

# Why incorporate?

## Making rights a reality for every child



The United Nations  
Convention on the Rights  
of the Child must become  
part of UK law.

# CONTENTS

---

Executive summary	2
Introduction	4
A brief analysis	4
Why incorporate?	8
A shared vision for the UK’s children	6
Making children’s rights a reality	9
Why make the Convention part of UK law? The case for change	10
Failings of the “piecemeal” approach	10
Benefits of incorporation	12
Widespread support for incorporation from human rights bodies, Parliamentarians and civil society	12
Now is the time for incorporation	16
Why incorporation is the natural next step for the UK	17
The Convention in the UK courts	17
Is CRC incorporation possible in the UK?	21
International treaties already in UK law	22
Enforceable economic, social and cultural rights	22
Lessons from abroad	23
Models and methods of incorporation	24
Additional steps to accompany incorporation	24
Endnotes	27

## The benefits of incorporation



© UNICEF/Humphries

The Rights of the Child UK coalition believes the UK Government should directly incorporate the United Nations Convention on the Rights of the Child into our domestic law to make rights a reality for every child and young person in the UK.

### What is incorporation?

The direct incorporation of the UN Convention on the Rights of the Child would see all its principles and provisions brought into UK law through overarching, comprehensive children's rights legislation. It would give real force to children's rights and require both the UK Government and all public authorities to protect and respect children's rights.

There is no doubt that now is an uncertain time for human rights, with conflicting messages from politicians about the future of the Human Rights Act and the viability of economic, social and cultural rights. However, the Rights of the Child UK coalition believes that we cannot afford to ignore the important part that the incorporation of children's rights into UK law could play in seeking to address the huge inequalities in our society: inequalities that have a disproportionate impact on children and young people.

### Why isn't the status quo sufficient?

The approach taken by successive UK governments to put children's rights into practice can be described as "sectoral", the gradual examination of legislation in different areas in order to ensure compliance with the UN Convention on the Rights of the Child. However, this means that there is too often a focus on certain rights, certain settings and certain children to the exclusion of others, resulting in some rights being neglected and the obligation to consider children's views only being recognised in some contexts. Incorporation would provide something far more rigorous and routine than currently happens across the UK as a whole.

Although direct incorporation is not required by international law, it is a method of implementation favoured by the UN Committee on the Rights of the Child to give full legal effect to the binding commitment made by governments when they

ratified the UN Convention on the Rights of the Child. The UN Committee has repeatedly called on the UK Government to take this step.

Children and young people have told the many member organisations of Rights of the Child UK coalition that they struggle to exercise their rights in many areas of their lives. Sadly, the extent to which many children are able to realise their rights is dependent, at least in part, on their circumstances – whether they are at home, in school, in care, or in custody; whether living in rural or urban settings; living above or below the poverty line. Children and young people want to change their lives for the better, and see both enforceable rights and decision-makers taking children’s rights seriously as two of the necessary ingredients for achieving this.

Making children’s rights directly enforceable in the UK has also been supported by the parliamentary Joint Committee on Human Rights and the four Children’s Commissioners across the UK.

### Why incorporate?

- An overarching and comprehensive children’s rights law would allow sustainable improvements in children’s rights and bring about change for children far more quickly than the current piecemeal approach to reform.
- Incorporating the Convention would prompt the cultural change needed across the UK to ensure children’s rights are meaningful, respected, protected and implemented.
- Incorporating the Convention would require the systematic consideration of all children’s rights in every piece of legislation and policy affecting children.
- Incorporating the Convention would place a binding commitment on public agencies to protect children’s rights.
- Incorporating the Convention would provide a framework for local and national government in making decisions affecting children, and provide consistency and accountability in any further moves towards decentralisation and localism.
- Incorporating the Convention would make it applicable in UK courts, giving children greater access to justice and stronger protection for their rights and entitlements. It would also require judges to ensure cases affecting children

in the UK courts are always and consistently interpreted in light of the principles and provisions of the Convention.

- Incorporating the Convention would help to raise awareness of children’s rights throughout society, and among all those working with or for children and young people.
- Incorporation has been successful in other countries and it could work in the UK, given the political will. While the models used in other countries are different, they provide a benchmark for the UK to work from and build upon.

### What’s next?

2011 saw significant steps forward in children’s rights in Wales, where the Welsh Assembly voted unanimously in favour of the Rights of Children and Young Persons (Wales) Measure. This Measure places a duty on all Welsh Ministers to have due regard to the UN Convention on the Rights of the Child when exercising all of their functions. A similar duty will be introduced into the Scottish Parliament in 2012.

These duties do not amount to the direct incorporation of the UN Convention on the Rights of the Child – they do not provide children with any new rights under domestic law, nor do they give children the right to seek help in the courts if their individual rights are violated. However, they are an important step forward in giving the Convention statutory force within the devolved nations.

16 December 2011 marked the 20th anniversary of the UK’s ratification of the UN Convention on the Rights of the Child. Children and young people have already waited far too long to have their rights fully realised. The Rights of the Child UK coalition now calls on the UK Government to demonstrate its commitment to children’s rights by giving statutory force and full effect to the UN Convention on the Rights of the Child in UK law.

### About Rights of the Child UK

Rights of the Child UK is a coalition of NGOs and individuals across the UK that have joined together to campaign for the incorporation of the UN Convention on the Rights of the Child into domestic law. Members include children’s charities, lawyers, academics, children’s rights activists and politicians from all over the UK.

# Introduction

Successive governments have asserted their desire to make the UK the best place in the world for children to grow up. The Rights of the Child UK coalition believes this can only be achieved by making the United Nations Convention on the Rights of the Child part of UK law, bringing the rights in that instrument within the reach of all children living in the UK, regardless of their background or circumstances.



The coalition Government's statement that 'it is a proud signatory of the United Nations Convention on the Rights of the Child, [and] is committed to its implementation' was a welcome announcement and underlined the growing importance that has been attached to children's rights in recent years.<sup>1</sup> Children's Minister Sarah Teather MP has gone further than her predecessors by acknowledging that she has '...an important role to play in challenging government to take account of the [Convention] when making new policies...' and promising to 'closely scrutinise new legislation and key policies that directly affect children and young people to ensure we act on this commitment'.<sup>2</sup> This recognition by the UK Government that the Convention is fundamental to achieving change for children is a good first step. Nevertheless, there is a need for more than internal scrutiny to ensure that all children are able to realise all of their rights, all of the time.

## A brief analysis

The current UK Government has recognised the need to foster greater respect for children and to acknowledge them explicitly as rights holders, as well as drawing attention to the responsibility of the state and wider society for children.<sup>3</sup> This suggests a shift towards a better understanding of children's rights and continues a growing trend over recent years.

The coalition Government has also emphasised the importance of ensuring children's existing rights (including those protected under the Human Rights Act) remain in place, and that any new measures build on these.<sup>4</sup> On the other hand, the agreement that underpins the coalition Government does not refer to the Human Rights Act<sup>5</sup>; instead proposing to build on the Government's 'obligations under the European Convention on Human Rights'.

There is no doubt that now is an uncertain time for human rights in the UK, with conflicting messages from both Government and Opposition on the future of human rights in the UK and concerns that children may lose the important protection they enjoy under the Human Rights Act. It is vital that any reform intended to strengthen children's rights must build upon current human rights protection rather than dilute it.

The UK Government has not yet set out any plans to incorporate the Convention into UK law, nor to create any new enforceable rights for children. There is currently no UK-wide children's rights strategy aimed at fully implementing the Convention in the UK.

The UK Government is right to say that it will put children and families at the heart of its plans. However, if it is to have any chance of creating the best place in the world for children to grow up, it must do much, much more.

