the Criminal Justice and Public Order Act 1994.<sup>115</sup> There are 3,500 Travellers with no legal place to stop. The Committee chair, Andrew Bennett MP, said:

*"It is a disgrace. In a supposedly civilised society, people ought to be able to tolerate each other. The settled community often finds well-paid work for Gypsies and Travellers, but too often refuses to find space for them to live.*

*"The problem will only be resolved when the government requires all local plans to have designated land for Gypsies and Travellers, and all local authorities have a statutory duty to provide sites - and central government enforces this duty."<sup>116</sup>*

↑ ***Reconsider its policies regarding the minimum wage for young workers with a view not to discriminate against the most vulnerable children***

A new minimum wage for 16 and 17 year olds came into force at the beginning of October 2004 but this will only protect 16 year-olds who have left full-time education. The rate is just £3 per hour, significantly lower than for older people (£4.10 for 18-21 year-old workers and £4.85 for workers aged 22 years and over).

In 2002, the Committee on Economic, Social and Cultural Rights criticised the Government for introducing a two different minimum wage rates and recommended that the scheme be applied in a non-discriminatory manner.<sup>117</sup> Introducing yet another tier goes directly against this recommendation.

The Government has produced some information for young people about the new minimum wage and how to seek redress if their employer is under paying them.

However, research carried out in September and October 2004 shows that few 16 and 17 year-olds are aware of this new right. A survey of 800 14-18 year-olds found that two-thirds of young people were unaware of the new minimum wage and most respondents did not know how to seek redress if they were being under-paid.<sup>118</sup>

Another survey of 100 young people found that 63% weren't aware of the new minimum wage for 16 and 17 year-olds, and 99% did not know where to go if they were not being paid it.<sup>119</sup>

↑ ***Undertake a study on the scope, causes and background of child prostitution.***

The Government includes a chapter on routes into prostitution in its current consultation document which differentiates between under-18 years-olds abused through prostitution and adults involved in prostitution.<sup>120</sup>

↑ ***Review its legislation not to criminalise children who are sexually exploited***

The Government is currently consulting on prostitution. The consultation document says the Government welcomes views on whether the law should be changed in relation to children, but continues, "... we believe there are compelling arguments for retaining this offence in respect of those under 18 to underline the message that prostitution involving children and young people is wholly unacceptable." In the same document, new offences in the Sexual Offences Act 2004 are explained, with the statement that *"The role of the child is immaterial for this offence: any sexual activity is unlawful. However, 16 is too young for a child to be considered a prostitute and ... children are given specific protection up to the age of 18 rather than 16."*<sup>121</sup>

↑ ***Continue to implement international policies and programmes against Commercial Sexual Exploitation of Children.***

Section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 introduces a new offence of trafficking people for exploitation, which carries a 14-year custodial sentence. However, this legislation does not fully meet the criteria set out in the UN 'Palermo Protocol' because it does not ensure that if a request or inducement is made to one person (for example a parent) but another person (for example the child) is

the one involved in the activity, the exploiter can be charged with the new offence.

Operation Paladin Child, a partnership initiative to integrate responses to unaccompanied children arriving at Heathrow across immigration, police and social services, has reported “*there is sufficient concern about the numbers of UMs ... [unaccompanied minors] to warrant the creation of a new multi-agency response to child migration*”. It recommended: the creation of a new set of risk indicators and a new risk assessment process; the establishment of safeguarding teams at ports of entry to the UK; and self help initiatives for children such as a helpline card or other ‘welcome’ pack.<sup>122</sup>

⇔ ***Ensure that adequate resources (human and financial) are allocated to policies and programmes in this area.***

A report by End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT UK), in June 2004, found that London social workers are failing to receive adequate information and support to help child victims of trafficking.<sup>123</sup>

⇔ ***Ratify the Optional Protocol on the Involvement of Children in Armed Conflict and take all necessary measures to prevent the deployment of persons below the age of 18 years***

The Government has not taken any steps towards removing its far reaching declaration, which reserved the right to deploy under 18s when it considers there to be a ‘genuine need’.

