

Children's rights in Great Britain

—
Submission to the UN Committee on
the Rights of the Child

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Introduction

This submission aims to provide the UN Committee on the Rights of the Child (UN CRC) with information on the implementation of the rights set out in the Convention on the Rights of the Child (CRC)¹ in Great Britain since it was last reviewed by the UN CRC in 2016.²

We indicate where progress has been made and highlight the main concerns or challenges regarding the implementation of the CRC. Recognising the diversity of lived experiences, and the importance of equality and non-discrimination to the full realisation of all CRC rights, we have sought to include information about the experience of those sharing particular protected characteristics, including an analysis of multiple disadvantage, where evidence allowed.

Our aim is to encourage the UK and Welsh governments to use the CRC reporting process to continue to strengthen their efforts to assess progress and improve compliance with their human rights obligations. To this end, our report includes recommendations for the UN CRC to consider as part of its List of Issues Prior to Reporting.

The coronavirus (COVID-19) pandemic is having, and will continue to have, an unprecedented and profoundly negative impact on children. This is already evident across many different aspects of children's lives. In this submission we have identified, using the evidence that is available, some of the ways in which the pandemic has exacerbated existing issues and where it has led to new problems. The significance of the pandemic for children's rights is, however, continuing to evolve and is therefore not yet fully known.

¹ [Convention on the Rights of the Child](#) [accessed: 7 September 2020].

² [UN CRC, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5](#), 12 July 2016.

The role of the EHRC

The Equality and Human Rights Commission (EHRC) was established by the UK Parliament in the Equality Act 2006 as an independent body with a mandate covering both equality and human rights. Among other human rights responsibilities, the EHRC was tasked by the UK Parliament with 'encouraging good practice in relation to human rights'.³

The UK Parliament has also given the EHRC responsibilities to assess and report on the UK's progress in achieving the human rights in the treaties the UK has chosen to ratify, both within the European Convention on Human Rights and other international human rights treaties.⁴ The EHRC works with its colleague national human rights institutions (NHRIs) in the UK and with government departments and agencies to fulfil this role.

Devolution and geographic scope of this report

The UK comprises four countries: England, Scotland, Wales and Northern Ireland.

The UK Parliament has devolved various powers to the Scottish Parliament, the Welsh Parliament and the Northern Ireland Assembly, and it maintains responsibility for matters that have not been devolved (known as reserved matters) and for England. Responsibility for implementing the CRC therefore lies with the UK Government and the devolved governments.

In addition, there are three separate legal systems in the UK: England and Wales, Scotland, and Northern Ireland. The Supreme Court is the UK's highest court of law. It is the final court of appeal for all UK civil cases. It also decides 'devolution issues' about whether the devolved authorities in Scotland, Wales and Northern Ireland have acted, or propose to act, within their powers.

³ Section 9(1)(b) of the [Equality Act 2006](#).

⁴ *Ibid.*, Section 9(2).

This submission covers England and Wales for all the thematic areas, and Scotland for those issues that are reserved to the UK Parliament. The submission of the Children and Young People's Commissioner Scotland will cover Scotland in more detail and the submission of the Northern Ireland Human Rights Commission will cover Northern Ireland, over which the EHRC does not have a mandate. The EHRC has also supported and funded the Children's Rights Alliance for England and Children in Wales to coordinate the children's sector's shadow reports in England and Wales respectively.

The recommendations in this submission are aimed at the UK and Welsh governments. However, they may also be relevant to the other devolved administrations and the EHRC expects all the UK governments to work together to realise the rights set out in the CRC.

1. Equality and human rights framework

Coronavirus (COVID-19)

We are deeply concerned about the impact, both short and long term, of the coronavirus pandemic on children's rights, well-being and futures. This includes pushing more children into poverty, widening educational inequalities, the increasing risk of abuse, and worsening mental health. A robust and effective children's rights framework is critical, as is thoughtful, flexible and inclusive forward planning by governments.

Recommendation

The UK and Welsh governments should:

- urgently conduct a critical analysis of the short- and long-term impact of the pandemic on children, giving consideration to the compounding negative effects and the disproportionate impact on certain groups.

CRC incorporation

The UK Government has not directly incorporated the CRC into domestic law, so neither its general principles nor its substantive provisions can be enforced by domestic courts, unless certain exceptions apply.⁵

⁵ The CRC principles are reflected in some areas of domestic legislation. For example, the [Children Act 1989](#), section 11 of the [Children Act 2004](#), and section 55 of the [Borders, Citizenship and Immigration Act 2009](#). The CRC can be used as an aid to statutory interpretation when the courts are considering human rights, see [SG v SSWP](#) below and [ZH \(Tanzania\) \(FC\) \(Appellant\) v Secretary of State for the Home Department \(Respondent\)](#), [2011] UKSC 4.

A 2015 Supreme Court case illustrated the gap in protection left by the CRC's lack of direct effect in domestic law, turning as it did on the question of whether the court was required to consider the best interests of the child.⁶ Despite this, the UK Government has not taken any steps to address this gap in protection.⁷

In Wales, the Rights of Children and Young Persons (Wales) Measure 2011 (the Measure) partially incorporates the CRC into Welsh legislation.⁸ It requires Welsh ministers to have 'due regard' to the CRC when carrying out any of their functions. Research carried out in 2018⁹ concluded that the Measure has had an impact on how children's rights are considered in policy development, however there is still a lack of understanding across the Welsh Government and by Welsh ministers on the obligations of the Measure, resulting in a patchy approach to implementation. A report following a committee inquiry into children's rights in Wales supports this view.¹⁰

The Welsh Government commissioned research in January 2020 to explore the benefits of further incorporation of UN treaties into Welsh legislation. The Scottish Government has committed to fully incorporate the CRC into Scottish law, with a Bill introduced in September 2020.¹¹

⁶ R (on the application of SG and others (previously JS and others)) (Appellants) v Secretary of State for Work and Pensions (Respondent), Judgment of 18 March 2015, para. 115. See also dissenting judgment from Lord Kerr at paras. 255–56 [accessed: 3 September 2020].

⁷ Ministry of Justice (2017), United Nations Universal Periodic Review - United Kingdom, British Overseas Territories and Crown Dependencies - Annex to the response to the recommendations received on 4 May 2017, ref. 134.56 [accessed: 2 September 2020].

⁸ Rights of Children and Young Persons (Wales) Measure 2011.

⁹ Equality and Human Rights Commission (2018), 'The impact of Legal Integration of the UN Convention on the Rights of the Child in Wales' [accessed: 14 July 2020].

¹⁰ Welsh Parliament Children, Young People and Education Committee (2020), 'Children's Rights in Wales' [accessed: 24 August 2020].

¹¹ The Scottish Parliament (2020), United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill [accessed: 7 September 2020].

Recommendations

The UK Government should:

- give full effect to the provisions of the CRC in domestic law. It should publish and consult on proposals for statutory incorporation of the CRC into domestic law, and should ensure that children's voices are heard in the process. The UK Government should learn lessons from successful measures in Scotland and Wales that contributed to enhanced protection of children's rights, such as establishing a children's rights working group to advise on incorporation, and carrying out extensive public consultation while providing funding to ensure children's participation.

The Welsh Government should:

- accept and act on the recommendations made by the Children, Young People and Education Committee's inquiry into children's rights in Wales.
- strengthen measures to protect children's rights in Wales by making the rights within the CRC (and other UN treaty rights) legally enforceable.

Constitutional changes

The UK Government has committed to 'update the Human Rights Act (HRA)', and to establish a constitution, democracy and rights commission to consider this and other constitutional matters.¹² There is a risk that such a process might weaken rights protections, given the published views of some senior members of the UK Government.¹³ Recent media coverage suggests that the work of the proposed commission may now be carried out by a series of 'small highly expert panels'.¹⁴ The timing, composition and terms of reference of the new commission or panel considering the HRA have not been published, but it is important that children's views and interests are heard and considered in the process, to help ensure that it does not lead to any weakening of children's rights.

¹² The Conservative and Unionist Party (2019), [Manifesto 2019](#) [accessed: 20 July 2020]; Prime Minister's Office (2019), [The Queen's Speech 2019](#) [accessed: 20 July 2020].

¹³ For example: the UK Attorney General, Suella Braverman, has written critically about the HRA (Conservative Home, 27 January 2020, '[Suella Braverman: People we elect must take back control from people we don't. Who include the judges](#)'); the current Foreign Secretary, Dominic Raab, wrote in 2009 that since the introduction of the HRA, '[t]he spread of rights has become contagious' and the door has opened 'to vast new categories of [human rights] claims': Raab, D. (2009), *The Assault on Liberty: What Went Wrong with Rights* (London: Fourth Estate), p.124, cited in Giannouloupoulos, D. (2020), 'The Eurosceptic right and (our) human rights: the threat to the Human Rights Act and the European Convention on Human Rights is alive and well,' *European Human Rights Law Review*, vol. 3, pp. 225-242.

¹⁴ Rayner. G. (2020), '[Boris Johnson ready to curb the scope and power of judicial reviews](#)', *The Telegraph*, 24 July [accessed: 4 August 2020].

The UK Government has signalled that it intends to remain bound by the European Convention on Human Rights (ECHR), although this position has not always been unequivocal.¹⁵ Concerns about this include the serious implications for the devolution settlements in Wales and Scotland, where the ECHR is a central part of the constitutional arrangement.¹⁶ A clear statement of the UK Government's commitment to remaining in the ECHR would help to maintain stability and confidence in the UK's human rights laws.

Recommendations

The UK Government should:

- make a clear statement of its commitment to remain permanently a party to the European Convention on Human Rights.
- commit to ensuring that any changes to the human rights legal framework do not lead to any weakening in protection for human rights, including children's rights. It should ensure that those rights, and existing routes to redress, remain enshrined in domestic legislation by ensuring that any proposals to change or repeal the Human Rights Act include new legislation that offers at least the equivalent protection for human rights and provides opportunities to strengthen these rights further.
- ensure that the voices of children from all backgrounds and their representatives are meaningfully sought and are fully represented and reflected in the work and conclusions of the constitution, democracy and rights commission or related processes.

Brexit

The process of leaving the European Union creates uncertainty for children's rights, both in its practical effects and the impact on the legal framework. Concrete steps are required to ensure that it does not lead to regression in protections, particularly after the transition period ends on 31 December 2020.

¹⁵ Bowcott, O. (2020), '[UK government plans to remove key human rights protections](#)', The Guardian, 13 September [accessed: 15 September 2020]; The Prime Minister's Chief Adviser, Dominic Cummings, has previously written "we'll be coming for the ECHR referendum and we'll win that by more than 52-48". See Cummings, D. (2018), '[On the referendum #24C: Whistleblowers and C4/Observer accusations — they promised Watergate and delivered Zoolander](#)', 24 March.

¹⁶ European Union Select Committee (2016), '[The UK, the EU and a British Bill of Rights](#)', paras. 155–161 [accessed: 14 September 2020].

Article 24(2) of the EU Charter of Fundamental Rights (the Charter) contains a protection for the child's best interests. Article 24(2) of the Charter is based on the CRC and replicates the principles in Article 3(1).¹⁷ The CRC is not incorporated into domestic law, and so the inclusion of Article 3 principles in the Charter enabled a further route to give direct legal effect to the 'child's best interest' principle. The Charter will not be retained in UK domestic law at the end of the transition period, which risks further weakening children's access to the protection of this right.

In 2017, the UK Government published an analysis of the Charter rights that would be lost after leaving the EU,¹⁸ but there is still considerable uncertainty about which rights will still be enshrined in the longer term.

The loss of access to EU funding risks harming children's rights. Organisations working on projects to tackle violence against children, for example, have previously been able to access EU funds because of the European legislation and policy (specifically the Charter and the EU Children's Rights Strategy) that prioritise children's rights.¹⁹ It is essential that the new UK Shared Prosperity Fund, expected to replace EU funding in the UK, continues to provide this support.

Recommendations

The UK Government should:

- avoid any weakening of children's rights as a consequence of leaving the EU, including by ensuring the statutory protection of the child's best interests.
- ensure that the UK Shared Prosperity Fund, which replaces EU funding, continues to protect the UK's equality and human rights infrastructure, including by ensuring continued support for projects that protect children's rights.

¹⁷ [Charter of Fundamental Rights of the European Union](#).

¹⁸ UK Government (2017), [Charter of Fundamental Rights of the EU Right by Right Analysis](#), p. 45.

¹⁹ Equality and Human Rights Commission (2018), [The future of funding for equality and human rights](#) [accessed: 16 July 2020].

National Mechanism for Implementation, Reporting and Follow-up

We continue to argue that the UK and Welsh Governments should establish a National Mechanism for Implementation, Reporting and Follow-up (NMIRF) to effectively implement the recommendations made by UN treaty bodies and under the Universal Periodic Review (UPR).

An NMIRF would ensure a coordinated, efficient approach to reporting to, and engaging with, human rights reviews, and provide a stronger accountability mechanism for overseeing the implementation of the UK's human rights obligations.²⁰ This call has been echoed by a number of UN treaty bodies,²¹ as well as domestic stakeholders, such as the UK Parliament's Women and Equalities Select Committee (WEC)²² and the Scottish Parliament's Equalities and Human Rights Committee.²³

Despite this, to date there has been a lack of political will by the UK Government to take on board calls for greater action, the publication of implementation plans on UN recommendations, or a more coordinated approach to monitoring, reporting and implementation. In response to this gap, we created an online human rights tracker to improve accountability, transparency and understanding of the UK and Welsh governments' human rights obligations.²⁴

²⁰ UN Office of the High Commissioner for Human Rights (2016), [National Mechanisms for Reporting and Follow-up: A study of state engagement with international human rights mechanisms](#) [accessed: 30 July 2020]; Pacific Community, Regional Rights Resource Team and URG (2020), [Pacific Principles of Practice](#) [accessed: 30 July 2020].

²¹ For example the Committee on the Elimination of Discrimination against Women in its 2019 [Concluding Observations](#).

²² Women and Equalities Committee (2019), [Letter to the UN Committee on the elimination of discrimination against women, concerning the UK's review](#).

²³ Scottish Parliament Equalities and Human Rights Committee (2018), [Getting Rights Right: Human Rights and the Scottish Parliament](#), SP Paper 431, para. 129.

²⁴ Equality and Human Rights Commission, [Human rights tracker](#) [accessed: 15 September 2020].

However, there is some willingness to consider change from the devolved governments to strengthen human rights protections and accountability frameworks.²⁵

In Wales, we engaged with the Children, Young People and Education Committee's inquiry into children's rights and reiterated our calls for the Welsh Government to establish an NMIRF. The concluding report by the Committee recommends that the Welsh Government publish an annual update of progress made against the UN Committee on the Rights of the Child's Concluding Observations, to be laid before the Welsh Parliament and scrutinised annually by the relevant committee.²⁶ It also encourages the Welsh Government to 'reflect on international practice and consider options for a formal monitoring mechanism'.²⁷ The Welsh Government has accepted most of the formal recommendations, including committing to reporting on progress made against all UN CRC recommendations.²⁸

Recommendation

The UK and Welsh governments should:

- strengthen their commitment to the international human rights framework and ensure a joined-up approach to implementation of the UK's obligations at a domestic level, by putting in place comprehensive national mechanisms for monitoring and reporting on progress and ensuring implementation of the Universal Periodic Review and treaty body recommendations.

²⁵ See, for example, [Welsh Government's September 2020 response to Children, Young People and Education Committee's report on the Inquiry on Children's Rights](#). For Scotland, see [First Minister's Advisory Group on Human Rights Leadership \(2018\), Recommendations for a New Human Rights Framework to Improve People's Lives](#), Recommendation 4.

²⁶ [Welsh Parliament Children, Young People and Education Committee \(2020\), Children's Rights in Wales](#), p. 9 [accessed: 24 August 2020].

²⁷ *Ibid.*, p. 106.

²⁸ [Welsh Government \(2020\), Response to Children, Young People and Education Committee's report on the Inquiry on Children's Rights](#), [accessed: 8 October 2020].

Gender Recognition Act and transgender young people

The UK Government consulted on reforming the process for obtaining legal gender recognition in 2018 to make it 'less intrusive' for transgender people.²⁹ This sparked a much wider and often divisive debate about transgender people, characterised by a lack of clarity about what reforming the law would mean. There is evidence that the nature of the current debate is having a negative impact on people's mental health, in particular young transgender people, with many feeling they need to withdraw from discussion due to the strength of views expressed.³⁰ Despite strong evidence in support of legislative reform of the process for obtaining legal gender recognition,³¹ the UK Government announced in 2020 that, following this consultation, it would not change the law.³² The minimum age required to obtain legal gender recognition under the current system is 18; however, the UK Government did not collect evidence on the age threshold when it consulted on reforming the law in England and Wales in 2018.

²⁹ See UK Government (2018), [Reform of the Gender Recognition Act 2004](#) [accessed: 2 September 2020]. The current system is set out in the [Gender Recognition Act 2004](#). It is an administrative process that gives the successful applicant a Gender Recognition Certificate (GRC) and changes their legal sex. While a diagnosis of gender dysphoria is required, the process is not a medical one and it is not necessary to have undergone any medical intervention to obtain a GRC.

³⁰ Trevor Project (2020), [National Survey on LGBTQ Youth Mental Health 2020](#) [accessed: 5 August 2020]: '86% of LGBTQ youth said that recent politics have negatively impacted their well-being'; Stonewall (2018), [LGBT in Britain: Trans Report](#) [accessed: 11 August 2020]: 'three in ten trans people (30 per cent) ... are pessimistic with the direction LGBT rights are going in this country. Many cite the negative personal impact of attacks against trans people in media outlets and on social media'; Connolly, M., Zervos, M., Barone, C., Johnson, C. and Joseph, C. (2016) [The Mental Health of Transgender Youth: Advances in Understanding](#), *Journal of Adolescent Health*, vol. 59, issue 5, pp. 489–495: 'studies since 2011 have shown that transgender youth have higher rates of depression, suicidality and self-harm, and eating disorders when compared with their peers'.

³¹ See EHRC (2018), [Response of the Equality and Human Rights Commission to the consultation on reform of the Gender Recognition Act](#); See also the UK Government's analysis of consultation responses: [Gender Recognition Act - Analysis of Consultation Responses](#)

³² The UK Government's consultation document showed that fewer than 5,000 Gender Recognition Certificates had been issued, yet estimated as many as 200,000 to 500,000 people identified as transgender in the UK. See Minister for Women and Equalities (2018), [Reform of the Gender Recognition Act – Government Consultation](#) [accessed: 20 July 2020]; See also the Government's response to the consultation: [Written Ministerial Statement: Response to Gender Recognition Act \(2004\) consultation](#) (2020).

Transgender children are being failed by our schools, with the lack of support linked to a rising number of self-harm and suicide attempts.³³ Limited understanding of how to respond to young transgender people puts an enormous burden on children, resulting in isolation, discrimination, prejudice and bullying.

The UK Government ran an effective programme to prevent bullying of lesbian, gay, bisexual and transgender (LGBT) pupils in schools in England from 2016,³⁴ with grant funding coming to an end in March 2020. The Welsh Government introduced anti-bullying statutory guidance in 2019, including in relation to transphobic bullying, which requires the recording and monitoring of data.³⁵

In 2018 the UK Government committed to 'bringing forward proposals to end the practice of conversion therapy in the UK';³⁶ however, this has not yet happened. The National LGBT Survey found that respondents under 25 were most likely to say they had been offered conversion therapy, compared with all other age groups.³⁷

Recommendations

The UK Government should:

- collect evidence on the potential impact of reducing the age limit for legal gender recognition, taking into consideration the different contexts in each nation within Great Britain.
- urgently allocate new funding and reintroduce its anti-LGBT bullying programme in schools across England.
- bring forward proposals to end the practice of 'conversion therapies' that seek to change either the sexual orientation or gender identity of children.

³³ A Stonewall survey in 2017 found that 60% of transgender children had not been offered support or information by school staff. It also found that 84% had self-harmed and 92% had thought about taking their own life. See Stonewall (2017), [School report: The experiences of lesbian, gay, bi and trans young people in Britain's schools in 2017](#) [accessed: 15 September 2020]. See also Williams, A., Arcelus, J., Townsend, E. and Michail, M. (2019), '[Examining risk factors for self-harm and suicide in LGBTQ+ young people: a systematic review protocol](#)', *BMJ Open*, vol. 9, issue 11 [accessed: 20 July 2020].

³⁴ Mitchell, M., Kotecha, M., Davies, M., et al. (2016), '[Evaluation of an anti-homophobic, biphobic and transphobic bullying programme](#)', NatCen [accessed: 20 July 2020]; and Government Equalities Office (2018), '[Help us continue to tackle LGBT bullying in schools](#)' [accessed: 14 September 2020].

³⁵ Welsh Government (2019), '[New guidance will challenge bullying in Welsh schools](#)' [accessed: 11 August 2020].

³⁶ Government Equalities Office (2018), [LGBT Action Plan](#).

³⁷ [National LGBT Survey Data Viewer](#).

2. Living standards (Articles 26 and 27)

Social security

The UK Government's changes to the welfare system, taxes and public spending in recent years continue to have a significant negative impact on the living standards and rights of millions of children.

We conducted a cumulative impact assessment to understand the effect that changes made from 2010 to 2018 would have across society in 2021/2.³⁸ The changes were projected to be overwhelmingly regressive, with the biggest impact felt by those from the lowest income households. Those households in the bottom two deciles will lose, on average, approximately 10% of net income, with much smaller losses for those higher up the income distribution.³⁹ The analysis found that an extra 1.5 million children are projected to live in poverty⁴⁰ and that the child poverty rate of lone parent households will have jumped from 37% to over 62%.⁴¹ The impact is more substantial in England than in Scotland and Wales,⁴² where mitigation steps have been taken by the devolved governments.⁴³

³⁸ Equality and Human Rights Commission (2018), [The cumulative impact of tax and welfare reforms](#). It should be noted that the forecasts discussed are based on pre-pandemic estimations. It is likely that the true picture in 2021/2 will be worse than previously expected.

³⁹ *Ibid.*, p. 17.

⁴⁰ Including 1.36 million in England and 50,000 in Wales. *Ibid.*, pp. 23–24.

⁴¹ *Ibid.*, p. 24.

⁴² *Ibid.*, p. 23.

⁴³ For example, the Scottish Government spent more than £100 million in 2019 to mitigate the impact of the UK Government's welfare reforms in Scotland; see Scottish Government (2019), [Mitigating UK Government welfare cuts](#) [accessed: 9 September 2020]. In 2019 the Welsh Government, which has less control over social security than the Scottish Government, published an analysis of the impact of the UK Government's welfare reforms on Welsh households to understand how best to mitigate against negative outcomes; see Welsh Government (2019), [Analysis of the impact of the UK Government's welfare reforms on households in Wales](#) [accessed: 6 August 2020].

The UK Government's four-year freeze on benefit rates from April 2016, including support for children under Universal Credit, meant that support for families fell behind the rising cost of living. As a result, in its first three years alone, the freeze pushed an estimated 100,000 children into poverty.⁴⁴ Although this freeze has now ended, the impact continues to be felt. Alongside this, working-age benefits continue to decline in relative terms.⁴⁵ Illustrating this decline, child benefit for a second child, and any subsequent children, is worth less in 2019/20 than when it was fully introduced in 1979.⁴⁶ Children are consistently among the worst affected by this erosion – some estimate that children are twice as likely as pensioners to be living in poverty.⁴⁷ Similarly, the cap on benefits has a disproportionate impact on households with children, which make up 93% of those affected.⁴⁸

⁴⁴ Barnard, H. (2019), [End the benefit freeze to stop people being swept into poverty](#), Joseph Rowntree Foundation.

⁴⁵ Corlett, A. (2019), [The benefit freeze has ended, but erosion of the social security safety net continues](#), fig. 2, Resolution Foundation.

⁴⁶ *Ibid.*, fig. 1.

⁴⁷ *Ibid.*, p. 4.

⁴⁸ Children's Rights Alliance for England (2017), [State of children's rights in England 2017: Poverty and homelessness](#), p. 4 [accessed: 16 July 2020].

