



## CHILDREN AND SOCIAL WORK BILL COMMITTEE STAGE, HOUSE OF LORDS

### PURPOSE OF AMENDMENT

This amendment places a duty on public authorities to have due regard to the United Nations Convention on the Rights of the Child when exercising all of their functions. It will require public authorities to determine the impact of local service provision and decision-making on the rights of children; and will provide a framework for public service delivery in relation to children.

### AMENDMENT

Insert the following new Clause after Clause 19 in Part 1 of Chapter 2 –

#### “United Nations Convention on the Rights of the Child

- (1) Public authorities must, when exercising any function relating to safeguarding and promoting the welfare of children, have due regard to the United Nations Convention on the Rights of the Child and its Optional Protocols.
- (2) Any person whose functions are of a public nature must, in the exercise of any function relating to safeguarding and promoting the welfare of children, have due regard to the rights set out in the United Nations Convention on the Rights of the Child and its Optional Protocols.
- (3) Public authorities must publish a report, in a format accessible to children, on the steps they have taken to meet the requirement in subsection (1) every five years.
- (4) The references in this section to the United Nations Convention on the Rights of the Child are to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom), subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.”

### BRIEFING

The Children and Social Work Bill offers a rare opportunity to integrate a genuine child rights framework throughout public services in England.

Rights become real for children at the local level - in their homes, schools and communities, and through their contact with local services and practitioners. Yet research has shown that too many children continue to experience systematic violations of their rights on a daily basis such as lack of access to vital mental health services or living in overcrowded, damp accommodation.<sup>1</sup> The far reaching cuts to local authority budgets have resulted in a 40% real terms reduction to their funding which has impacted in particular on preventative services, including those for children..<sup>2</sup>

The UN Committee on the Rights of the Child (the UN Committee) said in its recent examination of the UK's child rights record that it was '*seriously concerned at the effects that recent fiscal policies and*

<sup>1</sup> Children's Rights Alliance England (2015), *Civil Society Alternative Report 2015 to the UN Committee-England*

<sup>2</sup> Local Government Association (2014) *Under pressure: how councils are planning for future cuts*

*allocation of resources' have had and that they are 'disproportionately affecting children in disadvantaged situations.'* The UN Committee urged the UK to *'introduce a statutory obligation'* to consider children's needs *'when developing laws and policies affecting children'*.<sup>3</sup> A duty for public authorities would require them to routinely consider the impact of policies and decision-making on children, thus ensuring that vulnerable children in particular do not bear the brunt of any future spending cuts.

*"Being in circumstances such as living in a B and B or any form of temporary accommodation, decisions are often made for you and your family which are out of your control. This results in children feeling like they are not being listened to or even put into consideration. We think that the more education on children's rights that is put in place for children and families then the more likely they are to be able to fight for their rights and not get taken advantage of!"* (Jade aged 11, Renee aged 16)<sup>4</sup>

## THE IMPORTANCE OF EMBEDDING CHILDREN'S RIGHTS IN NATIONAL FRAMEWORKS

Political and administrative duties play an important part in putting children's rights into practice as the prohibition on public authorities to act incompatibly with the European Convention on Human Rights clearly shows (Section 6, Human Rights Act 1998), for example, it has ensured equal financial support for family members and non-family members who foster children<sup>5</sup> and confirmed that children staying in hospital for a long period of time still receive Disability Living Allowance.<sup>6</sup>

We believe – and evidence shows – that the most powerful driver for implementation of the CRC within a nation comes through giving direct force to the CRC in domestic law.<sup>7</sup> Earlier this month, the UN Committee urged the UK Government to *'expedite bringing its domestic legislation, at the national and devolved levels ... in line with the Convention in order to ensure that the principles and provisions of the Convention are directly applicable and justiciable under domestic law'*<sup>8</sup> Incorporation through a duty on public authorities should enable the provisions of the CRC to be directly invoked before the courts and that it will prevail where there is a conflict with domestic legislation or common practice'.<sup>9</sup> The Joint Committee on Human Rights also stated it would like to see the CRC *'...incorporated into UK law in the same way that the European Convention on Human Rights has been incorporated by means of the Human Rights Act.'*<sup>10</sup>