⇔ ***Strengthen and increase its efforts to recruit persons of 18 years and older.***

The UK still recruits at age 16 – one of the lowest official voluntary recruitment ages of any country.<sup>124</sup>

While there is no statutory minimum age for Armed Forces recruitment in the UK, the Armed Forces do not recruit under the age of 16. Both males and females may enlist, with parental consent, at 16 years. Recruitment procedures, however, can begin at 15 years and 9 months. The UK shares the lowest minimum age of recruitment in Europe and enlists the largest number of under-18s of any European State.<sup>125</sup>

A new pilot scheme run by the Youth Justice Board and the Ministry of Defence involves children between the ages of six and 12 being ‘sent’ to military training camps. A spokesperson from the youth justice board was reported as saying, “[*This will also improve the potential for recruitment into the Armed Forces ... from the MOD's point of view, they can improve the lives of children and the communities in which they live, while benefiting from gaining a positive image in these communities and in doing so, improve the potential for recruitment to the Armed Forces.*”<sup>126</sup>

All Army recruits must serve a minimum of four years, but for those enlisting under-18 this minimum period does not start to run until after their 18th birthday.<sup>127</sup> Thus a recruit joining at 16 must serve until his/her 22nd birthday (the ‘six-year trap’).

⇓ ***Establish a juvenile justice system that fully complies with the provisions and principles of the Convention and other relevant international standards.***

We are no closer to a juvenile justice system that complies with international human rights standards.

Antisocial behaviour and criminal justice legislation passed in the last 12 months confirms the Government's ambivalence (at best) to the Convention on the Rights of the Child and other relevant international standards.

Section 11 of the Children Act 2004 requires certain individuals and bodies to discharge their functions having regard to the need to safeguard and promote the welfare of children. Police authorities and each local police chief officer, the British Transport Police Authority, local probation boards, youth offending teams and prison or secure training centre governors (and the directors of privately run prison or secure training centres) are included in this new duty. This is a much weaker provision than section 17 of the Children Act 1989, which requires local authorities to safeguard and promote the welfare of children within their area who are in need. As the Children's Minister said in House of Commons Standing Committee:

*"From the publication of the Green Paper onwards, we have always said that the duty is not about giving agencies a function to safeguard and promote children's welfare and interests; its purpose is to ensure that agencies exercise their primary function in a way that recognises and takes account of the need to safeguard and promote children's welfare and interests. It is important to recognise that all the agencies covered by the duties under clause 8 have their own functions."<sup>128</sup>*

*Major changes in criminal justice over the past 12 months, where the principles of the Convention and other relevant international standards have not informed the legislation:*

#### *Criminal Justice Act 2003*

- Compulsory drug testing and drug treatment orders from the age of 14 (children aged under 16 must be in the presence of an appropriate adult)
- Removal of double jeopardy rule, whereby those previously acquitted of a crime can be charged again – no safeguards for children, or for adults who committed a crime as a child
- Evidence of bad character now admissible, including of a person who is not the defendant
- New power for police to bail arrestees from the street, rather than from the police station (therefore removing PACE protection for children)
- Detention without charge extended from 24 to 36 hours for any arrestable offence
- New sentence of detention for life and detention for public protection (indeterminate sentence)
- New conditional caution means that adults can be 'diverted' from prosecution even with previous convictions. Children, however, still face mandatory prosecution if they have committed any previous offences (even minor and unrelated)
- New custodial sentences for adults mean in some circumstances a child can spend longer detained than an adult co-defendant with the same nominal length of sentence.

#### *Antisocial Behaviour Act 2003*

- New power to disperse groups of two or more and remove children under 16
- New power to require parents to attend a residential parenting course

- Parenting contracts for truancy
- Parenting orders for improving behaviour in school
- Fixed penalty notices for parents who fail to get children to school
- Fixed penalty notices for disorderly 16 and 17 year-olds, with provision to lower to 10 years (though the parent, not the child, will be liable)
- Presumption that reporting restrictions will be lifted on children issued with antisocial behaviour orders
- New powers to evict or reduce the tenancy rights of anti-social tenants of local authority or other social housing
- New definition of public assembly – reduced from 20 people to two people
- New definition of rave – reduced from 100 people to 20 people
- New power to remove Travellers if alternative site available

