

UK implementation of the International Covenant on Economic Social and Cultural Rights

Memo from Save the Children UK¹

Issue 4: Review anti-discrimination legislative framework and adopt a single equality act

The Equality Bill² announced last autumn includes significant extension of protection from age discrimination. In October 2008, the UN Committee on the Rights of the Child urged the UK Government to take this opportunity to address negative age discrimination against children in the UK.³ However, under the current proposals this new protection will only be available to those aged 18 years and over.

The UK Government has accepted that age discrimination adversely affects older people but maintains that there is little evidence of harmful age discrimination against children. Save the Children UK, as well as a number of other organisations⁴, disagree with this assertion.

Recent research carried out by the Department for Children, Schools and Families asked over 3,900 under 18 year-olds in England to state whether they have ever been treated unfairly because of their age, gender, disability, amount of money their family has, skin colour, religion or culture, the beliefs or behaviour of parents/carers, the child's own beliefs, language, sexual orientation or something else. Unfair treatment on the grounds of age was by far the single biggest example of discrimination:⁵

- 43% reported that they had been treated unfairly because of their age
- 29% of under-11s felt that they had experienced age discrimination
- 64% of older teenagers had experienced age discrimination

¹ Please note: This memo focuses only on areas of policy where Save the Children UK is currently active

² The Equality Bill covers England, Scotland and Wales only

³ UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland. Paragraphs 24 and 25

⁴ Save the Children is a member of the Young Equals campaign, which is campaigning to stop age discrimination against children. It is convened by the Children's Rights Alliance for England and members of the steering group include the British Youth Council, The Children's Society, Families Need Fathers, Liberty, National Children's Bureau, NSPCC, National Youth Agency, Save the Children UK, Youth Access and 11 Million, Office of the Children's Commissioner for England (observer status).

⁵ Willow, C., Franklin, A. and Shaw, C. (2007) Meeting the obligations of the Convention on the Rights of the Child in England. Children and young people's messages to Government. DCSF

Similarly, Save the Children research with 50 children and young people, aged between 9 and 19 in Scotland, found that a large majority were treated unfairly because of their age. Only 6% of those consulted did not think this was so.⁶

The UK Government also argues that protecting under-18s from age discrimination would result in all children being treated homogenously, regardless of their age, and the same as adults. Save the Children accepts that it is important to tailor services to the needs of children but, as will be the case for older people, the Equality Bill could ensure that genuine service requirements would allow a provider to seek to justify different treatment on the basis of demonstrable need.

The Equality Bill will extend age discrimination protection beyond the workplace, to cover the provision of goods, facilities and services which will make it unlawful for providers of goods, facilities or services to treat a person seeking to use those services less favourably than would be usual in the case of someone of a different age. Children will not be covered by this protection.

However, evidence gathered by Young Equals shows that children and young people frequently experience unfair treatment because of their age in the provision of goods, facilities and services For example:

- 16 and 17 year-olds finding it difficult to access social services and mental health services, falling between children's and adults' provision^{7 8}
- Children and young people not being taken seriously when reporting a crime or calling for emergency services^{9 10}
- Children and young people being treated unfairly in shops, when using public transport^{11 12}
- The use of the mosquito device in public spaces¹³

⁶ Save the Children (2006) Children and young people in Scotland talk about discrimination

⁷ Office of the Children's Commissioner (January 2007) Pushed into the shadows. Young people's experience of adult mental health facilities.

⁸ Office of the Children's Commissioner (October 2008) Out of the shadows? A review of the responses to recommendations made in Pushed into the Shadows

⁹ CRAE (2007) We are all equal and that's the truth. Children and young people talk about discrimination and equality.

¹⁰ Inglis, G and Shepherd, S (March 2008) Independent Police Complaints Commission Confidence in the police complaints system: a second survey of the general population interim report, BMRB.

¹¹ CRAE (2008) Get ready for Geneva submission to the UN Committee on the Rights of the Child.

¹² Save the Children (2006) Children and young people in Scotland talk about discrimination

¹³ Mosquito devices are electronic devices being used across England to stop teenagers from congregating in public places: it works by emitting a painful high-pitched noise only heard by young people.