Within the UK, Scotland and Wales have taken different approaches to delivering on children's rights, with Ministers under duties to consider or give due regard to children's rights and, in Scotland, with public authorities required to report on steps they have taken to secure children's rights.<sup>11</sup> England is lagging behind the rest of the UK in terms of legislative protections for children's rights, and, despite the welcome Ministerial commitment in 2010 to give due consideration to the CRC in all new legislation and

<sup>3</sup> 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

<sup>4</sup> Children's Rights Alliance for England (2015) *See it, Say it, Change it: Submission to the UN Committee to the Rights of the Child in England*

<sup>5</sup> R (Land others) v Manchester City Council, High Court, 26.09.01

<sup>6</sup> Trinity Term [2015] UKSC 47 On appeal from: [2014] EWCA Civ 286 JUDGMENT Cameron Mathieson, a deceased child (by his father Craig Mathieson) (Appellant) v Secretary of State for Work and Pensions (Respondent)

<sup>7</sup> [http://www.unicef.org.uk/Documents/Publications/UNICEFUK\\_2012CRCImplementationreport.pdf](http://www.unicef.org.uk/Documents/Publications/UNICEFUK_2012CRCImplementationreport.pdf)

<sup>8</sup> 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

<sup>9</sup> UN Committee on the Rights of the Child (2003), *General Comment 5: General Measures of Implementation of the Convention on the Rights of the Child*

<sup>10</sup> Joint Committee on Human Rights (2015) *The UK's compliance with the UN Convention on the Rights of the Child: Eighth Report of Session 2014–15*

<sup>11</sup> Rights of Children and Young Persons (Wales) Measure 2011; Part 1, Children and Young People (Scotland) Act 2014

policy, children's rights still do not routinely inform the development of law, policy and practice across government. To this end, the UN Committee has recently emphasised the need for the UK to introduce a 'statutory obligation at national and devolved levels to systematically conduct a child rights impact assessment when developing policies and laws that affect children'.<sup>12</sup>

## LACK OF CHILD RIGHTS FRAMEWORKS AT A LOCAL LEVEL

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 almost unprecedented cuts to public services. To embed the CRC in children's services and within other public authorities working with children and families in England, a child rights framework needs to be introduced to enable public authorities to better to safeguard, support, promote and plan for the rights and welfare of children in their area.

At a local level, the legal machinery for securing children's rights in England is significantly weaker than it should be and, as a result, local implementation of the CRC is far from consistent or comprehensive. It relies on an ad hoc approach to child rights impact assessment (CRIA) and the efforts of committed individuals to protect and promote children's rights. In addition, the landscape of local government has changed rapidly over the last five years in the UK with local authorities increasingly reliant on public and private sector organisations to deliver vital services for children.

*"I don't think it [the CRC] gets advertised that much or properly. When it does get mentioned to kids, it's only little drops of rights, but not the whole thing."* (Girl, 10)<sup>13</sup>

Few local authorities have an explicit child rights plan or strategy in place (although many local children's services plans do make reference to the CRC), and there is limited knowledge and understanding of CRIA as a tool among local government policy and decision-makers. Evidence from Unicef UK's programmatic work indicates that local authorities do not always understand the full extent or breadth of the rights and duties set out in the CRC, and often limit children's rights to participation and voice. It is also clear that local authorities find the implementation of child rights principles in commissioning challenging, a problem that is compounded by the lack of legal impetus as well as a lack of nationally available guidance and support. There is no evidence of a systematic use of CRIA to determine which services to cut, scale back, adapt or retain, in order to protect vital community-based support services for vulnerable children and families.<sup>14</sup>

## MORE INFORMATION

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<sup>12</sup> 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

<sup>13</sup> Children's Rights Alliance for England (2015) *See it, Say it, Change it: Submission to the UN Committee to the Rights of the Child in England*

<sup>14</sup> See, for example Joseph Rowntree Foundation (2015), *The cost of the cuts: The impact on local government and poorer communities*; Young Minds (2015), *Local authorities and CAMHS budgets 2012/2013*