In April 2017, the two-child limit on the child element of tax credits and Universal Credit came into force. Third, or subsequent, children born after this date do not receive these entitlements except in limited circumstances.⁴⁹ The impact of this change has been devastating for many of the almost one million affected children.⁵⁰ It is estimated that as a direct result of the policy 300,000 children will be pushed into poverty and the levels of poverty experienced by one million children will be worse by 2023/4.⁵¹ By 2021/2 more than half of households with three or more children will be living in poverty.⁵² A legal challenge to the policy will be heard in the Supreme Court in late 2020,⁵³ when it will be argued that the policy discriminates against multiple groups, including children and those with a religious or moral objection to the use of birth control.⁵⁴ The Court of Appeal has already found that one of the UK Government's stated aims – incentivising people to work – was not rationally capable of justifying the policy.⁵⁵ Indeed, it is undermined by the fact that 70% of those claiming tax credits are already in work.⁵⁶

⁴⁹ Exemptions include when a child is conceived as a result of rape. The so-called 'rape clause' forces women to provide evidence of rape to claim the entitlement. Despite widespread condemnation of this policy, and the Prime Minister himself suggesting it was an 'injustice', the UK Government confirmed in March 2020 that the policy would continue. See McGuinness, A. (2020), '[Boris Johnson not scrapping 'rape clause' despite labelling it an "injustice"](#)', Sky News, 11 March.

⁵⁰ The Church of England, Child Poverty Action Group, Women's Aid, Turn2us and the Refugee Council (2019), [All kids count: the impact of the two-child limit after two years](#), p. 3 [accessed: 16 July 2020]; and Child Poverty Action Group (2020), [The two-child limit now affects almost one million children – and it is being implemented when poverty is rising for larger families](#).

⁵¹ The Church of England, Child Poverty Action Group, Women's Aid, Turn2us and the Refugee Council (2019), [All kids count: the impact of the two-child limit after two years](#), p. 14 [accessed: 16 July 2020].

⁵² *Ibid.*, p. 13.

⁵³ This follows an unsuccessful challenge at the Court of Appeal where, despite rejecting the arguments against the two-child limit, the Court recognised the need to have regard to the Convention on the Rights of the Child. See Child Poverty Action Group website, [Two child limit challenge](#) [accessed: 16 July 2020].

⁵⁴ Muslim and Jewish households are significantly more likely to comprise three or more children than other religious or non-religious groups. See The Church of England, Child Poverty Action Group, Women's Aid, Turn2us and the Refugee Council (2019), [All kids count: the impact of the two-child limit after two years](#), p. 49 [accessed: 16 July 2020].

⁵⁵ [SC & Ors, R \(on the application of\) v The Secretary of State for Work And Pensions & Ors](#) [2019] EWCA Civ 615, para. 135 [accessed: 3 September 2020].

⁵⁶ Child Poverty Action Group, [Two child limit challenge](#) [accessed: 16 July 2020].

Children's living standards have also been diminished indirectly by policies that create hardships for their parents or guardians – for example the roll-out of Universal Credit (UC)⁵⁷ and the imposition of benefits sanctions that are more likely to affect lone parents.⁵⁸ Despite evidence of these regressive trends, we are concerned that the UK Government is not giving due consideration to this issue.⁵⁹

These concerns have been exacerbated by the coronavirus pandemic, during which people living in areas of deprivation have been disproportionately affected⁶⁰ and the UK Government has rejected calls to uplift out of work benefits at the same rate as Universal Credit.⁶¹ Even with this uplift, a survey found that seven in 10 families with children claiming Universal Credit or Child Tax Credit have had to cut back on essentials, with half of families behind on rent or other essential bills.⁶² With these figures only reflecting the early months of the pandemic, we are concerned about the potential long-term impact on families with children.

⁵⁷ Problems include the mandatory, minimum five-week wait for new claimants until they receive their first UC payment. It is estimated that two in five families waiting for UC will be unable to meet the basic costs of living during this period. See Porter, I. (2019), '[We need to end the five-week wait for Universal Credit – here's how](#)', Joseph Rowntree Foundation, 19 September; Evidence shows a 30% increase in food bank reliance in areas where UC has been rolled out for more than a year, and 40% where it has been rolled out for 18 months. See the Trussell Trust (2019), '[The longer Universal Credit exists in an area, the higher the need for food banks](#)', 19 September.

⁵⁸ UK House of Commons Work and Pensions Committee (2018), [19th Report – Benefits sanctions](#), para. 36

⁵⁹ While the Prime Minister claimed that fewer families were living in poverty in 2020 than in 2010, the government's own figures show that relative child poverty grew by 600,000 children between 2011/2 and 2018/9. See Penington, E. (2020), '[Fact checking claims about child poverty](#)', Children's Commissioner for England, 22 June. See also Butler, P. and Rawlinson, K. (2020), '[Boris Johnson repeatedly used inaccurate child poverty figures](#)', The Guardian, 30 June.

⁶⁰ Office for National Statistics (2020), [Deaths involving COVID-19 by local area and socioeconomic deprivation: deaths occurring between 1 March and 31 May 2020](#), fig. 8 [accessed: 16 July 2020].

⁶¹ The Government introduced an emergency uplift of £20 per week for people on Universal Credit and Working Tax Credit. The same has not been afforded to those on other benefits such as Employment and Support Allowance. See MS Society (2020), '[UK Government says it's "too complicated" to give disabled people extra COVID-19 support](#)', 3 June.

⁶² Maddison, F. (2020), '[Call for a stronger social security lifeline for children](#)', Joseph Rowntree Foundation, 17 June.

Recommendations

The UK Government should:

- undertake cumulative children's rights impact assessments of all new tax and social security policies and reconsider existing policies that are contributing to negative impacts for those children who are most disadvantaged. Particular consideration should be given to the impact of the coronavirus pandemic, to ensure that no children experience material deprivation or poverty as a result of the negative impacts of social security policies.
- permanently reduce the five-week wait for a first Universal Credit payment, to support the right to an adequate standard of living for households with children that have lost their income during the pandemic and beyond.
- permanently scrap the two-child limit, the benefit cap and extend the coronavirus emergency £20 per week uplift to the child element of Universal Credit and Child Tax Credit so that already struggling families can better cope with the impact of the pandemic.
- review the rate of child benefit on an ongoing basis to ensure it is in line with inflation.
- ensure a social security system that is accessible to everyone and provides an adequate standard of living for all, by carrying out a comprehensive review of the application of sanctions and conditionality on households with children, in particular those sharing different protected characteristics, and take action to address any disparities.

Poverty

Poverty is one of the main barriers to the full enjoyment of children's rights. Living in poverty can have a negative impact on children's health, well-being, education and development.⁶³ Children living in poverty are more likely to experience food⁶⁴ and housing insecurity,⁶⁵ live in overcrowded conditions,⁶⁶ and be at a greater risk of bullying and violence.⁶⁷

In 2018/9, there were 4.2 million children in the UK living in relative poverty, with 3.7 million children living in absolute poverty.⁶⁸ Children living in families where someone is disabled, children living in lone-parent households, and children from certain ethnic minorities are disproportionately likely to be living in poverty.⁶⁹

⁶³ Child Poverty Action Group, ['The effects of poverty'](#) [accessed: 6 August 2020]; Royal College of Paediatrics and Child Health (2018), ['The impact of poverty on child health'](#) [accessed: 29 October 2020].

⁶⁴ The Trussell Trust (2019), [State of hunger: a study of poverty and food insecurity in the UK](#) [accessed: 12 October 2020].

⁶⁵ The Children's Society (2020), [Moving, always moving](#) [accessed: 29 October 2020]; Shelter (2019), Press release: [A child becomes homeless in Britain every eight minutes.](#)

⁶⁶ Ibid.

⁶⁷ Gibb, J., Fitzsimons, E., Mostafa, T., Rix, K. and Wallace, E. (2016), [Poverty and children's personal and social relationships: secondary analysis of Millennium Cohort Study data, supported by the Joseph Rowntree Foundation](#), p. 4 [accessed: 6 August 2020].

⁶⁸ Department for Work and Pensions (2020), [Households Below Average Income, Statistics on the number and percentage of people living in low income households for financial years 1994/95 to 2018/19](#), Table 4b [accessed: 6 August 2020]. An individual is defined as living in relative poverty if they are living in a household with income below 60% of median household income in that year, adjusted for family size, after housing costs. An individual is defined as living in absolute poverty if they are living in a household with income below 60% of the 2010/1 median, uprated for inflation, adjusted for family size, after housing costs.

⁶⁹ Ibid., Tables 4_3db and 4_5db.

The number of children in the UK who are living in relative and absolute poverty has increased since 2010/1,⁷⁰ attributable in part to the cumulative impact of tax and welfare changes carried out by successive UK governments between 2010 and 2017 (see page 19).⁷¹ In the Welfare Reform and Work Act 2016 the UK Government removed previously binding targets to reduce child poverty in England.⁷² The Welsh Government has similarly not renewed previous targets to end child poverty in Wales.⁷³ The Welsh Parliament Equality, Local Government and Communities Committee inquiry report recommended that the Welsh Government should publish a cross-government poverty reduction strategy with targets and performance indicators.⁷⁴

⁷⁰ Ibid., Table 4b: There were 600,000 more children living in relative poverty after housing costs in 2018/9 than 2010/1, and 100,000 more children living in absolute poverty after housing costs during the same period.

⁷¹ Equality and Human Rights Commission (2018), [The cumulative impact of tax and welfare reforms](#) [accessed: 6 August 2020].

⁷² [Welfare Reform and Work Act 2016](#), sections 4–7. The Scottish Government reintroduced statutory targets to reduce child poverty in Scotland by 2030 in the [Child Poverty \(Scotland\) Act 2017](#).

⁷³ Having failed to meet its target to end child poverty in Wales by 2020, attributed in part to the impact of welfare reforms introduced by the UK Government, the Welsh Government has not renewed any further targets to end child poverty in Wales. See BBC News (2016), '[No end to child poverty by 2020, Welsh Government says](#)', 13 December [accessed: 3 August 2020]. The Welsh Government has a child poverty strategy, but it does not include a target to end child poverty. In 2019/20, the Welsh Government conducted a review of its programmes and services that are aimed at children, young people and families living in poverty. See [Welsh Government Child Poverty Review](#) [accessed: 3 August 2020]

⁷⁴ Welsh Parliament Equality, Local Government and Communities Committee (2020), [Into sharp relief: inequality and the pandemic](#), para. 60.

Poverty can limit children's access to a healthy, nutritious diet,⁷⁵ with implications for the realisation of a number of child rights.⁷⁶ An estimated 2.5 million British children are living in food insecure households,⁷⁷ and there has been a worrying increase in the number of emergency food parcels provided to households with children over the past five years.⁷⁸

⁷⁵ Food Foundation (2019), [Children's Future Food Inquiry](#), pp. 27–32 [accessed: 6 August 2020].

⁷⁶ Including those contained in CRC articles 3, 6, 24, 27 and 28.

⁷⁷ Handa, S., Holmqvist, G. and Pereira, A. (2017), [Prevalence and Correlates of Food Insecurity among Children across the Globe](#), pp. 16, 29 [accessed: 6 August 2020]; Food Foundation (2019), [Children's Future Food Inquiry](#), p. 5 [accessed 6 August 2020].

⁷⁸ In 2019/20, the Trussell Trust's network of food banks across Great Britain provided 701,570 three-day emergency food supplies to children, more than doubling from 325,309 in 2013/4. See the Trussell Trust (2020), [End of year stats](#) [accessed: 28 October 2020]. Demand for emergency food parcels increased further during the coronavirus pandemic. See the Trussell Trust (May 2020), [Food banks report record spike in need as coalition of anti-poverty charities call for strong lifeline to be thrown to anyone who needs it](#) [accessed: 6 August 2020].

Children of parents in receipt of certain benefits across Great Britain,⁷⁹ and all children under the age of seven in England, are eligible for free school meals (FSM).⁸⁰ However, the eligibility criteria for FSM do not currently extend to all those who need them. A recent inquiry found that fewer than half of all secondary school-age children living in poverty in England, and only 57% in Wales, are eligible for FSM.⁸¹ Children from families with no recourse to public funds (NRPF) are not eligible for FSM.⁸² ⁸³ School holidays can also create additional challenges for families who rely on FSM, with some children forced to go hungry or having to rely on charities to provide meals.⁸⁴ ⁸⁵

⁷⁹ UK Government website, [Apply for free school meals](#) [accessed: 6 August 2020].

⁸⁰ There is no universal provision in Wales, where all children in primary schools are entitled to free breakfast. See the Food Foundation (2019), [Children's Future Food Inquiry](#), p. 6 [accessed: 6 August 2020].

⁸¹ *Ibid.*, pp. 46–47.

⁸² *Ibid.*, p. 48.

⁸³ During the coronavirus pandemic, the Welsh Government directed local authorities to extend the policy of continuing the provision of free school meals during the school holidays to children whose parents/carers have NRPF. See Welsh Government (2020), [Revised guidance for schools in Wales: supporting children eligible for free school meals](#) [accessed: 6 August 2020]. The UK Government temporarily extended free school meal eligibility to include some groups that have NRPF. See Department for Education (2020) [Coronavirus \(COVID-19\): temporary extension of free school meals eligibility to NRPF groups](#) [accessed: 7 August 2020].

⁸⁴ The Food Foundation (2019), [Children's Future Food Inquiry](#), pp. 53–55 [accessed: 6 August 2020].

⁸⁵ In response to the coronavirus pandemic, both the UK and Welsh Governments provided additional funding to enable children who are eligible for FSM to claim vouchers, equivalent to a free school meal allowance, for use over the school summer holiday in 2020. See Department for Education (2020), [COVID Summer Food Fund](#) [accessed: 7 August 2020]; Welsh Government (2020), [Revised guidance for schools in Wales: supporting children eligible for free school meals](#) [accessed: 7 August 2020].

We are particularly concerned about the estimated 175,000 children⁸⁶ in the UK who are living in households that have NRPF.⁸⁷ By removing the safety net of social security, the NRPF condition can create and exacerbate socio-economic disadvantage, and has been found to breach human rights.⁸⁸ Research shows that children from families with NRPF are at greater risk of insecure housing, hunger, missing education, destitution or exploitation.⁸⁹

The coronavirus pandemic risks pushing more families into poverty and exacerbating existing inequalities. Groups who already faced poverty are more likely to have seen their income reduced during the pandemic,⁹⁰ with families with children among those that have lost out the most.⁹¹ Food insecurity has increased dramatically, with over 1.5 million people in households with children unable to access food for economic reasons.⁹²

⁸⁶ The Migration Observatory at the University of Oxford (2020), [A million children in the UK don't have British or Irish citizenship, and 175,000 live in families expected to have no recourse to public funds](#); despite these best estimates, the true number of children with an irregular migration status is unknown.

⁸⁷ A person with NRPF cannot access most welfare benefits, including Universal Credit and social housing, although they can access some publicly funded services that are not listed as 'public funds' for immigration purposes. See UK Visas and Immigration (2014), [Guidance: public funds](#) [accessed: 7 August 2020].

⁸⁸ In May 2020, the High Court ruled that the NRPF immigration-condition breached the [Human Rights Act 1998](#), which prohibits inhuman and degrading treatment. In response, the UK Government changed its policy guidance to make clear that people can now apply for recourse to public funds if they are likely to become destitute, before any financial difficulties or crisis. See Home Office (2020), [Family policy: Family life \(as a partner or parent\), private life and exceptional circumstances](#) [accessed: 7 August 2020].

⁸⁹ Woolley, A. (2019), [Access denied: The cost of the 'no recourse to public funds' policy](#), Chapter 5 [accessed: 6 August 2020]. See also, The Children's Society (2020), [A lifeline for all: Children and families with no recourse to public funds](#) [accessed: 29 October 2020]

⁹⁰ Joyce, R. and Xu, X. (2020), [Sector shutdowns during the coronavirus crisis: which workers are most exposed?](#) Institute for Fiscal Studies Briefing Note BN278 [accessed: 6 August 2020].

⁹¹ Lee, T. (2020), [Families hit harder because nothing for children in COVID-19 response](#), Child Poverty Action Group, 12 May [accessed: 6 August 2020].

⁹² The Food Foundation (2020), [Food Foundation Polling: third survey – five weeks into lockdown](#) [accessed: 6 August 2020].

An enhanced status for socio-economic rights in domestic law would lead to improvements in rights protections across a number of areas, including children's right to an adequate standard of living. The Equality Act 2010 provided a framework for reducing the inequalities of outcome resulting from socio-economic disadvantage through the socio-economic duty.⁹³ The duty has not been enacted in England, although it has been introduced in Scotland⁹⁴ and the Welsh Government has committed to commencing the duty in Wales from March 2021.⁹⁵

Recommendations

The UK and Welsh governments should:

- consider providing universal free school meals or, at a minimum, extending eligibility to all children living in poverty and those in households with no recourse to public funds, and extend provision to the school holidays by providing families with options, including a voucher system, equivalent to a free school meal allowance.
- reintroduce income poverty-related targets for the eradication of child poverty and establish clear accountability mechanisms (including binding targets) with a set time frame and measurable indicators for meeting these targets.

The UK Government should:

- bring the socio-economic duty into force in England at the earliest opportunity.
- amend existing immigration rules to ensure that no recourse to public funds conditions are not applied to parents with leave to remain in the UK when they have children who are under 18 years old or still in full-time education.

⁹³ Section 1(1) of the [Equality Act 2010](#) provides that '[a]n authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage'.

⁹⁴ Scottish Government (2018), [The Fairer Scotland Duty: Interim guidance for public bodies](#) [accessed: 7 August 2020].

⁹⁵ Welsh Government (2020), [Written statement: A more equal Wales – commencing the socio-economic duty](#) [accessed: 9 October 2020].

- develop a comprehensive child poverty strategy for England, which sets out a clear action plan to eradicate child poverty and address the inequalities faced by children and young people that have been exacerbated by the pandemic, ensuring that the best interests of the child are taken as a primary consideration.

The Welsh Government should:

- set out in its statutory guidance for the socio-economic duty the particular inequalities of outcome experienced by children and young people living in poverty that it and public bodies should use the duty to address.
- publish a cross-government poverty reduction strategy with targets and performance indicators.

Childcare

Organisation for Economic Co-operation and Development (OECD) data shows that the UK has one of the most expensive childcare systems in the world,⁹⁶ which is a particular barrier for low-income or lone parents, and for the parents of disabled children who may need more specialised childcare.

⁹⁶ Organisation for Economic Co-operation and Development (2019), Net childcare cost for parents using childcare. Figures show that only the US and Cyprus have higher percentages of net household income spent on childcare than the UK.

Though we welcomed the UK Government's introduction of 30 hours of free childcare for children in England aged three to four years old,⁹⁷ there are concerns about the viability and sustainability of the current system,⁹⁸ with evidence suggesting that about half of local authorities in England, and even fewer in Wales, have enough childcare available for parents who are working full time.⁹⁹ Childcare providers in England say UK Government funding is not sufficient to cover the costs.¹⁰⁰ Many childcare settings have had to close or significantly reduce capacity as a result of the coronavirus pandemic, placing an additional burden on working parents in the short term, and further straining providers' tight profit margins.^{101 102}

The childcare funding gap between the ages of 39 weeks, when current maternity pay or Shared Parental Pay entitlement ends, and three years old, when 30 hours of free childcare funding begins, places a financial strain on working parents. The low statutory rate of pay for Shared Parental Leave is also a barrier for working parents, as research suggests only 1% of eligible new parents have taken it up since its introduction, due to the anticipated loss of earnings.¹⁰³

Evidence¹⁰⁴ shows that access to childcare in Wales for children under eight years old is patchy, with poor supply in the South Wales valleys and in parts of rural Wales. The Welsh Government introduced the Childcare Offer for Wales in 2017 to provide up to 30 hours of formal childcare for children aged three or four.¹⁰⁵

⁹⁷ UK Government (2020), [30 hours free childcare](#) [accessed: 22 October 2020]

⁹⁸ Nursery World (2018), ['Nursery closures rise 66 per cent since 30 hours began'](#) [accessed: 1 September 2020]

⁹⁹ Coram Family and Childcare (2020), [Childcare Survey 2020](#), pp. 4 and 24.

¹⁰⁰ EHRC (2018), [Is Britain Fairer?](#), p. 46

¹⁰¹ Parlett, H. (2020), ['Statement from Coram Family and Childcare: nursery closures'](#), Coram Family and Childcare, 18 March.

¹⁰² Simpson, F. (2020), ['Nurseries face "mass closure" due to financial impact of Covid-19'](#), Children and Young People Now, 25 June.

¹⁰³ Birkett, H. and Forbes, S. (2018), [Shared Parental Leave: Why is take-up so low and what can be done?](#), University of Birmingham.

¹⁰⁴ EHRC (2018), [Is Wales Fairer?](#)

¹⁰⁵ Welsh Government, ['The Childcare Offer for Wales: Help with childcare costs for working parents of 3 to 4 year olds'](#) [accessed: 10 September 2020].

It has been highlighted that while the childcare offer is welcome, steps such as reducing the eligible age of the child would be of further benefit.¹⁰⁶ The early years entitlement often does not fit with parents' working patterns and in some areas it is difficult to find 'wrap around' childcare to bridge this gap. The Welsh Government rejected a recommendation by the Equality, Local Government and Communities Committee to set out the further steps it will take to address the need for childcare of one to three year olds during this government's term.¹⁰⁷

Recommendations

The UK and Welsh governments, where applicable, should:

- ensure the availability and affordability of properly regulated childcare, including by ensuring adequately funded, flexible and high-quality childcare for all children, tackling problems with funding and availability of the provision for 30 hours of free childcare for children aged three to four years, and addressing the funding gap for children between the ages of nine months and three years.
- introduce dedicated, non-transferable and flexible 'use it or lose it' shared parental leave for parents, with a pay rate that acts as a real incentive to take-up.
- make paternity and shared parental leave a 'day one' right for employees, and include equivalent provisions for agency and self-employed workers to ensure they can access paid shared parental leave at the same rate as employees.

¹⁰⁶ Hodge, P., Davies, N. and Furlong, C. (2019), [Gender equality: a roadmap for Wales; Welsh Government \(2019\), Evaluation of the Childcare Offer for Wales: year 2, Chwarae Teg](#) [accessed: 5 August 2020].

¹⁰⁷ Welsh Government (2018), [Work it out: Parenting and employment in Wales – ELGC Committee report: Welsh Government response.](#)

3. Education (Articles 28, 29 and 42)

Attainment

Educational attainment can have a profound and lifelong impact on almost every aspect of a child's future. Though overall attainment at school-leaving age has largely been improving in recent years,¹⁰⁸ there were significant inequalities in England and Wales in 2018/9,¹⁰⁹ which in some cases have worsened.¹¹⁰

¹⁰⁸ Overall the percentage of students in England who achieved grades 9–4 in English and mathematics at the end of Key Stage 4 has increased in recent years (64.6% in 2018/9 compared with 64.2% in 2017/8). See Department for Education (2020), [National Statistics: Key stage 4 performance 2019 \(revised\), national characteristics table](#). In Wales, in 2016/7, 55.7% achieved the Level 2 inclusive threshold. In 2017/8, 56.5% of pupils achieved the Level 2 inclusive threshold. However, in 2018/9, 53.8% of pupils did; see Welsh Government (2020), [Key Stage 4](#).

¹⁰⁹ Department for Education (2020), [National Statistics: Key stage 4 performance 2019 \(revised\), national characteristics table](#); Welsh Government (2020), [Key Stage 4](#).

¹¹⁰ In 2019, the attainment gap in England between disadvantaged children and other pupils, measured by the disadvantage index, widened slightly for the second consecutive year. See Department for Education (2020), [National Statistics: Key stage 4 performance 2019 \(revised\), main text](#). It was estimated in 2019 that, at the current pace of change, it would take 560 years for the disadvantage gap at secondary school age to close – see Hutchinson, J., Bonetti, S., Crenna-Jennings, W. and Akhal, A. (2019), [Education in England, Annual Report 2019](#), Education Policy Institute and Fair Education Alliance [accessed: 11 September 2020]. In Wales, the attainment gap at GCSE level between children eligible for free school meals and those who are not remains significant and only narrowed by 2% between 2010 and 2018, from 34% to 32% – see Joseph Rowntree Foundation, ['Education in Wales'](#).