#### *Sexual Offences Act 2004*

- New offences of sexually touching a child, causing or inciting a child to engage in sexual activity, engaging in sexual activity in the presence of a child and causing a child to watch a sexual act all apply children and carry a maximum five-year prison sentence

#### *Domestic Violence, Crime and Victims Act 2004*

- New offence of causing or allowing the death of a child applies to parents from the age of 10
- New offence of causing or allowing the death of a child or vulnerable adult applies to a member of the household from the age of 16

In July 2004, the Office for Criminal Justice Reform, on behalf of the Home Office, the Department for Constitutional Affairs and the Law Officers' Department published its five-year crime strategy. The aim of the strategy is to cut crime by 15 per cent by 2008 and to refocus the criminal justice system to put first victims of crime and those that do not commit offences.

Proposals that will impact directly on children:

- Extending the use of fixed penalty notices to crimes such as shoplifting, under-age drinking, and other more minor criminal offences
- Introducing new powers for the public to force police action against 'nuisance' behaviour
- Expanding the number of trailblazer areas to tackle anti-social behaviour.

More positively, the strategy includes a commitment to reduce unjustified racial disparities in stop and search and sentencing (Black people are nearly six times more likely to be stopped and searched by the police than white people).<sup>129</sup>

Other proposals include increasing the number of civilian community support officers from 5,000 to 20,000; establishing specialist courts for specific crimes; and setting up a new £36 million unit to support witnesses and the victims of crime (the 'Victims Commissioner', being established by the Domestic Violence, Crime and Victims Act 2004, which will now also champion the interests of victims of antisocial behaviour).

There is no mention in the strategy of the UK's human rights obligations, nor of the specific needs and rights of children involved in or affected by crime.

↓ ***Considerably raise the minimum age for criminal responsibility***

The law still allows children from the age of 10 to be tried in adult courts and to be detained. The European Court of Human Rights in Strasbourg this year heard a case (*SC v UK*) of an 11 year-old tried in an adult crown court. A consultant clinical psychologist had advised the judge that the boy had significant learning impairments, with a developmental age of between six and eight years. Yet the judge continued with the proceedings, and an application to the Court of Appeal failed. The boy finally got some sort of justice, when the Strasbourg court agreed that his right to a fair trial had been breached and concluded:

*The Court considers that, when the decision is taken to deal with a child, such as the applicant, who risks not being able to participate effectively because of his young age and limited intellectual capacity, by way of criminal proceedings rather than some other form of disposal directed at determining the child's best interests and those of the community, it is essential that he be tried in a specialist tribunal which is able to give full consideration to and make proper allowance for the handicaps under which he labours, and adapt its procedure accordingly.*<sup>130</sup>

The 'at risk' agenda is now creating an unofficial, even lower, age of criminal responsibility. Ninety-two local authorities have Youth Inclusion and Support Panels (YISPs). Their purpose is to prevent anti-social behaviour and offending by **eight** to 13 year-olds who are deemed to be at high risk of offending. The Government has promised to increase the number of YISPs by 50% by 2008.<sup>131</sup>

In October, the Independent newspaper reported on a joint venture between the Youth Justice Board and the Ministry of Defence, where children as young as **six** will be sent to 'boot camps'. It is also hoped the initiative will improve recruitment to the Armed Forces. Primary school children who complete a military programme will get a certificate and an automatic referral to a cadet force.<sup>132</sup>

The Government has again this year resisted strong calls to increase the age of criminal responsibility. In a memorandum to the parliamentary joint committee on human rights, the Department for Education and Skills asserted that the low age was justified as a way of intervening early in children's lives.<sup>133</sup>

The joint committee responded:

*This response [from Government] misses our point, which was that we agreed that early intervention is crucial, but that the criminal justice system is the wrong tool by which to give it effect. We are concerned that the involvement of the criminal justice agencies while a child is still in primary school inevitably invites a criminal label both in terms of those who deal with the child and the child's own self-image—which is not easily shaken off. This cannot be in the best interests of the child as required by UNCRC Article 3, or of society as a whole.*<sup>134</sup>

↓ ***Review the new Orders introduced by the Crime and Disorder Act 1998 and make them compatible with the principles and provisions of the Convention.***

There has been no move to make the Orders in the Crime and Disorder Act 1998 comply with the principles and provisions of the Convention, though some aspects of the legislation are proving beneficial to child offenders.