'Whilst we recognise the steps the UK Government has taken to prioritise the health of children living in the United Kingdom, it still falls short of its obligation to uphold children's rights. Incorporation of the Convention on the Rights of the Child into UK law would prove to be a historical milestone advancing the United Kingdom's obligation to ensure children's rights are realised for all children living in the United Kingdom.' Royal College of Paediatrics and Child Health

## Why incorporate?

The Rights of the Child UK coalition believes the UK Government should directly incorporate the entire UN Convention on the Rights of the Child into UK law:

- 1 **A shared vision for the UK's children:** A comprehensive child rights law will ensure far better implementation of the Convention in the UK and achieve positive changes that the current "piecemeal" approach could only produce over a long period of time, if ever. Some of the positive implications would be:
  - More extensive realisation of all children's rights, especially the right to be heard.
  - A clear channel of redress for breaches of children's rights.

- A consistent approach to policy through using the Convention as the framework for all public policies and services relating to children (policy affecting children is currently fragmented between departments and levels of government, and different approaches to children's issues are increasingly apparent between the UK Government and the devolved administrations).
- Increased knowledge and understanding of the UN Convention on the Rights of the Child.

- 2 **Making children's rights a reality:** Although direct incorporation is not required by international law, the Rights of the Child UK coalition believes it is necessary to enable the UK to give full effect to the binding commitment it made to children by ratifying the Convention in 1991.
- 3 **Failings of the "piecemeal" approach:** Research shows that this approach tends to focus on specific areas or groups of children, and omits many of the rights set out in the Convention from the process of law reform.<sup>6</sup>
- 4 **Lessons from abroad:** The Convention has been incorporated into the law in a variety of ways in two-thirds of 60 countries studied in 2008 by UNICEF's Innocenti Research Centre, illustrating that such a step is an achievable one for the UK.<sup>7</sup>
- 5 **Clear support from children and young people:** Children say they want the UK Government to do more to ensure their rights are acknowledged and respected.<sup>8</sup>
- 6 **Widespread support for incorporation from human rights bodies, Parliamentarians and civil society:** The UK Parliamentary Joint Committee on Human Rights<sup>9</sup> and the Children's Commissioners for England, Northern Ireland, Scotland and Wales have all called for the incorporation of the Convention into domestic law. The UN Committee on the Rights of the Child strongly favours incorporation and has repeatedly called on the UK Government to take this step – most recently in its 2008 examination of children's rights in the UK.

## A shared vision for the UK's children

Our vision is of a society in which children can fully realise their rights under the UN Convention on the Rights of the Child, regardless of their background or circumstances.

The Vienna Convention on the Law of Treaties, ratified by the UK on 25 June 1971, states in Article 26 that 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'<sup>10</sup> However, 20 years after the Convention was ratified by the UK, it remains far from being fully implemented.

The three main UK political parties have high ambitions for the UK's children and have recognised the importance of the Convention as an instrument for change. Most notably, the Liberal Democrats – in their 2010 election manifesto – committed to incorporating the Convention into UK law.<sup>11</sup> Although the Liberal Democrats were the only party to cite the Convention directly in their manifesto, the Labour and Conservative parties also outlined their approach to human rights in the UK and abroad, both with clear implications for children.<sup>12</sup>

In January 2011, all political parties in Wales voted in favour of the Rights of Children and Young People (Wales) Measure, embedding the Convention into Welsh law (within its legislative competence at the time – see page 18). In Scotland, the Scottish National Party approved a motion at its 2008 party conference to make incorporation "official" party policy; the Scottish Government is planning to introduce a Rights of Children and Young People Bill into the Scottish Parliament in 2012 (see page 18 for further details).<sup>13</sup>

In Northern Ireland, Sinn Féin stated that it 'supports the full implementation of the United Nations Convention on the Rights of the Child' in its Westminster Election Manifesto of 2010. It went on to state that '...we believe that the Convention must underpin all laws and policies relating directly and/or indirectly to children'.<sup>14</sup> The Convention has also been invoked by Northern Ireland Assembly Members from other parties, including Gregory Campbell (DUP)<sup>15</sup> and Dawn Purvis (Independent).<sup>16</sup>

Many politicians in the UK have recognised the fundamental importance of rights in enabling children to develop to their full potential. John Denham MP, as

Minister for Young People, explained in his speech to the UN General Assembly in 2002 that:

*'The way to ensure children's well-being is to take full account of their rights.'*<sup>17</sup>

In 2009, Adam Ingram MSP, then Scottish Minister for Children and Early Years, also made clear the importance of children's rights and the role of the Convention:

*'Children's rights are relevant to everyone whose work impacts on children – including teachers, social workers, police officers, nurses, judges, town planners, GPs, Directors of local authority services, classroom assistants etc. All of these and more have an interest in ensuring that children are able to fully enjoy their right to play, their right to be healthy and happy, to learn new things and be looked after and nurtured whether they live at home or not. All of these are rights enshrined in the UN Convention on the Rights of the Child.'*<sup>18</sup>

The Convention was drafted over many years and represents a near-universal consensus about the fundamental rights that children are entitled to. The Convention is the most widely ratified international human rights treaty in the world, adopted by all countries except the USA and Somalia.<sup>19</sup> Representatives from countries around the world, including from the UK, played a key role in negotiating its 54 articles.

The Convention sets out a holistic framework for the rights for all children. It includes four overarching principles that are not only rights in themselves but underpin every other right in the Convention: for rights to be applied without discrimination (Article 2); for the best interests of the child to be a primary consideration (Article 3); the right to life, survival and development (Article 6); and the right to express a view and have that view taken into account (Article 12). The Convention also provides children with a series of individual rights, such as the right to a name and nationality, the right to an education and the right to an adequate standard of living, alongside additional rights for specific groups of children, such as disabled children, children who are refugees, and children seeking asylum. Children's rights are inextricably linked with the rights of parents, carers and families, whose important role in children's lives is recognised throughout the Convention.



‘The second article of the UN Convention on the Rights of the Child sets a mandate for every country to ensure the rights of its children are protected without discrimination of any kind. However, in the UK, inequalities persist, with disadvantaged children and young people continuing to experience poorer health and education outcomes, for example, than their more privileged peers. Incorporation of the UN Convention on the Rights of the Child into UK law is a vital tool for tackling inequalities, so destructive to our society and the lives of children and young people.’ NCB (National Children’s Bureau)



'The UN Convention on the Rights of the Child has been in force in the United Kingdom now for 20 years, yet many of our children and young people – and particularly the most vulnerable – remain unable to enjoy many of the rights that would support them to develop to their full potential. This is an unacceptable situation in a country that aspires to being the best place in the world for children to grow up. It is time for the UK Government to seize the opportunity to create a step change in the way our society puts children's rights into practice by giving those rights real force in our domestic law.'

UNICEF UK

## Making children's rights a reality

Article 4 of the Convention requires governments to 'undertake all appropriate legislative, administrative and other measures' to implement the Convention. These legislative measures should ensure that all domestic legislation and related administrative guidance are fully compliant with the Convention. However, in the UK, this only happens on a piecemeal and patchy basis, with uneven application and inconsistent outcomes for children.

The UN Committee on the Rights of Child (hereafter referred to as the UN Committee) recommended in its 2002 and 2008 concluding observations that the UK should incorporate the Convention into domestic law in order to improve implementation. The Rights of the Child UK coalition believes this is a necessary next step in order to make the Convention a reality for every child in the UK.

The UN Committee has made it clear that States Parties should take appropriate measures to give the Convention legal effect in their domestic legal systems. This includes building on the Convention where either domestic law or other international human rights instruments provide greater protection for children's rights.<sup>20</sup> The UK courts already take some account of the Convention when interpreting children's rights, making incorporating the Convention a natural progression for the development of UK domestic law.