Certain ethnic minority groups had lower attainment rates than others,¹¹¹ although Gypsy, Roma and Traveller (GRT) children had the lowest attainment levels of any ethnic group.¹¹² Children with special educational needs (SEN) had significantly lower attainment than children without SEN.¹¹³ Girls continued to perform better than boys,¹¹⁴ but the uptake of science, technology, engineering and mathematics (STEM) subjects has traditionally been lower among girls.¹¹⁵ Educational attainment differed across socio-economic statuses too, with children eligible for free school meals (FSM) performing far below their peers.¹¹⁶

¹¹¹ Measured by, in England, the percentage of students who achieved grades 9–4 in English and mathematics at the end of Key Stage 4, and in Wales, the Level 2 inclusive threshold. The threshold requires the equivalent volume of five GCSEs at grade A*–C including English or Welsh First Language and mathematics.

¹¹² In England, 27.8% of Traveller pupils with Irish heritage attained grades 9–4 in English and mathematics and only 13.7% of Gypsy/Roma pupils. The highest performing group were Chinese pupils, with 89.3% achieving grades 9–4, while other low rates are found among Black Caribbean (48.3%) and other Black (59.3%) pupils. In Wales, only 11.1% of Gypsy/Roma pupils achieved the Level 2 inclusive threshold. See Department for Education (February 2020), [National Statistics: Key stage 4 performance 2019 \(revised\), national characteristics table](#); Welsh Government (2020), [Key Stage 4 from 2018/9](#).

¹¹³ In England, the difference in attainment of grades 9–4 was very large between pupils with special educational needs (SEN) and those without SEN (26.7% compared with 71%). In Wales, one in five pupils on the SEN register (20.7%) reached the Level 2 inclusive threshold, compared to pupils without SEN (66.3%). See Department for Education (2020), [National Statistics: Key stage 4 performance 2019 \(revised\), national characteristics table](#); Welsh Government (2020), [Key Stage 4 from 2018/9](#).

¹¹⁴ In England, 68.4% of girls and 61% of boys attained grades 9–4 in English and mathematics GCSE. In Wales, a higher percentage of girls (59%) than boys (48.9%) reached the threshold. See Department for Education (2020), [National Statistics: Key stage 4 performance 2019 \(revised\), national characteristics table](#); Welsh Government (2020), [Key Stage 4](#).

¹¹⁵ In Wales, girls are under-represented in most of the A level STEM subjects, with the exception of biology and some vocational award A levels. See Welsh Government (2016), [Talented women for a successful Wales: a report on the education; recruitment; retention and promotion of women in STEM-related study and careers](#).

¹¹⁶ In England, 41.4% compared with 68.5%. In Wales, half as many pupils eligible for FSM (28.4%) achieved the threshold compared with pupils not eligible for FSM (60.5%). See Department for Education (2020), [National Statistics: Key stage 4 performance 2019 \(revised\), national characteristics table](#); Welsh Government (2020), [Key Stage 4 from 2018/9](#). Note that these figures refer to those eligible for free school meals prior to the coronavirus pandemic, during which eligibility was widened.

Research shows that in 2018 the attainment gap between socio-economically disadvantaged pupils and those who are not disadvantaged widened for the first time at both secondary level and in the early years, and has not improved since.¹¹⁷ In 2019 the gap also increased at primary school level for the first time since at least 2007, reversing previous progress.¹¹⁸ In 2020, by the time disadvantaged pupils leave secondary school in England they are 18.1 months on average behind their non-disadvantaged peers.¹¹⁹

¹¹⁷ Hutchinson, J., Reader, M. and Akhal, A. (2020), Education in England, Annual Report 2020, p. 11, Education Policy Institute [accessed: 11 September 2020].

¹¹⁸ Ibid.

¹¹⁹ Ibid., p. 35.

These inequalities are likely to be significantly exacerbated by the coronavirus pandemic and aspects of the UK and Welsh governments' responses to it. School closures and inequalities in home-learning environments and circumstances risk exacerbating existing attainment gaps for certain groups, including disabled pupils,¹²⁰ some ethnic minorities, and those who are socio-economically disadvantaged.¹²¹ ¹²² The 'digital divide' is a significant issue in this regard, particularly for children from socio-economically disadvantaged backgrounds.¹²³ The shift to online learning risks undermining the right to education and may have long-term effects on attainment. These effects may also be more pronounced for children from migrant backgrounds and for GRT pupils, whose parents often face language or literacy barriers.¹²⁴

¹²⁰ Disabled Children's Partnership (2020), [Left in Lockdown – Parent carers' experiences of lockdown.](#)

¹²¹ Pupils from lower socio-economic backgrounds spent less time on home learning; they had less access to individualised resources such as private tutoring or chats with teachers; they had a worse home set-up for distance learning; and their parents reported feeling less able to support them. See Institute for Fiscal Studies (2020), [Learning during the lockdown: real-time data on children's experiences during home learning.](#) The Education Endowment Foundation estimates that the socio-economic gap in attainment could widen by 36%. However, plausible 'good' and 'bad' estimates range from the gap widening from 11% to 75%. See Education Endowment Foundation (June 2020), [Impact of school closures on the attainment gap: rapid evidence review.](#)

¹²² It is estimated that the attainment gap between disadvantaged pupils and their peers widened by 46% as a result of the coronavirus pandemic. A similar widening of the gap between children from ethnic minorities and other children is estimated. See the National Foundation for Educational Research (2020), [Schools' responses to Covid-19: The challenges facing schools and pupils in September 2020.](#)

¹²³ Up to one million pupils from lower socio-economic backgrounds in the UK are estimated to lack adequate access to computers or the internet. See Institute for Public Policy Research (2020), [Children of the pandemic: Policies needed to support children during the COVID-19 crisis.](#) The Institute for Fiscal Studies also found, in a survey of 4,000 parents of under-15s in England, that 14% of the most deprived fifth of pupils in secondary school either use a phone to access schoolwork or have no device at all, compared to 10% of the least deprived fifth. See Institute for Fiscal Studies (2020), [Learning during the lockdown: real-time data on children's experiences during home learning.](#) Wales continues to have areas of digital exclusion, particularly in rural areas.

¹²⁴ Traveller Movement (2020), [Open letter to the Department for Education: Don't further marginalise Gypsy and Irish Traveller school pupils.](#)

Attainment by certain groups may also be affected by the decision to replace exams with a 'calculated grades' system based on teacher assessments and a moderation process aimed at avoiding grade inflation. Early analysis of the results suggested that a disproportionate number of pupils from lower socio-economic backgrounds were disadvantaged by this moderation process.¹²⁵ This was partly borne out by more recent analysis that showed pupils from lower socio-economic backgrounds were more likely to have their grades reduced by the moderation process at certain grade levels only.¹²⁶ A subsequent decision was taken to award pupils either their teacher-calculated grade or the moderated grade, whichever was higher.¹²⁷ There is an appeals process in both England and Wales, and in England there is a chance to sit exams in the autumn. However, these options may prevent candidates who cannot afford to delay from progressing to further or higher education, apprenticeships or employment in the same year.¹²⁸

¹²⁵ Lough, C. (2020), '[Ofqual missed A-level private school bonus](#)', Tes, 14 August; Nye, P. and Thomson, D. (2020), '[A-Level results 2020: Why independent schools have done well out of this year's awarding process](#)', FFT Education Datalab, 13 August.

¹²⁶ Pupils from lower socio-economic backgrounds were more likely to have their grades reduced by the moderation process at grade B and below, but this group saw a smaller reduction in A* and A* to A grade results as a result of standardisation compared to better-off pupils. See Ofqual (2020), '[Annex Q: Differences between CAGs and final grades by socio-economic group](#)'

¹²⁷ Ofqual (2020), '[Guidance: Your results, what next?](#)'; Welsh Government (2020), '[Examinations and assessments: coronavirus](#)'.

¹²⁸ Further details of our concerns about these exams can be found in our consultation response to Ofqual on their exam series: Equality and Human Rights Commission (2020), '[Consultation response: An additional GCSE, AS and A level exam series in autumn 2020](#)'.

Recommendations

The UK and Welsh governments should:

- urgently prepare for future disruption to education due to the pandemic, including by drawing up contingency plans to ensure that every child, regardless of their background and circumstances, is able to access good quality education without discrimination.
- increase their efforts to tackle gaps in educational attainment, in particular among socio-economically disadvantaged children, disabled children and certain ethnic groups, and ensure that all children have the opportunity to reach their full potential through education.
- encourage uptake of STEM subjects among all girls, regardless of background, so that they have the opportunity to consider and pursue this career path.

The UK Government should:

- undertake and publish an analysis of how the exceptional arrangements for issuing grades this summer, both the standardisation process and the decision to replace this with teacher-assessed grades, affected outcomes for pupils with protected characteristics. This should be used to identify any disproportionate impacts and to inform contingency plans for issuing grades in preparation for the possibility of future disruptions to exams.
- ensure that the coronavirus education recovery plan for England, which includes £1 billion worth of catch-up premiums for disadvantaged children, is used to provide individualised and targeted support for ethnic minority pupils and disabled pupils affected by the school closures.

Approaches to managing 'challenging behaviour'

We are concerned by reports that a rise in so-called 'zero tolerance' policies is creating environments where schools rely more heavily on exclusions and restraint to manage 'challenging behaviour'.¹²⁹

¹²⁹ House of Commons Education Committee (2018), Forgotten children and the scandal of ever increasing exclusions, pp. 8–9.

There is also increasing evidence of the use of informal exclusions¹³⁰ and widespread anecdotal evidence about the excessive use of restraint in education.¹³¹ The Department for Education found that, in a sample of schools in England, more than half of secondary schools used isolation rooms,¹³² and, although the data was more limited, some primary schools were also identified as using them. The limited data available also suggests that in some circumstances, children with learning disabilities are unlawfully restrained.¹³³

¹³⁰ This includes 'off-rolling' which Ofsted define as 'the practice of removing a pupil from the school roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the school roll, when the removal is primarily in the interests of the school rather than in the best interests of the pupil'. See Ofsted (2019), School inspection handbook. See also Ofsted (2019), Education inspection framework: Overview of research. This refers to increasing concern about off-rolling 'as evidence of the scale of the problem grows.'

¹³¹ This includes, but is not limited to, physical restraint and seclusion. See Challenging Behaviour Foundation (2019), Reducing Restrictive Intervention of Children and Young People, pp.11–18 [accessed: 7 August 2020]; Busby, E. (2019), 'Disabled children "constantly" physically restrained and left with bruises and trauma, parents say', The Independent, 2 March [accessed: 7 August 2020]. We define restraint as follows: "'Restraint" is an act carried out with the purpose of restricting an individual's movement, liberty and / or freedom to act independently.' It includes chemical, mechanical and physical forms of control, coercion and enforced isolation, which may also be called 'restrictive interventions'. Equality and Human Rights Commission (2019), Human Rights Framework for Restraint, p. 4 [accessed: 7 August 2020].

¹³² Department for Education (2018), Investigative research into alternative provision, p. 60. The research was carried out with 276 mainstream primary and secondary schools (including 33 special schools) [accessed: 9 July 2020].

¹³³ A Freedom of Information request to local authorities across Britain revealed 13,000 physical restraints in special schools between 2014 and 2017, resulting in 731 injuries. Over 80% of local authorities subject to the request said that they did not have the relevant information requested, suggesting the actual figure may be much higher. See Harte, A. (2017), 'Hundreds of restraint injuries at special schools', BBC News, 8 April [accessed: 8 July 2020].

There is no legal duty on schools in England and Wales to record the use of restraint.¹³⁴ As a result, there is almost no official data about how and when restraint is used in schools.¹³⁵ ¹³⁶ Parents, carers and teachers may not understand how or why schools use restraint, or even that it has been used at all, and schools may be less able to monitor and minimise its use. We are undertaking an inquiry into restraint recording in schools in England and Wales.¹³⁷

¹³⁴ Guidance for schools in England states that it is good practice for schools to consider how best to record serious incidents involving the use of force. See Department for Education (2013), Use of reasonable force: Advice for headteachers, staff and governing bodies, p. 7 [accessed: 8 July 2020]. Guidance for special schools (and social care settings) [the guidance only relates to children and young people with certain conditions such as autism spectrum disorder] in England states that services should consider when to record occasions where restraint is used. See UK Government (2019), Reducing the Need for Restraint and Restrictive Intervention, pp. 36–37 [accessed: 8 July 2020].

¹³⁵ This contrasts with other settings, such as child and adolescent mental health units. See UK Government (2018), Mental Health Units (Use of Force) Act 2018 section 6 [accessed: 8 July 2020].

¹³⁶ Ministry of Justice (2020), Use of force on young people in custody [accessed: 8 July 2020].

¹³⁷ The inquiry is examining how primary, secondary and special schools in England and Wales are monitoring and recording their use of restraint. See EHRC (2020), Inquiry: how schools are monitoring the use of restraint [accessed: 18 July 2020].

Since 2013/4 the rate of fixed and permanent exclusions has been rising in England, with permanent exclusions levelling off over the last two years at 10 per 10,000 students.¹³⁸ Evidence suggests that exclusions are used disproportionately for certain groups, including children in need of special educational needs and disabilities (SEND) support, boys, those eligible for free school meals, Gypsy, Roma and Traveller children, Black Caribbean, and Mixed White and Black Caribbean pupils.¹³⁹ Following a landmark Upper Tribunal decision in 2018, children with a tendency to physical abuse arising from their disability will now be protected under the Equality Act 2010, and schools are required to make reasonable adjustments to try to prevent or manage challenging behaviour, and to justify that any exclusion in these circumstances is proportionate.¹⁴⁰

In Wales, where exclusions have also been rising since 2013/4,¹⁴¹ local authorities support schools with managing challenging behaviour and monitor school exclusions. Figures show that pupils in Wales with special educational needs have higher rates of exclusions than those without,¹⁴² and that special schools have the highest rate of fixed-term exclusions of all types of school. Children eligible for free school meals are consistently more likely to be excluded than their peers.¹⁴³ The Welsh Government updated its guidance on school exclusions in November 2019.¹⁴⁴

¹³⁸ Evidence for 2018/9 shows that the rate of permanent exclusions has remained at 0.10 (with a slight decrease of 11 in the number of permanent exclusions). The rate of fixed period exclusions increased, from 5.08 to 5.36 in 2018/9, continuing an increasing trend from 2013/4. See DfE (2020), [Permanent and fixed-period exclusions in England](#). Excluded children are less likely to achieve good passes at GCSE. They are more likely to be not in education, employment or training (NEET) in the longer term, as well as victims and perpetrators of crime. See Timpson (2019), [Timpson Review of school exclusions](#), p. 8.

¹³⁹ Department for Education (2020), [Permanent and fixed-period exclusions in England](#); EHRC (2018), [Is Britain Fairer?](#).

¹⁴⁰ [C & C v The Governing Body of a School, The Secretary of State for Education \(First Interested Party\) and The National Autistic Society \(Second Interested Party\) \(SEN\) \[2018\] UKUT 269 \(AAC\)](#); See also Ayres, K. (2018), 'A tendency to physically abuse: Upper Tribunal clarifies scope of Equality Act in education', [Human Rights Blog](#), 26 November; EHRC (2018), [Landmark ruling on exclusion of disabled pupils from schools](#)'.

¹⁴¹ Statistics for Wales (2019), [Permanent and fixed-term exclusions from schools in Wales 2017/18](#).

¹⁴² *Ibid.*, p. 2.

¹⁴³ *Ibid.*

¹⁴⁴ Welsh Government (2019), [Exclusion from schools and pupil referral units \(PRU\)](#).

The UK Government made manifesto commitments to give schools in England more support to manage challenging behaviour, but we are concerned that these included support for the use of exclusions.¹⁴⁵ In 2018, the UK Government commissioned the Timpson Review, in response to the Race Disparity Audit, to review how head teachers use exclusions in practice, and to investigate the disproportionate exclusion rates affecting certain children, including children from certain ethnic groups and children with special educational needs (SEN).¹⁴⁶ The UK Government agreed in principle¹⁴⁷ to implement all the recommendations, with four core commitments, including to provide greater clarity on how and when to use exclusions.¹⁴⁸ There are, however, concerns about lack of progress with implementation.¹⁴⁹ While we welcome many of the recommendations,¹⁵⁰ we are concerned that the Review did not identify sufficient measures to address the disproportionate exclusion of certain ethnic minority pupils, including tackling discriminatory practices.¹⁵¹

¹⁴⁵ The Conservative manifesto states: 'We will back heads and teachers on discipline. We will expand our programme to help schools with the worst behaviour learn from the best – and back heads to use exclusions.' See the Conservative and Unionist Party (2019), Manifesto 2019, p. 13.

¹⁴⁶ Department for Education (2018), Press release: New action to improve outcomes for children with additional needs; and Department for Education (2018), A review of school exclusion: terms of reference. The Review concluded that there is more to be done 'to ensure that exclusion is always used consistently and fairly, and that permanent exclusion is always a last resort'. It also included recommendations such as updating guidance on exclusions to provide further clarity on their use. The Review also noted that schools should be supported to respond to individual children, for example, those with SEN, who might otherwise find themselves at risk of exclusion. See Timpson (2019), Timpson Review of School Exclusion.

¹⁴⁷ Department for Education (2019), 'News story: Edward Timpson publishes landmark exclusions review'.

¹⁴⁸ The government also committed to clarifying in guidance the need for exclusions information to 'be used to inform improvements in practice and reduce disparities, with particular reference to those groups more likely to experience exclusion, nationally'. See Department for Education (2019), The Timpson Review of School Exclusion: Government response, p. 6.

¹⁴⁹ For example, a consultation into increasing schools' accountability for pupils they exclude was scheduled for autumn 2019 but has not yet been launched.

¹⁵⁰ One of the recommendations was to make schools more accountable for pupils they exclude. This was due to be the subject of a consultation as possible unintended consequences were identified, such as an increase in off-rolling or abuse of the admissions framework to avoid admitting children.

¹⁵¹ CORE (2019), Letter to the Prime Minister regarding Timpson Review of School Exclusion. See also Haque, Z. (2019), 'Timpson Review: where was the acknowledgement of race?', Tes, 13 May.

We also remain concerned about the effectiveness of the system for challenging exclusions. In particular, we are concerned that pupils in England under the age of 18 are not able to lodge an independent review of a decision to exclude them,¹⁵² that free legal aid is not available to all pupils who wish to challenge an exclusion,¹⁵³ and about the limitations associated with the powers of independent review panels.¹⁵⁴

¹⁵² Though this is the case as per Section 51(a)(c) of the Education Act 2002 and The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012, which give the definition of a 'relevant person' who can apply for a review, there are alternative routes under certain circumstances. If the exclusion includes an element of disability discrimination there is a right of appeal to the SEND First-tier Tribunal on discrimination and exclusion – and an individual can appeal if they are between 16 and 18 years old.

¹⁵³ Education issues in scope of legal aid include special educational needs, discrimination and judicial review, for example, in relation to unofficial exclusions. See Rosenberg, D. (2014), 'The education problems still covered by legal aid', Legal Action Group.

¹⁵⁴ There are concerns, for example, about whether the Independent Review Panel (IRP) system is compatible with Article 6 of the European Convention on Human Rights. See JUSTICE (2019), Challenging school exclusions.

We are concerned that new coronavirus-related health and safety rules, which may make schools less tolerant toward challenging behaviour,¹⁵⁵ could lead to an increase in the use of restraint and exclusion. We welcomed the UK and Welsh governments' guidance for schools to work with pupils to manage the effects of the pandemic on children's behaviour and well-being.¹⁵⁶ Although the temporary relaxation of timescales for reviewing exclusions, introduced in response to the pandemic in England,¹⁵⁷ have now been updated,¹⁵⁸ it remains the case that deadlines can be extended for reasons related to coronavirus. We are concerned about any reduction in safeguards against discriminatory exclusions.

¹⁵⁵ University of Oxford (2020), [School exclusion risks after COVID-19](#).

¹⁵⁶ Department for Education (2020), [Guidance for full opening: schools](#). We note government activities including a webinar with Public Health England and NHS England for school and college staff on how to support returning pupils' and students' mental well-being, and the early publication of the training module on [teaching about mental well-being](#). Ofsted's interim series of inspections also include a focus on how pupils are settling back into expected routines and behaviours; see Ofsted (July 2020), [Guidance: Education plans from September 2020](#). See also Welsh Government (2020), [Education and childcare: coronavirus](#).

¹⁵⁷ Department for Education (2020), [Statutory guidance: changes to the school exclusion process during the coronavirus \(COVID-19\) outbreak](#). The amended guidance on exclusions applies to all exclusions occurring from 1 June until 24 September 2020 (as well as to exclusions before that date that have not yet been considered or the decision reviewed). Some of the changes also apply to exclusions that occur from 25 September 2020 to 24 March 2021.

¹⁵⁸ See [The School Discipline \(England\) \(Coronavirus\) \(Pupil Exclusions and Reviews\) \(Amendment\) \(No.2\) Regulations 2020](#). The updated Regulations continue to allow the application of virtual meetings for exclusions occurring up to and including 24 March 2021, and also carry over the extension of time for parents (or pupils over 18) to request a review at an Independent Review Panel (extended from 15 to 25 school days). In relation to time limits for responsible bodies and IRPs to meet to review exclusions, any exclusion occurring from 25 September 2020 until before 25 March 2021 reverts back to the usual time frame of 15 school days. However, this is not yet a reversion to the mandatory time frame, as the deadline can be extended, but only if the meeting has been postponed because coronavirus made it impracticable, a virtual meeting was not suitable, and it is reasonably necessary for a reason related to coronavirus.

Recommendations

The UK and Welsh governments should:

- ensure that restraint is used proportionately, and as a last resort in schools, in line with our human rights framework for restraint, and require schools to collect and publish data on the use of restraint, including to identify and address any disproportionate use on those who share protected characteristics. This should include a ban on using restraint for disciplinary reasons and on techniques that deliberately inflict pain on children.
- ensure that, as schools open their doors to increasing numbers of students following pandemic-related closures, they are supported to manage disruptive behaviour. There should be a focus on prevention, early intervention and, in the case of children with additional learning needs (ALN), SEND or SEN, including those disabled children with a tendency to physical abuse, on implementing the legal obligation to provide reasonable adjustments.

The UK Government should:

- accelerate plans to implement the Timpson Review recommendations, and identify areas where further measures are needed to tackle the disproportionate levels of exclusion affecting ethnic minorities and disabled children, including developing stronger safeguards to prevent informal exclusions, requiring schools to invest in early interventions and strengthening processes for pupils to challenge exclusions.
- immediately extend to all children the right to be heard before exclusion and to appeal against both temporary and permanent exclusions. Children should be provided with age-appropriate legal advice and assistance throughout the appeal or claim process, which is independent from local authorities and properly resourced.

The Welsh Government should:

- identify and address the causes of such high exclusion rates for particular groups, including children with SEN and those eligible for free school meals.
- ensure that the right of children of all ages to be heard before being excluded, to appeal against exclusions and to be given support when doing so is not lost when any changes are made to the process. Such children should be provided with age-appropriate legal advice and assistance throughout the appeal or claim process.

Human rights education

Research that we have conducted suggests that there are a number of barriers to implementing a human rights based approach in schools across Great Britain.¹⁵⁹ In England, these include insufficient knowledge among teachers about the CRC and the wider international human rights framework.¹⁶⁰ In England and Wales, the national curricula and inspectorate frameworks do not provide strong incentives to take this approach.¹⁶¹

The introduction of a new curriculum for Wales in 2022 provides the opportunity to foster inclusivity.¹⁶² As part of this, relationships and sexuality education (RSE) will be mandatory in Wales. The Welsh Government has proposed new guidance to accompany the changes to the curriculum; however, while human rights are referenced, it is unclear if human rights education (HRE) has been sufficiently embedded, including in teacher training.¹⁶³

¹⁵⁹ This is particularly concerning as our research on schools that adopted a rights-based approach to the curriculum in England and Wales suggests that this helped to create more cohesive and integrated student bodies, and resulted in a reduction in discriminatory attitudes and racist incidents, with positive implications for attainment. See EHRC (2020), [Exploring human rights education in Great Britain](#) [accessed: 16 November 2020].

¹⁶⁰ In contrast, the Welsh Government has, to an extent, integrated the CRC into domestic law, which has encouraged some local authorities and schools to see human rights education (HRE) as part of their remit. Local authorities have, therefore, been crucial in driving this approach in Wales through the provision of funding, training and resources. See EHRC (2020), [Exploring human rights education in Great Britain](#) [accessed: 16 November 2020].