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- Public places such as leisure centres and libraries and transport facilities being unfit for adults with babies and young children.^{14 15}

The UK Government also intends to introduce an integrated equality duty (covering race, sex, disability, sexual orientation, religion or belief and age) on all public bodies. However, it is the Government's intention to exclude schools and children's services from the age element of the integrated duty. By contrast, Northern Ireland has operated a broad equality duty on all its public authorities since 1998¹⁶ and children's services are included in this.

Save the Children and the Young Equals campaign believes that an integrated equality duty should apply to all public bodies without exception. These services are uniquely placed to lead the public sector's drive towards promoting more positive attitudes towards children and young people. Excluding schools and children's services from the age element of the public sector duty would clearly be a missed opportunity

In the absence of legislation that protects children and young people from negative age discrimination many current discriminatory practices will simply not be questioned or addressed.

The UK Government must:

- **Use the opportunity presented by the Equality Bill to protect children from negative age discrimination**

Issue 19: Corporal punishment in the home, schools and alternative care settings

Rather than having clear, univocal protection, legislation across the UK continues to justify violence against children by seeking to limit its use rather than end it completely.¹⁷

In its recent Concluding Observations on the UK, the UN Committee, echoing its recommendations made in both 1999 and 2002 stated that as a matter of priority,

¹⁴ House of Commons Transport Committee (October 2006) Bus Services across the UK, Eleventh Report of session 2006-06

¹⁵ County Council of The City and County of Cardiff (2006) Family Friendly Cardiff, A Report of the Children and Young People Scrutiny Committee

¹⁶ Section 75 Northern Ireland Act 1998

¹⁷ Section 58 of the Children Act 2004 (England and Wales) and Article 2 of the Law Reform (miscellaneous Provisions) (Northern Ireland) Order 2006 and do not remove the defence of "reasonable chastisement", in Scotland Section 51 of the Criminal Justice (Scotland) Act 2003 does not remove the defence of "justifiable assault"

corporal punishment in the family must be prohibited *“through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland.”*¹⁸

In 2005, the European Social Rights Committee declared that the UK is in breach of article 17 of the Charter - the right of children and young people to appropriate social, legal and economic protection -¹⁹ and in 2006, the independent expert for the United Nations study on violence against children recommended that States: *“prohibit all forms of violence against children, in all settings, including all corporal punishment”.*²⁰ The study set a deadline for corporal punishment to be outlawed by 2009.

Contrary to these clear recommendations, there continues to be resistance to reforming the law. In the UK’s recent response to the recommendations of the UN Committee on the Rights of the Child’s the UK Government stated that *“There remains areas where the UK Government and the UN Committee differ in views, such as... the appropriateness of a legal ban on smacking children.”*²¹

The Welsh Assembly Government has taken a principled stand against the physical punishment of children and agrees with the UN Committee that corporal punishment should be prohibited in law but does not have the power to change the law.²²

The UK Government must:

- **Move quickly to satisfy its human rights obligations by ensuring that children have full protection from abuse under the law.**

Issue 22: Progress made in combating poverty and social exclusion

Levels of child poverty

Levels of child poverty are unacceptably high throughout the UK – with 3.9 million children living below the poverty line and 1.3 million children living in severe poverty.²³ The UK Government missed its target (set in 1999) of reducing child

¹⁸ UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, Paragraph 42

¹⁹ European Committee of Social Rights (2005) European Social Charter, Conclusions XVII-2, Volume 2

²⁰ United Nations (2006) Report of the independent expert for the United Nations study on violence against children, Paragraph 38 and 98

²¹ Department for Children, Schools and Families (2008) The Children’s Plan – A Progress Report

²² Jane Hutt, Minister for Children. NAFW Record of Proceedings/Cofnod for October 23rd 2002 and NAFW Record

²³ This has been calculated using a measure developed by Save the Children UK, which is a mixed measure of income and deprivation - 50% median income plus children and adults lacking at least one basic necessity and either children or adults lacking more than one

poverty by a quarter in 2006. In 2007, child poverty levels rose for the first time in seven years.

It now looks increasingly likely that, without significant policy intervention, the UK Government's target of halving child poverty by 2010 will be substantially missed. This target is a key staging post in the long-term commendable commitment to eliminate child poverty by 2020. It is estimated that an additional £3 billion a year will need to be invested by the Government in order to meet its 2010 target.