The UK has benefited greatly from incorporating the European Convention on Human Rights. Since the passage of the Human Rights Act 1998, for example, the UK has seen fewer cases brought before the European Court of Human Rights as a result both of pre-legislative scrutiny and an ability to address human rights violations in UK courts. The Human Rights Act has also resulted in a broader human rights culture in the UK: the same would likely be true for children's rights if the Convention was incorporated into UK law.<sup>21</sup>

The Human Rights Act offers vital protection for children and must be preserved. However, it is not a child-focused instrument and there are many rights – particularly economic, social and cultural rights – which are not covered in its pages. We can and must do more for children. The Convention is children's Magna Carta, recognising their unique status, needs and entitlements. If it were made part of UK law – operating alongside the Human Rights Act – children would have more comprehensive protection of their rights than is currently the case.

Sadly, the extent to which many children are able to realise their rights often depends, at least in part, on their circumstances – whether they are at home, at school, in the care system, or in custody or UK's immigration detention. Incorporating the Convention into UK law would protect children no matter what their circumstances, offering the potential to effect real change in their lives.



# Why make the Convention on the Rights of the Child part of UK law?

## Failings of the “piecemeal” approach

The 2008 report by the UNICEF Innocenti Research Centre, *Law reform and implementation of the Convention on the Rights of the Child*, details the different approaches that have been taken to improve the protection of children’s rights in countries around the world.<sup>22</sup>

The approach taken in the UK, as in most common law countries<sup>23</sup>, could be described as “sectoral” law reform – the gradual examination of legislation concerning different areas in order to make the changes needed to bring existing legislation into conformity with the Convention. However, this description suggests something more systematic than the UK’s current approach, where children’s law reform is much more piecemeal and *ad hoc*.

As the UNICEF study makes clear, no one approach is sufficient in and of itself. The disadvantage of sectoral law reform (even where it is approached systematically) is that it tends to focus only on specific areas. This means that some rights are neglected and that obligations to respect children’s views are recognised only in specific circumstances or contexts, often with inadequate mechanisms to ensure accountability.

## Children’s rights are not yet fully realised in the UK

There have been many positive developments in compliance with the Convention over the last 20 years, including progress in children’s participation in education, some strengthening of child protection law, and legislation to end child poverty. Children also now have their own Ministers in the UK Government and devolved administrations, and children’s commissioners exist in England, Northern Ireland, Scotland and Wales.

However it is evident, not least from the 2008 Concluding Observations of the UN Committee<sup>24</sup> and criticism from other international and national human

rights bodies, that the UK still has a long way to go before the Convention is fully implemented for all its children.

Despite an increasing political commitment to children, there is still resistance to a child rights-based approach to policy-making. The 2008 examination of the UK by the UN Committee resulted in well over a hundred recommendations for reform. Continuing breaches of children’s rights include the following:

- The UK has the 5<sup>th</sup> richest economy but has the 2<sup>nd</sup> worst infant mortality rate of the 24 wealthiest countries in the world.
- 3.8 million children live in poverty in the UK (after housing costs)<sup>25</sup>, with 1.6 million children living in severe poverty (13% of all children).<sup>26</sup>
- The treatment of children in the criminal justice system is regularly subject to severe criticism by international and national human rights bodies and inspectorates, particularly in relation to the low age of criminal responsibility; the numbers of children in custody; child deaths and self-harm in custody; restraint law and practices; and strip-searching and segregation.
- Despite the withdrawal of the immigration reservation to the Convention in 2008 and a commitment by the coalition Government to end the immigration detention of children<sup>27</sup>, the overall treatment of refugee children is still not always in accordance with all the articles of the Convention.
- The rights of children to privacy are not taken seriously, as seen in the blanket retention of children’s data (including under-10s)<sup>28</sup> in the National DNA Database prior to the *S & Marper* judgment from the European Court of Human Rights; the deliberate use of negative publicity against children receiving anti-social behaviour orders; and the erosion of privacy for children involved in family court proceedings.

'A Children's Rights Act would ensure that the Government would have to act in the best interests of the child in all policy and practice and new laws would be "children's rights proofed". This would be especially key for disabled children and their families, who according to the UN Committee, are disproportionately affected by the fact that 'there is no comprehensive national strategy for the inclusion of children with disabilities into society in the UK.'

Scope, UK charity supporting disabled children and adults

- There is no comprehensive national strategy for the inclusion of disabled children in society. They continue to be denied many of the rights guaranteed by the Convention.

The incorporation of the Convention into UK law would provide accountability, both demonstrating the UK Government's commitment to upholding children's rights under the Convention, and requiring this commitment to be maintained on an ongoing basis.

## Benefits of incorporation

### Redress for children's rights breaches

It is essential that UK law incorporates children's rights in order to ensure there are effective remedies when children's rights are ignored or deliberately violated. This gives rights meaning. This requirement is implicit in the Convention and consistently referred to in the other UN human rights treaties.

Children's dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. It is vital that the UK Government gives particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, and advocacy (including support for self-advocacy), as well as access to independent complaints procedures and to the courts with the necessary legal and other assistance this would require.



© UNICEF/NYHQ2001-0500/Noorani

'While it is our view that the 1989 Children Act is largely compliant with the Convention in upholding the rights of looked after children, we believe that incorporation of the Convention into domestic law could enhance the effectiveness of Article 12 in relation to the child's effective participation in administrative and judicial decision making.'

Voice, children's advocacy organisation for children living away from home or in need

The challenge of ensuring an effective remedy takes on additional importance in light of the development of a third Optional Protocol to the Convention. This will establish a communications procedure to allow individual complaints to be heard by the UN Committee on the Rights of the Child, and constitute a major shift towards the recognition of children as both subjects and holders of rights. It is more important than before that an effective system dealing with the breaches of the Convention is in place in the UK to avoid the UN Committee in Geneva being UK children's only option for justice.<sup>29</sup>

#### Increasing accountability

Incorporation of the Convention would mean that it would form part of national law, be binding on public agencies, and be applicable in the UK courts.<sup>30</sup> The status of the Convention in relation to other laws would depend on the method of incorporation used.

However, for incorporation of the Convention to have real meaning for children, the rights and principles contained within it must be justiciable (individuals must be able to go to court to enforce their rights). This would give the Convention real "teeth", creating legal liability for public authorities for the way in which they work with and treat children and young people.

The development of equality law has effected real cultural change through the introduction of legal liability for public authorities, private bodies and individuals. The Rights of Children and Young Persons (Wales) Measure 2011 builds on the public sector duties model in equalities legislation and could be considered for use at UK level.

There are already some good examples of the Convention being used in UK courts, specifically in the context of claims made under the Human Rights Act and in cases involving Section 5 of the Borders, Citizenship and Immigration Act 2009. However,

the use of the Convention by the judiciary to inform decisions affecting children is still very limited.

#### Raising awareness of children's rights

A plethora of research from across the UK has found that awareness of the Convention among children is low.<sup>31</sup> Similarly, parents, carers and professionals are largely unaware of the existence of the Convention, let alone of the detail it contains and what this means in practice for children and for adults. The UN Committee has urged the UK Government to act to substantially increase awareness of children's rights.<sup>32</sup> Without widespread knowledge and understanding of the Convention in the UK, it is unlikely that children will ever have their rights fully understood and realised.<sup>33</sup> Raising awareness of the Convention would be one undoubted benefit of incorporation. Incorporation would also contribute to the development of a "rights culture" through making public bodies cognisant of children's rights and their legal obligations towards children when planning and commissioning, when allocating resources, and when developing new legislation, policy and practice.

#### Clear support from children and young people

Views and experiences shared by children make clear that they struggle to exercise their rights in many areas of their lives.

In December 2009, the Children's Rights Alliance for England and UNICEF UK helped convene a national consultation event on the Bill of Rights proposed by the Labour Government. The event gave 20 children's rights activists (all aged under 18) the opportunity to discuss their views of and aspirations for children's rights with the Ministry of Justice. A delegation of children presented these views to the then Human Rights Minister Michael Wills MP in January 2010. Children and young people said they wanted a Bill of Rights that would:

- Change their lives for the better, particularly by taking account of economic and social rights.
- Strengthen their right to be heard and taken seriously.
- Bring big improvements in how they are perceived and treated as a social group.
- Open channels of communication between adults and children and promote open-mindedness.

