



Comments by Save the Children UK on the Second Report to the UN Committee on the Rights of the Child by the United Kingdom 1999.

February 2002

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1.0 Introduction

Since the Government's Second UK report in 1999, **devolution of the government** in the UK has progressed further allowing for greater capacity to deliver for children and young people across the UK. While there remain three legal jurisdictions: England and Wales, Scotland, and Northern Ireland, there are now four governmental frameworks: Westminster, The Welsh Assembly, the Scottish Parliament, and the Northern Ireland Assembly. In this new context, alternative NGO reports to the UN Committee have been produced at the country level. Each of these reports was produced by a coalition of child rights based NGOs of which Save the Children was a member and, where possible, based on consultations with children and young people. The four alliances have also produced a joint report providing an overview of the common concerns across the UK. While Save the Children wholeheartedly supports these submissions, it was felt that in addition there was the need to highlight those policy areas that still function at a UK level and that continue to pose particular concerns.

In view of the structure of the Government's Second UK report, we have chosen to respond by highlighting particular themes making reference to the still relevant concerns highlighted in the observations made in 1995 by the Committee on the Rights of the Child on the Government's First UK Report. While this paper is based on Save the Children's experience of working with children across the UK, the issues raised in this paper are in no way comprehensive. For more detailed information on the situation for child rights in the devolved administrations please read the reports submitted by the relevant child right alliances from each of the countries concerned.¹

2.0 Summary of Save the Children's main concerns

Overall the Government's Second Report does not make explicit links to the UNCRC, which would seem to reflect a corresponding absence of any coherent focus on UNCRC in public policy. While we welcome progress made by the UK and devolved governments since the Second Report, we have a number of concerns at the UK level which we highlight in this report under the following headings: **general measures of implementation; general principles; civil rights and freedoms; basic health and welfare; and special protection measures**

3.0 General Measures of Implementation

3.1 Lack of clear vision for UK approach to children's rights

The lack of clear vision for a consistent UK approach to children's rights is evident in the Report. The Report does not systematically refer to the general principles of the Convention – articles 2, 3, 6 and 12 - in the main body of the text nor does it address the civil rights of children. The Report ultimately reflects an approach to children, which emphasises welfare rather than rights. Although examples of improvements in child welfare are noted in the report and some progress has since been made, this approach is not a substitute. The piecemeal approach in the report reflects a lack of coherence at that time and in itself offers no possibility of a measured critique of the Government's overall strategy.

¹ **England:** Christine Pandrich (ed), *Children's Views of the UNCRC*, Save the Children UK, June 1999; Children's Rights Alliance for England "The UK Government's second Report to the Committee on the Rights of the Child, 1999 – A commentary from CRAE November 1999" in UNICEF *The UN Convention on the Rights of the Child*, February 2000; CRAE, *Report to the Pre-Sessional Working Group Committee on the Rights of the Child -England*, 2002. **Northern Ireland:** Children's Law Centre and Save the Children, *Getting it Right? The State of Children's Rights in Northern Ireland at the end of the 20th Century*, 1999; Children's Law Centre and Save the Children, *Submission to the UN Committee on the Rights of the Child for consideration during the Committee's scrutiny of the UK Governments report*, January 2002. **Scotland:** Colin Morrison and Cathy McCulloch, *The NGO Alternative Report (Scotland) to the UN Committee on the Rights of the Child*, Scottish Alliance for Children's Rights, Summer 2000; Save the Children, *Our Lives*, Scottish Office, 1999. **Wales:** Save the Children and Children in Wales, *The Wales Alternative Report for the Committee on the Rights of the Child*, 2002.

Since this report, however, there have been a number of important developments across the UK. In **England**, the Government established a new Cabinet Committee on Children and Young People's Services, a **Children and Young People's Unit** (CYPU) and a Minister for Young People. The CYPU has recently published a consultation document "Building a Strategy for Children and Young People" (December 2001), which proposes that the Unit publish a regular State of the Nation's Children and Young People's report. It has also published "Learning to Listen - Core Principles for the Involvement of Children and Young people" (November 2001). While these signal an important step forward they relate only to England and although the UNCRC is referred to in the consultation document, it does not form the basis of the strategy's framework.

In **Wales** we have seen significant progress in that the Welsh Assembly has now appointed a **Children's Commissioner** and more recently issued the consultation document '*Children and Young People - a Framework for Partnership*' (September 2001). This, together with 'the report 'Extending Entitlement - Supporting Young People in Wales', stresses the participation of children and young people in decision making at all levels. The UK Government has indicated that it will monitor progress in Wales and keep the question of a similar Children's Commissioner office for England under review. **Scotland** is considering proposals for a Children's Commissioner and has a Minister for Education and Young People. The **Northern Ireland** Assembly has plans to appoint a Commissioner for Children and will be developing a Children's Strategy. The Assembly has also set up a Children and Young People's Unit which sits in the Office of the First and Deputy First Minister.