#### *Referral order*

This was described in the *No More Excuses* White Paper preceding the 1998 Act, but was introduced through the Youth Justice and Criminal Evidence Act 1999. The referral order now accounts for around a third or all sentences in the youth court. A child who is prosecuted in the courts for the first time and pleads guilty is referred to a youth offender panel, consisting of trained volunteers and a representative of the local youth offending team. The panel agrees a contract with the child, aimed at reparation to the victim or wider community and to stop further offending. The minimum length of the contract is three months.

The Audit Commission has found high levels of satisfaction, including among children referred to the panel. Its recommendations for further improving the scheme include: youth offending teams to regularly review the nature of contracts, and to publicise their work locally; the removal of the need for a court hearing by giving responsibility for making a three-month referral order to the Crown Prosecution Service; and increasing the role of the victim in the reparation process (“... victims should play a central role in Referral Orders but, in practice, participation by victims in most areas is the exception rather than the rule”).<sup>135</sup> The Audit Commission noted there were too many referral orders where there have been no reprimands or warnings.

#### *Reprimands and final warnings*

The Audit Commission this year cited a 2003 study reporting that over half of the children who had appeared in court for the first time and pleaded guilty to a minor offence had not previously received a reprimand or final warning.

Next Steps for Youth Justice<sup>136</sup> and the Audit Commission 2004 review of the youth justice system<sup>137</sup> recommend widening the use of the reprimand and final warning scheme, introduced by the Crime and Disorder Act 1998. There has been no announced policy change as yet.

There is still no way to avoid prosecution where there has been a previous final warning (in last two years) and absolutely no discretion where there is a previous conviction. A child admitting a minor offence, which could be completely different in nature to the previous conviction, must be prosecuted. This contrasts with the new adult ‘conditional caution’ which is available even with previous convictions.

#### *Dispersal and curfews*

In January 2004, section 30 of the Anti-social Behaviour Act 2003 came into effect. This gives police forces new powers to disperse and take home under-16s when it is perceived that members of the public have been “intimidated, harassed, alarmed or distressed” by two or more people and the area is seen to have a “significant and persistent” antisocial-behaviour problem. The dispersal order was used 418 times between January and September 2004 (70 dispersal zones), though the Government has not yet specified the extent to which children have been affected.<sup>138</sup>

Provision for local authorities to introduce curfews was first included in the Crime and Disorder Act 1998. Local councils at that stage saw them as unnecessary and disproportionate.

*Antisocial behaviour orders*

Anti-Social behaviour orders (introduced by the 1998 Act) remain at a minimum of two years duration. The Anti-Social Behaviour Act 2003 makes it possible to add an ASBO to a conviction in criminal courts, using the ‘balance of probabilities’ civil evidence test. Children are issued with just over half of all ASBOs.

<b>The number of notifications reported to the Home Office of Anti-Social Behaviour Orders (ASBOs) issued/refused, at all courts, in England and Wales, by age at date of decision, 1 April 1999 to 31 March 2004</b>							
<b>Age/Period</b>	<b>Males</b>	<b>Granted Females</b>	<b>Persons</b>	<b>Males</b>	<b>Refused Females</b>	<b>Persons</b>	
<b>From 1 April 99 to 31 May 00<sup>1</sup></b>			104				4
<b>From 1 June 00 to 31 March 04</b>							
Age 10	11	0	11	0	0		0
11	31	0	31	0	0		0
12	40	5	45	0	0		0
13	77	4	81	1	0		1
14	166	12	178	1	1		2
15	252	18	270	5	0		5
16	288	23	311	3	0		3
17	226	16	242	5	0		5
10-17 sub total	1091	78	1169	15	1		16
18+	914	220	1134	9	8		17
age not known	35	13	48	1	4		5
<b>Total all ages</b>	<b>2040</b>	<b>311</b>	<b>2455</b>	<b>25</b>	<b>13</b>		<b>42</b>

1 From 1 April 1999 to 31 May 2000 data was collected by police force area only on the number of ASBOs granted/refused.  
Source: RDS-OCJR/M&SDC  
Home Office  
M&SDC 237-04

Growing use of and Government support for anti-social behaviour orders has resulted in more privacy infringements. There are areas that have photos in supermarkets and in the media and there has even been a ‘game’ of ‘spot the yob’ in the local press (see below).