¹⁶¹ For example, in England, it is not mandatory to teach human rights as a distinct standalone subject. However, there are references to 'rights' within Citizenship Education and Relationships and Sex Education (RSE) guidance. See EHRC (2020), [Exploring human rights education in Great Britain](#) [accessed: 16 November 2020]; Compulsory Relationships Education (RelEd)/RSE was introduced in September 2020 (with schools able to delay implementation due to the pandemic) and so it is too early to make an assessment. However, the UK Government was criticised for letting citizenship education 'degrade to a parlous state'. See House of Lords Select Committee on Citizenship and Civic Engagement (2018), [The ties that bind: Citizenship and Civic Engagement in the 21st Century](#).

¹⁶² Welsh Government (2017), [Curriculum for Wales: overview](#) [accessed: 3 September 2020].

¹⁶³ Welsh Government, [Curriculum for Wales guidance](#) [accessed: 3 September 2020]. A recent report following the Children, Young People and Education Committee's inquiry into children's rights in Wales recommended that 'the Welsh Government ensure human rights education, including children's rights with reference to the United Nations Convention on the Rights of the Child, is taught under the new Curriculum for Wales'; see Welsh Parliament Children, Young People and Education Committee (2020), [Children's Rights in Wales](#) [accessed: 2 September 2020].

In England, new regulations have been introduced making Relationships Education (RelEd) compulsory in all primary schools; Relationships and Sex Education (RSE) in all secondary schools; and Health Education in all state-funded schools from September 2020.¹⁶⁴ The statutory guidance sets out that this should include sexual and reproductive health, sexual abuse and sexuality.¹⁶⁵ The guidance states that RelEd requires 'sensitive and well-judged teaching' in primary schools about families that are 'different', and describes these families as taking 'many forms', including LGBT families. It does not clearly state that teaching about LGBT families is mandatory in primary schools. The UK Government's subsequent communications state that primary schools have discretion over whether or not to cover LGBT content,¹⁶⁶ and that this decision should be taken following consultation with parents.¹⁶⁷ This has created a challenging situation for teachers, parents and children, has divided some communities,¹⁶⁸ and is potentially in breach of Articles 12 and 29 of the CRC.

¹⁶⁴ The Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019: Draft statutory instruments, [SI 2019/924](#). However, following the disruption caused by coronavirus, new Government guidance allows schools to delay until the start of the summer term 2021. See Department for Education (2019), [Relationships education, relationships and sex education \(RSE\) and health education](#).

¹⁶⁵ Department for Education (2019), [Relationships Education, Relationships and Sex Education \(RSE\) and Health Education: Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers](#), p. 28. The guidance also says that by the end of secondary school, pupils should know about the 'legal rights and responsibilities regarding equality'. We have some concerns about the use of the term 'responsibilities' in this context.

¹⁶⁶ Department for Education (2019), [Relationships education, relationships and sex education \(RSE\) and health education: FAQs](#).

¹⁶⁷ Department for Education (2019), [Engaging parents with relationships education policy](#).

¹⁶⁸ There have been national and local campaigns by those concerned about the content of the new curriculum, with a particular focus on the inclusion of LGBT content. Most notably, there have been protests outside primary schools in Birmingham, where schools were including this teaching related to the Equality Act 2010 and British values, ahead of the future RelEd/RSE requirements. This led to a High Court injunction banning protestors from demonstrating directly outside a [Birmingham](#) primary school. See [Birmingham CC v Afsar \(No 3\) \[2019\] EWHC 3217 \(QB\)](#).

The history of the British Empire, immigration and colonialism, including of slavery and other grave human rights violations, is not a mandatory part of the school curriculum in England or Wales, contrary to recommendations made by the UN Committee on the Elimination of Racial Discrimination in 2016.¹⁶⁹ There have been renewed calls for a review of the curriculum in the context of the Black Lives Matter movement.¹⁷⁰ However, to date, the UK Government has said there are no plans to hold a review of the syllabus.¹⁷¹ The Welsh Government has established a new working group to advise on and improve the teaching of themes relating to Black, Asian and ethnic minority communities and experiences across all parts of the Welsh school curriculum.¹⁷²

Recommendations

The UK Government should:

- ensure that equality and human rights are strengthened as part of the curriculum to instil shared values, tackle prejudiced attitudes by educating about difference, foster community cohesion and enable young people to fully participate in our democratic society. The curriculum should also include Britain's colonial and immigration history to enable children to understand how this has shaped all aspects of our country.
- ensure that teaching about families that take different forms – including LGBT families – is clearly made a mandatory part of the curriculum in both primary and secondary schools, in accordance with its obligations under international law, and that all guidance and related communications consistently reflect this.

The UK and Welsh governments should:

- ensure quality and consistent teacher training on equality and human rights, including children's rights.

¹⁶⁹ Committee on the Elimination of Racial Discrimination (2016), Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland.

¹⁷⁰ Lough, C. (2020), 'Train new teachers in anti-racism, say teachers', Tes, 10 June. A recent report from race equality think tank Runnymede also raises concerns about the current curriculum, and considers racial diversification of school curricula and the implementation of an anti-racist curriculum. See Joseph-Salisbury, R. (June 2020), Race and racism in English secondary schools, Runnymede.

¹⁷¹ Proctor, K. (2020), "'Tone-deaf' ministers reject BAME review of English curriculum", The Guardian, 30 July.

¹⁷² Welsh Government (2020), Professor Charlotte Williams to lead work on teaching Wales' "rich history built on difference and diversity".

Inclusive education

The UK is one of only two signatories in the world to retain a reservation and an interpretive declaration to Article 24 (2) (a) and (b) of the UN Convention on the Rights of Persons with Disabilities (CRPD),¹⁷³ relating to inclusive education. This states that the UK Government considers special schools as part of the general education system of the country.¹⁷⁴ Our view is that this reservation is contrary to the object and purpose of the Convention, and related provisions in the CRC, as it reinforces the segregation of disabled children in education.¹⁷⁵

In England, attempts to deal with longstanding concerns with the SEND system,¹⁷⁶ including by introducing education, health and care (EHC) plans,¹⁷⁷ have yet to make sufficient progress.¹⁷⁸

¹⁷³ Convention on the Rights of Persons with Disabilities.

¹⁷⁴ In England and Wales, children with special educational needs and disabilities (SEND) may be educated in state-funded or non-state-funded mainstream schools, or within state-funded or non-state-funded special schools.

¹⁷⁵ A view supported by the Committee on the Rights of Persons with Disabilities (2017), Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, para. 51.

¹⁷⁶ By the Children and Families Act 2014.

¹⁷⁷ Not all children with SEND will have an EHC Plan. In England, there are two categories of support for pupils with SEND, which broadly reflect their level of need. As of January 2020, 294,800 pupils (21% of pupils with SEN) had an EHC Plan, who local authorities had assessed as needing the most support. 1,079,000 (79% of pupils with SEN) pupils do not have an EHC plan, but have been identified as requiring additional support at school (known as 'SEN support'); see Department for Education (2020), Special educational needs in England.

¹⁷⁸ Concerns continue to be expressed about delays, long-term funding, poor information and communication, and dissatisfaction on the part of parents: see National Audit Office (2019), Support for pupils with special educational needs and disabilities in England; Local Government & Social Care Ombudsman (2019), Not going to plan? Education, Health and Care plans two years on; House of Commons Public Accounts Committee (2020), Support for children with special educational needs and disabilities. Latest figures from the Department for Education show that, in the 2019 calendar year, 60.4% of EHC Plans were issued within the statutory deadline of 20 weeks; see Department for Education (2020), Education, health and care plans.

The trend toward inclusion of children with SEND in mainstream schools has stalled, with the number of pupils in state-funded special schools increasing by 5.3% between 2019 and 2020, continuing an upward trend since 2006.¹⁷⁹ Recent announcements by the UK Government to create more special school places will do little to reverse this.¹⁸⁰ Evidence also suggests that children with SEND are disproportionately represented among children educated through alternative provision.¹⁸¹ We are concerned that this trend is inconsistent with the right of disabled children to access inclusive, quality education.¹⁸²

¹⁷⁹ Department for Education (2020), [Special educational needs in England](#).

¹⁸⁰ Department for Education (2020), [Thousands of places created in new special free schools](#).

¹⁸¹ Ofsted (2019), [Exploring moving to home education in secondary schools: research summary](#); House of Commons Education Committee (16 October 2019), [Special educational needs and disabilities](#) paras. 14 and 125.

¹⁸² Committee on the Rights of Persons with Disabilities (2016), [General Comment no. 4. Article 24. The Right to Inclusive Education](#).

While these figures will partly be a result of family choice, there are concerns that the funding model of schools in England disincentivises mainstream schools to be more inclusive, as admitting pupils with SEND can be seen as costly.¹⁸³ There are also challenges in ensuring that mainstream schools meet their duties to produce accessibility plans,¹⁸⁴ and provide the necessary reasonable adjustments for disabled children to receive a high-quality inclusive education.¹⁸⁵ Failure to implement reasonable adjustments by schools can often result in both formal and informal exclusions.¹⁸⁶ In addition, when families seek to challenge the extent of SEND provision in schools, there are issues with the avenues of redress and appropriate remedies – the Local Government and Social Care Ombudsman lacks sufficient powers to investigate complaints about SEND provision within schools;¹⁸⁷ and the relevant tribunal¹⁸⁸ lacks the power to award compensation.¹⁸⁹

¹⁸³ National Audit Office (2019), Support for pupils with special educational needs and disabilities in England, para. 11. Although the Department for Education launched a call for evidence on this issue, no further action has materialised; see Department for Education (2019), Provision for children and young people with special educational needs and disabilities, and for those who need alternative provision: how the financial arrangements work: Call for Evidence.

¹⁸⁴ Alliance for Inclusive Education (2020), ‘Accessibility Plans as Effective Tools for Inclusion in Schools, Are They Working?’ research report launch.

¹⁸⁵ House of Commons Education Committee (2019), Special educational needs and disabilities, paras. 42, 55–56 and 124–126. See ‘Approaches to managing ‘challenging behaviour’ (page 38): without these adjustments, children with SEND are at an increased risk of exclusion.

¹⁸⁶ See ‘Approaches to managing ‘challenging behaviour’ (page 38).

¹⁸⁷ As noted by Local Government and Social Care Ombudsman (2018), Triennial Legislative Review – 2018; see also House of Commons Education Committee (2019), Special educational needs and disabilities, paras. 30 and 222.

¹⁸⁸ The First-tier Tribunal (Special Educational Needs and Disability).

¹⁸⁹ Equality Act 2010, Schedule 17, Part 2, para. 5.

In Wales, the proportion of children with SEN attending special schools has been steadily increasing for several years.¹⁹⁰ In response, the Welsh Government has introduced significant changes to education for children with additional learning needs (ALN), including the new Curriculum for Wales¹⁹¹ and the Additional Learning Needs and Education Tribunal Act 2018.¹⁹² The Act includes a duty on public bodies to involve and support children, their parents and young people, and to have 'due regard' to the rights of children under the CRC and under the Convention on the Rights of Persons with Disabilities.¹⁹³ However it is too soon to determine the impact these changes will have on inclusivity because implementation has been delayed by one year until 2021.¹⁹⁴

In both England and Wales the challenges affecting SEND provision in schools have been exacerbated by the coronavirus pandemic.¹⁹⁵ Staff shortages, social distancing rules and the need to concentrate resources on the health emergency led local authorities to reduce SEND provision, in some cases ceasing it altogether.¹⁹⁶ This is likely to widen the already significant gap¹⁹⁷ in attainment affecting children with SEND.¹⁹⁸

¹⁹⁰ Between 2013/4 and 2019/20 the proportion of children with special educational needs attending special schools increased every year from 4.1% of pupils in 2013/4 to 5.3% in 2019/20. See StatsWales (2020), [Pupils with special educational needs by sector and year](#) [accessed: 10 September 2020].

¹⁹¹ Welsh Government, [Curriculum for Wales](#) [accessed: 10 September 2020].

¹⁹² [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#).

¹⁹³ *Ibid.*, sections 7 and 8.

¹⁹⁴ Welsh Government (2019), [Written Statement: Implementation of the Additional Learning Needs system](#), [accessed: 10 September 2020].

¹⁹⁵ Local Government Association (2020), [Coronavirus: certainty needed over ongoing COVID-19 funding for vital local services](#). The Government amended the EHC Plan timetables in response to the pandemic, allowing local authorities and health commissioning bodies greater flexibilities in terms of time limits to discharge their legal obligations – these flexibilities expired on 25 September 2020: see [The Special Educational Needs and Disability \(Coronavirus\) \(Amendment\) Regulations 2020](#).

¹⁹⁶ Jackman, A. and Wright, E. (2020), '[Education: recent developments](#)', Legal Action Group, May 2020. This view is also supported by anecdotal evidence provided to us by Just for Kids Law in May 2020.

¹⁹⁷ The attainment gap between children with and without SEND remains very large: see Equality and Human Rights Commission (2018), [Is England Fairer?](#) p. 10; Association of Directors of Children's Services (2020), [Building a Country that Works for All Children Post Covid-19](#), paras. 5.1 and 9.

¹⁹⁸ Welsh Parliament, [Scrutiny of Covid-19 and its impact on children and young people \(including students in further and higher education\)](#); Hutchinson, J., Reader, M. and Akhal, A. (2020), [Education in England, Annual Report 2020](#), p. 32, Education Policy Institute.

Recommendations

The UK Government and, where relevant, the Welsh Government, should:

- remove the reservation and interpretive declaration on Article 24 of the CRPD, and take concrete steps to facilitate genuine family choice and realise the right of disabled children to inclusive education.
- ensure appropriate monitoring and avenues of redress are in place and strengthen the remedies for school children in cases of disability discrimination, failure to make reasonable adjustments and harassment, including, where appropriate, compensation.
- address the concerns about funding of the SEND system in England, exacerbated by coronavirus, through the development of a long-term, sustainable funding package, with an emphasis on how to incentivise schools to be more inclusive.

The Welsh Government should:

- when implementing the Additional Learning Needs and Education Tribunal (Wales) Act 2018, ensure that the vision is achieved for a comprehensive and coordinated framework for inclusive education where families with disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children.

4. Children in institutions (Articles 23, 24 and 25)

Detention of children and young people under the Mental Health Act

The Mental Health Act 1983 (MHA) gives the state powers to detain, assess and treat people who have severe mental health conditions or learning disabilities and / or autism in England and Wales. There were more than 1,240 MHA detentions of children in England in 2018/9,¹⁹⁹ an increase of 63 from the previous year.²⁰⁰ In Wales, between April 2019 and March 2020 there were 37 detentions under Sections 135 and 136 of the MHA of children under 16, and a further 65 of 16 and 17 year olds.²⁰¹

¹⁹⁹ NHS Digital (2019), [Mental Health Act statistics, annual figures 2018-19](#) (see Mental Health Act statistics, annual figures 2018-19: data tables at Table 1b) [accessed: 14 July 2020]. There were 1,241 new detentions under the MHA of children aged 17 and under recorded in 2018/9, although the overall national totals will be higher as some providers did not submit data. There were at least 433 detentions of children aged 15 and under, and at least 808 detentions of children aged 16–17. Equivalent figures of detention under the MHA, disaggregated by age, are not available for Wales. See Statistics for Wales (2019), [Statistical First Release: admission of patients to mental health facilities in Wales, 2017-18](#) [accessed: 14 July 2020].

²⁰⁰ NHS Digital (2018), [Mental Health Act statistics, annual figures 2017-18](#) (see Mental Health Act statistics, annual figures 2017-18: data tables at Table 1b) [accessed: 4 August 2020]. There were 1,177 new detentions under the MHA of children aged 17 and under recorded in 2017/8, although the overall national totals will be higher as some providers did not submit data. There were at least 378 detentions of children aged 15 and under, and at least 799 detentions of children aged 16–17.

²⁰¹ StatsWales, [Section 135/136 Detentions by local health board, age, gender and quarter](#) [accessed: 31 August 2020]

More girls are detained than boys in England: in 2018/9, 68% of children detained were female.²⁰² In the year to March 2019, considering all ages, Black people were more than four times as likely as White people to be detained under the MHA.²⁰³

The final report of a UK Government-commissioned independent review of the MHA, published in December 2018, reflected several recommendations we made.²⁰⁴ The report called for more community-based mental health services to prevent people from reaching crisis point, as well as additional checks and safeguards 'in the strongest terms' for children and young people.²⁰⁵ The UK Government committed to introducing new legislation to reform the MHA in 2018²⁰⁶ and 2019;²⁰⁷ however, reform has been delayed.²⁰⁸

²⁰² In comparison, 48% of detained adults are female. See NHS Digital (2019), [Mental Health Act statistics, annual figures 2018-19](#) (see Mental Health Act statistics, annual figures 2018-19: data tables at Table 1e) [accessed: 14 July 2020].

²⁰³ Known rates of detention for the Black or Black British group (306.8 detentions per 100,000 population) were over four times those of the White group (72.9 per 100,000 population). See NHS Digital (2019), [Mental Health Act statistics, annual figures 2018-19](#) (see Mental Health Act statistics, annual figures 2018-19: data tables at Table 1c) [accessed: 6 August 2020].

²⁰⁴ Department of Health and Social Care (2018), [Modernising the Mental Health Act: Increasing choice, reducing compulsion](#) [accessed: 14 July 2020]; EHRC (2018), [Our recommendations to the Independent Review of the Mental Health Act](#) [accessed: 14 July 2020].

²⁰⁵ Department of Health and Social Care (2018), [Modernising the Mental Health Act: Increasing choice, reducing compulsion](#) [accessed: 14 July 2020].

²⁰⁶ Department of Health and Social Care (2018), [Government commits to reform the Mental Health Act](#) [accessed: 14 July 2020].

²⁰⁷ The background briefing notes to the Queen's Speech on 19 December 2019 reiterated the UK Government's commitment to reform the MHA 'to ensure people have greater control over their treatment and receive the dignity and respect they deserve'. See Prime Minister's Office (2019), [The Queen's Speech December 2019 – background briefing notes](#) [accessed: 14 January 2020].

²⁰⁸ As of the date of this submission, the UK Government has not introduced a white paper or draft legislation to amend the MHA.

Inappropriate and / or long-term detention of children and young people with learning disabilities and / or autism

The UK Government has consistently failed to meet its targets to transform care by developing appropriate community services for people with learning disabilities and / or autism²⁰⁹ and significantly reducing the number of people in inpatient settings.²¹⁰ Instead, the number of children with learning disabilities and / or autism in inpatient units in England has more than doubled between 2013 and 2020.²¹¹ Available data indicates that there are no children with learning disabilities in NHS-run mental health hospitals and units in Wales.²¹²

²⁰⁹ Department of Health (2012), [Transforming care: A national response to Winterbourne View Hospital](#) [accessed: 14 July 2020].

²¹⁰ The Government set a target to reduce detention in inpatient settings by 35–50% by the end of March 2019, which would have meant that no more than 1,700 people remained in detention. See NHS England (2015), [Building the right support](#) [accessed: 14 July 2020]. However, by May 2020 at least 2,060 people with learning disabilities and / or autism remained in inpatient units in England; see NHS Digital (2020), [Learning disability services monthly statistics](#) (see LDA monthly statistics from AT – May 2020: reference tables) [accessed: 14 July 2020].

²¹¹ In 2013 the figure was 96 – see NHS England (2014), [NHS England publishes data on transfer dates for people with learning disabilities, autism and behaviour that challenges](#) [accessed: 14 July 2020]. At the end of May 2020 the number of children in inpatient units had risen to 200 – see NHS Digital (2020), [Learning disability services monthly statistics](#) (see LDA monthly statistics from AT – May 2020: reference tables) [accessed 14 July 2020].

²¹² Devolution of health and social care in Wales has resulted in differences in data gathering from England. At the end of March 2019, there were 87 people with learning disabilities in NHS-run mental health hospitals and units in Wales, all over the age of 18; however, this does not include people in independent hospitals or placed out of area in English hospitals. There is no official data on the length of hospital admission for people with learning disabilities in Wales. See StatsWales (2019), [Patients in mental health hospitals and units in Wales with a learning disability](#) [accessed: 14 July 2020].

The institutionalisation of children with learning disabilities and / or autism in psychiatric settings for prolonged periods has been described by one government-commissioned review as a 'denial of the basic rights of childhood'.²¹³ At the end of February 2019, children with learning disabilities and / or autism had spent on average eight months overall in inpatient care in England.²¹⁴ Nearly 25% had been detained for at least six months over 30 miles from home, while about 10% had been detained for at least a year over 60 miles from home.²¹⁵

Restraint and treatment in inpatient care

There were 570 restrictive interventions recorded against children with learning disabilities and / or autism in inpatient care in England in March 2020, including physical, chemical and mechanical restraint, seclusion and segregation.²¹⁶

²¹³ Council for Disabled Children (2017), [These are our children: A review, by Dame Christine Lenehan, Director, Council for Disabled Children](#) [accessed: 14 July 2020].

²¹⁴ Children's Commissioner for England (2019), [Far less than they deserve: Children with learning disabilities or autism living in mental health hospitals](#) [accessed: 14 July 2020].

²¹⁵ Ibid.

²¹⁶ NHS Digital (2020), [Learning disability services monthly statistics](#) (see LDA monthly statistics from MHSDS – March 2020: reference tables, reference table 17) [accessed: 14 July 2020].

Concerns about abusive practices, segregation and restraint of children and young people with learning disabilities and / or autism in secure care have been the subject of both a parliamentary inquiry²¹⁷ and a review by the Care Quality Commission (CQC).²¹⁸ The parliamentary inquiry considered evidence about an autistic teenager who had been detained for nearly two years in a psychiatric assessment and treatment unit (ATU), behind a locked door and fed through a hatch.²¹⁹ The final report from this inquiry, published in November 2019,²²⁰ reflected several recommendations we made,²²¹ including support for our legal model for disabled people's right to live independently and be included in the community.²²² The UK Government's response to the inquiry includes some welcome commitments, although it has deferred responding to certain key recommendations.²²³

The independent review of the MHA also noted the disproportionate use of restraint on girls.²²⁴ Moreover, children detained under the MHA continue to be placed in adult psychiatric wards.²²⁵

²¹⁷ Joint Committee on Human Rights (2019), [Inquiry into the detention of children and young people with learning disabilities and/or autism](#) [accessed: 14 July 2020].

²¹⁸ Care Quality Commission (2019), [Interim report: Review of restraint, prolonged seclusion and segregation for people with a mental health problem, a learning disability and or autism](#) [accessed: 14 July 2020]. The CQC was due to publish a final report on its review in May 2020; however, this was postponed due to the coronavirus pandemic.

²¹⁹ Joint Committee on Human Rights (2019), [Inquiry into the detention of children and young people with learning disabilities and/or autism](#) [accessed: 14 July 2020].

²²⁰ Ibid.

²²¹ EHRC (2019), [Written evidence from The Equality and Human Rights Commission \(YDA0021\)](#) [accessed: 14 July 2020] (summarising our concerns regarding evidence of breaches of the human rights of many children and young people with a learning disability and / or autism).

²²² EHRC (2019), [Supplementary written evidence from The Equality and Human Rights Commission \(YDA0045\)](#) [accessed: 14 July 2020].

²²³ UK Government (2020), [The Government response to the Joint Committee on Human Rights reports on the detention of young people with learning disabilities and/or autism and the implications of the Government's COVID-19 response](#) [accessed: 30 October 2020].

²²⁴ Department of Health and Social Care (2018), [Modernising the Mental Health Act: Increasing choice, reducing compulsion](#) [accessed: 14 July 2020].

²²⁵ In 2018/9, the Care Quality Commission received 152 notifications of admission of a child to adult psychiatric wards. This number has decreased from 233 in 2014/5. See CQC (2020), [Monitoring the Mental Health Act in 2018/19](#) [accessed: 14 July 2020].

Impact of coronavirus

Pandemic-related changes to the operation of mental health services²²⁶ and mental health tribunals,²²⁷ as well as potential temporary changes to the MHA,²²⁸ all relax important safeguards against detention. The pandemic has also exacerbated the risks of human rights abuses of children and young people already in mental health detention.²²⁹

²²⁶ The Department of Health and Social Care and NHS England published legal guidance on the operation of mental health services that allows 'temporary departures from the [MHA] Code of Practice'. See NHS England (2020), [Legal guidance for mental health, learning disability and autism, and specialised commissioning services supporting people of all ages during the coronavirus pandemic](#) [accessed: 15 July 2020]. For example, under certain conditions, a patient detained under the MHA can challenge their detention through a hospital managers' panel. However, the guidance allows hospitals to depart from the MHA Code of Practice and suspend hospital managers' hearings 'temporarily, for the duration of the pandemic period' if holding a panel would be 'unfeasible due to reasons relating to the current pandemic'. Ibid., p. 42. The guidance does not define 'pandemic period'. This represents a significant potential erosion of a pathway to challenge detention.