In the context of devolution, mechanisms for child participation in policy development are most effectively implemented at the devolved level. However, in order that devolved policies affecting children are consistent across the UK the four administrations in the UK need to liaise with each other and establish links for sharing examples of good practice. This is particularly important for **monitoring** progress vis-à-vis child rights in the UK. We welcome the Government's inclusion of child specific indicators in their recent development of 'Opportunity for All' indicators, which, aimed at measuring progress in tackling poverty and social exclusion are published annually in two reports. In addition to this, there is also the need for each of the devolved administrations to monitor child rights at the country level. In the absence of any common framework across the four countries, however, and with the existence of a Children's Ombudsman/ Commissioner in only some and not all devolved administrations, there are still not mechanisms established for monitoring and publishing information on the impact of all government policies on children across the UK.

General Measures of Implementation: Recommendations

- Governments in the UK should establish a Children's Rights Commissioner in England, Scotland and Northern Ireland to act as an independent watchdog and champion for children. These offices along with the Children's Commissioner in Wales should be able to legally and publicly monitor and report on any matter affecting the rights and welfare of children across the UK.
- As proposed in its consultation document, the CYPU in England should prepare and publish an annual report on *The State of Children in England* monitoring implementation of government policy. The devolved administrations should also prepare and publish an annual report on *The State of Children* in the respective countries. The CYPU and the devolved administrations should work together to produce a report on *The State of Children in the UK*, which could include consideration of the impact of reserved policy areas, such as asylum, tax and benefits across the UK.
- The UK Government should liaise closely with the devolved administrations for Wales, Northern Ireland and Scotland when non-devolved policy affecting UK children is developed and determined in Westminster.

- The Government should address the lack of consideration given to Welsh children in the development of primary legislation by the UK Government by ensuring that the Secretary of State for Wales is a member of the Cabinet Committee on Children and Young People.
- Government in Westminster should more actively involve devolved governments in any reporting mechanisms to UN bodies.

4.0 General Principles

4.1 The participation of children and young people

Children and young people up to the age of 18 years are formally disenfranchised across the UK. It is therefore all the more regrettable that children are rarely given the fundamental democratic right to appropriate participation in decision-making by institutions and systems, which affect them. There is no discussion in the Government's Second Report of a systematic approach to the participation of children and young people in all matters affecting them in any of the four devolved administrations. This lack of any acknowledged commitment to involve children and young people where appropriate, reflected in the low priority accorded to Article 12, is one of the greatest shortcomings of the Report.

However, since this Report there has been much policy development in this area, across all the devolved administrations. Although sporadic, the number of **consultations with children and young people by governments** across the UK is increasing. In **Scotland**, for example, a Scottish Youth Parliament, targeted at 14-25 year olds, has been recently set up and aims to involve young people in the democratic process. As part of its wider Action Programme for Youth the Scottish Executive commissioned a toolkit for professionals, such as community workers, teachers, youth workers, and policymakers such as civil servants and politicians on how to consult effectively with children of all ages.² The Scottish Executive has also commissioned and carried out direct consultation with children and young people on a range of policy areas. In turn the Scottish Parliament has taken evidence from young people and involved them in civic consultation events on a number of occasions.

In **Wales**, we have seen the establishment of a national youth forum called 'Llais Ifanc'. Managed by young people themselves, its main function is to provide a mechanism whereby children and young people can influence government policy and service development in Wales. The forum is currently developing guidelines on effective consultation with children and young people for use by professionals.

In **Northern Ireland**, the Committee set up to examine and report on functions carried out in the Office of the First Minister and Deputy First Minister met in June 2001 to discuss the issue of a Commissioner for Children in Northern Ireland.³ It made a number of recommendations, some of which focused specifically on the issue of consulting children and young people. It recommended that the Commissioner for Children: should have a duty to create and promote new and innovative opportunities for young people to make their views heard; should work to improve the means of communication with children and young people; and should consider supporting the establishment of a children's forum to relate to the work of the office of the Commissioner. This is in the context of the Equality Provision (Section 75) of the 1998 Northern Ireland Act, which places a statutory obligation on designated public

² Save the Children, *Re:action consultation toolkit - a practical toolkit for consulting with children and young people on policy issue*, Save the Children, 2001.

³ Committee Of The Centre Report Into The Proposal To Appoint A Commissioner For Children For Northern Ireland Volume 1 —Report and the Minutes of Evidence Relating To The Report Ordered by The Committee of the Centre to be printed 4 June 2001 Report: 2/00 R (Committee of the Centre)

authorities to promote equality of opportunity and good relations. The duty to promote equality of opportunity extends to a number of new categories including age. Public authorities therefore are now required to consult with children and young people

In **England**, the UK Government recently announced its commitment to establishing mechanisms for youth participation in its consultation document "Building a Strategy for Children and Young People" (December 2001) and in its report "Learning to Listen -Core Principles for the Involvement of Children and Young people" (November 2001). In addition to this, the Government has set up a new Young People's Advisory Forum made up of young people aged 10-17 years to advise the Minister for Young People direct. An attempt at creating a forum for children and young people from across the **UK** to input into government policy can be seen in the establishment of the UK Youth Parliament. For the first time a Youth Manifesto for the UK was published in Spring 2001.

A higher number of consultations are carried out by **local authorities**, but with important exceptions. For example, while there exists a section devoted to participation in the new Code of Practice for Children with Special Educational Needs, research shows that many health, education, leisure, and social services fail to consult adequately with **disabled children**.⁴ An increasing number of guidelines are now being produced aimed at directly addressing this. For example, Save the Children's *Learning to Listen: Consulting children and young people with disabilities*, 2001.

