



**Briefing - House of Lords, Oral question for short debate:  
'Incorporating the United Nations Convention on the Rights of the Child (CRC) into legislation'  
16<sup>th</sup> November 2020**

**Key messages**

- England is lagging well behind Scotland and Wales in relation to incorporation of the CRC.
- There is still no statutory obligation in England to conduct Child Rights Impact Assessments (CRIAs) in all policy areas affecting children, despite similar requirements in Wales and Scotland.
- The Human Rights Act (the CRC is used to interpret HRA rights in cases involving children) is under threat with the Government imminently due to announce an independent panel to review it which raises worrying concerns about our current domestic human rights framework to protect children's rights.
- The UK Government needs to fully and directly incorporate the CRC so there is no discrepancy across the UK and the full breadth of children's rights in the CRC are enshrined in domestic law.

**What are children's rights and the CRC?**

- The UN Convention on the Rights of the Child (CRC) sets out the fundamental human rights that all children have, so that every child is able to have a good childhood and develop to their full potential. This includes their right to an adequate standard of living, access to education and healthcare, and to be cared for and protected regardless of their background or circumstances.
- The UK Government ratified the CRC in 1991 which means all areas of the Government and the state (including local government, schools and health services) must do all they can to uphold the 40 rights set out in the CRC.<sup>1</sup>

**England lagging behind on CRC incorporation**

- The UK's approach to the incorporation of international treaties means the Convention is non-binding in domestic law. There have been numerous calls from several UN treaty bodies, including the UN Committee on the Rights of the Child (UN Committee) for the UK to incorporate the Convention into domestic law.<sup>2</sup>
- To date, successive UK Governments have refused to incorporate the Convention.
- England is lagging well behind Scotland and Wales on incorporation of the CRC.
- On 1st September 2020, the First Minister announced that the Scottish Government would "shortly introduce" the UNCRC Incorporation (Scotland) Bill. It will incorporate the UNCRC into Scots law "fully and directly", to the maximum extent of the Scottish Parliament's powers and be passed before the end of the current parliamentary term.<sup>3</sup>
- In Wales the Rights of Children and Young Persons (Wales) Measure in 2011 placed a duty on Welsh Ministers to have due regard to the CRC.
- The UK Government needs to fully and directly incorporate the CRC so there is no discrepancy across the UK and the full breadth of children's rights in the CRC are enshrined in domestic law. This would ensure better policy making, which takes into account the CRC, and enable redress in the courts in the event of a child having their rights in the CRC breached.

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<sup>1</sup> For more info on the CRC see CRAE, Unicef, Equality and Human Rights Commission (2019) *How parliamentarians and civil servants can use the UN Convention on the Rights of the Child* [http://www.crae.org.uk/media/128597/crae\\_brief-for-parliamentarians-d.pdf](http://www.crae.org.uk/media/128597/crae_brief-for-parliamentarians-d.pdf)

<sup>2</sup> For example, UN Committee, General Comment No.5, General Measures of Implementation of the Convention on the Rights of the Child, 2003; and UN Committee, Concluding Observations on the UK State Party, 2008.

<sup>3</sup> <https://beta.parliament.scot/bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill>

## The steps England has taken to incorporate the CRC are not enough

- There is no consistent practice across the UK in when and how governments take children's rights into account when developing law and policy.
- Despite the Government's commitment to "give due consideration to the UNCRC articles when making new policy and legislation"<sup>4</sup>, assessment or scrutiny of the impacts of laws and policies on children's rights is largely absent which is very concerning.<sup>5</sup>
- The civil service training on children's rights launched in 2018 in England is a welcome step but it is not mandatory.<sup>6</sup>
- The child rights team within the Department for Education (DfE) has very limited capacity and authority and there is only very limited cross-departmental monitoring and implementation processes to ensure the training is embedded across Whitehall and Child Rights Impact Assessments (CRIAs) are conducted.

## Child Rights Impact Assessments (CRIAs)

- CRIAs help public authorities consider the impact of their policy or legislation on children's rights. When developing new policy or legislation they should consider, from the start, if this will have an impact on children's rights and if there is a negative impact on children's rights, take steps to mitigate them.
- CRIAs are recommended by the UN Committee to as a step towards incorporating the CRC.<sup>7</sup>
- The CRIA<sup>8</sup> template introduced in England in 2018 is welcome but there is no statutory requirement to carry out a CRIA despite similar requirements in Wales and Scotland.<sup>9</sup>
- Very few CRIAs have been carried out in England since the template was published and one of these on the Adoption and Children (Coronavirus) (Amendment) Regulations,<sup>10</sup> was completed *after* Ministerial approval.