²²⁷ Fewer tribunal panel members are needed to make a decision, pre-hearing assessments are waived, and decisions can sometimes be made without a hearing. The changes in Wales are likely to further reduce protections for those challenging detention compared with the changes in England. See Courts and Tribunal Judiciary (2020), [Pilot practice direction: health, education and social care chamber of the first-tier tribunal \(mental health\)](#) [accessed: 15 July 2020]; [Coronavirus Act 2020 \(Commencement No. 1\) \(Wales\) Regulations 2020](#) [accessed: 15 July 2020]; Mental Health Review Tribunal for Wales (2020), [Practice direction COVID-19](#) [accessed: 15 July 2020].

²²⁸ [Coronavirus Act 2020, Schedule 8, Part 2](#). These changes have not been activated, but include reducing the number of doctors needed to approve detention, extending or removing time limits and reducing oversight for forced treatment. See Royal College of Psychiatrists (2020), [Legal matters – COVID-19 guidance for clinicians](#) [accessed: 15 July 2020].

²²⁹ A parliamentary inquiry on the impact of the pandemic on young people in detention who are autistic and / or have learning disabilities found that '[p]rohibitions on family visits, the suspension of inspections, the increased use of restraint and solitary confinement, and the vulnerability of those in detention to infection (due to underlying health conditions and the infeasibility of social distancing) mean that the situation is now a severe crisis'. See Joint Committee on Human Rights (2020), [Human Rights and the Government's response to COVID-19: The detention of young people who are autistic and/or have learning disabilities](#) [accessed: 15 July 2020].

Recommendations

The UK and Welsh governments, where relevant, should:

- strengthen the criteria for detaining children and young people under the Mental Health Act to ensure that the least restrictive intervention is used, and improve the ability of children and young people detained to be involved in decisions about their treatment and care and to obtain a timely and meaningful review of the decision to detain or prolong detention.
- implement the recommendations of the Independent Review of the Mental Health Act. These should include taking action to address the disproportionate use of the Mental Health Act among children, including in detention rates and use of restraint.
- improve data gathering on the use of restraint on children and young people in inpatient care.
- ensure there are sufficiently and sustainably funded appropriate, high-quality mental health services in the community, to support the needs of all children and young people, including those with learning disabilities and / or autistic spectrum disorder, to reduce the need to resort to involuntary admission and treatment.
- repeal pandemic-related provisions that would relax safeguards under the Mental Health Act at the earliest opportunity, including provisions in the Coronavirus Act 2020, legal guidance affecting the operation of mental health services, and changes to the operation of mental health tribunals. Data on rates of detention under the Mental Health Act during the pandemic period, as well as COVID-19 cases and deaths among those detained under the Mental Health Act, should be closely monitored and published.

5. Youth justice (Articles 37 and 40)

Treatment of children in the criminal justice system

We are concerned that Black children in England and Wales are disproportionately held in custody at much higher, and increasing, rates than children from other ethnic groups.²³⁰

²³⁰ Figures from the Youth Justice Board show that 'the number of children in youth custody from a Black background has increased by 6% in the last year, and now accounts for 28% of the youth custody population. This compares to 15% ten years ago'. See Youth Justice Board and Ministry of Justice (2020), [Youth justice statistics 2018/19 England and Wales. Statistics bulletin](#); David Lammy, the author of the 2017 [independent review](#) into 'the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system', has expressed concern that the majority of his recommendations have not been implemented and some areas have continued to get worse, including an increasing proportion of children from ethnic minorities in the child prison population. The Government reports that 16 recommendations have been completed, two were rejected and 17 are in progress; see House of Commons (2020), [Urgent question on the implementation of the Lammy Review](#), Hansard, vol. 678, column 172, 30 June.

Children and young people in the criminal justice system face high levels of violence across the youth estate in England and Wales. In secure children's homes (SCHs) and secure training centres (STCs), there were approximately 2,200 assaults by children in the year ending March 2019, representing a 70% increase from five years previously.²³¹ In young offender institutions (YOIs), there were about 2,400 assaults by children.²³² Assault victims can be another child, a staff member or a visitor. Many children felt unsafe,²³³ and had experienced bullying²³⁴ by other children or staff members.²³⁵ Failures to keep children in custody safe from physical or sexual abuse are also a concern.²³⁶ About 200 allegations of sexual abuse are made each year, mostly against staff,²³⁷ and mostly in relation to restraint or body searches.²³⁸ The HM Inspectorate of Prisons (HMIP) advised that levels of violence and intimidation affect whether children report these issues.²³⁹ The Independent Inquiry into Child Sexual Abuse (IICSA) noted that the closed nature of these establishments, and their focus on containment and control, does not protect children.²⁴⁰ It found that complaints are rarely investigated properly, and seldom involve statutory authorities.²⁴¹

²³¹ Youth Justice Board and Ministry of Justice (2020), [Youth justice statistics 2018/19 England and Wales. Statistics bulletin](#) [accessed: 9 July 2020].

²³² Ibid. At any one time, there were approximately 600 children in YOIs in England and Wales.

²³³ In a survey by HM Inspectorate of Prisons, more than one-third (35%) of children said they had felt unsafe at some point, and 13% reported feeling unsafe at the time of the survey. Children from Traveller communities and those who had a disability were significantly more likely to do so. See HM Inspectorate of Prisons (2020), [Children in Custody 2018–19 An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions](#). [accessed: 9 July 2020].

²³⁴ In a survey by HM Inspectorate of Prisons, just under half (48%) of children said they had been bullied. This was particularly the case for Traveller children and those with disabilities. Children from Black and ethnic minority backgrounds were significantly more likely (than children from White backgrounds) to report being verbally abused or threatened/intimidated by staff. See HM Inspectorate of Prisons (2020), [Children in Custody 2018–19 An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions](#). [accessed 9 July 2020]

²³⁵ Just over half (52%) of children said they had not been victimised by other children, and 58% said they hadn't been victimised by staff. See HM Inspectorate of Prisons (2020), [Children in Custody 2018–19 An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions](#). [accessed: 7 August 2020]

²³⁶ IICSA (2019), [Sexual abuse of children in custodial institutions 2009-2017 investigation report](#) [accessed: 7 August 2020].

²³⁷ Ibid., p. 31.

²³⁸ Ibid., p. vi.

²³⁹ HM Inspectorate of Prisons (2019), [Annual report 2018-19](#), p. 55. [accessed: 9 July 2020].

²⁴⁰ IICSA (2019), [Sexual abuse of children in custodial institutions 2009-2017 investigation report](#) [accessed: 9 July 2020].

The number of self-harm incidents in the youth secure estate in England and Wales increased by 3% to about 1,800 incidents in the year ending March 2019.²⁴² This is the highest number in the last five years.²⁴³ The number of resultant injuries has also grown.²⁴⁴

The coronavirus pandemic has added to the many pressures on the youth secure estate. Children are locked up for longer,²⁴⁵ visits were suspended, and education and therapy are limited.²⁴⁶ An inspection identified that in two out of three YOIs, children were out of their cells for one hour, or less, per day.²⁴⁷ Concerns have been raised about the physical and mental impact of this regime on children.²⁴⁸ Despite legislation to enable some prisoners to be temporarily released,²⁴⁹ no children had been released by October 2020.²⁵⁰ We are also concerned that issues such as self-harm will go under-reported with institutions under less scrutiny, and that the limitations on the rights of children in custody during the pandemic may endure.

²⁴¹ Ibid.

²⁴² Youth Justice Board and Ministry of Justice (2020), [Youth justice statistics 2018/19 England and Wales. Statistics bulletin](#) [accessed: 9 July 2020].

²⁴³ Ibid.

²⁴⁴ In the year ending March 2019, 36% (660) of self-harm incidents resulted in injuries that required medical treatment. This is the highest proportion in the last five years. 94% needed on-site treatment, and 6% required hospital treatment. Youth Justice Board and Ministry of Justice (2020), [Youth justice statistics 2018/19 England and Wales. Statistics bulletin](#) [accessed: 9 July 2020].

²⁴⁵ The UK Government introduced [The Secure Training Centre \(Coronavirus\) \(Amendment\) Rules 2020](#), which reduced the minimum time a child should be given outside their room from 14 hours per day to 1.5 hours. See UK Government (2020), [Explanatory memorandum: The Secure Training Centre \(Coronavirus\) \(Amendment\) Rules 2020, 2020 No. 664](#) [accessed: 11 September 2020].

²⁴⁶ House of Commons Justice Committee (2020), [Coronavirus \(Covid-19\): The impact on prisons](#) [accessed: 7 August 2020].

²⁴⁷ HM Chief Inspector of Prisons (2020), [Report on short scrutiny visits to young offender institutions holding children](#) [accessed: 7 August 2020].

²⁴⁸ This includes evidence to the House of Commons Justice Committee from the Chair of the Youth Justice Board and HM Chief Inspector of Prisons. See Justice Committee (2020), [Coronavirus \(Covid-19\): The impact on prisons](#) [accessed: 7 August 2020]; Article 39 (2020), [Joint call for safe release of child prisoners](#) [accessed 7 August 2020]; Howard League for Penal Reform (2020), [Children in prison during the Covid-19 pandemic](#) [accessed: 7 August 2020].

²⁴⁹ UK Government (2020), [The Prison and Young Offender Institution \(Coronavirus\) \(Amendment\) Rules 2020](#) [accessed: 7 August 2020].

²⁵⁰ See House of Commons Justice Committee (2020), [Coronavirus \(Covid-19\): The impact on prisons](#) [accessed: 7 August 2020]. The UK Government confirmed that, as of October 2020, no children have been released early.

We are also concerned about the use of restraint in the youth secure estate. A recent review reported widespread overuse of restraint.²⁵¹ In a survey by HMIP in England and Wales, almost two-thirds (64%) of children in YOIs and STCs said they had been physically restrained.²⁵² In the year ending March 2019, restrictive physical interventions²⁵³ in the youth secure estate were up 16% compared with the previous year.²⁵⁴ In 1% of cases, medical treatment was required.²⁵⁵ Use of force was higher for those aged 10–14 years (compared with those aged 15–18), as well as for girls.²⁵⁶ The use of segregation is also a concern,²⁵⁷ with three in five (59%) children reporting in a survey that they had been placed in solitary confinement as punishment.²⁵⁸

²⁵¹ The review examined restraint in YOIs and STCs. See Taylor, C. (2020), [A review of the use of pain-inducing techniques in the youth secure estate](#), Ministry of Justice and HM Prison and Probation Service [accessed: 8 July 2020].

²⁵² HM Inspectorate of Prisons (2020), [Children in Custody 2018–19 An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions](#). [accessed: 9 July 2020].

²⁵³ A restrictive physical intervention (RPI) is 'any occasion in which force is used to overpower or with the intention of overpowering a child or young person'. See Youth Justice Board and Ministry of Justice (2020), [Youth Justice Statistics 2018/19 England and Wales. Statistics bulletin](#), para. 8.2 [accessed: 9 July 2020].

²⁵⁴ Youth Justice Board and Ministry of Justice (2020), [Youth Justice Statistics 2018/19 England and Wales. Statistics bulletin](#) [accessed: 9 July 2020].

²⁵⁵ On 60 occasions children and young people required medical treatment for an injury following the use of force; 50 minor injuries required on-site treatment and nine serious injuries required hospital treatment. See Youth Justice Board and Ministry of Justice (2020), [Youth Justice Statistics 2018/19 England and Wales. Statistics bulletin](#) [accessed: 9 July 2020].

²⁵⁶ Youth Justice Board and Ministry of Justice (2020), [Youth Justice Statistics 2018/19 England and Wales. Statistics bulletin](#), p. 51 [accessed: 1 September 2020].

²⁵⁷ Separation causes psychological harm, with symptoms increasing with the length of confinement. The harmful effects include: 'anxiety; depression; hostility, rage and aggression; cognitive disturbances; hypersensitivity to environmental stimulation; paranoia; and in the most extreme cases, hallucinations and psychosis'. See British Medical Association (2018), [Written evidence to the JCHR inquiry on Human Rights and Youth Detention: solitary confinement and restraint](#) [accessed: 9 July 2020].

²⁵⁸ HM Inspectorate of Prisons (2020), [Children in Custody 2018–19 An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions](#). [accessed: 9 July 2020].

We have called for the use of pain-inducing restraint on children to be prohibited.²⁵⁹ Similarly, the UK Parliament's Joint Committee on Human Rights concluded that '[t]he deliberate infliction of pain in Young Offenders' Institutions is unacceptable under any circumstances'.²⁶⁰ A recent review of pain-inducing techniques recommended that staff should only be allowed to use them to prevent serious physical harm.²⁶¹ The UK Government has partially or fully accepted many of the recommendations made.²⁶²

²⁵⁹ EHRC (2019), [Torture in the UK: update report: Submission to the UN Committee Against Torture in response to the UK List of Issues](#), p. 59. [accessed: 9 July 2020].
EHRC (2019), [Our response to the Justice Committee inquiry on children and young people in custody](#) [accessed: 9 July 2020].

²⁶⁰ Joint Committee on Human Rights (2019), [Youth detention: solitary confinement and restraint: Nineteenth Report of Session 2017–19](#), p. 3 [accessed: 9 July 2020].

²⁶¹ This applies to young offender institutions and secure training centres. See Taylor, C. (2020), [A review of the use of pain-inducing techniques in the youth secure estate](#), Ministry of Justice and HM Prison and Probation Service [accessed: 8 July 2020].

²⁶² Ministry of Justice (2020), [Independent review of pain-inducing techniques – Government response](#) [accessed: 7 August 2020].

Age of criminal responsibility

In England and Wales, the age of criminal responsibility remains 10.²⁶³ While the Scottish Government recently raised the age to 12,²⁶⁴ the UK Government has resisted change,²⁶⁵ despite calls from domestic organisations²⁶⁶ and international human rights bodies.²⁶⁷ Its position is inconsistent with accepted international standards,²⁶⁸ including the Committee's recent recommendation for states to increase the age to at least 14,²⁶⁹ and runs counter to mounting evidence that criminalisation makes children more likely to reoffend as adults.²⁷⁰

Recommendations

The UK Government should:

- improve the provision and availability of mental health services in the youth secure estate to prevent suicide and self-harm. This should include a particular focus on the impact of coronavirus restrictions on children's mental health.

²⁶³ Section 50 of the [Children and Young Persons Act 1933](#) (as amended). This is significantly lower than many European countries: see Child Rights International Network, [The minimum age of criminal responsibility](#) [accessed: 3 July 2020].

²⁶⁴ [Age of Criminal Responsibility \(Scotland\) Act 2019](#) [accessed: 3 July 2020].

²⁶⁵ Committee on the Rights of the Child Draft General Comment No. 24 replacing General Comment No. 10 (2007) on children's rights in juvenile justice – see UK Government (2019), [Comments of the Government of the United Kingdom of Great Britain and Northern Ireland](#) [accessed: 3 July 2020].

²⁶⁶ Standing Committee for Youth Justice (2017), [The Age of Criminal Responsibility Bill, 2017](#) [accessed: 12 October 2020]; Children's Rights Alliance for England and Just for Kids Law (2017), [Age of Criminal Responsibility Bill House of Lords Second Reading briefing](#) [accessed: 8 March 2019]. Another [Private Members Bill](#) on raising the age of criminal responsibility from 10 to 12 in England and Wales was introduced in the House of Lords in October 2019. However, the Bill did not complete its passage through the UK Parliament before the end of the parliamentary session.

²⁶⁷ Human Rights Committee (2015), [Concluding Observations on the UK](#); Human Rights Committee (2020), [List of Issues Prior to Reporting for the UK](#), para. 25; Committee against Torture (2019), [Concluding Observations on the UK](#).

²⁶⁸ UN (1989), [Convention on the Rights of the Child](#), Article 40(3)(a); UN Committee on the Rights of the Child (2007), [General Comment no.10 addressing Article 40 CRC](#); [UN Standard Minimum Rules for the Administration of Juvenile Justice \(The Beijing Rules\)](#), adopted by General Assembly resolution 40/33 of 29 November 1985.

²⁶⁹ UN Committee on the Rights of the Child (2019), [General Comment No. 24 \(2019\) on children's rights in the child justice system](#) [accessed: 3 July 2020].

²⁷⁰ Houses of Parliament (2018), [Age of Criminal Responsibility. POSTNOTE no. 577](#) [accessed: 3 July 2020].

- publish a specific plan for resolving issues in youth custody that have arisen following the restrictions brought about by the pandemic. This should include steps to: increase access to education; increase contact with families and friends, including face to face visits; significantly increase time out of cells; and eliminate solitary confinement. Inconsistencies in provision across the youth secure estate should be removed.
- ensure that measurable steps are taken to reduce violence in youth custody inflicted upon, and carried out by, children, including assaults and bullying, and to take action in response to the recommendations of the Independent Inquiry into Child Sexual Abuse report on sexual abuse of children in youth custody.
- improve data gathering on restraint in the youth secure estate and ensure that restraint is used proportionately and as a last resort in youth custody, in line with our human rights framework for restraint. This should include a ban on using restraint for disciplinary reasons and on techniques that deliberately inflict pain on children.
- develop a holistic welfare-based system, including early intervention and therapeutic services, for dealing with the harmful behaviour of children, and to raise the age of criminal responsibility to at least 14 years of age, in line with international human rights standards.
- prioritise urgent implementation of the recommendations set out in the Lammy Review and by the Commission on Justice in Wales, and develop and implement a comprehensive, coordinated and long-term strategy to ensure children from ethnic minorities are not subject to disproportionate treatment in the criminal justice system.

Policing

The way in which some children and young people are policed is of concern to us, with certain ethnic minorities consistently being disproportionately policed. Tasers were used 1,700 times on children in England and Wales in 2018/9²⁷¹ (an increase of 78% compared with the previous year)²⁷² including 29 times on children aged 10 or younger.²⁷³ In March 2020, the Home Office announced funding to deploy Tasers to 8,000 more police officers²⁷⁴ and we are concerned this could result in further use against children. The Independent Office for Police Conduct has called for greater scrutiny of the use of Tasers.²⁷⁵

The number of police forces in England and Wales authorising the use of spit-hoods is increasing, as is their use on children in police custody.²⁷⁶ There has been criticism that the risk assessments do not take into account the specific dangers spit-hoods pose to children.²⁷⁷ Evidence shows that children from some ethnic minorities in England are disproportionately subject to the use of both spit-hoods and Tasers.²⁷⁸

²⁷¹ The data presents an overall figure and does not account for geographic differences.

²⁷² Home Office (2018), [Police use of force statistics, England and Wales, April 2017 to March 2018: data tables](#). See Table 2 – figures show that during this period Tasers were used 954 times against children [accessed: 11 September 2020].

²⁷³ Home Office (2019), [Police use of force statistics, England and Wales: April 2018 to March 2019: data tables](#), see Table 2 [accessed: 11 September 2020].

²⁷⁴ Home Office (2020), [Forces awarded extra funding for Taser](#).

²⁷⁵ The Independent Office for Police Conduct has recommended more robust oversight for Tasers and a 'visible demonstration that police forces are learning from their experiences'. See Independent Office for Police Conduct (2020), [IOPC calls for greater scrutiny of Taser use following increasing concerns](#).

²⁷⁶ Comyn, R. (2019), ['The rise of spit hoods: dangerous, degrading and unjustified'](#), Liberty, 21 February. Liberty reports that at least 30 the 43 police forces in England and Wales issue spit-hoods to officers.

²⁷⁷ Children's Rights Alliance for England (2016), [State of Children's Rights in England 2016: Briefing on policing and criminal justice](#).

²⁷⁸ Children's Rights Alliance for England (2018), [State of Children's Rights in England: Briefing on policing and criminal justice](#); Across 2017 and 2018, children from ethnic minorities accounted for 34% of spit-hood use nationally and 72% in London. See also Children's Rights Alliance for England (2020), [Children's rights and policing: Tasers and children's rights](#); In the first 10 months of 2019, almost three-quarters of children against whom Tasers were used in London were from ethnic minorities. See also Busby, M. (2020), ['BAME children three times more likely to have a Taser weapon used on them by police'](#), The Guardian, 16 August [accessed: 11 September 2020].

Police have powers to stop and search children of any age, including those under the age of criminal responsibility in England and Wales, and there is no general requirement for the presence of an appropriate adult.²⁷⁹ In 2018/9 the use of stop and search rose by 32% across England and Wales.²⁸⁰ Children and young people from ethnic minorities are disproportionately stopped.²⁸¹ The use of stop and search in London appears to have risen sharply during the coronavirus pandemic.²⁸² We have significant concerns about the pilot removal of important safeguards on 'no-suspicion' stops,²⁸³ which is likely to result in more children from ethnic minorities being stopped, particularly Black children.²⁸⁴

²⁷⁹ See, for example, StopWatch (2017), [Stop & search, a guide for parents and children](#); Metropolitan Police, [Stop and search dashboard](#) [accessed: 17 July 2020].

²⁸⁰ Home Office (2019), [Stop and search statistics data tables, police powers and procedures year ending 31 March 2019](#), Table 1.

²⁸¹ Official statistics do not break down stop and search by age. However, Freedom of Information data shows the largest proportion of stop and searches in England is of 15–19 year olds; see Children's Rights Alliance for England (2019), [Briefing on policing and criminal justice](#). London's Metropolitan Police force, which is responsible for about 47% of all stop and search use across England and Wales, carried out 101,978 stop and searches on children and young people aged up to 19 (33%) in the year ending June 2020, including 9,785 on children aged 10–14 and 1,228 on children under 10. Overall, people from every ethnic minority group are stopped at higher rates than those from White groups, particularly Black people, who are stopped at almost 10 times the rate; see Home Office (2019), [Stop and search statistics data tables, police powers and procedures year ending 31 March 2019](#), Table 13. The data does not include an analysis of different local policing strategies.

²⁸² For example, the Metropolitan Police reported an increase in stop and search of 84% between March and May 2020. See Metropolitan Police, [Stop and search dashboard](#) [accessed: 1 July 2020]. There were 43,844 stop and searches reported in May, compared with 23,826 in March.

²⁸³ Home Office (2019), [Section 60 stop and search pilot extended](#).

²⁸⁴ Robust data on stop and search by age is not available. However, overall, Black people are almost 40 times more likely than White people to be subject to 'no-suspicion' stops, and people from Asian, Mixed, and Chinese or 'Other' ethnic groups are also disproportionately stopped, see Home Office (2019), [Equality impact assessment, Relaxation of Section 60 conditions in the Best Use of Stop and Search Scheme](#). This equality impact assessment acknowledges the removal of safeguards risks 'magnifying any residual levels of discrimination', and that people from ethnic minorities will be more likely to be searched under this power 'despite not committing any offences, and without being provided with significant person-specific justification for searches taking place' (pp. 10–11).

Recommendations

The UK Government should:

- understand and deal with disproportionate use of force by the police on children from ethnic minority groups.
- continue to improve the quality and consistency of data on the use of force, including data on protected characteristics, to ensure transparency, promote best practice and support efforts to tackle racial disproportionality.
- prohibit the use of Tasers on children, implementing the recommendations of the UN Committee on the Rights of the Child.
- hold police forces to account for their use of stop and search and make sure these powers are used in a lawful, non-discriminatory manner and only on the basis of reasonable suspicion. This should include ensuring that forces comply with the Best Use of Stop and Search Scheme, effectively record and monitor ethnicity data, and put in place appropriate procedural safeguards to protect the rights to privacy, liberty and security.
- carefully analyse the impact that 'no-suspicion' stops by police have had on ethnic minority children, in particular Black children, and publish its findings. The pilot removal of safeguards on these types of stops should not be extended unless the UK Government can demonstrate that the changes are justified and proportionate, and measures to prevent any discriminatory impact are in place, in line with the requirements of the Public Sector Equality Duty.

Legal aid

We remain concerned that changes to the civil legal aid regime in England and Wales, introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO),²⁸⁵ have restricted access to justice for children and their families.²⁸⁶

²⁸⁵ The changes removed legal aid for most private family, housing, debt, welfare benefits, immigration and employment matters, and for initial legal advice in many areas of law: [Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1](#).