Another example is the lack of participation of children in **community planning** as discussed in Save the Children's *Children and Community Regeneration: Creating Healthier Environments* (2001). Children and young people also rarely have a role in the running of services. For example with respect to the participation of young care leavers in **England**, Save the Children worked with Hull City Council and the Warren Community Centre to survey the experiences of local young people. The demand for involvement by young people individually and collectively in decisions and procedures affecting their lives was one of their main findings.⁵

With the exception of Scotland, the **education** context provides a particularly striking example of the poor implementation of participatory mechanisms.⁶ In **England**, **Northern Ireland** and **Wales**, children and young people are routinely not consulted on a range of policies such as behavioural policy, homework, home-school contracts, and pupil attendance. There is a particular need to consult with groups of children and young people who are disproportionately affected by truancy and exclusion. We therefore welcome recent proposals to encourage participation of young people in school by the UK Government and the Welsh Assembly in their respective White Papers on education. We also welcome the recent moves in **England** and **Northern Ireland** towards citizenship education, in which the respective governments see participation as integral. Indeed, there is a wealth of good practice with respect to participation in many schools throughout the UK. School councils are one example as noted in the Government's Second Report. However, it is important to note that the Government does not collate statistics on the numbers of school councils and that they do differ greatly in quality from one school to another.

In **England**, **Northern Ireland** and **Wales**, children also continue to be denied the legal right to appeal against **school exclusion**. Although the Report states that in respect of England and Wales, for older children it may be appropriate for the child to address the relevant committee and appeal panel about his or her exclusion, it can

⁴ Joseph Rowntree Foundation, *Consulting with disabled and young children*, Research Findings, July 2001; *Can You Hear Us?* A report published by Save the Children and Bolton Metro Social Services promotes the view that young disabled people can, with support, participate in decisions affecting their lives, such as school reviews, and in consultation on strategic issues, for instance by providing delegates to local Joint Planning Teams.

⁵ Save the Children, *All Together Now* (1997)

⁶ The Standards in Scotland Schools Bill (2000) ensures that young people are consulted in the development of school plans.

only be done with the agreement of all the parties involved. Ultimately it remains that the right to be heard rests with the parent or guardian rather than the child, which does not comply with the spirit or letter of the UNCRC Article 12 and 3.1.

General Principles: Recommendations

- Each of the devolved administrations should continue to implement new, sustainable and flexible mechanisms for consulting with young people across the respective departments, which ensure the participation of *all* children.
- The devolved administrations should place special emphasis on establishing mechanisms for systematically consulting children on issues affecting them in the school context. As part of this statutory regulations on pupil participation within schools should be issued to all schools, containing clear guidelines on creating democratic schools and examples of best practice.
- Each of the devolved administrations for education should ensure that all education policies and consultations are produced in child-friendly formats and are fully consulted upon with children and young people.
- Pupils in England, Northern Ireland and Wales should be given the statutory right to make representations in the school exclusion process, to attend an exclusion hearing and to appeal against a decision to exclude

5.0 Civil Rights and Freedoms

5.1 Physical punishment

The Committee in 1995 noted its concern with the national legal provision in the UK that deals with "reasonable chastisement" within the family. It stated that legislative and other measures relating to the physical integrity of children were not compatible with the provision and principles of the Convention, including articles 3, 19 and 37. In 1998, the European Court of Human Rights in Strasbourg in *A v UK*⁷ ruled that UK law had failed to protect a 9-year-old boy who had been beaten by his step-father from "inhuman or degrading treatment" in contravention of Article 3 of the European Convention of Human Rights.

In response to this ruling and since the 1994 Report, the UK Government accepted that the law needed to be reviewed. Consultations by the devolved administrations on whether to and if so how to change the law regarding physical punishment of children were therefore carried out in 2000 and 2001 in England, Northern Ireland, Scotland and Wales. From the outset, all consultations, except Northern Ireland, stated that the making of *all* physical punishment and other forms of physical rebuke unlawful was not an option to be considered. The consultations only called for 'consideration to be made to the age of the child.' The governments' main concern therefore was with the question of when physical punishment of children *is* acceptable.

Scotland completed its consultation in September 2001 with the Scottish Executive announcement of a number of important proposals aimed at addressing physical punishment. It has proposed to make illegal the physical punishment of children under the age of three. It has also proposed that it will be illegal to hit on the head, shake or strike with an implement, children under the age of 16. Under the Scottish proposals it will also be illegal for child minders and childcare centres to administer corporal punishment. The proposals are to be included in the new Criminal Justice Bill to be introduced to Scottish Parliament in 2002.

⁷ *A v UK*, judgement of 23 September 1998, Reports 1998-VI, no. 90

For **England** and **Wales**, the Government response to the consultation was quite different. The Department of Health stated that the Government does not propose to make any changes in the law, instead noting that with the coming into force of the Human Rights Act courts are now obliged to take account of the judgement in the case of *A v UK*. However, since the entering into force of the Human Rights Act, UK courts have continued to acquit parents who hit children causing bruising and other injuries. The Government states that it will keep "under review" the use of the "reasonable chastisement" defence.

The Government failed to consult children and young people during the consultation process for **England** and failed to consider the views of children and young people submitted by Save the Children. The Government has only recently allowed public access to the responses. In **Wales**, Save the Children identified a number of flaws in the government's analysis, such as undue weight being given to individual over organisational responses (most individuals were pro-smacking).