The children and young people that took part in the consultation were enthused and excited about the possibility of seeing further civil, political, economic, social and cultural rights enshrined in UK law. One young delegate said:

*“Should the Convention be part of UK law and children’s rights be enforceable in courts? Yes, definitely, otherwise what would be its real value?”*

The general consensus among the children and young people involved was that the UK Government should take the opportunity of a Bill of Rights to incorporate the Convention into domestic law and ensure that children are more easily able to access justice for any violations of their rights. Children and young people felt that direct incorporation would help to raise the status of children and work towards creating a better, fairer and safer society.

#### Widespread support for incorporation from human rights bodies, Parliamentarians and civil society

There is strong support for the Convention to be made part of UK law from a wide range of domestic and international human rights bodies, non-governmental organisations and Parliamentarians.

- **UK Parliamentary Joint Committee on Human Rights**

In its 2009 report *Children’s Rights*, the Parliamentary Joint Committee on Human Rights agreed ‘with those witnesses who emphasised the benefits of incorporation, accompanied by directly enforceable rights.’<sup>34</sup>

- **Parliamentarians**

Baroness Walmsley introduced a Private Members Bill into the House of Lords in November 2009 – the Children’s Rights Bill. This used a similar model to the Human Rights Act to propose the incorporation of the Convention into UK law. The Bill was supported by the Rights of the Child UK coalition. A number of peers from the Labour, Liberal Democrat and Cross Benches declared support for the Bill and their intention to participate in the Second Reading debate. Unfortunately the Second Reading did not take place before Parliament was dissolved prior to the 2010 General Election.

- **Children’s Commissioners for England, Northern Ireland, Scotland and Wales**

The four UK Children’s Commissioners issued a joint public statement in February 2010 endorsing the Children’s Rights Bill and calling for the Convention to be made part of UK law:

*We support the Children’s Rights Bill currently before the House of Lords that aims to bring the UN Convention on the Rights of the Child into UK national law. We believe that doing so would further safeguard and protect children’s interests and enable them to lead happier and more fulfilling lives.*<sup>35</sup>

- **UN Committee on the Rights of the Child**

In its General Comment on the general measures of implementation for the Convention (which sets out what States Parties must do to fully meet their practical obligations to children), the UN Committee welcomes ‘the incorporation of the Convention into domestic law’ as a method of implementing children’s rights, and further states that for rights to have real meaning, ‘effective remedies must be available to redress violations’.<sup>36</sup>

In 2002, in noting the entry into force of the Human Rights Act 1998, the UN Committee expressed its concern that the provisions and principles of the Convention, ‘much broader than those contained in the European Convention on Human Rights’, had not yet been incorporated into UK law. It also noted the lack of any formal process to ensure that new legislation fully complied with the Convention. The UN Committee explicitly encouraged the UK to incorporate into domestic law the principles and provisions of the Convention in order to ensure the compliance of all domestic legislation with them, and to achieve their wide application in legal and administrative proceedings.<sup>37</sup>

In 2008, the UN Committee again recommended that the UK Government ‘continue to take measures to bring its legislation in line with the Convention’. It suggested this could be done by using the opportunity of a British Bill of Rights and a Bill of Rights for Northern Ireland to incorporate the Convention into UK law, including ‘by having a special section in these Bills devoted to child rights.’<sup>38</sup>





'The Children's Society is a strong supporter of children's rights. Many of the children that we work with – refugees, disabled children and children in care – are currently not sufficiently well protected in law. We believe that the full incorporation of the United Nation's Convention on the Rights of the Child into UK law would help to address this failing, and give marginalised and vulnerable children a stronger voice.'

The Children's Society

It should also be noted that Article 4 of the Convention requires ratifying governments such as the UK to 'undertake all appropriate legislative, administrative and other measures' to put children's rights into practice.

- **Non-governmental organisations**

Human rights organisations have long advocated for the incorporation of children's rights into UK domestic law. The Rights of the Child UK coalition has an increasing NGO membership from across the UK and campaigns actively for the direct incorporation of the UN Convention on the Rights of the Child.

## Now is the time

There are many reasons why **now** is the right time for the UK Government to make the Convention part of UK law:

- 16 December 2011 sees the 20<sup>th</sup> anniversary of the ratification of the Convention by the UK Government. Incorporation into UK law and a serious attempt to ensure consistent implementation is long overdue.
- The UN Committee on the Rights of the Child has repeatedly called on the UK Government to incorporate the Convention into UK law. The next examination of the UK by the UN Committee is due to take place in 2014.
- The UK Government no longer holds any formal reservations to the Convention.<sup>39</sup>
- The UK Government now has, for the first time, a Minister with specific responsibility for implementing the Convention within her portfolio. This Minister has stressed the coalition Government's commitment to promoting and protecting children's rights and, as stated previously, has given an assurance that the Convention will be given due consideration when making legislation and policy that affects children.<sup>40</sup>
- Each jurisdiction in the UK now has a Children's Commissioner in place. The UK Government has accepted the recommendations from an independent review of the Office of the Children's Commissioner for England<sup>41</sup> and intends to make it rights-based and increase its independence, with the aim of creating a stronger champion for children and young people and their rights.<sup>42</sup>
- There is an emerging cross-party consensus on the importance of children's rights. The Labour Government, in its 2009 Green Paper on a Bill of Rights, recognised the Convention as a 'crucial instrument' to achieve change for children; more recently, at the 2011 Labour Party conference, the Shadow Children's Minister Sharon Hodgson recognised the case for giving the Convention statutory weight. The Liberal Democrat Party supported incorporation in its manifesto for the 2010 General Election, and the Liberal Democrat Children's Minister leads the implementation of the Convention across government. In March 2010, Conservative MP Dominic Grieve, now Attorney General in the coalition Government, said that the rights of children within a British Bill of Rights 'may merit consideration.'<sup>43</sup>
- Incorporation of the Convention is the natural next step for children when looking to build on the Human Rights Act and the European Convention on Human Rights.
- The Welsh Assembly Government unanimously passed legislation in early 2011 to place a duty on Ministers to adhere to the Convention when exercising all of their functions (see page 18), leading the way in the UK for giving statutory expression to children's rights. This was led by the Welsh Assembly Government and strongly supported by Assembly Members and civil society.
- The Scottish Government has announced its intention to legislate to place a similar duty on Scottish Ministers to have due regard to the Convention in a Rights of Children and Young People Bill<sup>44</sup> (see page 18).
- Civil society in Northern Ireland has made clear that it seeks the incorporation of justiciable children's rights through a Bill of Rights for Northern Ireland.
- Strong civil society support for direct incorporation has been demonstrated in both England and Scotland.<sup>45</sup>

- Section 1b of the Childcare Act 2006 places a duty on English local authorities to reduce inequalities between young children in their area, including with regard to socio-economic inequality.<sup>46</sup> Section 3 of the same Act provides for the Secretary of State to set targets for a local authority to reduce such inequalities. This is an example of where socio-economic rights already form part of our domestic law.
- Taking this expression of socio-economic equality further, Sections 3 to 6 of the 2010 Child Poverty Act place a series of targets for ending child poverty by 2020 into UK law.<sup>47</sup>
- The Health Act of 2009 gives a legal basis to the NHS Constitution for England, which grants patients a range of health-related rights intended to be legally enforceable. These rights include access to health care; consent and confidentiality; respect and non-discrimination in the provision of services; the right to informed choice; and complaints. The Act requires all NHS bodies to have regard to the provisions within the NHS Constitution.

## Why incorporation is the natural next step for the UK

'There is very little point in having rights if you cannot rely upon them. The Government took a bold step in signing the the Convention almost 20 years ago, we hope they will stand by that action and give their words real meaning to some of our society's most vulnerable children.' Howard League for Penal Reform

### The increasing influence of the Convention on law and policy

Previous UK governments have rejected the need for full incorporation of the Convention into domestic law, but Parliaments and assemblies in each of the UK jurisdictions have differed in the extent to which they have embraced and promoted the concept of children's human rights.