²⁸⁶ EHRC (2018), [Response of the Equality and Human Rights Commission to the post-implementation review of LASPO 2012](#) [accessed: 13 July 2020].

The removal of legal aid for private family law cases²⁸⁷ has had a significant impact on children, including in cases to determine residence, contact and financial support.²⁸⁸ ²⁸⁹ Opportunities for free legal advice for family matters are scarce, and cannot meet demand;²⁹⁰ there is insufficient funding to obtain evidence to assist courts in evaluating cases;²⁹¹ and individuals are often unable to represent themselves effectively,²⁹² meaning judges may lack the information needed to assess the child's best interests.²⁹³ Legal aid remains unavailable for most education cases, other than those involving discrimination or special educational needs.²⁹⁴

²⁸⁷ Private family law cases have been removed from the scope of civil legal aid, except where there is evidence of domestic violence or abuse. See Legal Aid Agency, [Scope of family proceedings under LASPO](#) [accessed: 1 September 2020].

²⁸⁸ EHRC (2018), [The impact of LASPO on routes to justice](#) [accessed: 13 July 2020].

²⁸⁹ There is evidence of a particular impact on children's contact with non-resident parents, usually fathers, with reports of individuals abandoning claims for contact and residence due to restrictions on legal aid. See EHRC (2018), [The impact of LASPO on routes to justice](#); and Wong, S. and Cain, R. (2019), [The impact of cuts in legal aid funding of private family law cases](#), *Journal of Social Welfare and Family Law*, vol. 41, issue 1, pp. 3–14 [accessed: 13 July 2020].

²⁹⁰ EHRC (2018), [The impact of LASPO on routes to justice](#); see Wong, S. and Cain, R. (2019), [The impact of cuts in legal aid funding of private family law cases](#), *Journal of Social Welfare and Family Law*, vol. 41, issue 1, pp. 3–14 [accessed: 13 July 2020].

²⁹¹ EHRC (2018), [The impact of LASPO on routes to justice](#) [accessed: 13 July 2020].

²⁹² This is particularly true for people with certain protected characteristics, such as those with mental health conditions and learning disabilities, and those who face language barriers. The challenges are also pronounced in domestic abuse and child sexual abuse cases. See EHRC (2018), [The impact of LASPO on routes to justice](#), and Ministry of Justice (2020), [Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report](#) [accessed: 13 July 2020].

²⁹³ Coram Children's Legal Centre (2018), [Rights without remedies: Legal aid and access to justice for children](#) [accessed: 13 July 2020].

²⁹⁴ All other legal matters relating to education cases, including school exclusions, admissions, bullying and negligence issues, were removed from scope by LASPO. While legal aid remains in scope in special educational needs (SEN) cases, it is not available for representation at the first-tier tribunal, or for expert attendance at a hearing. Between April 2013 and February 2018, the number of children granted legal aid for education had fallen by 84%; see Coram Children's Legal Centre (2018), [Rights without remedies: Legal aid and access to justice for children](#) [accessed: 13 July 2020].

While LASPO had excluded unaccompanied and separated children with immigration issues from the scope of legal aid,²⁹⁵ recent legislative changes have brought such issues within scope.²⁹⁶ However, legal aid for immigration advice is not generally available for potential child victims of trafficking who are waiting for the National Referral Mechanism to determine whether there are 'reasonable grounds' for believing they have been trafficked.²⁹⁷

While Exceptional Case Funding (ECF) may be available where a failure to provide legal aid could result in a breach of an individual's rights, applications for ECF require specialist knowledge and detailed evidence; this presents barriers for children, particularly those with learning disabilities or limited English.²⁹⁸ The UK Government has committed to a number of steps to improve access to legal aid, including reviewing the ECF scheme.²⁹⁹

²⁹⁵ Including those whose cases include mixed asylum and non-asylum grounds. As a result, many have had to rely on free services for immigration advice, although geographic disparities in the availability of such services have given rise to a 'postcode lottery', with most free services concentrated in London and the South East. See The Children's Society (2017), *An update to Cut Off from Justice: The impact of excluding separated and migrant children from legal aid* (This publication is temporarily unavailable on The Children's Society website. Please email research@childrenssociety.org.uk for access).

²⁹⁶ The [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Legal Aid for Separated Children\) \(Miscellaneous Amendments\) Order 2019](#) has brought non-asylum immigration and citizenship matters into the scope of legal aid for under-18s who are not in the care of a parent, guardian or legal authority, including legal aid for applications to the EU Settlement Scheme. See Ministry of Justice and Legal Aid Agency (2019), [Separated migrant children given better access to legal aid](#) [accessed: 13 July 2020].

²⁹⁷ In addition, the following individuals are not eligible for legal aid unless they qualify for another reason not related to trafficking (e.g. they have an asylum claim): potential child victims who have not yet gone into the National Referral Mechanism (NRM); victims who have received a negative reasonable or conclusive grounds decision; and victims who only want advice about identification and the NRM (and not about leave to remain). See Anti Trafficking and Labour Exploitation Unit (2018), [Legal aid and immigration advice for victims of modern slavery](#).

²⁹⁸ The ECF application process is onerous and complex. Children may find it challenging to prepare a successful application without legal assistance, and even practitioners making an application on a child's behalf may face difficulties in obtaining sufficient instructions and evidence, given the complexity of the application process. Coram Children's Legal Centre (2018), [Rights without remedies: Legal aid and access to justice for children](#); Coram Children's Legal Centre (2018), [Evidence for the LASPO Post-implementation Review Exceptional Case Funding, September 2018](#); EHRC (2018), [Response of the Equality and Human Rights Commission to the post implementation review of LASPO 2012](#) [accessed: 13 July 2020]

²⁹⁹ Ministry of Justice (2019), [Post-Implementation Review of Part 1 of LASPO](#) [accessed: 13 July 2020].

The Commission on Justice in Wales reflected the concerns above in its recommendations and highlighted the particular cumulative effect of these changes having a higher impact in Wales.³⁰⁰

Recommendations

The UK Government should:

- identify where the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has had a negative impact on access to justice for rights protected by the CRC and take mitigating action, including bringing areas of law back in scope where children's rights and well-being are at risk.
- review Exceptional Case Funding and ensure that it works effectively to protect children's rights under the CRC and Human Rights Act 1998, including by resolving the complexity of the application process to ensure that children do not face barriers to funding in cases when legal aid would not normally be available.

³⁰⁰ The Commission on Justice in Wales (2019), [Justice in Wales for the people of Wales](#) [accessed: 10 September 2020].

6. Refugee and migrant children (Articles 10, 22 and 37)

Brexit and family reunification

The UK's departure from the European Union (EU), and the consequent changes to the UK's immigration system, has created uncertainty about the future residency rights of European Economic Area (EEA) and Swiss nationals in the UK, including children. Children's rights organisations have raised concerns about the UK Government's EU settlement scheme and the barriers to securing their rights faced by some children, for example due to confusion about the difference between settled and pre-settled status.³⁰¹ In particular, there are concerns about those in the care system, and those who have only ever lived in the UK but nevertheless may have insecure immigration status through no fault of their own.³⁰² High fees for British citizenship registration applications, and the burden of collecting evidence to establish citizenship, can be obstacles for those children who have the legal right to become British.³⁰³ Children's rights must continue to be a primary consideration³⁰⁴ in decision-making around immigration to ensure that children do not fall through the cracks of the wider changes precipitated by Brexit.

³⁰¹ Coram Children's Legal Centre (2020), [Children Left Out: Securing Children's Rights to Stay in the UK Beyond Brexit](#), [accessed 4 August 2020], p. 14.

³⁰² *Ibid.*, pp. 11-13.

³⁰³ [Project for the Registration of Children as British Citizens and others v Secretary of State for the Home Department](#) [2019] EWHC 3536 (Admin) [accessed: 10 September 2020]. This decision was appealed and was heard by the Court of Appeal on 7-8 October 2020. At the time of writing a judgement was not yet available; see also Coram Children's Legal Centre (2020), [Children Left Out: Securing Children's Rights to Stay in the UK Beyond Brexit](#), [accessed 4 August 2020], pp. 7-8.

³⁰⁴ The 'best interests' of the child must be a primary consideration as per the duties under section 55 of the [Borders, Citizenship and Immigration Act 2009](#). The duty is referred to in guidance produced by the Home Office, including [Home Office \(24 August 2020\), EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members version 7.0](#), p. 9; see also [HA \(Iraq\) v Secretary of State for the Home Department](#) (Rev 1) [2020] EWCA Civ 1176 (4 September 2020), paras. 9-11; and [ZH \(Tanzania\) v Secretary of State for the Home Department](#) [2011] UKSC 4 (1 February 2011), para. 23.

In 2019 there were 3,775 asylum applications made in the UK by unaccompanied children, a 23% increase from 2018.³⁰⁵ 89% of applicants were boys.³⁰⁶ There have been substantial delays in processing asylum applications by unaccompanied children,³⁰⁷ with a detrimental impact on children's education and mental health,³⁰⁸ though the High Court recently found that these delays were not unlawful.³⁰⁹ Meanwhile, the UK remains one of the only European countries not to allow child refugees to sponsor close relatives to join them in the UK.³¹⁰

³⁰⁵ Home Office, [Asylum and resettlement summary tables, year ending June 2020](#), Table Asy-01a [accessed: 13 October 2020].

³⁰⁶ Home Office (2020), [Asylum applications, initial decisions and resettlement](#), Table Asy_D01 [accessed: 13 October 2020].

³⁰⁷ Elder Rahimi Solicitors (2018), [Systemic Delays in the Processing of the Claims for asylum made in the UK by Unaccompanied Asylum Seeking Children \(UASC\)](#), pp. 6–8 [accessed: 15 July 2020].

³⁰⁸ Children's Rights Alliance for England (2019), [State of Children's Rights in England 2018: Immigration, Asylum and Trafficking](#), p.6 [accessed: 15 July 2020].

³⁰⁹ [MK, R \(On the Application Of\) v Secretary of State for the Home Department \[2019\] EWHC 3573 \(Admin\) \(20 December 2019\)](#)

³¹⁰ The UK has not opted into the European Family Reunification Directive. See also Children's Rights Alliance for England (2019), [State of Children's Rights in England 2018: Immigration, Asylum and Trafficking](#), p.8 [accessed: 15 July 2020].

The so-called 'Dubs amendment' to the Immigration Act 2016³¹¹ obligated the UK Government to make arrangements to relocate unaccompanied children to the UK from European countries. Despite hopes that 3,000 children could be relocated under the scheme,³¹² the UK Government, in consultation with local authorities, limited relocations at just 480 before completing the scheme in 2020.³¹³ In January 2020, MPs voted against an amendment³¹⁴ – another 'Dubs amendment' – to the European Union (Withdrawal Agreement) Bill, which would have ensured continued reunification for unaccompanied child refugees in Europe with family members in the UK following the UK's departure from the EU.³¹⁵

³¹¹ [Immigration Act 2016, Section 67](#).

³¹² McKinney, C. J. (2017), '[The Dubs Amendment: 3,000 refugee children?](#)', Full Fact, 10 February [accessed: 3 September 2020].

³¹³ Bulman, M. (2020), '[Give more children sanctuary here': Scheme bringing lone child refugees to safety in UK ends](#)', The Independent, 21 May. While the 480 cap was found to be lawful, a Court of Appeal judgment ruled that the UK Government had acted unlawfully under the scheme by giving 'patently inadequate' reasons for rejecting children assessed under the scheme. See [R \(Help Refugees Ltd\) v Secretary of State for the Home Department](#), [2018] EWCA Civ 2098, paras. 134–135.

³¹⁴ Amendment 18, tabled by Lord Dubs and others, would have removed Clause 37 from the European Union (Withdrawal Agreement) Act 2020, ensuring the continuation of the refugee children and family reunification provisions of the European Union (Withdrawal) Act 2018. See European Union (Withdrawal Agreement) Bill, [Second Marshalled List of Amendments to be moved on Report](#) [accessed: 19 October 2020], Amendment 18.

³¹⁵ Walker, P. (2020), '[Brexit bill passes parliament as Johnson overturns Lords amendments](#)', The Guardian, 22 January [accessed: 15 July 2020].

A 'no-deal' withdrawal from the EU will also end the UK's participation in the Dublin III Regulation,³¹⁶ under which family unity is a key criteria in determining the EU state responsible for examining an asylum claim.³¹⁷ Though the UK Government has stated its intention to negotiate a reciprocal agreement with the EU, which would allow for family reunification of unaccompanied children seeking asylum in either the UK or the EU,³¹⁸ a recent draft legal text from the UK Government appears to make this voluntary.³¹⁹ In October 2020 the House of Lords voted in favour of an amendment to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-2021, which would ensure continued rights under UK law to family reunion following departure from the EU.³²⁰ However, it is expected that the amendment will be rejected again by the House of Commons.³²¹

We are concerned that, without action by the UK Government to establish or maintain a robust legal framework for family reunification, the routes by which unaccompanied asylum-seeking children can join relatives in the UK will be reduced as the UK's 'transition period' comes to an end on 31 December 2020.

³¹⁶ House of Common Library (2019), [What is the Dublin III Regulation? Will it be affected by Brexit?](#) [accessed: 20 July 2020].

³¹⁷ Home Office (2020), [Dublin III Regulation](#), p. 6 [accessed: 28 October 2020]. See also [Dublin III Regulation](#) preamble para. 16 and Article 8, which stipulates that the responsibility is on the member state in which a family member is legally residing, so long as it is in the best interests of the child.

³¹⁸ UK Government (2020), [The Future Relationship with the EU: The UK's Approach to Negotiations](#), para. 54 [accessed: 20 July 2020]; Home Office (2020), [Statement of policy in relation to family reunion of unaccompanied children seeking international protection in the EU or the UK](#) [accessed: 20 July 2020].

³¹⁹ The text states that an EU member state 'may request the transfer to the United Kingdom of an unaccompanied child' when the child has a family member legally present in the UK. See also UK Government (2020), [Draft working text for an agreement between the United Kingdom of Great Britain and Northern Ireland and the European Union on the transfer of unaccompanied asylum-seeking children](#), para.1 [accessed: 20 July 2020]. See Townsend, M. (2020), ['Outrage at U-turn on promise to reunite child refugees with UK family'](#), The Observer, 24 May [accessed: 20 July 2020].

³²⁰ [Lords Amendments to the Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) [accessed: 19 October 2020], Amendment 4.

³²¹ Singh, A (2020), ['Government suffers fourth defeat on post-Brexit child refugees' rights – but still won't budge'](#), Huffington Post, 21 October 2020.

Recommendations

The UK Government should:

- ensure that the EU Settlement Scheme and any future changes to the UK's immigration rules make children's rights, including the child's best interests, a primary consideration in line with its legal obligation to do so.
- eliminate unnecessary delays in processing asylum applications by unaccompanied children, ensuring that disaggregated data on processing times is collected and published.
- ensure that arrangements are put in place to allow unaccompanied asylum-seeking children to join relatives in the UK under the same terms as the Dublin III Regulation following the UK's withdrawal from the EU, and review its immigration policy to enable child refugees to sponsor close relatives to join them in the UK.

Immigration detention and visual age assessments

Detention of children for immigration purposes

Despite Unicef stating that the immigration detention of children is 'never in their best interests, is a violation of their rights, and should be avoided at all costs',³²² the UK continues to allow the detention of children whose families are liable to be removed from the UK.³²³ Unaccompanied children may also be detained in short-term holding facilities.³²⁴ In 2019 a total of 98 children were detained, increasing for the second year in a row.³²⁵ Of these, 44 were under 12 years old including 19 who were under five. Only a third of children leaving detention in 2018 were removed from the UK,³²⁶ raising concerns about whether detention is being used as a last resort.³²⁷

³²² Unicef (2019), [Unicef working paper: alternatives to immigration detention of children](#), [accessed: 7 September 2020].

³²³ Home Office (2020), [Family returns process \(FRP\), version 6.0](#), [accessed: 21 October 2020].

³²⁴ [Immigration Act 2014](#), section 5., amending Schedule 2 of the Immigration Act 1971.

³²⁵ Home Office (2020), [Immigration detention statistics: year ending June 2020, detention summary tables](#), [accessed: 23 October 2020] table det_02b. This may include children stopped at the border with their families, children being removed under the family returns process, children held in age-disputed cases, and the children of foreign national offenders under the early release scheme.

³²⁶ Home Office (2019), [Immigration detention statistics](#), Table dt_09 [accessed: 19 August 2020].

³²⁷ Common law principles restrict the use of detention to a reasonable period, according to the 'Hardial Singh principles'; see [R \(Hardial Singh\) v Governor of Durham Prison \[1983\] EWHC 1 \(QB\)](#) [accessed: 2 September 2020]. Article 5 of the [Human Rights Act 1998](#) requires that detention is closely connected to the purpose of facilitating deportation or preventing unlawful entry. Home Office policy provides that families can only be admitted to pre-departure accommodation when removal directions have been set and all travel documentation is in place. Home Office (2020), [Family returns process \(FRP\), version 6.0](#), [accessed: 21 October 2020]. Home Office staff must give special consideration in decisions to detain unaccompanied children pending handover to a local authority, relative or carer, and comply with the duty to safeguard and promote their welfare. Home Office (2020), [Enforcement instructions and guidance, chapter 55, detention](#).

Conditions in immigration detention

Inspections have revealed a number of concerns about conditions in detention centres where children are held, including serious concerns about short-term holding facilities.³²⁸ Overall, there are high levels of violence and self-harm in the immigration estate,³²⁹ raising serious concerns about the suitability of these settings for children who may be held there in age-disputed cases.

Evidence suggests healthcare provision in immigration detention is inconsistent and not equivalent to the care available in the community.³³⁰ These concerns have been exacerbated in the context of the coronavirus pandemic, with the potential for poor ventilation in removal centres, inadequate sanitation, limited space and lengthy confinement increasing the risk of infection.³³¹

³²⁸ The most recent inspection of accommodation for detained families reported that 'The arrest, detention and attempted removal of families from the UK was harmful to children but was often ineffective. Children were woken early in the morning by arrest teams and escorted on long journeys before being detained in an unfamiliar environment with their parents who were often visibly distressed. Some children had witnessed their parents being restrained, but after this traumatic process, nearly 80% of families were simply released.' HMIP (2019), Report on an unannounced inspection of family detention, Tinsley House Immigration Removal Centre. A recent report of short-term holding facilities found unaccompanied children were often held overnight with adults and that welfare interviews regularly took place in the early hours of the morning, undermining the purpose. Reception facilities were found to be "very poor", with insufficient basic supplies, insufficient protection from the cold and no ready access to showers. HMIP (2020), Report on an unannounced inspection of the detention of migrants arriving in Dover in small boats [accessed: 23 October 2020].

³²⁹ The number of self-harm incidents requiring medical treatment in immigration detention settings almost trebled between 2011 and 2017 (note that this includes adults); see EHRC (2018), Is Britain Fairer? 2018, p. 151.

³³⁰ Medical Justice (2018), Written evidence to the Home Affairs Committee on immigration detention, [accessed: 19 August 2020]; and British Medical Association (2017), Locked up, locked out: health and human rights in immigration detention, [accessed: 19 August 2020].

³³¹ Coker, R. (2020), Report on coronavirus and immigration detention [accessed: 19 August 2020]. The report was prepared in relation to Detention Action's legal challenge to continued detentions during the pandemic.

Age assessments

Although it is unlawful to detain unaccompanied asylum-seeking children,³³² Home Office policy allows officials to treat children as adults in some circumstances where their age is disputed.³³³ This has led to some children being unlawfully detained.³³⁴ Detention has a significant negative effect on children and there are serious safeguarding risks in detaining unaccompanied children alongside adults.³³⁵ Children who are incorrectly assessed as adults may also be denied access to education, accommodation and other child-specific rights and benefits.³³⁶

³³² Immigration Act 1971, Schedule 2, as amended by the Immigration Act 2014, section 5. Unaccompanied children may be detained in 'short-term holding facilities' for a maximum of 24 hours subject to specified conditions. The Court of Appeal in BF (Eritrea) v Secretary of State for the Home Department [2019] EWCA Civ 872 described the detention of unaccompanied asylum-seeking children as 'positively unlawful', paragraph 4.

³³³ Home Office (2019), Assessing age, Version 3.0, pp. 10 and 61 [accessed: 19 August 2020].

³³⁴ It is not clear how many unaccompanied children are detained in age-disputed cases each year. A report by the UN Refugee Agency identified 'numerous cases where asylum-seekers, initially judged to be adults, were later determined to be children as young as 15 years'. UNHCR (2019), 'A refugee and then...' [accessed: 23 October 2020]. See also Ali, R (On the application of) v The Secretary of State for the Home Department [2017] EWCA Civ 138 in which a minor was detained as an adult.

³³⁵ Home Office (2019), Assessing age, Version 3.0, p. 10 [accessed: 19 August 2020].

³³⁶ UNHCR (2019), Putting the child at the centre: An analysis of the application of the best interests principle for unaccompanied and separated children in the UK, p. 34 [accessed: 19 August 2020].

Revised UK Government guidance on age assessments was published in 2019³³⁷ after the previous policy was found to be unlawful.³³⁸ The UK Government has made clear that the guidance reflects an 'interim policy position', and has been granted permission to appeal the decision to the Supreme Court.³³⁹ The current guidance permits children to be treated as adults if their physical appearance and demeanour 'very strongly suggests' that they are 25 or over.³⁴⁰ The UN Refugee Agency still considers this to be problematic³⁴¹ and letters reportedly sent by the Home Office to local authorities in 2020 indicated that this guidance was not necessarily being followed.³⁴² There are persistent concerns that visual age assessments are inherently unreliable and may not adequately take into account relevant cultural or racial factors, or the effects of trauma.³⁴³

³³⁷ Home Office (2019), Assessing age, version 3.0 [accessed: 19 August 2020].

³³⁸ BF (Eritrea) v Secretary of State for the Home Department [2019] EWCA Civ 872 (23 May 2019), para. 82.

³³⁹ Home Office (2019), Assessing age, version 3.0, p. 13 [accessed: 19 August 2020].

³⁴⁰ *Ibid.*, p. 11. Note that the guidance does not make explicit reference to the impact of unconscious bias, as is referenced, by way of comparison, in the Scottish Government's guidance; Scottish Government (2018), Age assessment: practice guidance.

³⁴¹ UNHCR (2019), Putting the child at the centre, An analysis of the application of the best interests principle for unaccompanied and separated children in the UK, pp. 41–42 [accessed: 19 August 2020].

³⁴² Townsend, M. (2020), 'Priti Patel under fire as Home Office bids to target child asylum seekers', *The Guardian*, 30 August [accessed: 7 September 2020]. The Home Office letters reportedly state that '[o]n the question of age, we ask that all authorities with UASCs [unaccompanied asylum-seeking children] they suspect are over 18 are given urgent age assessments'. This is despite the 2019 court ruling after which the guidance was changed so that only those 'strongly suspected' of being over 25 could be detained.

³⁴³ See our intervention in BF (Eritrea) v Secretary of State for the Home Department [2019] EWCA Civ 872 (23 May 2019) [accessed: 19 August 2020].

Hostile environment

The UK Government's hostile environment policies, which intentionally made it increasingly difficult for irregular migrants to live in the UK, may have had a detrimental effect on children's access to vital services.³⁴⁴ Home Office requirements for services to share individuals' data prevents certain families without valid leave to remain, or with uncertain immigration status, from accessing schools, housing, social security, healthcare and the police, out of fear of immigration enforcement.³⁴⁵ This may have been exacerbated during the coronavirus pandemic in relation to healthcare, with risks to individual children and wider public health.³⁴⁶

Recommendations

The UK Government should:

- ensure that local authorities conduct age assessments for unaccompanied migrant and asylum-seeking children in line with Home Office guidance, and amend the guidance to introduce a presumption that, where the age of a young person is uncertain, they must be treated as a child, including not being detained alongside adults, until their age has been assessed objectively by an independent expert.
- ensure suitable alternatives to immigration detention are made available for children.

³⁴⁴ Citizens UK (2019), [Forgotten people, how the hostile environment impacts schools and children's wellbeing](#) [accessed: 16 September 2020].

³⁴⁵ Liberty (2018), [Care, don't share](#) [accessed: 19 August 2020]; Citizens UK (2019), [Forgotten people, how the hostile environment impacts schools and children's wellbeing](#) [accessed: 19 August 2020]; Equality and Human Rights Commission (2018), [The lived experiences of access to healthcare for people seeking and refused asylum](#).

