



JOINT SUBMISSION TO THE CHILDREN AND SOCIAL WORK BILL PUBLIC BILL COMMITTEE: JANUARY 2017

INTRODUCTION

UNICEF is the only organisation mandated by the UN General Assembly to uphold the UN Convention on the Rights of the Child (CRC) and promote the rights and wellbeing of every child. **The Children's Rights Alliance for England** (CRAE) seeks the full implementation of the UN Convention on the Rights of the Child in England. It is with this remit that Unicef UK and CRAE support the recommendation and proposed amendment from the Joint Committee on Human Rights to ensure due regard is given by English public authorities to the rights children are afforded under the UN Convention on the Rights of the Child:¹

"We have considered the arguments and the evidence for and against introducing a statutory duty on public authorities in England requiring them to have due regard to the rights of children in the UNCRC in the exercise of their functions relating to children, equivalent to the duties already introduced in Wales and Scotland... We recommend that Parliament takes the opportunity presented by this Bill to enhance the protection of children's rights in England by introducing such a duty."

AMENDMENT TEXT

NC14

To move the following Clause—

"Duty to have due regard to United Nations Convention on the Rights of the Child

- (1) A public authority must, in the exercise of its functions relating to safeguarding and the welfare of children, have due regard to the UN Convention on the Rights of the Child.
- (2) For the purposes of this section—
 - (a) "public authority" has the same meaning as in section 6 of the Human Rights Act 1998, and
 - (b) "United Nations Convention on the Rights of the Child" has the same meaning as in section 2A (2) of the Children Act 2004."

CHILDREN'S RIGHTS IN LEGISLATION

The UN Convention on the Rights of the Child (CRC) is the most ratified human rights treaty in the world. It was ratified by the UK in 1991 and, this year, the UN Committee on the Rights of the Child examined the UK's implementation of the CRC for the fourth time. While the UN Committee acknowledged significant progress for children in many areas, it raised concerns about the continuing reluctance of the UK Government to introduce overarching measures to ensure the consistent consideration of children's rights across all decision-making by government. It also took note in its recommendations of the diverging picture of legislative implementation of the CRC across the UK.

Research undertaken by Unicef UK to explore international best practice in the legal implementation of children's rights found that where the CRC or its general principles were directly reflected in national legislation, there was more likely to be a culture of respect for children's rights, and this was the most effective way to create a step change in making rights a reality for children.²



The Children and Social Work Bill, in combination with the recent examination of the UK's implementation of the CRC, offers a rare opportunity to integrate a genuine child rights framework within public authorities in England and ensure we are keeping pace with developments in Wales and Scotland in strengthening protections of children's rights. A duty for public authorities to have due regard to the CRC will place those authorities under a binding commitment to protect children's rights, requiring them to routinely and systematically consider the impact of policies and decision-making on children; to ensure children's rights and best interests are the guiding principle in every action affecting children, and that children's voices are heard and taken into account.

Unicef UK welcomes the commitment from the Minister Lord Nash during the Third Reading of the Bill in the House of Lords to consider what further steps can be taken to embed consideration of children's rights through child rights impact assessment and other methods; to strengthening the underpinning principles of the safeguarding statutory guidance; and to improving training for government officials on children's rights, and we look forward to supporting the government to develop these steps. However, while the Minister is correct that the Government should already give "due consideration" to the CRC when forming legislation (following the 2010 political commitment from the then Coalition Government, and subsequent Cabinet Office guidance), and rightly highlighted certain provisions with the Children Acts 1989 and 2004 that strengthen protections of children's rights, this in reality falls far short of a robust and systematic approach to implementing the CRC.

THE IMPORTANCE OF EMBEDDING CHILDREN'S RIGHTS

Since ratifying the CRC, the UK Government, as the duty bearer under international law, has been obliged to ensure children's rights are promoted, protected and respected. Introducing a new duty to require all those public authorities who have functions in relation to the safeguarding and welfare of children to have due regard to the CRC will be a significant step forward in strengthening protections for individual children's rights, and will enable the systematic delivery of the 2010 Ministerial commitment to consider the CRC in all new legislation and policy.