Although **Wales** is dependent on the UK government for legal reform on physical punishment in the home, the Welsh Assembly has the power to legislate on physical punishment in respect of child-minding and day care. In 2001, both the Assembly and the UK Government issued draft regulations and standards for consultation, which included a ban on childminders smacking, shaking, humiliating or shaming children. At the time of writing, it was not yet clear whether this would be enshrined in law. The law on physical punishment in non-family placements in England still allows for childminders to use physical punishment on the children in their care with the consent of parents.

The consultation period for physical punishment in **Northern Ireland** is due to close at the end of January 2002. At the time of writing the results had not yet been published. It is important to note, however, that the consultation document is much broader than those issued for England, Wales and Scotland. It asks not only about legal reform but also what constitutes effective discipline and also actively seeks to consult children and young people.

While we welcome the recent proposals by the Scottish government for a partial ban as a move in the right direction, Save the Children believes that the Strasbourg ruling must lead to the ending of *all* physical punishment for children up to the age of 18 across the UK. This would need to be complemented by a wide availability of support for parents. This could take the form of resources such as training packs and parenting booklets and access to advice, groups and courses offering practical support to parents. These need to be matched by government led public education and awareness campaigns on positive alternatives to physical punishment

Civil Rights and Freedoms: Recommendations

- The UK Government should bring forward legislation to remove the defence of 'reasonable chastisement' and outlaw all physical punishment of children.
- The UK Government should lead with an adequately resourced, national public education campaign on alternative, non-violent discipline methods.
- The Scottish Parliament should extend the proposals in the Criminal Justice Bill to all children under the age of 18. The Scottish Executive's developing Parenting Strategy should also ensure adequate support for parents.
- The Welsh Assembly should enshrine in law the standards proposed for childminding and day care, followed by similar legal protection enshrined by the Parliaments and Assemblies protecting children in Scotland, Northern Ireland and England
- The Northern Ireland Assembly should legislate to remove the defence of reasonable chastisement and should develop and implement a comprehensive education and support programme which promotes positive, non-violent methods for disciplining children.

- The views of children and young people should be taken into consideration when developing the legislation on physical punishment in Scotland, as well as in all aspects of Government activity on physical punishment in the four UK countries.

6.0 Basic Health and Welfare

6.1 Children living in poverty

Child poverty is a complex policy area in the UK, with key powers such as tax and benefits reserved at Westminster, while others (such as regeneration and social services) are the responsibility of the devolved administrations.

According to the UNICEF Innocenti Research Centre, the **UK has the second highest child poverty rate in Europe**. Moreover, while other European countries' child poverty rates have gone down or steadied, child poverty in the UK has nearly tripled (from 10% to 26%) over the last twenty years.⁸ DSS figures for 1998/1999, showed that one in three (4.5 million) children in the UK were in poverty (living in households with an income below half the national average) compared to 1 in 10 in 1979. The figures vary by region and by ethnic group, and the impact of unemployment and lone parenthood has been severe. Yet, the issue of child poverty was not addressed directly in the Government's Second Report to the UN Committee on the Rights of the Child. This is a serious omission.

Since the 1999 Second Report the Government has announced plans to eradicate child poverty by 2020 and to halve it within 10 years. There has already been significant progress, with early evidence suggesting that child poverty (measured as children living on less than half the average income) may be halved within 5 years rather than 10. Nevertheless, much more needs to be done. Even halving child poverty in 10 years will still leave child poverty higher than most industrial countries and higher than in 1979.

The Government's **poverty eradication strategy** has four key strands: helping to ensure a decent family income; delivering excellent public services; support for parents - so that parents can provide better support for their children; and harnessing the power and expertise of the voluntary and community sectors. There has also been an increase in universal Child Benefit and a significant increase in Income Support for families with children. Independent research shows that the Government's tax and benefit measures announced in the last Parliament will help to lift 1.2 million children out of relative poverty. However, such policies so far concentrate on families nearest the poverty threshold with less of an emphasis on children in families living in severe and long-term poverty. The overall results of the UK Government's drive to end child poverty have therefore been at best mixed. As research by Bradshaw shows:⁹

- those who are lifted out of poverty are in families nearest the poverty line and in families that are able to participate in the labour market
- up to 50% of children who remain poor are in families where adults are not able to work
- 340,000 children in the poorest 10% of households are actually worse off since the changes of the last two years
- 10,000 children from lone parent families moved into poverty, due to the abolition of lone parent benefit.

⁸ UNICEF (2000), *A League Table of Child Poverty in Rich Nations*, Innocenti Report Card No.1, Innocenti Research Centre, Florence; Hill and Jenkins (1999) *Poverty amongst British children: chronic or transitory?* Working Paper 99-23, ESRC Research Centre on Micro-Social Change.

⁹ Bradshaw, J. (2001) *Child Poverty Under Labour*, in Fimister, G. (ed) *Tackling child poverty in the UK: an end in sight?* London: Child Poverty Action Group

In addition to this, while we welcome the impetus for eradicating child poverty, it has resulted in a plethora of initiatives that do not necessarily form a coherent whole. In England alone there have been a vast number of initiatives since 1999 such as the Children and Young People's Unit, the Social Exclusion Unit, Health and Education Action Zones, Sure Start, and the National Childcare Strategy. While such initiatives are clearly important, they are difficult to evaluate separately and there is concern that they may be based on the displacement of funding from other initiatives rather than on new funding.