In April 2004, the chair of the Youth Justice Board, Rod Morgan, expressed concern over ASBO breaches contributing to high levels of children in custody. Eighty-one children were given custodial sentences as a result of breaching ASBOs, between June 2000 and December 2002.<sup>139</sup> Many of these ‘breaches’ arise from behaviour that would not have otherwise been at the seriousness threshold for custody.

↓ ***Ensure that no child can be tried as an adult irrespective of the circumstances or the gravity of his/her offence.***

There has been no progress in the past 12 months.

Young people being tried for violent and sexual offences under sections 226 and 228 of the Criminal Justice Act 2003 will have their cases sent up to the higher (adult) courts at an earlier stage, and for less serious offences.

The Criminal Justice Act 2003 adds complexity to arrangements for determining the mode of trial and reintroduces situations where children can be committed up to the Crown Court for sentence (as well as for trial). Recommendation 48 of the Auld report, providing for a reconstituted youth court that could deal with all young defendants, has never been implemented.<sup>140</sup>

↓ ***Ensure the privacy of all children in conflict with the law is fully protected.***

National and regional newspapers are energetically implementing the Government's policy to name and shame children who are subject to Anti-Social Behaviour Orders (ASBOs). Section 49 of the 1933 Children and Young Person's Act protects (though not absolutely) the anonymity of children involved in criminal proceedings. The Antisocial Behaviour Act 2003 amended the 1933 Act to make it the norm for children subject to ASBOs to be named and shamed. There is growing concern that the matter of fact nature in which children subject to ASBOs are paraded in newspapers is creating a new climate for eroding safeguards for those involved in criminal proceedings.

A High Court case in June 2003 determined that the naming and shaming of a 27 year-old father could have a detrimental effect on his five-year-old daughter. The Lord chief justice of England and Wales, Mr Justice Goldring, ruled that "*The family of the offender, and in particular any children of the offender, have rights under Article 8 as well. The need to safeguard children is particularly important. It does not need much imagination to see how a poster campaign in relation to a child's father could produce unfortunate reactions in the playground of the child's school ... There is a real question as to whether it would ever be appropriate to nominate a father of young children* ..."<sup>141</sup>

This positive judgement gave a temporary red light to naming and shaming. Unfortunately, in October this year, two boys and a 19 year-old lost their application for a judicial review in the High Court, claiming that their right to privacy had been infringed under article 8 of the European Convention on Human Rights. After being given Anti-Social Behaviour Orders – one lasting for 10 years (reduced on appeal), the other two for five years – the local council had used its website to 'name and shame' the boys. It then handed out leaflets, with identifying information, and included the boys' details in a council newspaper.

Lord Justice Kennedy said, "*The language in some of the publicity was colourful ... [but] it was entirely appropriate, and the colour was needed in order to attract the attention of the readership*". He determined the publicity to be "justified, reasonable and proportionate", and ruled: "*Whether publicity is intended to inform, to reassure, to assist in enforcing the existing orders by policing, to inhibit the behaviour of those against whom the orders have been made, or to deter others, it is unlikely to be effective unless it includes photographs, names and at least partial addresses.*"<sup>142</sup>

↓ ***Ensure that detention of children is used as a last resort and for the shortest appropriate period of time and that children are separated from adults in detention, and encourage the use of alternative measures to the deprivation of liberty.***

During 2002-2003, 6,524 children aged between 10 and 17 years received a custodial sentence.<sup>143</sup>

The Youth Justice Board has announced that it plans to reduce by 10% the number of children locked up each year. This is an arbitrary figure that comes nowhere close to meeting the human rights standard that children should only be locked up as a last resort and for the shortest possible period. The Government acknowledges itself that "*greater use of custody for juveniles is made in England and Wales than in most other industrialised, democratic countries.*"<sup>144</sup>

Section 226 and 228 of the Criminal Justice Act 2003 includes provision (not yet implemented) to use long custodial sentences where there is an assessment of 'dangerousness'. The criteria are essentially pre-emptive in nature and can be applied for violent and sexual offences with a relative lack of seriousness. One version of this new custodial order is indeterminate (up to life) in nature. The Criminal Justice Act also introduced a 'statutory minimum sentence' for murder, of 12 years for children, set by the Home Secretary. This would result in many (of the few) children sentenced for murder being held after they have ceased to be dangerous.