³⁴⁶ Public Health England has stated that data-sharing by the NHS for immigration enforcement purposes 'could present a serious risk to public health'; see Health and Social Care Committee (2018), [Memorandum of understanding on data-sharing between NHS Digital and the Home Office](#), para. 46 [accessed: 12 October 2020]. A coalition of human rights organisations has called on the Government to immediately suspend data-sharing between the NHS and immigration enforcement, so that migrants can access healthcare without fear that they will be subject to immigration controls. See [Letter to the Home Secretary on protecting migrants from COVID-19 \(2020\)](#) [accessed: 19 August 2020]. Signatories include Liberty, Medact, Doctors of the World, Runnymede Trust and Women for Refugee Women.

- introduce a 28-day time limit to bring an end to indefinite detention, create statutory criteria to ensure detention is only used as a measure of last resort and removal is imminent, and require a judge to authorise detention beyond 72 hours.
- implement in full the recommendations of the Windrush Lessons Learned Independent Review by Wendy Williams, including by undertaking a full review and evaluation of hostile environment policies, and strengthening compliance with the Public Sector Equality Duty in line with our assessment and recommendations on the subject.

7. Health (Articles 6 and 24)

Mental health

An NHS study of children and young people in England found that the proportion with a probable mental disorder had increased significantly from one in nine in 2017 to one in six by 2020.³⁴⁷ In 2004 the figure was one in 10.³⁴⁸ Recent research in Wales suggested a similar rate of one in seven.³⁴⁹ Despite this, there are significant gaps between need and the availability of services.³⁵⁰

The 2017 study also showed an increase in the prevalence of emotional disorders, including anxiety and depression, and consistently higher rates of most disorders among younger boys, lesbian, gay and bisexual young people, and those from lower income households.³⁵¹ At particular risk are children in the care system, of whom half meet the criteria for having a mental disorder.³⁵²

³⁴⁷ NHS Digital (2020), [Mental health of children and young people in England, 2020](#) [accessed: 29 October 2020]. In 2020, 16% of children aged 5 to 16 years were identified as having a probable mental disorder, increasing from 10.8% of children aged 5 to 15 years in 2017.

³⁴⁸ NHS Digital (2018), [Mental health of children and young people in England, 2017](#). The 2017 figures show that the increase from 2004 was largely driven by a rise in emotional disorders (including anxiety and depression), which for 5–15 year olds rose from 3.9% in 2004 to 5.8% in 2017. The 2017 figures show that young people aged 14 to 19 years old who identified as lesbian, gay, bisexual or other were more likely to have a mental disorder (34.9%) than those who identified as heterosexual (13.2%).

³⁴⁹ Research conducted with 11–19 year olds found that one in seven would describe their mental health as poor or very poor. See Mind Cymru (2019), [Mind Cymru calls on Welsh Government to make mental health and wellbeing a statutory part of the national curriculum for all learners, as survey finds that one in seven young people have poor mental health](#), [accessed: 6 August 2020].

³⁵⁰ The Children's Commissioner for England (2020), [Children's mental health report warns 'chasm' remains between what services are available and what children need](#) [accessed: 6 August 2020].

³⁵¹ NHS Digital (2018), [Mental health of children and young people in England, 2017: Summary of key findings](#), pp. 8, 16–17.

³⁵² Department for Education and Nadhim Zahawi MP (2018), [Improved mental health support for children in care](#).

Hospital admissions due to self-harm increased by at least 21% between 2011/2 and 2017/8,³⁵³ and we are concerned that certain groups – including girls and children who are attracted to the same or both genders – continue to self-harm at higher rates than others.³⁵⁴ Suicide rates have increased substantially among young people and almost doubled in Wales between 2014 and 2020.³⁵⁵

Both the UK and Welsh governments have committed to significantly increasing access to support either through NHS-funded mental health services, school and college support teams in England,³⁵⁶ or via a 'whole-school approach'.³⁵⁷ However, we are concerned that the growing number of children with mental health conditions are still often unable to access support or treatment when they need it. Although the UK Government's NHS Long Term Plan reported that access to services rose by 25% between 2015/6 and 2017/8, the total remains alarmingly low, with less than one-third of children with a mental disorder in England able to access support.³⁵⁸ Only 9% of young people reported in a survey that it was 'easy' to get support,³⁵⁹ with barriers including children not asking for help due to not understanding their condition, problems getting help from school or college, and problems getting help from a GP.³⁶⁰

³⁵³ The rate of hospital admissions due to self-harm of 10–24 year olds has increased by 21%. This does not take into account attendance at Accident and Emergency departments and the true figure is therefore likely to be higher: See Nuffield Trust (2019), [Hospital admissions as a result of self-harm in children and young people](#) [accessed: 13 July 2020].

³⁵⁴ The Children's Society reported in 2018 that girls (22%) were more than twice as likely as boys (9%) to self-harm. Alarmingly, almost half of children who are attracted to people of the same sex or both sexes had self-harmed compared with 15% of those who are attracted to the opposite sex: See The Children's Society (2018), [The Good Childhood Report 2018](#), p. 43.

³⁵⁵ The figures represent young people aged 15–24. See Royal College of Paediatrics and Child Health (2020), [State of child health: at a glance](#) [accessed: 17 July 2020].

³⁵⁶ [NHS Long Term Plan](#), p. 50.

³⁵⁷ Welsh Government (2019), [£7m to improve the mental health of children and young people in Wales](#) [accessed: 6 August 2020]; Department of Health and Social Care and Department for Education (2018), [Government Response to the Consultation on Transforming Children and Young People's Mental Health Provision: a Green Paper and Next Steps](#), p. 10 [accessed: 12 October 2020].

³⁵⁸ [NHS Long Term Plan](#), p.50.

³⁵⁹ Young Minds (2018), [#FightingFor Report](#), p. 6 [accessed: 17 July 2020].

³⁶⁰ *Ibid.*, p. 7.

The existence of a 'postcode lottery'³⁶¹ for access to child and adolescent mental health services (CAMHS) creates further inequality. A report into spending on 'low-level' support for children in England found that the top 25% of local areas spent at least £1.1 million, while the bottom 25% spent less than £177,000.³⁶² Between 2016/7 and 2018/9 local authority spending on mental health services fell in 60% of areas.³⁶³ We are also concerned by the impact of significant waiting times³⁶⁴ and increasingly stringent eligibility criteria³⁶⁵ for CAMHS referrals. Highlighting the geographic disparity in access, the proportion of CAMHS referrals in Wales was less than half the rate in England, based on 2020 figures.³⁶⁶ This was despite an upward trend in ring-fenced funding from the Welsh Government.³⁶⁷

³⁶¹ See, for example, Education Policy Institute (2020), [Access to child and adolescent mental health services in 2019](#) [accessed: 8 October 2020].

³⁶² The Children's Commissioner for England (2019), [Early access to mental health support](#), p. 4.

³⁶³ The Children's Commissioner for England (2019), [Early access to mental health support](#), p. 4. See also evidence of significant regional variations with lower spending in the East Midlands, the East and the South East, and evidence of lower spending in rural areas compared to urban areas.

³⁶⁴ The Local Government Association reports that in 2017 less than a third of children referred to CAMHS received treatment within the year. It also reports that 75% of children experiencing a mental health problem are forced to wait so long that their condition worsens or they cannot access treatment at all; see Local Government Association, [CAMHS - facts and figures](#) [accessed: 9 July 2020].

³⁶⁵ A survey found that almost 30% of 935 GPs in England reported that NHS trusts and commissioners had imposed stricter criteria for CAMHS referrals in the preceding 12-month period. It also found that one in three NHS mental health trusts only accepted the most severe referrals. See Pulse (2020), ['Revealed: How CAMHS are restricting GPs' referrals'](#).

³⁶⁶ The rate of admissions to CAMHS per 100,000 children aged 0–18 was 33 in England and 13 in Wales. See Royal College of Paediatrics and Child Health (2020), [State of child health: at a glance](#) [accessed: 17 July 2020].

³⁶⁷ Welsh Parliament Children, Young People and Education Committee (2018), [Mind over matter: A report on the step change needed in emotional and mental health support for children and young people in Wales](#), para. 334 [accessed: 6 August 2020].

In 2018 the UK Government committed to delivering the elements contained within its flagship 2017 Green Paper on mental health support in schools and treatment waiting times in England.³⁶⁸ The plans, however, were criticised for lacking ambition and taking too long to implement.³⁶⁹ Though we welcome the recognition that schools are a vital part of the support system, there are concerns that the policies place an unreasonable burden on school staff.³⁷⁰ In addition, the UK Government's approach pays little regard to prevention or early intervention, and fails to adequately address the disproportionate needs of certain vulnerable groups, underscoring a major gap in the UK Government's mental health strategy.³⁷¹ The strategy, for example, fails to adequately recognise the correlation between social disadvantage and mental health, and therefore misses an opportunity to create cross-governmental links with, for example, the social mobility strategy.³⁷² Despite these criticisms, we are concerned that the UK Government is failing to acknowledge the growing problem.³⁷³

³⁶⁸ Department of Health and Social Care and Department for Education (2018), Government Response to the Consultation on Transforming Children and Young People's Mental Health Provision: a Green Paper and Next Steps [accessed: 17 July 2020].

³⁶⁹ Many of the targets are set for 2022/3, and will initially cover only some areas of the country, leaving hundreds of thousands of children with insufficient support for several years. See House of Commons Education and Health and Social Care Committees (2018), The Government's Green Paper on mental health: failing a generation, p. 3; see also YoungMinds, Our view on the government's green paper [accessed: 17 July 2020].

³⁷⁰ House of Commons Education and Health and Social Care Committees (2018), The Government's Green Paper on mental health: failing a generation, p. 33.

³⁷¹ *Ibid.*, p. 6.

³⁷² *Ibid.*, p. 8.

³⁷³ The 2019 Conservative and Unionist Party Manifesto contained no acknowledgement of children's mental health. See Conservative Party (2019), Manifesto [accessed: 6 August 2020].

Furthermore, the impact of the coronavirus pandemic on children's mental health, though not yet fully understood, is likely to be severe and long-lasting. By July 2020, 81% of children with previous mental health issues reported that their mental health had deteriorated.³⁷⁴ With children cut off from support at school and the reduced capacity of the health service,³⁷⁵ the short and long-term impacts of the pandemic require the urgent attention of the UK and Welsh governments.

Recommendations

The UK and Welsh governments should:

- ensure that decisions about the provision and prioritisation of mental healthcare for children – during the pandemic and in the longer term – comply with the Public Sector Equality Duty by ensuring adequate data on the need for, access to and outcomes from mental health services for people sharing different protected characteristics is gathered and analysed, and take action to deal with any disproportionate impacts.
- commit to increased, ring-fenced and long-term funding of a range of children's mental health support services and interventions, during and after the pandemic, including pastoral therapeutic care in schools, provision of sufficient community-based support to prevent crisis and unnecessary detentions, along with resources to publicise nationally the availability of these services.
- introduce increased, ring-fenced and long-term funding for CAMHS to match demand, alongside a new strategy to resolve geographic disparities, waiting times and concerns about eligibility criteria.
- urgently develop a robust, cross-departmental child mental health strategy to tackle the growing need for support, with clear and distinct plans to reduce disproportionate rates of mental health disorders in certain at-risk groups. The strategy must include clear time frames, targets, measurable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources.

³⁷⁴ The findings were based on a survey of approximately 2,000 young people. See YoungMinds (2020), [Coronavirus: Impact on young people with mental health needs](#), p. 3. See also Children's Commissioner for England (2020), ['Angry, fed up, isolated': Coronavirus and children's mental health](#).

³⁷⁵ 31% of children (based on 1,081 responses) said they were no longer able to access support, while still needing it. See YoungMinds (2020), [Coronavirus: Impact on young people with mental health needs](#), p. 6.

Physical health

Good physical health in children is essential to the enjoyment of other rights. However, children's access to healthcare continues to be unequal and can often be determined by factors such as race,³⁷⁶ deprivation,³⁷⁷ care experience³⁷⁸ or gender identity.³⁷⁹

³⁷⁶ There are particular concerns about the inequality in accessing services for Gypsy, Roma and Traveller communities. See Women and Equalities Committee (2019), Tackling inequalities faced by Gypsy, Roma and Traveller communities, paras. 89–91.

³⁷⁷ Nuffield Trust (2018), Poor areas left behind on standards of GP care, research reveals. See also figures that show lower rates of admission to elective care in more deprived areas, despite greater need: Public Health England (2019), Place based approaches for reducing health inequalities: annexes, fig. 4.

³⁷⁸ National Institute for Health and Care Excellence (NICE) (2010, updated 2015), Guidance: looked after children and young people, para. 3.2. It is of concern that there is very little data available on the impact of care experience on physical health and access to healthcare.

³⁷⁹ Children's Rights Alliance for England, Children speak out on transgender issues, p. 5 [accessed: 20 July 2020]. See also survey by Stonewall that found that 40% of transgender people – not specifically children – had experienced difficulty accessing healthcare because of their trans status; Stonewall (2018), LGBT in Britain: health report, p. 14 [accessed: 20 July 2020].

Migrants and asylum seekers in England and Wales also face significant barriers to accessing healthcare,³⁸⁰ including the challenges of having no recourse to public funds,³⁸¹ and, for some, the increasing cost of the Immigration Health Surcharge (IHS). The IHS, introduced in 2015³⁸² and payable by people making immigration applications unless they are exempt,³⁸³ will rise in October 2020 from £400 to £470 per child per annum.³⁸⁴ The UK-wide charge, granting access to the NHS, cannot be paid in instalments and is due even when parents or guardians make standard taxation contributions.³⁸⁵ The UK Government conducted an impact assessment in 2018 that failed to acknowledge the impact of this policy on children,³⁸⁶ many of whom will have grown up in the UK.³⁸⁷ We are concerned about the impact on child poverty³⁸⁸ and that the charge deters the most vulnerable from seeking healthcare.³⁸⁹ For many families, the coronavirus pandemic has significantly exacerbated these existing problems.³⁹⁰

We are concerned that not enough is being done to address deteriorating health outcomes, and the inequality between certain groups of children. For example:

³⁸⁰ Equality and Human Rights Commission (2018), [The lived experiences of access to healthcare for people seeking and refused asylum](#); Public Health Wales NHS Trust, Swansea University (2019), [The Health Experiences of Asylum Seekers and Refugees in Wales](#).

³⁸¹ This has become particularly pronounced as a result of the coronavirus pandemic – see Gower, M. (2020), [‘Coronavirus: Calls to ease No Recourse to Public Funds conditions’](#), House of Commons Library, 27 April. It is estimated there are 1.4 million people in the UK with no recourse to public funds; Citizens Advice (2020), [Citizens Advice reveals nearly 1.4m have no access to welfare safety net](#).

³⁸² [The Immigration \(Health Charge\) Order 2015](#).

³⁸³ Home Office, [Pay for UK healthcare as part of your immigration application](#), [accessed: 3 June 2020].

³⁸⁴ This comes after the charge was doubled from £200 in 2019. See Gower, M. (2020), [‘The immigration health surcharge’](#), House of Commons Library 18 June.

³⁸⁵ Ibid.

³⁸⁶ Home Office (2018), [Updating the immigration health charge, 2018](#).

³⁸⁷ Coram Children's Legal Centre, [Doubling of immigration health surcharge blocks children from having secure immigration status](#) [accessed: 7 August 2020]; see also [Lord Rosser, Hansard 28 November 2018](#), vol. 794, column 637.

³⁸⁸ Refugee and Migrant Children's Consortium (2018), [Doubling the immigration health surcharge](#), November 2018.

³⁸⁹ Doctors of the World, [Research Briefing: deterrence, delay and distress: the impact of charging in NHS hospitals on migrants in vulnerable circumstances](#).

³⁹⁰ Rix, J. (2020), [‘Sally Daghlian: “Some migrants are too scared to seek healthcare”](#)’, The Guardian, 26 May.

- Coverage rates for the 5-in-1 vaccination at 12 months have decreased across the UK, with rates in England now 3.8% lower than in Scotland.³⁹¹ At 24 months, rates in England are at the lowest level since at least 2009/10, falling below the 95% target for the second year in a row.³⁹²
- The smoking rate among 15 year olds in Wales has increased among boys since 2014, while falling elsewhere.³⁹³
- After reaching an all-time low in 2014, infant mortality increased for three consecutive years for the first time since 1980, before improving slightly in 2018.³⁹⁴ Those from the most deprived areas and from ethnic minorities were over-represented.³⁹⁵

³⁹¹ Rates in England fell from 94.2% to 92.1%, and in Scotland from 97.4% to 95.9%, between 2014 and 2020. Royal College of Paediatrics and Child Health (2020), State of child health: at a glance [accessed: 17 July 2020].

³⁹² Public Health England (2020), Childhood vaccination coverage statistics, England, 2019-20, p. 11 [accessed: 13 October 2020].

³⁹³ Even where there have been improvements, we continue to fall behind comparable high-income European countries. See Royal College of Paediatrics and Child Health (2020), State of child health: at a glance [accessed: 17 July 2020] and Smoking in young people [accessed: 13 October 2020].

³⁹⁴ Office for National Statistics (2018), Child and infant mortality in England and Wales: 2018. In 2018 the infant mortality rate decreased to 3.8 deaths per 1,000 live births in England and Wales, compared with 3.9 in 2017; this is above the lowest ever rate of 3.6, recorded in 2014.

³⁹⁵ Office for National Statistics (2018), Child and infant mortality in England and Wales: 2018, section 6. The infant mortality rate was highest among babies with a Pakistani ethnicity, at 7.3 deaths per 1,000 live births in 2017. In contrast, the rate was lowest among babies born in the White Other ethnic group, at 2.6 deaths per 1,000 live births. Suggested causes of this reversal include smoking during pregnancy, obesity, increasing poverty and pressure on maternity services. See also Campbell, D. (2018), 'Concern at rising infant mortality rate in England and Wales', The Guardian, 15 March.

Childhood obesity continues to rise,³⁹⁶ with predictions that half of all children in England would be obese or overweight by 2020.³⁹⁷ In 2018/9, 9.7% of children in England aged four to five were obese, rising to 20.2% of children aged 10–11.³⁹⁸ In Wales over a quarter of children are either overweight or obese.³⁹⁹ At the same time, cases of child malnutrition in England have increased.⁴⁰⁰ Children from the most deprived areas are significantly more likely to be obese or overweight, with this gap widening over the last decade.⁴⁰¹ Race continues to be a factor, with Black children in England and Wales more likely to be overweight than children from other ethnicities,⁴⁰² and Asian children more likely to be underweight in England.⁴⁰³ ⁴⁰⁴ Though we welcome the UK Government's obesity strategy, announced in 2020,⁴⁰⁵ we are concerned that it fails to address the link with socio-economic disadvantage.⁴⁰⁶ The National Audit Office further warned in 2020 that the UK Government would fail to meet its target of halving childhood obesity by 2030 if it did not act with 'greater urgency, commitment, co-ordination and cohesion'.⁴⁰⁷

³⁹⁶ Public Health England (2020), [National child measurement programme \(NCMP\): trends in child BMI](#); and NHS Digital (2019), [National Child Measurement Programme, England 2018/19 School Year](#), Table 1a. Despite the introduction of a 'sugar tax' in 2017, which cut sugar in soft drinks by almost 30%, consumption of sugar in England increased by 2.6% between 2015 and 2018. See Public Health England (2019), [Sugar reduction: report on progress between 2015 and 2018](#).

³⁹⁷ Royal College of Paediatrics and Child Health, [About childhood obesity](#) [accessed: 3 July 2020].

³⁹⁸ NHS Digital (2019), [National Child Measurement Programme, England 2018/19 School Year](#).

³⁹⁹ Public Health Wales Observatory (2019), [Obesity in Wales](#) [accessed: 31 August 2020].

⁴⁰⁰ Wood, V. (2020), ['Almost 2,500 people admitted to hospital with malnutrition this year as cases double in England'](#), The Independent, 31 July.

⁴⁰¹ Public Health England (2020), [National child measurement programme \(NCMP\): trends in child BMI](#); Baker, C. (2019), ['Obesity statistics'](#) House of Commons Library, 6 August [accessed: 31 August 2020].

⁴⁰² A study in the The BMJ found that, although the risk from COVID-19 was very low in children, Black children and those who are obese were at a slightly higher risk than other children. See The BMJ (2020), ['Clinical characteristics of children and young people admitted to hospital with covid-19 in United Kingdom: prospective multicentre observational cohort study'](#), BMJ 2020;370:m3249.

⁴⁰³ NHS Digital (2018), [National child measurement programme, England – 2017/18 School Year \[PAS\]](#).

⁴⁰⁴ Public Health Wales NHS Trust (2018), [Child Measurement Programme 2017/18](#) [accessed: 31 August 2020].

⁴⁰⁵ Department of Health and Social Care (2020), [New obesity strategy unveiled as country urged to lose weight to beat coronavirus \(COVID-19\) and protect the NHS](#).

⁴⁰⁶ The strategy, for example, targets 'buy one get one free' deals on supermarket meals – something that many families from poorer households rely on. See Boseley, S. (2020), ['New UK obesity plan fails to address underlying problems'](#), The Guardian, 27 July.

⁴⁰⁷ National Audit Office (2020), [Childhood obesity](#) [accessed: 11 September 2020].

Despite recommendations by various UN bodies to prevent unnecessary medical interventions on intersex children,⁴⁰⁸ and the launch of a UK Government call for evidence in January 2019,⁴⁰⁹ steps have not been taken by the UK or Welsh governments to strengthen the rights of babies born with atypical sexual or reproductive anatomy. The impact of so-called 'genital normalisation' surgery can be profound and yet no legislative provision has been made to safeguard babies from these interventions when there is no medical necessity.⁴¹⁰

⁴⁰⁸ Committee on the Rights of the Child (2016), Concluding Observations, paras. 47(c)–(e); Committee against Torture (2019), Concluding Observations, para. 65; Human Rights Council (2013), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, para. 88.

⁴⁰⁹ Government Equalities Office (2019), Variations in sex characteristics call for evidence [accessed: 2 July 2020].

⁴¹⁰ Malta and Portugal have in recent years banned medically unnecessary surgery on intersex children. See Guilbert, K. (2018), 'Portugal approves law to boost transgender rights, protect intersex infants', Reuters, 13 April.

Undoubtedly one of the most significant threats to the physical well-being, and indeed the right to life, of children is the climate crisis and the effects of pollution.⁴¹¹ Children are suffering the ill effects now – at least 4.5 million children in the UK are currently growing up in areas with unsafe levels of air pollution,⁴¹² and the UK has the highest rate in Europe of childhood asthma caused by air pollution.⁴¹³ The response from the UK Government, however, has lacked action with the UK on track to miss several environmental targets.⁴¹⁴ Without immediate and bold action by the UK and Welsh governments to reduce emissions and pollution levels, the health, well-being and lives of children will continue to be put at increasing and irreversible risk.

⁴¹¹ A major 2019 report by The Lancet found that children born today will live in a world that is four degrees warmer by their 71st birthday and that, as a result, they will be burdened with health issues at every stage of their lives, including malnutrition, asthma, premature death, stunted development, heart and lung weakness, and weakened immune systems. See Watts, N., Amann, M., Arnell, N. et al. (2019), 'The 2019 Report of The Lancet Countdown on health and climate change: ensuring that the health of a child born today is not defined by a changing climate', The Lancet, 16 November, vol. 394, issue 10211, pp. 1836–1878. See also Weston, P. (2019), 'Climate change poses unprecedented health risks to children, major study warns', The Independent, 14 November.

⁴¹² Unicef UK (2018), A breath of toxic air: UK children in danger, p. 4. While there is no 'safe' level of particulate matter for humans to breathe, the term 'unsafe' is used in reference to levels of air pollution on or above the World Health Organisation's recommended threshold of fine particulate matter.

⁴¹³ Achakulwisut, P., Brauer, M., Hystad, P. and Anenberg, S. (2019), 'Global, national and urban burdens of paediatric asthma incidence attributable to ambient NO₂ pollution estimates from global datasets', The Lancet Planet Health 2019, 3: e166178; see also Matthews-King, A. (2019), 'UK worst in Europe for pollution-linked childhood asthma cases, study shows', The Independent, 11 April.