With respect to articles 4 and 27 of the Convention, Save the Children is also concerned about the lack of measures taken to ensure the implementation of economic, social and cultural rights to the maximum extent of available resources. For example, the cutting of income tax by 1p could have been used instead to lift a further 695,000 children out of poverty. Similarly, the Government's cutting of benefits for lone parents potentially has direct implications for further entrenching child poverty.

Save the Children believes that additional support during a child's early years is the key to tackling child poverty. It is therefore urging the Government to consider increasing financial support for families with children aged three years and under. From 2003 the Government is introducing a Child Tax Credit, which is a new tax credit targeting families with children. Save the Children believes that the success of the new credit should be measured by whether or not the system is able to provide all children with an adequate standard of living including those in workless households. Present benefit rates (Income Support) do not do this. Research shows that Income Support is set at only 72 per cent of the poverty level (based on 50 per cent of mean average earnings, after housing costs) for a two-child couple and would need to rise by £62, or 38 per cent merely to reach the poverty line.

With respect to older children, we welcome the provisions of the Children (Leaving Care) Act 2000 (applicable in England and Wales) which emphasises 'safeguarding the wellbeing of young people' and the need to develop 'a detailed plan for education or training.' However, Save the Children remains concerned about inadequate welfare provision for the many **16-17 year olds** in England who cannot live with their families and are not in the care of statutory authorities. Despite the recent community based initiative in England, "Neighbourhood Support Fund", which aims to target those 13-19 year olds who have dropped out or are at risk of dropping out of education, training and/or work, many 16-17 year olds in this part of the UK are still being denied their basic human right to survival and development. For example:

- Many young people leaving care (aged 16-19) suffer from inconsistent leaving care grants; these differ across the UK.
- 16 and 17 year olds do not have the same benefit entitlements as young people aged 18 years and above.
- The New Deal for young people caters only for the 18-24 age group, thus excluding those 16-17 year olds who are unemployed. Programmes designed specially for this age group have instead been developed, such as Learning Gateway and Modern Apprenticeships.
- Under 18 year olds are not guaranteed the minimum wage afforded to adults.

Basic Health and Welfare: Recommendations

- The UK Government should increase Income Support for families with children in order to meet the needs of those not in work due to factors such as long term illness or disability.
- The UK and devolved governments need to target additional support to those children and young people who are in severe and persistent poverty, including 16-17 year olds and children of lone parents.
- The UK Government should set the Child Tax Credit at a level sufficient to lift the poorest children out of poverty, based on a minimum income standard.

- The UK and devolved governments need to ensure consistency among the various anti-poverty initiatives within and between countries.
- The UK and devolved governments need to ensure that children's direct experience and views of poverty are placed at the heart of strategies to tackle the problems of child poverty.

7.0 Special Protection Measures

7.1 Rights of refugee and asylum seeking children

- In the UK, there are approximately 6,000 asylum seeking children aged under 18 without parents or guardians. In March 2001, there were over 4,000 unaccompanied asylum seeking children in London alone.
- Children arriving in England alone (including those later dispersed to Scotland) often do not receive the full needs assessment that other children do.
- Even in those cases where young unaccompanied asylum seekers are identified by Social Services as being "in need", they do not get the same care routinely offered to other children "in need" and to which they are entitled under the Children Act 1989 and Children (Scotland) Act 1995. Many aged 16 years and above are placed in unsupported bed and breakfast accommodation as local authorities lack appropriate alternatives and adequate resources.
- Despite the Government's claim that asylum seeking children are not detained except in those cases when it is absolutely necessary, in practice there are documented case studies of asylum seeking children including those who are unaccompanied who are detained.

Save the Children welcomes the Government's Refugee Inclusiveness Strategy (announced in November 2000) aimed at improving access to education, employment and health services and the recognition that refugees bring enormous benefits to society. Save the Children wants the principle to be extended to children seeking asylum both accompanied and unaccompanied so that their needs are addressed from their arrival in the UK.

However, the UK Government's **Reservation to the UNCRC** relating to the application of the Nationality and Immigration Act clearly is not compatible with the General Principles and provisions of the Convention. In its Second Report, the UK Government states that the position on Immigration and Citizenship has not changed and that the reasons for needing to retain this reservation continue.

According to QC Nicholas Blake, the Reservation, insofar as it is seeking to exclude children who are not given leave to enter the UK from the substantive scope of UNCRC, is incompatible with the UNCRC's purpose which is to protect all children. The Reservation deters judicial investigation into whether treatment of separated children is implementing the best interest principle. It also prevents the UNCRC from playing a role in the building of ECHR case law and also in social and legal policy relating to young asylum seekers. According to this legal opinion the removal of this reservation would **not** interfere with UK government immigration policy and that the detention of refugee children, their dispersal and the lack of appropriate care for looked-after children is a fundamental abuse of their human rights.¹⁰

The situation for **young unaccompanied asylum seekers** or refugees is particularly severe. As noted in the Government's 1999 Report, the numbers of unaccompanied children seeking asylum in the UK increased considerably between 1994 and 1998.

¹⁰ QC Nicholas Blake, Matrix Chambers, *Legal Opinion on the Reservation to the UNCRC*, Save the Children UK, launched at Westminster 4.12.01.