### The UK

In September 2007, the Labour Government submitted its report to the UN Committee on the implementation of the Convention in the UK. The report opened with a clear statement that 'The United Kingdom's commitment to implementing the Convention remains unwavering.'<sup>48</sup> The report detailed steps by the UK State Party taken to uphold children's human rights, including the introduction of a new duty on local authorities, when working with children in need, to ascertain their wishes and feelings and take these into account in their decision-making (Section 53, Children Act 2004); the introduction of the first Cabinet Minister for Children, Schools and Families; and the introduction of Children's Commissioners in all four UK jurisdictions.

The Labour administration did not, at this time, take the opportunity to propose any new enforceable rights for children, including through the incorporation of the Convention into UK law. However, in its later Green Paper on a Bill of Rights it did recognise the need to improve protection of children's rights, proposing the inclusion of a right for children to achieve well-being. It also suggested that a Bill of Rights 'could present the opportunity to bring together in one place a range of welfare and other entitlements currently scattered across the UK's legal and political landscape'.<sup>49</sup>

The coalition Government's formal position on placing the principles and provisions of the Convention on a statutory footing, whether through direct incorporation or another method, remains somewhat unclear. Children's Minister Tim Loughton told the UK Parliament in September 2011:

*'There are no plans to incorporate the Convention into domestic legislation. In general the UK Government does not incorporate treaties and international conventions directly into UK law. There is no requirement in the [Convention] that it be incorporated into a single piece of legislation. Our approach to deliver the [Convention's] outcomes is through a mixture of legislative and policy initiatives.'*<sup>50</sup>

However, a few days after this statement, Children's Minister Sarah Teather told Parliamentarians on a subcommittee of the European Scrutiny Committee:

*'We do not have any plans at the moment to enshrine the [Convention] in British law.'*

In that same session, Labour's shadow Children's Minister Toby Perkins announced that:

*'The Opposition wholeheartedly back enshrining the rights of the child...'*<sup>51</sup>

## Wales

Devolution in Wales allows for action within the bounds of devolved powers. The administration has been keen to establish its own policy identity separate from that of the UK Government. One of the areas of divergence is to be found in its implementation of the Convention. In the context of significant cross-party consensus on children's rights, the Regulations for the Children's Commissioner for Wales in 2001 were the first time that the Convention was explicitly referenced in legislation anywhere in the UK, and the Welsh Government formally adopted the Convention as the framework for its strategy for children in 2004.

In Wales, the NGO sector has been able to work closely with the devolved government. The Rights of Children and Young Persons (Wales) Measure, passed in January 2011, will impose a duty from 2014 upon Welsh Ministers and the First Minister to have due regard to the Convention and its Optional Protocols when 'making decisions about how to exercise [their] functions', affecting both strategic and practical decisions relating to children. The

Measure also places a duty on Welsh Ministers to 'take such steps as are appropriate to promote knowledge and understanding amongst the public (including children)' of the Convention and its Optional Protocols. This will have the effect of embedding children's rights in the strategic and day-to-day work of the Welsh Government and increase understanding of the Convention across Wales. It should be noted however, that the Welsh Measure does not amount to direct incorporation of the Convention, in part a result of the limitations of the devolution settlement at the time the legislation was passed.

At the time of writing, the Welsh Government is consulting on its Children's Scheme, which sets out the arrangements to secure compliance with the due regard duty (as required by the Measure). The Scheme, together with the requirement to report to the National Assembly for Wales on the implementation of the Measure at least every five years, provide the accountability mechanism for ensuring Welsh Ministers comply with their new children's rights obligations.

## Scotland

Since devolution, Scottish Parliamentarians and the four governments since 1999 have demonstrated considerable commitment to the Convention and made progress on numerous legislative and policy fronts. Following the 2008 examination of the UK Government by the UN Committee on the Rights of the Child, the Scottish Government was the first in the UK to publish an action plan to implement the concluding observations, *Do the right thing*. In addition, the Scottish Government's *Getting it right for every child* approach aims to deliver the Convention for children locally, supporting practitioners and public authorities to join up their efforts to improve the well-being of children.

In September 2011, in a move reminiscent of that in Wales, the Scottish Government published a consultation on a Rights of Children and Young People Bill.<sup>52</sup> Through the Bill, the Scottish Government is proposing to place a duty on all Scottish Ministers to have due regard to the Convention and its Optional Protocols when carrying out any of their functions. While weaker than the Welsh Measure as it stands at the time of writing, the Scottish Bill will give the Convention legal force in Scotland for this first time. The Scottish Government intends to introduce the legislation into

the Scottish Parliament in summer 2012, with a view to the duty coming into force at the end of 2014. The new approach is also likely to inform forthcoming children's services legislation in Scotland.

### Northern Ireland

The 1998 Belfast Agreement includes a commitment to a Bill of Rights for Northern Ireland. In 2006 a Bill of Rights Forum was established to advise the Northern Ireland Human Rights Commission on how best to take forward this commitment. Seven working groups were established, including groups to consider both children's rights and economic and social rights.

The final report of the Forum was submitted to the Northern Ireland Human Rights Commission in March 2008; in December that year, the Commission submitted its advice to the Secretary of State for Northern Ireland. This argued for a range of children's rights to be included in a specific section of any Bill of Rights for Northern Ireland, as well as to be mainstreamed throughout its pages.

In 2009, a consultation on a Bill of Rights for Northern Ireland was opened. This was a huge disappointment for child rights advocates as it did not once mention the Convention, even when referring to the UK's international human rights obligations. Furthermore, it only suggested that two rights be included in any proposed Bill of Rights. Since this consultation, progress towards a Bill of Rights for Northern Ireland has stalled, though the commitment in the Belfast Agreement remains.

### Children's rights in the UK courts

Even though incorporation has not taken place, the importance of the principles and rights contained within the Convention has already been recognised by the UK courts in a variety of domestic cases. The status of the Convention has been made clear by Baroness Hale in a decision in the House of Lords. She stated that:

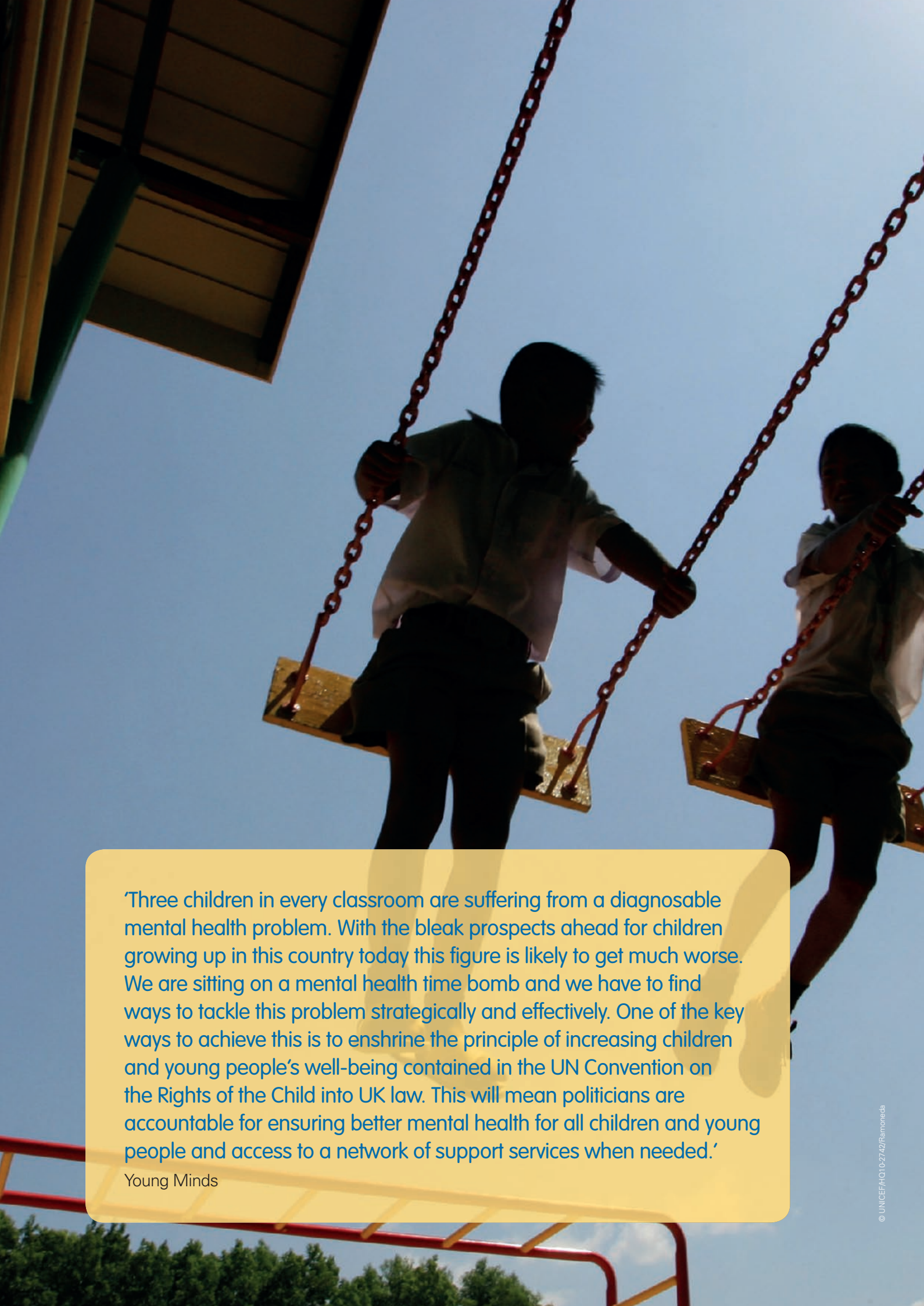
*'Even if an international treaty has not been incorporated into domestic law, our domestic legislation has to be construed so far as possible so as to comply with the international obligations which we have undertaken. When two interpretations of these regulations are possible, the interpretation chosen should be that which better complies with the commitment to the welfare of children which*

*this country has made by ratifying the United Nations Convention on the Rights of the Child.*<sup>53</sup>

Reference to the Convention when interpreting UK law in cases involving or affecting children and young people is becoming more frequent. In a previous judgment, Baroness Hale made clear that the recommendations of the UN Committee on the Rights of the Child should be heeded as it is the body 'charged with monitoring our compliance with the obligations which we have undertaken to respect the rights of the child.'<sup>54</sup> In a case concerning the harm caused by the use of restraint techniques on children in custodial settings in 2008, the Court of Appeal noted the importance of the views of the UN Committee as the body charged with the monitoring of the UK's compliance with the obligations taken to respect the rights of the child. The Court went on to highlight that (as pointed out by the Joint Committee on Human Rights) General Comment 8 of the UN Committee states that the deliberate infliction of pain is not permitted as a form of control of juveniles.<sup>55</sup> The Court stated that the Secretary of State's position that it was bound by the Convention but not by the views of the UN Committee showed a disappointing lack of respect and must, in view of the observations of Baroness Hale, 'raise serious doubts as to the degree of understanding with which the Secretary of State approaches his obligations under Article 3.'<sup>56</sup>

The Supreme Court has also held that a decision by the Home Office to remove a child's mother to another country was in breach of the right to family life under Article 8 of the European Convention on Human Rights (ECHR) because the decision gave insufficient weight to the best interests of the child in accordance with Article 3 of the Convention on the Rights of the Child.<sup>57</sup> In this case the child had British citizenship through her father, and so would be separated from one or other parent if her mother was removed. Lord Kerr stated:

*'It is a universal theme of the various international and domestic instruments to which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance*

A low-angle photograph of two children swinging on a swing set. The children are silhouetted against a clear blue sky. The swing chains are red, and the seats are wooden. The background shows a wooden structure of the playground and some greenery at the bottom.

‘Three children in every classroom are suffering from a diagnosable mental health problem. With the bleak prospects ahead for children growing up in this country today this figure is likely to get much worse. We are sitting on a mental health time bomb and we have to find ways to tackle this problem strategically and effectively. One of the key ways to achieve this is to enshrine the principle of increasing children and young people’s well-being contained in the UN Convention on the Rights of the Child into UK law. This will mean politicians are accountable for ensuring better mental health for all children and young people and access to a network of support services when needed.’

Young Minds

*alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them. It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child's best interests should customarily dictate the outcome of cases such as the present, therefore, and it will require considerations of substantial moment to permit a different result.'*

Since the Human Rights Act entered into force in October 2000, the judiciary has applied the provisions of the Convention in order to proclaim, reaffirm or elucidate articles contained in the ECHR. In the case of *R (P & Q) v The Secretary of State for the Home Department* in 2001, the Court of Appeal used the Convention to ensure its approach to the right to family life under Article 8 of the ECHR was in accordance with modern standards.<sup>58</sup> In a case concerning the detention of a mother and her two children in an immigration removal centre, the court recognised that the article on the deprivation of liberty contained in the ECHR must be read in light of provisions for children in the Convention.<sup>59</sup>

The judiciary has also recognised the importance of the Convention in informing the right to private life and freedom from inhuman and degrading treatment or punishment with respect to vulnerable children living outside the family environment.<sup>60</sup>

In a case concerning a long and unnecessary delay between a child being charged and brought to trial in Scotland, the Privy Council relied on the Convention to inform its understanding of fair trial provisions under the ECHR.<sup>61</sup>

In a case concerning family law proceedings, the Court of Appeal concluded that domestic legislation would only be compatible with the right of the child to express his or her views freely in accordance with Article 12 of the Convention where judges correctly focus on the sufficiency of the child's understanding of a situation. This would include reflecting on the extent to which there is now a keener appreciation of the autonomy of the child and the right to participate in decisions that fundamentally affect his or her family life.<sup>62</sup>

The courts have also acknowledged that the Convention is recognised as an important principle of public policy in both the domestic and international spheres, and that the courts must have close regard to this in cases concerning the illicit transfer, abduction, sale or trafficking of children across international boundaries.<sup>63</sup>

Despite these cases, there is still a long way to go to ensure full protection and realisation of child rights as the application of the Convention in the courts continues to be *ad hoc*. Incorporating the Convention into UK law would require the courts to ensure cases affecting children are always and consistently interpreted in light of the principles and provisions of the Convention and, perhaps more importantly, allow children to bring cases where their rights under the Convention have been violated.

## Is incorporation possible in the UK?



© UNICEF/NYHQ/2001-0500/Noorani

### International treaties already in UK law

The incorporation of international treaties and legal recognition of a wide range of human rights are not new concepts for the UK.

The Human Rights Act creates a powerful precedent for incorporation of international conventions into UK law and has been used as the basis for a Children's Rights Bill (see page 14). The Hague Convention on Child Abduction provides another example of incorporation in the UK.

The Human Rights Act has been of central importance to the development of children's rights in the UK, providing protection in its own right and acting as a mechanism for judges to consider the Convention in their decision-making. It has given us a benchmark in addition to that provided through the Concluding Observations and General Comments of the UN Committee on the Rights of the Child by which to judge compliance with children's rights. However, as previously noted, the Human Rights Act on its own does not provide for the specific rights that children are given by the Convention, only including limited protection of children's economic, social and cultural rights.