The UK Government must:

- **Allocate the additional funds needed to meet its target of halving child poverty by 2010 as a matter of urgency.**

Enshrining the UK Government's goal of eradicating child poverty in law

Save the Children welcomes the UK Government's commitment to legislate to eradicate child poverty by 2020, which takes forward the UN Committee on the Rights of the Child's recent recommendation.²⁴ Save the Children believes that giving legal force to the commitment to eradicate child poverty is a major opportunity to shape and drive policy to tackle poverty and thereby improve children's chances and the quality of their childhood. However, only a solid legislative framework will help to ensure that the right to an adequate standard of living is realised.

In order for the legislation to be effective Save the Children believes that it must include the following²⁵:

- **Definition of 'eradication of child poverty':** The UK Government currently measures children experiencing relative low income, before housing costs, in three ways.²⁶ The Government has indicated that the UK should be among the best in Europe on the first two measures and that the third measures should approach zero. We agree. The relative low income target should be set at a precise numerical target of 5 per cent²⁷

²⁴ UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 65 (a)

²⁵ These principles are based on those developed by End Child Poverty of which Save the Children is a member: End Child Poverty coalition statement of principles: Legislating for the eradication of child poverty by 2020

²⁶ a) children living in a household whose annual income is below 60 per cent of the contemporary median equivalised household income; b) children living in a household that is both materially deprived and whose annual income is below 70 per cent of the contemporary median equivalised household income; c) children living in a household whose annual income is below 60 per cent of the equivalised median income level in 1998/99, held constant in real terms

²⁷ The lowest historically in Europe has been 5 per cent

or below to ensure that the UK sets its ambitions at achieving the lowest, sustainable rate possible.

Focus on children living in severe and persistent poverty: Whilst fully supportive of the 60 per cent median poverty threshold as the benchmark for assessing progress towards ending child poverty, Save the Children is concerned that a singular focus could have a negative impact on the most disadvantaged children.²⁸

It is vital to ensure that the most disadvantaged children are not left behind.²⁹ The Work and Pensions Committee recommends in a recent inquiry that: *“the national strategy on child poverty develops immediate policy initiatives to assist children in severe and persistent poverty and creates an explicit indicator against which progress can be measured”*. The UN Committee makes a similar recommendation.³⁰

Statutory duties: Save the Children is concerned that different duties to end child poverty will exist throughout the UK. While we welcome the proposed UK-wide income targets used to define the 'eradication' of child poverty and the proposed duty on the UK Government to publish a child poverty strategy, we are concerned that these will not cover devolved areas of policy and will only apply to Westminster. We are calling on each of the devolved administrations to introduce statutory duties to end child poverty by 2020 and to publish a child poverty strategy.

Annual progress reports, including data on the extent of child poverty and future priorities, must be published annually and laid before Parliament and the devolved assemblies.

All strategy documents must be comprehensive and prepared in consultation with the devolved administrations and delivery agencies and include specified interim dates by which steps or key milestones will be achieved. A duty on Government to publish strategy documents every three years and lay them before Parliament is also essential.

²⁸ A recent report identified 1.3 million or 10.2 per cent of children living in severe and persistent poverty, based on a household income of below 50 per cent median and lacking at least three basic necessities (at least one adult and one child necessity) Middleton & Magadi (2007) Severe Child Poverty in the UK, SCUk

²⁹ According to the Institute for Fiscal Studies, in 1996/7, 11 per cent of children were in severe poverty and in 2005-6 10.4 per cent remained in severe poverty.

³⁰ The UK Government must *“give priority in this legislation and in the follow-up actions to those children and their families most in need of support.”* UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 65 (b).

Link to Government spending decisions: The legislation must be linked to key UK Government spending decisions, including Comprehensive Spending Reviews, annual pre-budget reports and budgets, with sufficient resources agreed by Parliament. Achieving constant, sustainable progress on raising family incomes and narrowing the gaps in other outcomes will require adequate resources at both national and local level.

‘Poverty-proofing’ policies at both national and local levels: The UK Government must ensure a duty on all Whitehall departments and on local authorities to undertake and publish a poverty impact assessment of all policies. This should also be replicated across the devolved administrations.

Independent external scrutiny body: There must be a clear mechanism for independent scrutiny and engagement with stakeholders, including children living in poverty.³¹ Legislation must require the UK Government to have regard to this body when setting or reviewing its 2020 strategy and producing progress reports.