This number has continued to rise and now stands at about 6,000. However, official figures do not include a wide range of separated children such as those who may have travelled with a relative but on arrival become separated, those who have been trafficked for exploitation or who have come from conditions of severe poverty. Research carried out with nearly 150 young separated asylum seekers and refugees in **England** by Save the Children shows that service provision across local authorities is at best inconsistent with examples presented of both good and poor practice.¹¹ This is mirrored to some extent in **Wales**, where lack of or inappropriate service provision is particularly acute in rural areas. The England research calls for a commitment to non-discrimination that is applied consistently to all refugee children - under and over 16 years old, unaccompanied and accompanied. The report highlights a number of issues raised by the young people which include:

- Many young refugees, especially 16- and 17- year olds, are not able to access formal education and gain the crucial competence in English language that they need to help them participate in community life.
- Many aged 16 years and above are placed in unsupported bed and breakfast accommodation and some are exposed to child protection risks as a result of a lack of assessment and monitoring of adults living with minors in shared housing.
- Access to services and adult support is especially problematic for young refugees who are placed at considerable distance from the local authority with responsibility for them and whose care and accommodation is contracted out to private providers.

A joint publication by Save the Children and the Refugee Council, **Separated Children in the UK: An overview of the current situation** by Wendy Ayotte and Louise Williamson (2001) also draws attention to a number of concerns, which include:

- The lack of any guidelines on the application of the refugee definition to separated children
- Children with refugee status and exceptional leave to remain have no clear entitlements to family reunification.
- Many separated children are being effectively excluded from formal education due to dispersal, difficulties with accommodation and out-of-borough placements.
- Smuggled children are victims of exploitation and are not provided with access to the asylum process.

One key area of discrimination for this group of children remains the **compulsory dispersal** at 18 years of those young unaccompanied asylum seekers who have been supported by local authorities under Section 17 of the Children (Leaving Care) Act 1989. Save the Children is deeply concerned that these vulnerable young people are being forced to leave behind the support and contacts that they have built up since the time of arrival. Education and training may be disrupted and set back, and the young person may be sent far from the only friends and support networks they have. A report produced by Save the Children in Scotland also provides examples of the racism and discrimination that many refugee children and young people who have been dispersed face.¹² The dispersal of unaccompanied asylum seeking children at 18 years gives rise to genuine concerns that the requirements of asylum legislation are being put before the rights, needs and interests of a particularly vulnerable group of young people.

Another major area of concern is the **voucher system**, which was introduced by the Immigration and Asylum Act 1999 and which has also been the subject of a recent review. Although not applicable to young unaccompanied asylum seekers, it does have direct implications for children within families. An asylum seeking family with two children on vouchers receives just 76% of Income Support levels (90% if supported in

¹¹ Kate Stanley, *Cold Comfort: Young Separated Refugees in England*, Save the Children UK with funding from The Diana, Princess of Wales Memorial Fund, 2001.

¹² Save the Children, *We did not come here for fun*, Save the Children (Scotland), 2000

NASS accommodation). A lone parent with one child under 16 years on vouchers receives only two-thirds of Income Support levels. The value of vouchers is reduced further by the fact that shops still cannot give change. The Government recently announced that vouchers will be phased out and in the meantime increased in line with Income Support. The Government also plans to increase the cash element of support.

The Government also announced the setting up of **accommodation centres** to house asylum seekers, full details of which are due to be published in February 2002.

***Special protection measures - Rights of Refugee and Asylum seeking children:
Recommendations***

- The UK Government should withdraw its reservation to the UNCRC, and review compliance of all immigration and asylum law with Convention principles.
- The UK and devolved governments should take a lead in promulgating positive and accurate images of asylum seekers and fostering a positive climate of debate in respect of asylum issues.
- The UK and devolved governments should ensure that in respect of both policy and practice the best interests principle in Article 2 of the UNCRC applies to all asylum seeking children.
- The UK Government should guarantee that unaccompanied asylum seeking children turning 18 receive equal treatment to other young people who have been the responsibility of a local authority.
- While the voucher system is being phased out, the UK Government should raise the value of vouchers to full Income Support levels.
- In the development of support systems for asylum seekers, the Government should ensure that the best interests of the child are the overriding consideration in all policy decisions that affect children seeking asylum.

7.2 Children belonging to a minority group: Rights of children and young people in Gypsy and Traveller communities

Only limited information is provided in the Government's Second Report on the situation of Gypsy and Traveller communities. Although it makes some claims in terms of increased numbers of authorised sites, it fails to mention the specific impact of policies on this minority. The nomadic lifestyle of many Gypsies and Travellers is currently not recognised as legitimate or valid. In **Northern Ireland**, the Race Relations NI Order 1996 prohibits racial discrimination in employment, education, and in service provision and unlike the Race Relations Act 1976, it specifically includes Travellers. Clearly the implementation of the new equality obligations under Section 75 of the Northern Ireland Act 1998 should have some impact but it remains to be seen. Travellers in Northern Ireland still do not receive adequate education, accommodation or health provision.

In **England, Wales and Scotland**, the 1994 Criminal Justice and Public Order Act has in many cases seriously worsened the situation for Traveller families and children. It removes the obligation on local authorities in England and Wales to provide sites, and increases police powers against unauthorised stopping in England, Wales and Scotland. The accommodation needs of Gypsy and Traveller families are in effect being treated as a public order issue.