⁴¹⁴ The UK is currently ranked 133rd on delivering on carbon emissions targets and providing a climate fit for future generations by an independent World Health Organization (WHO), UNICEF and Lancet Commission study. See WHO-UNICEF-Lancet Commission (2020), 'A future for the world's children?', fig. 10, Lancet 2020; vol. 395, pp. 605–658. See also a 2019 investigation by Greenpeace publication Unearthed and The Financial Times, which sets out the targets that the UK Government is on course to miss; Howard, E., Sandler Clarke, J. and Barratt, L. (2019), 'UK set to miss raft of environmental targets in 2020 and beyond', Unearthed and the Financial Times, 12 November [accessed: 20 July 2020].

Recommendations

The UK and Welsh governments should:

- urgently address the health inequalities – in both access and outcomes – experienced by children, especially those at particular risk of vulnerability, and set objectives that provide focus to child-specific health policies and services where evidence demonstrates targeted interventions would be effective.
- abolish the Immigration Health Surcharge for children to ensure that all children have access to healthcare when they need it, irrespective of their family circumstances.
- legislate to ensure that non-urgent medical interventions are not carried out on intersex children until there is informed consent, review birth registration rules to allow for instances of babies born with atypical sexual or reproductive anatomy, and make available adequate information, counselling and psychological services for families and children.
- ensure the rights of children, including the right to life and the right to health, are at the forefront of urgent decision-making and action to reduce carbon emissions and air pollution.

8. Violence and personal safety (Articles 19, 34, 35 and 36)

Violence against children

We are concerned that children continue to be subjected and exposed to violence and abuse, in a variety of forms, which can have a devastating impact on the future of each child:

- The Crime Survey for England and Wales⁴¹⁵ estimated that one in five adults aged 18 to 74 years experienced at least one form of child abuse, or witnessed domestic violence or abuse, before the age of 16 years.
- An estimated 831,000 children in England live in households that report domestic abuse.⁴¹⁶
- In Wales an estimated 18,489 children experienced domestic violence and abuse in 2018, and 25,607 children experienced severe domestic violence and abuse over their lifetime.⁴¹⁷
- 7.5% of the adult population have experienced some form of sexual abuse before the age 16.⁴¹⁸ Available data indicates that 11.5% of women reported past abuse compared to 3.5% of male respondents.⁴¹⁹
- Disabled adults were significantly more likely to have experienced abuse of any form before the age of 16 years compared to those who were not disabled, at 32% compared with 19%.⁴²⁰

⁴¹⁵ Office for National Statistics (ONS) (2020), [Child abuse extent and nature, England and Wales: year ending March 2019](#). Measuring the scale and nature of child abuse is difficult because it is usually hidden from view. Administrative data sources do not represent the full scale of the issue, and there are no current surveys that measure children's experiences of abuse because of the challenges in asking this age group about such a sensitive topic.

⁴¹⁶ Children's Commissioner for England (2019), [Vulnerable groups and latest data](#) [accessed: 7 October 2020].

⁴¹⁷ Welsh Women's Aid (2019), [Children matter: children and young people experience violence and abuse too](#), p. 13.

⁴¹⁸ Centre of Expertise on Child Sexual Abuse (2020), [What the new ONS child abuse compendium tells us about CSA](#) [accessed: 7 September 2020]

⁴¹⁹ Ibid..

⁴²⁰ Office for National Statistics (ONS) (2020), [Child abuse extent and nature, England and Wales: year ending March 2019](#) [accessed: 7 September 2020].

- Individuals identifying as having a mixed or multiple ethnic identity were significantly more likely to have experienced abuse before the age of 16 years than other ethnic groups.⁴²¹

The UK Government has accepted, through an amendment to the Domestic Abuse Bill,⁴²² that children who witness domestic abuse should be included within the definition of victims for the purpose of the legislation.⁴²³ Though this is welcome, further changes to the Bill are needed to ensure that all domestic abuse survivors, and their children, can access specialist support services.⁴²⁴

⁴²¹ Office for National Statistics (ONS) (January 2020), [Child abuse extent and nature, England and Wales: year ending March 2019](#). Those identifying as having a Mixed or multiple ethnic identity were significantly more likely to have experienced abuse before the age of 16 years (32%) than White (21%), Black (17%), Other (17%) and Asian (11%) ethnic groups.

⁴²² UK Parliament, [Bill documents — Domestic Abuse Bill 2019-21](#) [accessed: 7 September 2020].

⁴²³ House of Commons (2020), [Notice of Amendments given up to and including Monday 29 June 2020, Domestic Abuse Bill as amended](#), NC15.

⁴²⁴ EHRC (2020), [Briefing, Domestic Abuse Bill House of Commons Report Stage and Third Reading](#) [accessed: 20 July 2020]. In Wales the [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#) seeks to ensure that there are support services available for all, including children.

Current provision of support services does not reach all those in need, due largely to funding shortfalls.^{425 426} In Wales it is estimated that 77% of children and young people who experienced domestic abuse in 2018 received no specialist support.⁴²⁷ There are specific barriers, and a lack of specialist support, for ethnic minority families, children in LGBT families and those with disabled family members.⁴²⁸ Women with several children, and those with older male children, can face difficulties securing a refuge space.^{429 430}

Despite experiencing the highest rate of domestic abuse in their own relationships of any age group,⁴³¹ young people are relatively rarely referred to specialist support services⁴³² and face barriers to accessing support.⁴³³

⁴²⁵ A Women's Aid survey of domestic abuse services showed that, since 2014, almost one-third (30.6%) of services have had to reduce the amount of support (in terms of staff time) that they are able to give to each service user due to a lack of funding. Over half of services responding to the survey cited funding uncertainty as the biggest challenge in 2017. See Women's Aid (2019), [The Domestic Abuse Report 2019: The Annual Audit](#), pp. 33 and 38.

⁴²⁶ Action for Children (2020), [Children's services funding and spending](#) [accessed: 28 October 2020].

⁴²⁷ Welsh Women's Aid (2019), [Children Matter: Children and young people experience violence and abuse too](#) [accessed: 22 July 2020].

⁴²⁸ The All-Party Parliamentary Group (APPG) on domestic violence reported in 2015 that funding cuts by statutory agencies to violence against women and girls (VAWG) services had a disproportionate impact on ethnic minority-led VAWG organisations. Disabled women, who experience disproportionate levels of all forms of violence, also face additional barriers to accessing support: for example, Women's Aid's [The domestic abuse report 2020](#) showed that fewer than 2% of refuges are wheelchair accessible.

⁴²⁹ Women's Aid (2018), [Survival and beyond: The Domestic Abuse Report 2017](#) [accessed: 7 September 2020].

⁴³⁰ National charity [Friends, Families and Travellers](#) has found through its advice work that these types of restrictions can be a particular barrier for Gypsy and Traveller women, who may have larger families.

⁴³¹ SafeLives, [Safe Young Lives – Young People and domestic abuse](#) [accessed: 20 July 2020].

⁴³² 1.7% of multi-agency risk assessment conference (MARAC) referrals, 2% of referrals into independent domestic violence adviser (IDVA) support and 1% of referrals into outreach support are made for those aged 16 and 17 years old (who make up 3.1% of the adult population); see SafeLives, [Safe Young Lives: Young People and domestic abuse](#), p. 7 [accessed: 2 September 2020].

⁴³³ Research found that children in England and Wales faced barriers to accessing support in two-thirds of participating local authorities. More than 10% of responding local authorities had no specialist support services available at all for children. See Action for Children (2019), [Patchy, Piecemeal and Precarious – briefing](#) [accessed: 20 July 2020]; see also Action for Children (2019), [Up to 690 children face threat of domestic violence every day of election period](#) [accessed: 2 September 2020].

The number of child sexual offences recorded by police across the UK increased by 57% between 2014/5 and 2019/20.⁴³⁴ The Independent Inquiry into Child Sexual Abuse in England and Wales (IICSA) has found extensive evidence that public authorities with responsibility for children's welfare were aware of widespread allegations of child sexual abuse but failed to intervene in spite of numerous opportunities to do so.⁴³⁵ IICSA has issued a series of recommendations in response.⁴³⁶

Corporal punishment

In England, parents and those acting 'in loco parentis' who are charged with the common assault of a child can still seek to rely on the common law defence of 'reasonable punishment'⁴³⁷ if the act is committed for the purpose of correcting the child's behaviour. This means that children do not have the same level of protection from violence as adults. Already removed in Scotland, from March 2022 this defence will no longer be available in Wales.⁴³⁸

⁴³⁴ NSPCC (2020), [Child sexual offences jump 57% in 5 years](#).

⁴³⁵ IICSA (2018), [Interim report of the Independent Inquiry into Child Sexual Abuse](#) [accessed: 7 September 2020].

⁴³⁶ IICSA, [Recommendations](#) [accessed: 7 September 2020].

⁴³⁷ Also known as 'reasonable chastisement': section 58, [Children Act 2004](#).

⁴³⁸ See the [Children \(Equal Protection from Assault\) \(Scotland\) Act 2019](#) and the [Children \(Abolition of Defence of Reasonable Punishment\) \(Wales\) Act 2020](#).

Harmful practices

Certain groups of children remain at risk from harmful practices such as so-called 'honour-based' violence (HBV) or female genital mutilation (FGM). Forced marriage and child marriage are also continuing areas of concern.⁴³⁹ A 2017 Freedom of Information request by women's rights organisation IKWRO revealed that reports of HBV to police forces in the UK have increased by 53% since 2014, without a correlating increase in referrals to the Crown Prosecution Service (CPS).⁴⁴⁰ Despite estimates that instances of FGM are increasing,⁴⁴¹ funding to tackle the practice has reportedly been reduced by 84% since 2015.⁴⁴² We are concerned that the lack of convictions under FGM legislation could discourage women and girls affected from coming forward.⁴⁴³

⁴³⁹ Figures from the Government's Forced Marriage Unit show that in 2018 34% of cases involved a victim who was under 18 years old, with 19% aged 15 or under. See UK Government (2020), [Forced Marriage Unit Statistics 2018](#) [accessed: 7 September 2020]. Concerns have been raised that in some instances parental consent to marriages from the age of 16 in England and Wales allows for coercion to take place. See [Girls Not Brides](#) partnership website and Girls Not Brides (2017), '[Close loopholes that allow forced child marriage in the UK](#)', The Guardian, 3 August. Despite some improvements, under-reporting and high attrition rates through the justice system give cause for concern. In 2018 6% of cases of forced marriage reported to the Forced Marriage Unit involved a child with possible learning disabilities. See UK Government (2020), [Forced Marriage Unit Statistics 2018](#) [accessed: 7 September 2020].

⁴⁴⁰ IKWRO (2017), [Press release: 53% rise in 'honour' based violence cases reported to the police since the criminalisation of forced marriage](#) [accessed: 7 September 2020].

⁴⁴¹ Collinson, A. and Furst, J. (2019), '[FGM "increasingly performed on babies"](#)', BBC News, 4 February [accessed: 7 September 2020].

⁴⁴² Townsend, M. (2020), '[Girls put "at risk" as cash to help end FGM in Britain is reduced by 84%](#)', The Guardian, 19 July [accessed: 7 September 2020].

⁴⁴³ House of Commons Home Affairs Committee (2016), [Female genital mutilation: abuse unchecked](#), p. 21 [accessed: 7 September 2020].

Coronavirus impact

While the full impact of the coronavirus pandemic is not yet known, a rise in the abuse of children is one expected outcome. Evidence shows that, following the introduction of a national lockdown, reports of children living in abusive homes rose by 49%.⁴⁴⁴ Despite this, there is a risk that much-needed support services for children will be increasingly difficult to access.⁴⁴⁵ With schools closed, a vital safeguarding measure disappeared and left children in vulnerable positions at greater risk. There was low uptake of school places by 'vulnerable' children during the period of national lockdown.⁴⁴⁶ ⁴⁴⁷ The increased risk of exposure of children to online abuse and grooming raised additional safeguarding challenges.⁴⁴⁸

Disabled children are likely to be particularly affected by these developments, because it can be harder for them to report abuse and receive support.⁴⁴⁹ LGBT young people may also be particularly at risk of abuse in the home from hostile family members.⁴⁵⁰

⁴⁴⁴ NSPCC (2020), [Contacts to NSPCC helpline about domestic abuse up by nearly 50%](#) [accessed: 5 October 2020].

⁴⁴⁵ Of service providers responding to a Women's Aid survey on the impact of coronavirus, 60% stated that they had needed to reduce or cancel their service provision for children. See joint briefing by Action for Children and others, [Domestic Abuse Bill – Committee Stage Briefing](#) [accessed: 28 October 2020].

⁴⁴⁶ Farrell, J. (2020), ['Coronavirus: Fears for vulnerable children as thousands miss first day of new school term'](#), Sky News, 21 April. Early data showed that uptake by 'children in need' or with an EHC plan was as low as 5%. See Department for Education (2020), [Coronavirus \(COVID-19\) attendance in education and early years settings – summary of returns to 17 April 2020](#).

⁴⁴⁷ This situation was compounded in England by reduced children's social care services due to social distancing measures and regulatory changes that weakened the duties of local authorities toward children in care. See Willow, C. (2020), ['Ministers use COVID-19 to destroy children's safeguards'](#), Article 39, 23 April.

⁴⁴⁸ BBC News (2020), ['Coronavirus: Online child abuse warning during lockdown'](#), 27 March.

⁴⁴⁹ See NSPCC (2020), [Coronavirus \(COVID-19\) and keeping children safe from abuse](#)

⁴⁵⁰ See [LGBT Foundation briefing](#) on the impact of coronavirus on LGBT people.

Recommendations

The UK Government should:

- legislate to remove the 'no recourse to public funds' condition for survivors of domestic abuse that bars many migrant survivors from accessing services.
- ensure that the Domestic Abuse Bill includes a statutory duty on public authorities to commission community-based services, as well as placing duties on local authorities to provide accommodation-based services (that is, services for those in refuges). This should include specialist services for children and young people who have witnessed domestic abuse in the home, as well as for survivors of abuse in their own relationships.
- ensure that legislation on marriage is in line with the international human rights framework, ensuring the best interests of the child are taken as a primary consideration in marriage legislation and providing adequate safeguards for under-18s.
- ensure thorough investigation of all referrals of forced marriage, including those involving women and girls with learning disabilities.
- prohibit all forms of physical punishment of children, including through the abolition of the 'reasonable punishment' defence.
- allocate additional, ring-fenced funding to local authorities to ensure increased access to support services for children at risk of harm, both during any pandemic-related school closures and following their reopening.
- support all schools in monitoring and identifying indicators of abuse, ensuring schools have the resources to assist those who have experienced abuse in line with a child rights-based and adverse childhood experience (ACE)-aware approach.
- act urgently on all outstanding recommendations of the 2015 HM Inspectorate of Constabulary report on police responses to so-called 'honour-based' violence.

The UK and Welsh governments, where relevant, should:

- ensure that children who witness domestic abuse or who experience abuse or sexual violence receive appropriate support. Governments should develop a sustainable, dedicated and accountable funding model for refuges and domestic abuse services, including those that provide specialist services to Black and ethnic minority women and children, disabled women and children, and women and children with complex needs.
- take appropriate action, without delay, in response to the recommendations of the Independent Inquiry into Child Sexual Abuse.
- ensure that all relevant public sector professionals receive mandatory training in how to identify and support women and girls affected by harmful practices.

- encourage successful prosecutions for female genital mutilation (FGM), through concrete steps including providing training for law enforcement personnel and the judiciary, implementing a comprehensive, coordinated and properly funded FGM strategy, and providing sufficient, sustainable funding to relevant community groups.

Trafficking and exploitation

We are concerned about the growing number of child potential victims of modern slavery and trafficking being referred to the National Referral Mechanism (NRM), through which victims are identified and receive support. In 2019, there were 4,550 referrals for potential child victims, compared to 1,278 in 2016,⁴⁵¹ although there are concerns that NRM statistics do not capture the true scale of trafficking.⁴⁵² The latest data showed that 78% of potential child victims were male,⁴⁵³ 65% were British,⁴⁵⁴ and that criminal exploitation was the most common type of exploitation, accounting for 55% of all referrals of potential child victims.⁴⁵⁵ Between February 2019 and February 2020, the number of modern slavery police investigations involving children increased by 44%, with the number of criminal exploitation investigations more than doubling.⁴⁵⁶

⁴⁵¹ Home Office (2020), [National Referral Mechanism Statistics UK, End of Year Summary, 2019](#), and National Crime Agency (2017), [National Referral Mechanism Statistics – End of Year Summary 2016](#) [accessed: 9 July 2020].

⁴⁵² ECPAT (Every Child Protected Against Trafficking) UK reports that hundreds of children are not referred to the NRM each year, meaning they are not formally identified as victims; as such, the available statistics on child trafficking are not regarded as indicative of the true scale of the problem in the UK. See ECPAT UK (2019), [FAQs on child trafficking](#), p. 9 [accessed: 3 August 2020].

⁴⁵³ Home Office (2020), [Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 2 2020 – April to June](#), p. 5 [accessed: 12 October 2020].

⁴⁵⁴ After this, the most common nationalities of potential child victims were Vietnamese (4%), Romanian (3%) and Albanian (2%). See Home Office (2020), [National Referral Mechanism and Duty to Notify Statistics UK, Quarter 2 2020 – April to June](#), data tables, Table 6 [accessed: 12 October 2020]. According to ECPAT UK, children living in the UK may be more at risk of exploitation when they have experienced other forms of abuse, are disabled, are in care and / or are living in poverty. See ECPAT UK (2019), [FAQs on child trafficking](#), p. 10 [accessed: 3 August 2020].

⁴⁵⁵ Home Office (2020), [Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 2 2020 – April to June](#), data tables, Table 3 [accessed: 12 October 2020].

⁴⁵⁶ The number of child sexual exploitation investigations recognised as modern slavery has also increased significantly since 2017. See National Police Chiefs' Council Modern Slavery and Organised Immigration Crime Unit (2020), [Modern Slavery Police Transformation Programme Annual Report 2020](#) [accessed: 3 August 2020].

The increase in NRM referrals is partly attributable to a rise in the identification of 'county lines' exploitation cases. This term is used to describe drug gangs in large cities expanding their reach to small towns, often across counties.⁴⁵⁷ The scale of child exploitation through county lines is unknown, although 30,000 to 50,000 young people could be affected.⁴⁵⁸ Poverty and looked after status make children more likely to be targeted for exploitation.⁴⁵⁹ There are concerns that the pandemic has exacerbated vulnerabilities to exploitation,⁴⁶⁰ with gangs reportedly conducting an online 'recruitment drive' during the period of national lockdown.⁴⁶¹ Efforts to tackle county lines exploitation have been impeded by fragmented policing, governance and funding structures, and poor coordination of resources.⁴⁶²

⁴⁵⁷ Home Office (2020), [Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 2 2020 – April to June](#) and Home Office (2019), [Independent Review of the Modern Slavery Act 2015: Final Report](#), pp. 32–36 [accessed: 9 July 2020].

⁴⁵⁸ The Children's Society (2019), [Counting lives: Responding to children who are criminally exploited](#), p. 16 [accessed: 9 July 2020].

⁴⁵⁹ House of Commons Home Affairs Committee (2019), [Serious youth violence: Sixteenth Report of Session 2017–19](#), p. 32 [accessed: 3 July 2020]; Howard League for Penal Reform (2020), [Ending the criminalisation of children in residential care](#) [accessed: 4 August 2020].

⁴⁶⁰ Including as a result of school closures, the halting or restriction of youth services, social isolation and worsening mental health: see National Youth Agency (2020), [Out of Sight? Vulnerable Young People: COVID-19 Response](#), and National Youth Agency (2020), [Hidden in Plain Sight: Gangs and Exploitation, A youth work response to COVID-19](#) [accessed: 9 July 2020].

⁴⁶¹ Including through social media and cyber grooming: National Youth Agency (2020), [Hidden in Plain Sight: Gangs and Exploitation, A youth work response to COVID-19](#), p. 7 [accessed: 9 July 2020].

⁴⁶² House of Commons Home Affairs Committee (2019), [Serious youth violence: Sixteenth Report of Session 2017–19](#) and HM Inspectorate of Constabulary and Fire & Rescue Services (2020), [Both sides of the coin: The police and National Crime Agency's response to vulnerable people in 'county lines' drug offending](#), p. 36 [accessed: 3 July 2020].

There are significant gaps in the protection and support available for child survivors of trafficking. Civil society organisations have criticised the NRM as 'not fit for purpose' for children, noting that a new approach is required to ensure child survivors are identified quickly, receive specialist support and are properly safeguarded.⁴⁶³ Child survivors are at high risk of going missing while in the care of children's services⁴⁶⁴ and of being re-trafficked,⁴⁶⁵ with concerns that these risks have increased during the pandemic.⁴⁶⁶

⁴⁶³ Anti-Slavery International, ECPAT UK and others (2020), Joint civil society report on trafficking and modern slavery in the UK to the UN Human Rights Committee, pp. 20–23 [accessed: 9 July 2020]. In 2017, the UK Government announced a number of reforms to the NRM, stating that it would explore how to make the NRM more 'child friendly'. However, civil society organisations have noted that this has not led to any meaningful changes for children. See UK Parliament (2017), Human Trafficking: Children: Written question for Home Office – 110815.

⁴⁶⁴ According to ECPAT UK and Missing People, in 2017, 27% of all identified or suspected victims of trafficking went missing from care (244 of 910), and child trafficking victims went missing on average 7.2 times each. This is an increase from an average of 2.4 times in 2014/5. See ECPAT UK and Missing People (2019), Still in Harm's Way, p.5. See also Home Office (2019), Independent Review of the Modern Slavery Act 2015: Final Report [accessed: 9 July 2020].

⁴⁶⁵ Anti-Slavery International, ECPAT UK and others (2020), Joint civil society report on trafficking and modern slavery in the UK to the UN Human Rights Committee, p. 21 [accessed: 9 July 2020].

⁴⁶⁶ ECPAT UK (2020), The impact of Covid-19 on victims of trafficking, now and beyond.

In 2019, an Independent Review of the Modern Slavery Act 2015 (MSA)⁴⁶⁷ made several recommendations that mirrored our existing concerns.⁴⁶⁸ These included calls for the UK Government to commence provisions regarding Independent Child Trafficking Guardians,⁴⁶⁹ to fully roll out its revised model of support,⁴⁷⁰ and to amend the MSA to clarify that children cannot consent to their exploitation. While the UK Government accepted a number of the recommendations, some subject to further consultation, we were disappointed that it rejected the latter recommendation.⁴⁷¹

Recommendations

The UK Government should:

- set out a detailed plan and time frame for implementing the recommendations of the Independent Review of the Modern Slavery Act, including those relating to county lines and the roll-out of Independent Child Trafficking Guardians. As part of this, the UK Government should accept and implement the Independent Review's recommendation regarding the need to make it clear that children cannot consent to their exploitation.

⁴⁶⁷ Home Office (2019), Independent Review of the Modern Slavery Act 2015: Final Report, pp. 22–29 [accessed: 9 July 2020].

⁴⁶⁸ Including that it does not establish a clear obligation of non-prosecution of child victims or make it clear that a child cannot consent to their own exploitation. See EHRC (2015), Briefing on amendments to clarify trafficking and slavery offences published in the Marshalled List of Amendments on 20 February 2015 [accessed: 9 July 2020].

⁴⁶⁹ Independent Child Trafficking Guardians in England and Wales are expected to represent child victims of modern slavery and ensure their best interests are taken into account for all decisions made about them. However, such guardians have been operating in only a third of all local authority areas in England. See Anti-Slavery International, ECPAT UK and others (2020), Joint civil society report on trafficking and modern slavery in the UK to the UN Human Rights Committee, p. 22 [accessed: 9 July 2020].

⁴⁷⁰ Although the review stopped short of extending this to all unaccompanied children: see ECPAT UK (2019), Modern slavery legislation review misses opportunity to expand support for children [accessed: 9 July 2020].

⁴⁷¹ UK Government (2019), UK Government response to the Independent Review of the Modern Slavery Act 2015, pp. 17–18 [accessed: 9 July 2020].

The UK and Welsh governments, where appropriate, should:

- ensure a cross-government, multi-agency approach to identifying, preventing and responding to child exploitation, including child criminal exploitation through county lines, and safeguarding and supporting child victims of trafficking. This should include: providing sufficient and sustainable funding for early intervention services, including youth services, and for specialist support and suitable accommodation placement; and strengthening the National Referral Mechanism to ensure that child survivors are properly identified, safeguarded and supported.

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