There continues to be high numbers in custody, and the 'secure estate' has been recently running at near capacity. This has been highlighted by press reports of the placement of two 14 year-olds in a Travel Lodge with escorts.

The general trend in recent legislation and proposals for the future is towards sentencing the offender rather than the offence. Thus a repeat minor offender would be detained without having committed an offence that itself demands public protection.

The Home Secretary announced in April that all girls imprisoned with adults would be removed over the next two years. A £16 million fund for the Youth Justice Board will set up specialist secure units for girls. Although 17 year-olds held in the new units will not be held with adults, *they will still be within the prison system*. HM Chief Inspector of Prisons said that the development of new specialist units for girls would not overcome all the problems faced by girls in custody.<sup>145</sup>

↑ ***Ensure that every child deprived of liberty has access to independent advocacy services and an independent child-sensitive and accessible complaint procedure.***

The Youth Justice Board has commissioned Voice for the Child in Care and the National Youth Advocacy Service to run independent advocacy services in secure training centres and the Prison Service's young offender institutions.

The Prisons and Probation Ombudsman (PPO), Stephen Shaw, has this year again expressed concern at the low numbers of children making complaints.<sup>146</sup>

Of the 3,527 prison complaints received during 2003-04, just 108 – or 3% - were from children in young offender institutions. The ombudsman's juvenile project team found that there was little knowledge of the work of the PPO amongst children, or among staff

and members of the Independent Monitoring Board in young offender institutions; and children were unwilling to use a formal complaints system.

To help to overcome these barriers, the PPO has produced posters and leaflets for children; it has developed further training programmes for staff and children in juvenile establishments; and it is currently working with the Prison Service to develop a simplified complaints system for use in juvenile establishments.

↓ ***Take all necessary measures, as a matter of urgency, to review the conditions of detention and ensure that all children deprived of their liberty have an equal statutory right to education, health and child protection as any other children.***

Sixty four places in local authority secure children's homes have been withdrawn this year and replaced with more places in privately run secure training centres.<sup>147</sup>

A joint Prisons Inspectorate and Youth Justice Board report published in April 2004 showed that of 1,200 children in Prison Service custody:

- A quarter of all young people who took part in the survey had not received a family visit because of the distance from their homes
- About a quarter of children had been subject to insulting remarks from staff
- 47% of girls and 59% of boys felt helped by their personal officer
- Not one girl in Holloway prison reported feeling helped by her personal officer
- Of the children aged 16 and over who were leaving Prison service custody in the next two months, a third still needed help with resettlement.<sup>148</sup>

#### *Child protection*

In April this year, Prisons minister, Paul Goggins, described the conditions in special or unfurnished cells in young offender institutions:<sup>149</sup>

*Every special or unfurnished cell ... is heated, ventilated, has a window or other natural light, and an intercom or other means of allowing the young person to communicate with an officer. There is access to toilet and sanitary facilities.*

*The Prison Service does not provide other fixtures or facilities in special accommodation when used for the temporary confinement of juveniles, having regard to the fact that the young person's refractory or violent behaviour may result in damage to themselves or property; and the fact that the confinement is only temporary and must cease as soon as the refractory or violent behaviour has ended.*

*... When a young person is placed in special accommodation a risk assessment will be conducted. This determines whether the young person is at risk of self-injury and whether normal clothing presents a hazard to his/her health. If in exceptional circumstances it is necessary to remove normal clothing, the young person is provided with protective clothing so that he/she can be decently dressed and their normal clothing is returned to them at the earliest opportunity.*

*Personal possessions are not normally allowed in special accommodation given that the young people must only be kept there for the shortest possible time; and may often be in a volatile state, with the result that personal possessions may present the risk of self-injury or harm. However, permission may be granted on a*