In view of the key principles of the Convention and more specifically articles 2, 16, 28, and 30, Save the Children believes that Gypsy/Traveller children in families facing eviction are being denied their basic human rights. These include the right to enjoy

their own culture, the right to protection from interference with privacy, family and home and the right to basic healthcare. Gypsy/Traveller children are also being hindered from enjoying their right to an **education**. A law that allows the eviction of Gypsy and Traveller communities from sites impacts dramatically on the degree to which children and young people can put into practice their right to formal education.

There is also a significant **lack of available data** on the numbers of Gypsy/Travellers attending schools. In **Wales**, for example, research commissioned by Save the Children UK found that Welsh Office and Local Authority statistics on Traveller children represented only about half of the actual number of Traveller children living in Wales and that procedures for monitoring acceptance rates of Traveller children into local schools throughout Wales were patchy and inadequate.¹³

Gypsy/Traveller children throughout the UK are not receiving the **formal schooling** they should be. Although responsibility for education rests with the devolved administrations, it is possible to make a number of observations relevant to all four countries.¹⁴ Discrimination and prejudice is common and has led to low-attendance levels as well as poor communication between schools and Gypsy/Traveller parents. Some Local Education Authorities in England and schools across the UK have attempted to foster 'good practice' models to encourage and improve Gypsy/Traveller attendance and results. For example, distance learning and the maintaining of Gypsy/Traveller pupils on school registers whilst seasonally travelling. Likewise, some pre-school activities aimed at Gypsy/Traveller children have been developed both on and off sites but this is largely run by NGOs and is found only in certain parts of the UK. Participation of Gypsy/Travellers in further and higher education remains low.

As for future developments regarding accommodation and education issues across the UK, it is anticipated that The Human Rights Act, 1998, which has now entered into force across the UK, and in particular Article 8, will have major positive repercussions for cases involving the eviction of Gypsy and Traveller families.

Special Protection Measure - Rights of children and young people in Gypsy and Traveller communities: Recommendations

- With the entering into force of the Human Rights Act (1998), the UK and devolved governments need to review policy and practice affecting Gypsies/Travellers across the UK, particularly in terms of any detrimental impact they may have on their access to formal education.

7.3 Children in the Armed Forces

Young people in the United Kingdom can join the British Army from the age of 16 $\frac{3}{4}$ years. Although the UK Government has signed the Optional Protocol to the UN Convention on the Rights of the Child on Involvement of Children in Armed Conflict (September 2000) they have done so with an **interpretative declaration**. This declaration makes it very difficult for the British Army to ensure that young people under the age of 18 do not participate in hostilities or conflict. This declaration will continue to allow the UK Government under certain circumstances to deploy under 18 recruits in operations.

According to a report by the Coalition to Stop the Use of Child Soldiers (2001),

¹³ Laura Morgan and Edward Melhuish, *Traveller Children and Educational Need in Wales*, School of Education, University of Cardiff and Save the Children, October 1998.

¹⁴ For further information see the UK chapter in Save the Children *Denied a Future? The Right to Education of Roma/Gypsy and Traveller Children in Europe*, October 2001 available on: http://www.savethechildren.org.uk/development/reg_pub/index.htm

"Within Europe, the UK has the lowest minimum age for recruitment, the highest recruitment of under-18s into the regular armed forces and the lowest deployment age. The UK is also the only European country to send minors routinely into battle."

According to the Ministry of Defence there are currently 5,500 serving members of the armed forces under the age of 18. As the army finds it increasingly difficult to recruit older people, moves to recruit 16 and 17 year olds are likely to increase.

Article 17 guarantees that young people have a **right to appropriate information**. However, when presented with the career option of joining the armed forces young people are often not provided with enough information to make fully informed choices. This has been particularly noted in **Northern Ireland**, where the use of incentives such as holidays, money, driving instruction and career training often persuades young people to join. This is particularly the case with early school leavers whose career options may otherwise be limited.¹⁵

With reference to articles 3, 6, 17 and 32 of the Convention, we believe that the UK Government should fulfil its obligation of preventing the participation of under 18s in armed conflict. Further to this the UK armed forces must ensure that any member under the age of eighteen has the right to resign from military service at any time before their 18th birthday without fear of penalty.

***Special Protection Measures - Children in Armed Forces:
Recommendations***

- The UK government should bring forward legislation to ratify the Optional Protocol to the UN Convention on the Rights of the Child on Involvement of Children in Armed Conflict without any form of exemptions, declarations or reservations. In particular, it should review the 'interpretative declaration' on child soldiers in light of mounting evidence that it runs contrary to the UNCRC.

8.0 Conclusions and recommendations

There clearly has been some progress made by the UK and devolved governments since 1994, particularly in terms of introducing mechanisms for children's participation, beginning to address child poverty, and reviewing support arrangements and application procedures for asylum seekers. Save the Children UK would emphasise the need to build on this. There are clearly some policy issues that remain particularly problematic both at the country and UK levels including the reservations to the UNCRC that are still in place, physical punishment and Gypsy/Traveller children.