The UK Government must ensure that the Child Poverty Bill:

- **Is underpinned by the principles set out above, and in particular:**
- **Focuses on families most in need**
- **Places a duty to eradicate child poverty on both the UK Government and the devolved administrations**

Poor educational outcomes for children living in poverty

Despite the positive change evident in some local authorities and settings and a plethora of investment and initiatives, the underachievement of children living in poverty remains the norm across the UK.

Education is acknowledged both as a key route for children out of intergenerational poverty, and as a protective factor in stopping young people falling into poverty. Yet, among developed countries, recent research by the Organisation for Economic Cooperation and Development shows that the UK has some of the lowest social mobility and some of the highest gaps in educational performance between richer and poorer children:

- Whilst there has been an increase in the numbers of children gaining five good GCSEs in England, the number of children poor enough to qualify for Free School Meals (FSMs) gaining five good GCSEs has not increased at the same rate.³²

³¹ In line with article 12 of the UNCRC

³² Report from the Independent Commission on Social Mobility, January 2009. Pg 6.

- Of those children eligible for FSMs in England, less than one in five is currently achieving five good GCSEs, including English and Maths.³³
- Just over 6% of pupils receiving FSMs remain at school to take A levels, compared to around 40% of students overall.³⁴
- In 2007, pupils eligible for Free School Meals (FSM) in Scotland gained on average 60 points lower at Standard Grade than their better-off peers³⁵
- In the North of Ireland. Just 38% of children entitled to FSMs attained at least 5+ GCSEs at A*-C compared to 70% of non-FSM children.³⁶
- In Wales, just 28% of pupils eligible for FSMs gained 5+ GCSEs at A*-V compared to 61.9% of their non FSM eligible peers.³⁷

Educational underachievement also contributes to social exclusion in later life. Young people with poor educational outcomes are at an increased risk of unemployment and low pay, poorer health and a general lower standard of living.³⁸

The UN Committee on the Rights of the Child recently recommended that efforts are strengthened *“to reduce the effects of the social background of children in their achievement in school”*.³⁹ Focusing resources on offsetting the impact of poverty is therefore crucial.

The UK Government must:

- **Increase investment in early years education to enable more fully funded places for disadvantaged children**
- **Ensure that all low income families qualify for all free additional resources**
- **Remove barriers stopping deprivation funding reaching the most disadvantaged pupils at local authority and school level so that the maximum resources can be directed effectively**

³³ Ibid

³⁴ Child Poverty Action Group, *2 Skint 4 School*, 2008.

³⁵ 2. SQA Attainment and School Leaver Qualifications in Scotland: 2006/07

³⁶ Council for the Curriculum Examinations and Assessment 2008

³⁷ Children in Wales: Statistics 2008 Academic Achievement and Entitlement to Free School Meals

³⁸ Cassen, R. and G. Kingdom, *Tackling Low Educational Achievement*, Case Paper 118. London: The Centre for Analysis of Social Exclusion: London School of Economics, 2007

³⁹ UN Committee on the Rights of the Child (2008) *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, Paragraph 67

- **Make sure that the policies and practice of all schools are ‘poverty proofed’**
- **Introduce a ‘poverty proofing’ standard for all schools and pupil referral units, which measures the success of narrowing the gap in educational outcomes between the poorest children and their peers**

Issue 31: Measures to reduce the dropout rate of students belonging to racial minorities

Exclusion rates affecting minority groups

Despite noting the “*numerous efforts of the State Party in the sphere of education*”,⁴⁰ the UN Committee on the Rights of the Child recently identified a number of areas in need of improvement. In relation to school exclusions concern was raised about the high number of permanent and temporary school exclusions; that certain groups of children are disproportionately excluded compared to their peers; inadequate participation rights; and the absence of a child’s right to appeal their exclusion.⁴¹

Save the Children shares these concerns. High numbers of children in England continue to be excluded⁴² and despite some positive initiatives such as *Aiming High*⁴³ and Public Service Agreements 10 and 11,⁴⁴ school exclusions continue to disproportionately affect particular children from minority groups for example, males of Caribbean ethnicity are three times more likely to be excluded from school;⁴⁵ and Gypsy, Roma and Traveller children are three and a half times more likely.⁴⁶

The consequences of exclusion for children and wider society are stark, for example, fewer than 15 per cent of permanently excluded children return to

⁴⁰ UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 66

⁴¹ UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 65 (d)