### Enforceable economic, social and cultural rights

The UK Government continues to hold the view that economic, social and cultural rights are not enforceable rights, but rather aspirational policy goals. This is despite the UK's ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Social Charter, and the Convention on the Rights of the Child, which set out binding international economic, social and cultural rights accepted by the State Party upon ratification.<sup>64</sup> The UK Government has repeatedly stated that it considers economic, social and cultural rights unsuitable for incorporation in national law. For instance, in 2004 a written submission from the Foreign and Commonwealth Office to the 'Joint Committee on Human Rights' stated that:

*'The Government considers that the greater part of the provisions of the ICESCR are statements of principle and objectives which do not lend themselves to specific incorporation into legislation or to justiciable processes. The Government has, both before and since the coming into force of the Covenant, taken measures, including legislation and the adoption of policies and programmes, which advance the same principles and objectives as are set out in the Covenant.'*<sup>65</sup>



The coalition Government appears to hold a similar view.

The Convention contains economic, social and cultural rights as well as civil and political rights – all of which are of equal importance. The UN Committee has emphasised the need to ensure that all these rights are regarded as justiciable for children.<sup>66</sup>

The incorporation of economic, social and cultural rights is not only possible, but may also prove critical in seeking to address the significant inequalities in our society, inequalities which have a disproportionate effect on children. Indeed, the Government has recognised the crucial role that children’s economic, social and cultural rights should play in relation to law and policy: the UK Treasury’s guide to appraisal and evaluation (the *Green Book*) states that a range of Conventions, including the International Covenant on Economic Social and Cultural Rights and the Convention on the Rights of the Child ‘should inform the development of policy’.<sup>67</sup>

Tentative steps have been taken in the UK towards making children’s economic and social rights enforceable. As mentioned above, the Childcare Act 2006 places a duty on English local authorities to reduce inequalities between young children in their area – including socio-economic inequalities. The Child Poverty Act 2010 commits the UK Government to addressing one of the most serious child rights violations in the UK – the fact that around 3.8 million children live in poverty. The Act places strong duties on Government to ensure that targets to eradicate child poverty – in relation to relative low income, combined low income and material deprivation, absolute low income, and persistent poverty – are met by 2020.

Some people object to incorporating economic, social and cultural rights because they believe that judges do not want to, or should not be able to, adjudicate on economic, social and cultural rights. Others suggest that giving judges this power would blur the lines between the judiciary and the executive on the grounds that only democratically elected governments should set and allocate budgets. However, in practice, UK judges already deal with resource and reasonableness principles on a daily basis; courts in other countries such as South Africa (where economic and social rights form part of the written constitution) cope with this type of decision-making – subject to prescribed limitations.

Others have argued that it is not possible to incorporate the Convention because its phrasing is so broad as to require additional legislation to clarify the scope of its articles.<sup>68</sup> However, many countries have succeeded in making the Convention’s provisions justiciable in their domestic courts, including in the sphere of economic, social and cultural rights. In addition, many of the provisions of the ECHR are at least as broadly phrased as those of the Convention, a reality that has not prevented that instrument from being domestically incorporated nor rendered justiciable before the UK courts in the absence of additional legislation. That fact, combined with comparative international and domestic experience, makes it clear that economic, social and cultural rights can and should be made enforceable for the UK’s children in the UK courts.

### Lessons from abroad

Direct incorporation is a practice to be found in every corner of the globe. From Japan to Norway to Argentina, many States Parties<sup>69</sup> have accepted their treaty obligations by directly incorporating the Convention into national law either through new legislation or through inclusion into their constitutional hierarchies.<sup>70</sup>

Closer to home in the European Union, the Convention has been directly incorporated or holds a pre-eminent place in the national laws of Belgium, Cyprus, Finland, France, Norway, Portugal and Spain, among others.<sup>71</sup>

Even where the Convention has not yet been incorporated into national law, its general principles – from prioritising the best interests of the child to recognising a child’s right to be heard – have been almost universally embraced.<sup>72</sup> In many cases, these principles and the provisions they give rise to have been included in national constitutions and feature heavily in comprehensive children’s legislation.<sup>73</sup>

Although all-inclusive laws on children are less common in Western Europe, there have nonetheless been landmark legal reforms in the region, including a recent revision to the Spanish child protection regime to incorporate the Convention and expand children’s civil rights.<sup>74</sup> In contrast, the Children Act 1989, the Children (Scotland) Act 1995 and the Children (Northern Ireland) Order 1995, although often referred to by the UK Government as far-reaching enactments of the Convention, are limited largely to matters of child protection, family care, and alternative placements.<sup>75</sup>

Meanwhile, countless other nations around the world are introducing stronger and stronger measures to ensure children within their borders receive and benefit from the rights set out in the Convention. Indeed, over the past two decades, laws around the world have been steadily revised to recognise and expand the rights of the child.<sup>76</sup> Nearly every State Party to the Convention has made substantial changes to their legislation following ratification, seeking full implementation of children's rights as international law demands.<sup>77</sup>

### Models and methods of incorporation

The model of incorporation the UK chooses must allow the Convention to become a more powerful instrument for positive change for all children, and particularly for the most vulnerable. Direct incorporation offers children the strongest possible protection of their rights, requiring all public authorities and others to recognise the civil, political, economic, social and cultural rights set out in the Convention, and ensuring every decision they make will be based on the best interests of the child. Administrative incorporation through, for example, a duty on Ministers to have regard to the Convention, is a significant move forward in the recognition of children as rights-holders, but it does not give children any additional rights, nor give them any accessible means through which to assert their individual rights and entitlements.

For incorporation to have real meaning for children, the Rights of the Child UK coalition believes that incorporation must include an effective role for the judiciary. However undesirable the act of litigation may be for children and young people, in reality it often plays a crucial role in allowing the most vulnerable in society to claim their entitlements. More importantly, legal liability acts as a powerful incentive for those in power to avoid violations of rights without the need to go to court.

Children and young people who took part in a consultation on a Bill of Rights with the Children's Rights Alliance for England, UNICEF UK and the Ministry of Justice debated at length the way in which incorporation might function in practice, and had in-depth discussions about the practical implications of any such Bill on the delivery of services, the allocation of resources and the involvement of the courts. They came to the conclusion that, with all these considerations in mind, anything less than an enforceable Convention would not provide the respect and protection for children's rights that they felt was lacking in British society.

The then UK Government's response document to the consultation on a British Bill of Rights in 2010 acknowledged that 'there was most support for including rights relating to children and children's well-being' and that '...in a large number of cases, this support was linked to a specific call for the incorporation of the UN Convention of the Rights of the Child into domestic law.'<sup>78</sup>

Similar views were expressed in Northern Ireland during the consultations on the Bill of Rights for Northern Ireland. At the Bill of Rights Forum held in March 2008, the consensus was that rights based on international standards should be the starting point and the Convention seen as the minimum. The concept of justiciable rights was strongly supported by the public in Northern Ireland.<sup>79</sup>

### Additional steps to accompany incorporation

Enshrining the Convention into the UK's domestic law would not alone rectify the violations of children's rights that happen on a daily basis in the UK. However, such an action would clarify the status of the Convention in the UK and gives its principles and provisions real legal force within our homes, schools, communities, towns, cities and government institutions. It would also give children and young people a route to seek help where they are unable to enjoy all of their rights, and are prevented from developing to their full potential. To ensure the greatest possible impact of any incorporation of the Convention, the UK Government would need to ensure that:

- Sectoral law reform (the gradual review, amendment and subsequent compliance of existing legislation) continues after the incorporation of the Convention, but in a systematic and routine manner, driven by the principles of the Convention.
- Significant time and resource is invested into public education and achieving positive and consistent messages from the UK and devolved governments about the importance of children's human rights, learning from the difficult journey of the Human Rights Act in recent years.
- Judges and magistrates receive comprehensive training on applying the Convention and are clear as to the extent of their interpretative role, taking into account examples of training in Finland, Italy and Latin America where judges are already using the Convention effectively to protect the well-being and best interests of children.

'It is unacceptable that 3.5 million children live in poverty in the UK today, with 1.6 million children living in severe poverty (nearly 13% of all children). Such a wholesale denial of the right to an adequate standard of living for our children shames our nation and our political leaders. The time is up for paying lip service to our international obligations on children's rights: our children deserve so much more.'