To date, children's rights still do not routinely inform the development of law, policy and practice across UK Government, at either national or local level. Moreover, there is no common Child Rights Impact Assessment (CRIA) tool that is used systematically across Government, which limits the extent to which children's rights drive policy making. In its response to the JCHR in October 2016, the Government acknowledged that *"more needs to be done to ensure that the impact of legislation, policy and delivery of services on children's rights is assessed more routinely and analytically."*³

While there are several examples of good practice, a Freedom of Information request by the Children's Rights Alliance for England in 2014 showed that out of all government departments, only the Department for Education had made a detailed analysis in relation to the CRC in the past year and only for one piece of legislation. There were, for example, no CRIAs undertaken on the Legal Aid, Sentencing and Punishment of Offenders Bill (many of the changes in the 2012 Act have had a disproportionate impact on children, namely the removal of most non-asylum immigration, education and private family law cases from the scope of legal aid); the Welfare Reform and Work Bill (the Supreme Court has subsequently raised concerns about the impact on children of the reduction to the benefit cap set out in the Act); and the Courts and Criminal Justice Bill, all of which had significant implications for children; and the CRIA that was done on the Modern Slavery Bill was relatively superficial. Indeed, recent answers to Parliamentary Questions revealed a very patchy approach to considering the CRC in policy making.⁴



The UN Committee on the Rights of the Child highlighted the lack of systematic child rights analysis being carried out in England in its examination of the UK this year, and has urged the Government to “introduce a statutory obligation” to consider children’s needs “when developing laws and policies affecting children”.⁵

England is falling behind the rest of Great Britain in the way in which it embeds children’s rights in law and policy. Legislation in Scotland requires public authorities to report on the steps they have taken to “secure better or further effect” of children’s rights⁶; and in Wales, public authorities must have due regard to the CRC.⁷ Ministers in both nations are under legal duties with respect to the rights contained in the CRC. Yet there are no similar obligations in England. A duty on public authorities is the only way to ensure a systematic accountability mechanism to protect and realise children’s rights at both national and local level.⁸

SUMMARY OF LEGISLATIVE PROVISIONS IN SCOTLAND AND WALES

Wales	Scotland
<p>Children and Young Persons (Wales) Measure 2011</p> <ul style="list-style-type: none"> • Duty on Ministers to have “due regard” to the CRC and its Optional Protocols when exercising any of their functions • Requirement to publish a “scheme” to set out how Ministers will comply with the due regard duty; said “scheme” must be reviewed following concluding observations from the UN Committee on the Rights of the Child • Ministers must consult children, the Children’s Commissioner and others as they deem appropriate in the development of the scheme. The scheme is subject to approval by the Welsh Assembly. • Ministers must report on compliance with the duty every five years • Duty on Ministers to promote knowledge and understanding of the CRC • Power to amend legislation in order to give better or further effect to the CRC <p>Welsh Government use a CRIA model to deliver their due regard obligations under the Measure.</p> <p>Social Services and Well-Being (Wales) Act 2014</p> <ul style="list-style-type: none"> • A person exercising functions under this act in relation to a child “must have due regard” to the CRC 	<p>Children and Young People (Scotland) Act 2014</p> <ul style="list-style-type: none"> • Duty on Ministers to “keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements” and to take those steps if they consider it “appropriate” to do so • Duty on Ministers to promote public awareness and understanding of the CRC • Report to Parliament at the end of each 3 year period on delivery of both duties, to include plans for coming 3 years. First report is due in 2018 • Duty on public authorities to report every three years on steps they have taken to “secure better or further effect” of the CRC <p>Scottish Government is also undertaking (non-statutory) two-stage child rights impact assessment (stage 1 screening, stage 2 more detailed CRIA including views of children and young people)</p>



IMPACT OF LEGISLATIVE CHILD RIGHTS DUTIES

The duties placed on Ministers in Wales and Scotland in relation to children's rights are relatively new; however, there is emerging evidence from both nations that these duties are changing the way in which the respective governments engage with and legislate for children. For example:

- **The Draft Human Transplantation Bill in Wales** was a legislative proposal to introduce an opt-out system for organ donation in Wales in 2012. The law had been drafted before a child rights impact assessment (CRIA) was produced (as the primary mechanism for Welsh Ministers meeting their obligations under the due regard duty). However, once CRIA was done (the first Act for which this was used), the draft law was changed as a direct result of it. A number of actions were recommended and incorporated in the final Act, most notably to introduce the age limit for the legislation. When the act was being drafted children were not taken into consideration at all and the first proposal was for a one-size-fits-all opt-out system. As a result of the CRIA, children were excluded from the opt-out. 16 and 17 year-olds were given the right to express their wish to be organ donors (to reflect article 12 and evolving capacity of children).
- The Scottish Government undertook a child rights impact assessment through a multi-agency group of stakeholders on **the age of criminal responsibility** (which remains at 8 in Scotland). This enabled the consideration of the impacts of raising the age not only on children in conflict with the law but also on child victims, and allowed for a much more nuanced policy and practical discussions about the impacts of changes on children and the supportive practice/policies needing to be put in place to ensure children's rights are fully respected. Subsequently, the government has confirmed that it will introduce legislation to raise the age of criminal responsibility to 12.⁹

In its evidence to the Joint Committee on Human Rights, the Equality and Human Rights Commission identified a number of specific positive impacts for children of the child rights due regard duty in Wales:

- **The Welsh Government Budget for Growth and Jobs 2013/2014** – a child friendly version of the budget was produced, alongside – most importantly - an analysis of the budget disaggregating data and showing how much was spent on children in different sectors (health, education, etc.), and a public awareness campaign was held to engage children. This would not have happened without the CRC due regard duty.
- **The Housing (Wales) Act** introduced new provisions around not providing accommodation where people have made themselves “intentionally homeless”. A CRIA resulted in local authorities being able to disregard new provisions in relation to 16 and 17 year-olds (this happened before the child rights duty had come fully into effect but resulted from the cultural change prompted by the legislation).

LACK OF CHILD RIGHTS FRAMEWORKS AT A LOCAL LEVEL

A national approach to strengthening children's rights is a crucial foundation for ensuring every child, everywhere, is able to enjoy their rights. But equally important is ensuring those agencies that children encounter on a day-to-day basis are also driven by respect for children's rights. Rights become most real for children at the local level - in their homes, schools and communities, and through the contact they have with local services and practitioners.



Children need stronger protections to assert their rights and have their basic needs fulfilled by public authorities, particularly so in a period which has seen a rapid change in the landscape of local government with local authorities increasingly reliant on public and private sector organisations to deliver vital services to children. A child rights framework such as would be created by this amendment will embed the CRC in children's services and within other public authorities working with children and families no matter where they are, and enable public authorities to better to safeguard, support, promote and plan for the rights and welfare of children in their area.

MORE INFORMATION

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¹ Joint Committee on Human Rights (October 2016), *Legislative Scrutiny: (1) Children and Social Work Bill; (2) Policing and Crime Bill; (3) Cultural Property (Armed Conflict) Bill, Third Report of Session 2016–17; Page 9, Paragraph 30.*

² <http://qub.ac.uk/research-centres/CentreforChildrensRights/filestore/Filetoupload,485596.en.pdf>

³ Joint Committee on Human Rights (October 2016), *Legislative Scrutiny: (1) Children and Social Work Bill; (2) Policing and Crime Bill; (3) Cultural Property (Armed Conflict) Bill, Third Report of Session 2016–17; Page 9, Paragraph 30.*

⁴ See Children's Rights Alliance for England (2016) *State of Children's Rights in England 2016*

⁵ UN Committee on the Rights of the Child (2016), Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland

⁶ Section 2, Children and Young People (Scotland) Act 2014

⁷ Section 7, Social Services and Well-being (Wales) Act 2014; see also Section 6 on relevant children – an individual in need of care and support; a carer in need of support; looked after children. These duties came into force on 6 April 2016; due regard obligations also relate to the UN Principles on Older Persons (1991).

⁸ *EHRC briefing on the impact of statutory children's rights duties in Scotland and Wales* (October 2016), Written evidence from the Equality and Human Rights Commission to the JCHR [CSW0002](#)

⁹ <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-38160549>