The evidence drawn on in this paper together with the more detailed country level child rights coalition reports submitted separately demonstrate that the Government in the Second Report does not take a rights based approach nor does it adequately reflect the concerns expressed in the UN Committee's observations in 1995. Instead it is more concerned with documenting governmental policy rather than child rights. New policies that have been implemented since the Second Report and highlighted in this paper, however, suggest that governments across the UK are beginning to take some steps in addressing the rights of children.

¹⁵ This is based on a report produced by the WAVE Youth and 'Youth@clc' (Northern Ireland) for their submission to the UN General Assembly Special Session on Children, 2001.

As highlighted throughout this paper, Save the Children recommends to the UN Committee on the Rights of the Child that:

- Governments in the UK establish a **Children's Commissioner** in England, Scotland and Northern Ireland to act as an independent watchdog and champion for children. These offices along with the Children's Commissioner in Wales should be able to legally and publicly monitor and report on any matter affecting the rights and welfare of children across the UK.
- As proposed in its consultation document, the CYPU in England prepares and publishes an annual report on *The State of Children in England* monitoring implementation of government policy. The devolved administrations should also prepare and publish an annual report on *The State of Children* in the respective countries. The CYPU and the devolved administrations should work together to produce a report on ***The State of Children in the UK***, which could include consideration of the impact of reserved policy areas, such as asylum, tax and benefits across the UK.
- The UK Government liaises closely with the devolved administrations for Wales, Northern Ireland and Scotland when **non-devolved policy affecting UK children** is developed and determined in Westminster.
- The UK Government addresses the lack of consideration given to Welsh children in the development of primary legislation by ensuring that the Secretary of State for Wales is a member of the **Cabinet Committee on Children and Young People**.
- Government in Westminster more actively involves devolved governments in any **reporting mechanisms** to UN bodies.
- Each of the devolved administrations implements new, sustainable and flexible mechanisms for **consulting with young people** across the respective departments, which ensure the participation of *all* children. In particular, new procedures and duties to consult with young people across Whitehall need to be implemented and monitored.
- The devolved administrations place special emphasis on establishing mechanisms for systematically **consulting children** on issues affecting them in the school context. As part of this statutory regulations on pupil participation within schools should be issued to all schools, containing clear guidelines on creating democratic schools and examples of best practice.
- Each of the devolved administrations for education ensure that all education policies and **consultations** are produced in child-friendly formats and are fully consulted upon with children and young people.
- Pupils in England, Northern Ireland and Wales are given the statutory right to make representations in the **school exclusion** process, to attend an exclusion hearing and to appeal against a decision to exclude.
- The UK Government brings forward legislation to remove the defence of 'reasonable chastisement' and outlaw all **physical punishment** of children.
- The UK Government leads with an adequately resourced, national public education campaign on alternative, **non-violent discipline methods**.
- With respect to **physical punishment**, the Scottish Parliament extends the proposals in the Criminal Justice Bill to all children under the age of 18. The Scottish Executive's developing Parenting Strategy should also ensure adequate support for parents.
- The Welsh Assembly enshrines in law the standards proposed for childminding and day care, followed by similar legal protection enshrined by the Parliaments and Assemblies **protecting children** in Scotland, Northern Ireland and England
- With respect to **physical punishment**, the Northern Ireland Assembly legislates to remove the defence of reasonable chastisement and should develop and implement a comprehensive education and support programme, which promotes positive, non-violent methods for disciplining children.

- The views of children and young people be taken into consideration when developing the legislation on **physical punishment** in Scotland, as well as in all aspects of Government activity on physical punishment in the four UK countries.
- The UK Government increase Income Support for families with children in order to meet the needs of **those not in work** due to factors such as long term illness or disability.
- The UK and devolved governments target additional support to those children and young people who are in **severe and persistent poverty**, including 16-17 year olds and children of lone parents.
- The UK Government set the Child Tax Credit at a level sufficient to lift the poorest children out of **poverty** based on a minimum income standard.
- The UK and devolved governments ensure consistency among the various anti-**poverty** initiatives within and between countries.
- The UK and devolved governments ensure that children's direct experience and views of **poverty** are placed at the heart of strategies to tackle the problems of child poverty.
- The UK Government withdraws its reservation to the UNCRC, and review compliance of all **immigration and asylum** law with Convention principles.
- The UK and devolved governments take a lead in promulgating positive and accurate images of **asylum seekers** and fostering a positive climate of debate in respect of asylum issues.
- The UK and devolved governments ensure that in respect of both policy and practice the best interests principle in Article 2 of the UNCRC applies to all **asylum seeking children**.
- The UK Government guarantees that **unaccompanied asylum seeking children** turning 18 receive equal treatment to other young people who have been the responsibility of a local authority.
- While the **voucher system** is being phased out, the UK Government raises the value of vouchers to full Income Support levels.
- In the development of **support systems for asylum seekers**, the Government should ensure that the best interests of the child are the overriding consideration in all policy decisions that affect children seeking asylum.
- With the entering into force of the Human Rights Act (1998), the UK and devolved governments review policy and practice affecting **Gypsies/Travellers** across the UK, particularly in terms of any detrimental impact they may have on the access to education of children in Gypsy/Traveller communities.
- The UK government bring forward legislation to ratify the UN CRC without any form of exemptions, declarations or reservations. In particular, it should review the 'interpretative declaration' on **child soldiers** in light of mounting evidence that it runs contrary to the UNCRC.