*case-by-case basis, if the risk assessment demonstrates the benefits would outweigh the risks.*

During 2003, 'special cells' were used on 174 occasions in young offender institutions.<sup>150</sup> The cells – apparently used as a calming down measure – often have no furniture or sanitation and it has been reported that children are sometimes stripped of their clothes. In one young offender institution, Stoke Heath, a child was kept in an unfurnished cell for 20 hours and 45 minutes.<sup>151</sup>

Two children have died in custody this year. Gareth Myatt, 15, died in April after being restrained in Rainsbrook secure training centre, one of four privately run child prisons.

The Children's Society this year published a report on the experiences of young Black men (under 18) in young offender institutions. Here, two boys give an account of being restrained:

*"There were seven guards and they jumped me and pushed me to the floor and took hold of my arms and then they pulled them. I was lying down on my front chest and they pushed my elbows into the sides and then twisted me up."*

*"I think that prison officers have less power than the police, but they just act as if they've got more power. I've been twisted up and punched and stull like that in here but I've never been punched by a police officer."<sup>152</sup>*

Adam Rickwood, 14, died in August while on remand at Hassockfield secure training centre. Adam is the youngest person ever to die in custody in the UK.

Yvonne Scholes, the mother of 16 year-old Joseph Scholes, continues her fight for a public inquiry to examine the circumstances leading up to her son's death. Joseph hanged himself in Stoke Heath young offender institution, in March 2002, nine days into a custodial sentence. Ms Scholes has criticised the Government's refusal to hold a public inquiry, *"I believe this decision is allowing the Home Office to keep hidden the appalling treatment meted out to children in prison ... child abuse thrives on secrecy."*<sup>153</sup>

During the past year, 3,337 children assessed as too vulnerable for prison service accommodation were, nevertheless, sent to young offender institutions. This figure has increased steadily over the last four years (in 2000-01 the number was 432; in 2001-02 1,875; in 2002-03 2,903).<sup>154</sup>

#### *Control and restraint*

Between January 2003 and November 2003, control and restraint was used 622 times in just three young offender institutions – about 20 children each month being restrained in each institution.<sup>155</sup>

Physical restraint has been used 11,593 times on 12 to 14 year-olds in secure training centres, in the past four years.<sup>156</sup>

In May 2004, the National Children's Bureau published its review of the use of physical restraint in a range of settings, showing that children in young offender institutions can be held indefinitely in an unfurnished cell and restrained through the use

of a painful arm lock. It called for an urgent review of the use of child restraint across the range of educational, health and penal settings. In the absence of this, the Howard League for Penal Reform has set up an inquiry, chaired by Lord Carlisle, to consider the use of restraint, strip-searching and segregation of children in penal custody.

The Youth Justice Board plans to fund 25 social workers to be based in young offender institutions.<sup>157</sup> While anything that improves the welfare of children in custody is welcome, this move should not detract from the fundamental problem, which is the incarceration of children in Prison Service custody. There is the risk that such a move will lead to complacency among community-based social workers and youth offending team workers, who may mistakenly believe children's needs are now adequately catered for.

### *Education*

In March 2004, Home Office Minister, Paul Goggins, gave the following information about educational provision for 'inmates' in young offender institutions (aged 21 and under):

*During the current financial year to February 2004, prisoners in Young Offender Institutions undertook an average of 7.1 hours of education activity per week and 3.9 hours of physical exercise. This average is suppressed by the number of prisoners held on remand or unsentenced who are not obliged to participate in educational activities.*<sup>158</sup>

The National Audit Office has noted that the Prison Service does not systematically disaggregate data to show the education of children and the education of young adults in young offender institutions. A Prison Service census for one week in 2003 was therefore undertaken across 12 establishments. It found that every institution except one had provided at least 15 hours education to children *in that week*.<sup>159</sup> The Youth Justice Board has reported that, during 2003, young offender institutions delivered an average of 24 hours education, training and personal development activity a week to every child. It does not specify how much of the 24 hours was taken up with education.<sup>160</sup>