⁴² In 2006/07, a total of 8,680 children were permanently excluded from school and 363,270 children were given fixed-term exclusions. Department for Children, Schools and Families (2008), Permanent and Fixed Term Exclusions in Maintained Schools in England, 2006/2007 House of Commons written answer 3rd November 2008: Hansard Column 196W

⁴³ Department for Children, School and Families (2003) *Aiming High: Raising the Achievement of Minority Ethnic Pupils*. The project’s aim was to raise standards for all young people whatever their ethnic or cultural background and ensure that all education policies truly address the needs of every pupil in every school

⁴⁴ PSAs 10 and 11 commit the Government to keeping all children on the path to success and narrow gaps in attainment between disadvantaged pupils and their peers.

⁴⁵ *Ibid*

⁴⁶ Department for Children, Schools and Families: *The Standards Site, Gypsy, Roma and Traveller Achievement*, 2007

mainstream education⁴⁷ and one out of three excluded children become NEET at 16 (not in education, employment or training);⁴⁸

The UN Committee on the Rights of the Child set out a number of recommendations relating to exclusions: permanent and temporary exclusions should only be used as a last resort; the number of exclusions should be reduced; children who are able to express their views should have appeal rights against their exclusion; and all children out of school should have an alternative quality education.⁴⁹

A recent report sets out the UK Government's expectation that all secondary schools are in behaviour partnerships with a shared commitment to work together to improve behaviour, tackle persistent absence and improve outcomes for children with challenging behaviour. A key principle of the partnership is to intervene early where a child is at risk of exclusion with the specific aim to reduce exclusions. Save the Children welcomes this aim and urges behaviour partnerships to address the over-representation of particular groups of excluded children.

The UK Government has also recently committed £26.5 million over the next three years for piloting new forms of alternative educational provision for excluded children. However, despite this welcome commitment, in September 2008 the UK Government published revised guidance on exclusions.⁵⁰ We are disappointed that this guidance only places a duty on local authorities to provide provision from day six after the exclusion, rather than from day one. The guidance also fails to mention the particular needs of excluded primary school age children.

The Education and Skills Act 2008 requires all governing bodies of maintained schools to 'invite and consider pupils' views. Following this change to the law the exclusions guidance was amended and advised schools that children should be allowed and encouraged to attend exclusion hearings and to speak on their own behalf, subject to their age and understanding. Although this is a positive step forward, it will not guarantee that children will have their views taken into account nor replace the need for a statutory right to appeal.

⁴⁷ H Daniels et al (2007) Study of Young People Permanently Excluded from Schools, Department for Education and Skills, 2003

⁴⁸ The Bow Group (2007) Invisible Children 2007

⁴⁹ UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 67

⁵⁰ Department for Children, Schools and Families (2008) Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units

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Save the Children research found that many children felt the exclusion process was something that happened to and around them and that the core 'problem' was only shifted and not addressed.⁵¹ This contrasts with Scotland and Wales where children have the right to participate in the exclusion process.⁵²

An three-year independent advocacy project ran by Save the Children had an 80 per cent success rate in supporting children at risk of exclusion, or who had been excluded, to re-enter, re-engage or remain in education. Children told us that having an advocate to speak on their behalf or to help them communicate their views, made them feel included in decisions regarding their education and more encouraged to find positive solutions to the problems they were facing.

The UK Government must take the opportunity of its forthcoming review into the exclusion appeals process to introduce a statutory right to appeal for all children and ensure that children's views are fully taken into account with the ultimate aim of reducing the rates of exclusion, particularly for overrepresented groups of children.

The UK Government must:

- **Ensure that exclusion is only used as a matter of last resort**
- **Address with urgency the overrepresentation of minority groups who are excluded from school**
- **Provide high quality, alternative education for all children excluded from school from day one of the exclusion**
- **Establish independent education advocates which can advocate on a child's behalf or help them communicate their views**

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⁵¹ Ibid

⁵² In Scotland, the Age of Legal Capacity Act (1991) and the Standards in Scotland's Schools Act (2000) require that prior to intention to exclude a meeting to discuss an exclusion should be set up with a young person of legal capacity. In Wales, in January 2004, The Education (Pupil Exclusion and Appeals) (Maintained Schools) Regulations 2003 came into effect. These give children and young people registered at a secondary school or a Pupil Referral Unit the right to be informed in writing of their exclusion and the right to make representations to the governing body about their exclusion.