## Human Rights Act under threat through imminent independent review panel

- The Human Rights Act continues to be under threat following a Conservative manifesto commitment to 'update it'. The Government are due to announce an independent panel to review it, like the current Judicial Review panel, with speculation it will start its work this side of Christmas.<sup>11</sup>
- This is likely to weaken the HRA and could be very concerning for children's rights as this is currently the key legal remedy for human rights breaches affecting children.
- It is crucial that the HRA is fully protected and that any reforms only strengthen rights protections for children rather than weaken them.

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<sup>4</sup> Lord Agnew of Oulton, Parliamentary Under Secretary of State for the School System *Written Ministerial Statement for Universal Children's Day* (20 November 2018) HLWS1064 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2018-11-20/HLWS1064/>

<sup>5</sup> For example, calls by children's rights organisations for an amendment to the EU Withdrawal Bill to ensure that a CRIA would be carried out on future law and policy developments were rejected by the Government. Coram Children's Legal Centre, NSPCC, National Children's Bureau, Children England, The Children's Society, ECPAT UK (2017) *European Union (Withdrawal) Bill Briefing, Committee Stage, House of Commons, Protection and promotion of children's rights* <https://www.childrenslegalcentre.com/wp-content/uploads/2017/08/Committee-Stage-Briefing-Withdrawal-Bill-28HOC29-Children27s-Rights.pdf>

<sup>6</sup> Nadhim Zahawi MP, Parliamentary Under Secretary of State for Children and Families (20 November 2018) *Written Ministerial Statement for Universal Children's Day* HCWS1093 <https://questions-statements.parliament.uk/written-statements/detail/2018-11-20/HCWS1093>

<sup>7</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>8</sup> House of Lords written answer (15 May 2019) HL 15465 <https://questions-statements.parliament.uk/written-questions/detail/2019-05-01/HL15465#>

<sup>9</sup> The Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on Ministers to have due regard to children's rights as expressed in the UNCRC and to do this in a number of ways, including through CRIA. Part 1 of the Children and Young People (Scotland) Act 2014 requires all Scottish Ministers to give better or further effect to the requirements of the UNCRC; take account of the relevant views of children of which they are aware; promote public awareness and understanding of the rights of children and report every three years to the Scottish Parliament on what they have done to fulfil these duties.

<sup>10</sup> 'Child's rights impact assessment amendments to children's social care regulations during covid-19 outbreak' (15 April 2020) [http://gna.files.parliament.uk/gna-attachments/1198272/original/52285\\_Child's\\_Rights\\_Impact\\_Assessment.pdf](http://gna.files.parliament.uk/gna-attachments/1198272/original/52285_Child's_Rights_Impact_Assessment.pdf)

<sup>11</sup> Robert Buckland MP written answer 9 June 2020) HC147 <https://hansard.parliament.uk/commons/2020-06-09/debates/40290D6F-CF23-4CC6-8A7D-1B1FABCAF3D9/DepartmentalPrioritiesCovid-19Implications>

### Questions to the Government

- Can the Government set out its thoughts on incorporating the CRC into domestic legislation in the UK, including why it chooses not to follow Scotland?
- Can the Government explain why statutory obligations to systematically conduct CRIAs exists in Wales and Scotland but not in England?
- Can the Government reassure us that the independent review of the Human Rights Act will not weaken any protections for our human rights?

### Recommendations

- The UK Government should fully and directly incorporate the CRC so there is no discrepancy across the UK and the full breadth of children's rights in the CRC are enshrined in domestic law.
- The UK Government should introduce a statutory obligation on public authorities to conduct child rights impact assessments in all decision-making affecting children, including in budgetary decision-making.
- The Government should ensure that there is no weakening of the Human Rights Act and its protections through its review.

### About us

The Children's Rights Alliance for England (CRAE) works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child. CRAE fights for children's rights by listening to what children say, carrying out research to understand what children are going through and challenging those who violate children's rights. CRAE merged into Just for Kids Law in 2015. For more info visit: [www.crae.org.uk](http://www.crae.org.uk)

### Contact details

If you would like more information, please contact Natalie Williams, CRAE Policy and Public Affairs Manager, [NWilliams@crae.org.uk](mailto:NWilliams@crae.org.uk), 07890583511

For more information on how parliamentarians can use the CRC see: CRAE, Unicef, Equality and Human Rights Commission (2019) *How parliamentarians and civil servants can use the UN Convention on the Rights of the Child* [http://www.crae.org.uk/media/128597/crae\\_brief-for-parliamentarians-d.pdf](http://www.crae.org.uk/media/128597/crae_brief-for-parliamentarians-d.pdf)