When the Prisons Minister was asked how long 'inmates' of young offender institutions spent in their cells in 2003, he replied:

*The length of time prisoners spent in their cells is not collected routinely.*

The Education watchdog Ofsted assessed the quality of education for girls serving Detention and Training Orders. It found: information regarding the child's educational background was generally poor; education programmes were unrelated to an assessment of the child's needs; many girls did not fully understand the targets to be achieved and in most cases felt that they had been imposed rather than negotiated; there was insufficient space in all three establishments to provide a broad and relevant curriculum; and there was concern over the educational plans post-release.<sup>161</sup>

### *Health*

A joint Prisons Inspectorate and Youth Justice Board report published in April 2004 showed that of 1,200 children in Prison Service custody:

- 48% of girls were taking prescription drugs
- 23% of boys were taking prescription drugs

- 43% of girls rated health care by the doctor as 'good'
- 54% of boys rated health care by the doctor as 'good'
- Only 14% of girls rated food as 'good'
- Only 15% of boys rated food as 'good'

↑ ***Review the status of young people of 17 years of age for the purposes of remand with the view of giving special protection to all children under the age of 18 years.***

The Government in September 2003 reported that it planned to extend remand safeguards to 17 year-olds. This is expected in the draft Youth Justice Bill.

A 14 year-old boy was found hanged in the privately run Hassockfield secure training centre, in County Durham, in August 2004. He is the youngest person ever to die in custody. The training centre is over 100 miles from the boy's family who live in Burnley. Adam Rickwood had been on remand for a month and was to apply for bail on the day he was found hanged.

As at September 2004, there were 500 children remanded into prison accommodation (495 previous year).<sup>162</sup>

In July 2003, Serco group plc acquired the private company running Hassockfield secure training centre, Premier Group Limited. Serco's website boasts of the long term profitability of custody:

*The long-term nature of contracts in the UK custodial market, some for up to 25 years, provides high visibility of earnings into the future, and the Home Office requirement for custodial services demonstrates that growth potential for the business is good. There is a continuing and substantial rise in the demand for prison places and for new prisons. The Government's asylum policy will also lead to greater demand for secure accommodation...*

In October 2004, the Guardian newspaper reported that the Government is planning to put out to tender its four juvenile jails. Colin Moses, the chairman of the Prison Officers' Association commented, "*They should remain in the public sector, not for ideological reasons, but because those who are responsible for the most vulnerable in our society have a duty not to make a profit from their suffering*".<sup>163</sup> Prisons Minister, Paul Goggins, in a written answer to a Parliamentary question, denied the Government has any plans to privatise young offender institutions.<sup>164</sup>

⇔ ***Ratify the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.***

In July 2004, the Department of Constitutional Affairs published a report of the inter-departmental review of international human rights instruments. The review determined that no change be made to the existing position. The explanation given was:

*The UK intends to ratify the optional protocol at the earliest opportunity. We need to introduce a range of new offences to ensure that we are fully compliant with the instrument before we can ratify it, several of which, relating to trafficking for the purposes of sexual exploitation and the sexual exploitation of children for gain are included in the Sexual Offences Bill currently before parliament. The optional protocol however also requires the criminalisation of behaviour which does not*

*fall within the scope of the Sexual Offences Bill such as trafficking people for the sake of exploiting their labour, transfer of organs and illegal adoptions. These measures will require primary legislation. It is not therefore possible to say when we will be in a position to ratify the instrument.*<sup>165</sup>

## 8. Dissemination of the the Government's second periodic report, and the Committee's 2002 concluding observations

⇔ ***Make widely available to the public the Government's second periodic report, written replies and the concluding observations.***

There had been some progress, with the Children and Young People's Unit (CYPU) holding on its website certain documents relating to the UK examination by the Committee on the Rights of the Child in 2002.

Now, there is no information whatsoever about the Convention – or the reporting process – on the DfES web pages of the Children, Young People and Families Directorate.

Only two other Government websites – the Department of Constitutional Affairs and the Foreign and Commonwealth Office – hold any information on the Convention on the Rights of the Child and the UN reporting process; and there continues to be no government dissemination in schools or other in other public settings such as health centres, courts, hospitals, jobcentres or post offices and libraries.

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