Save the Children

## Acknowledgments

The Rights of the Child UK is a coalition of organisations and individuals seeking the incorporation of the United Nations Convention on the Rights of the Child into UK law.

Our member organisations are: Article 12 in Scotland, British Humanist Association, Centre for Inclusive Education, Association for the Protection of all Children (APPROACH), Children in Wales, Children’s Legal Centre, Children’s Rights Alliance for England,

Confederation of Green Parties in South East England, CRIN, ECPAT UK, the Fatherhood Institute, Garden Court Chambers, Howard League for Penal Reform, Just Fair, National Youth Advocacy Service, National Youth Agency, NCB, NSPCC, Royal College of Paediatrics and Child Health, Save the Children, Save the Children Scotland, Scope, Sefton CVS, The Children’s Society, Together, UNICEF UK, Voice, Who Cares? Scotland, and Young Minds.

A list of individual members is available on request.



Particular thanks go to the Children’s Rights Alliance for England, Save the Children, UNICEF UK and Mitchell Woolf for authoring this publication.

This publication was funded by Save the Children and UNICEF UK.

Contact details:

[www.rights-of-the-child.org.uk](http://www.rights-of-the-child.org.uk)

## Endnotes

- 1 HC Deb, 6 December 2010, c5WS, Statement by Sarah Teather MP, Minister of State for Children and Families
- 2 Ibid
- 3 Ibid
- 4 BBC News, *Full text: Conservative-Lib Dem Deal*, 12 May 2010. Accessed at [http://news.bbc.co.uk/1/hi/uk\\_politics/election\\_2010/8677933.stm](http://news.bbc.co.uk/1/hi/uk_politics/election_2010/8677933.stm).
- 5 Coalition Government (May 2010), *Programme for Government*
- 6 UNICEF Innocenti Research Centre (2008), *Law Reform and the Implementation of the Convention on the Rights of the Child*
- 7 Ibid, page 5
- 8 See section on *Children's views on incorporation*
- 9 Joint Committee on Human Rights (2009), *Children's Rights: Twenty-fifth report of session 2008-09*
- 10 Agreed at Vienna on 23 May 1969, entered into force on 27 January 1980.
- 11 The Liberal Democrat Party (2010), *Liberal Democrat Manifesto 2010*
- 12 The Labour Party (2010), *The Labour Party Manifesto 2010*; The Conservative Party (2010), *Invitation to Join the Government of Britain: The Conservative Manifesto 2010*
- 13 The Scottish Government (2011), *Consultation on Rights of Children and Young People Bill*
- 14 Sinn Fein (2010), *Westminster Election Manifesto*, page 40
- 15 See [http://www.niassembly.gov.uk/theassembly/CPFG/CPFG\\_Reports/report\\_rights\\_safes\\_equalissues\\_victims.pdf](http://www.niassembly.gov.uk/theassembly/CPFG/CPFG_Reports/report_rights_safes_equalissues_victims.pdf), p.4.
- 16 Dawn Purvis MLA in her foreword to Employers for Childcare (2010), *Sizing Up: A comparative study of childcare policies within the four nations of the UK*, page 6
- 17 Statement by John Denham MP, Minister for Children and Young People, to the United Nations General Assembly Special Session on Children, New York, 10 May 2002
- 18 The Scottish Government (2009), *Do the right thing*, page 1
- 19 Somalia has not yet ratified the Convention on the Rights of the Child because it lacks a government that has the power to do so.
- 20 Article 41, UN Convention on the Rights of the Child
- 21 For positive examples of the Human Rights Act making a difference see British Institute for Human Rights (2009), *The Human Rights Act: Changing Lives (2<sup>nd</sup> edition)*
- 22 <http://www.unicef-irc.org/publications/493>
- 23 The Scottish legal system is not principally a common law system, but a bi-judicial or hybrid system based on civil law with some common law elements; however, the point regarding the effectiveness of "sectoral" law reform stands in this context.
- 24 UN Committee on the Rights of the Child (2008), *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*
- 25 Department for Work and Pensions (2011), *Households Below Average Income 2009/10*
- 26 New Policy Institute (February 2011), *Severe child poverty: An update. A NPI report for Save the Children*
- 27 Coalition Government (May 2010), *Programme for Government*
- 28 European Court of Human Rights, *S and Marper v UK* (2008), Application Nos. 30562/04 and 30566/04.
- 29 UN Committee on the Rights of the Child (2003), General Comment 5: *General Measures of Implementation for the Convention on the Rights of the Child*, paragraph 20
- 30 Description of incorporation given in UNICEF Innocenti Research Centre (2008), *Law reform and implementation of the Convention on the Rights of the Child*
- 31 See, for example, Children's Rights Alliance for England and National Children's Bureau (2007), *Meeting the obligations of the Convention on the Rights of the Child in England: Children and young people's messages to Government*, page 7
- 32 UN Committee on the Rights of the Child (2008), *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*
- 33 UN Committee on the Rights of the Child (2003), General Comment 5: *General Measures of Implementation for the Convention on the Rights of the Child*
- 34 Joint Committee on Human Rights (2009), *Children's Rights: Twenty-fifth report of Session 2008-09*
- 35 Joint statement on 3 February 2010 by Professor Sir Al Aynsley-Green, Children's Commissioner for England; Keith Towler, Children's Commissioner for Wales; Patricia Lewsley, Northern Ireland Commissioner for Children and Young People; and Tam Baillie, Scotland's Commissioner for Children and Young People
- 36 UN Committee on the Rights of the Child (2003), *General Comment 5: General Measures of Implementation for the Convention on the Rights of the Child*, paragraph 6
- 37 UN Committee on the Rights of the Child (2002), *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*
- 38 UN Committee on the Rights of the Child (2008), *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, paragraph 11
- 39 The UK continues to retain an interpretative declaration to the Optional Protocol on Involving Children in Armed Conflict.
- 40 HC Deb, 6 December 2010, c5WS, Statement by Sarah Teather MP, Minister of State for Children and Families
- 41 Dunford, J (2010), *Review of the Office of the Children's Commissioner (England)*. Department for Education
- 42 Department for Education (2011), *Establishing a new Office of the Children's Commissioner for England (OCCE): Consultation on Legislative Proposals*
- 43 The British Academy (8 March 2010), *Proposals for a British Bill of Rights: A British Academy/AHRC Forum*
- 44 The Scottish Government (2011), *Consultation on Rights of Children and Young People Bill*
- 45 Together (2010), *State of children's rights in Scotland*, page 9; see also Article 12 in Scotland (2008), *I Witness: The UNCRC in Scotland*
- 46 Section 2 of the Childcare Act 2006 also specifies the areas in which English local authorities must reduce inequalities between young children: physical and mental health and emotional well-being; protection from harm and neglect; education, training and recreation; the contribution made by them to society; and social and economic well-being.
- 47 The targets relate to relative low income, combined low income and material deprivation, absolute low income, and persistent poverty.
- 48 UK Government (2007), *State Party Report to the UN Committee on the Rights of the Child*
- 49 UK Government (2007), *State Party Report to the UN Committee on the Rights of the Child*
- 50 HC Deb, 9 September 2011, c906W
- 51 House of Commons, European Committee C, 12 September 2011 – full transcript available at: <http://www.publications.parliament.uk/pa/cm201012/cmgeneral/euro/110912/110912s01.htm>
- 52 The Scottish Government (2011), *Consultation on Rights of Children and Young People Bill*
- 53 Smith (FC) v Secretary of State for Work and Pensions [2006] UKHL 35
- 54 R (Williamson) v Secretary of State for Education [2005] 2 AC 246, paragraphs 84-86
- 55 UN Committee on the Rights of the Child (2006), General Comment 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment
- 56 R (ota C) v Secretary of State for Justice [2008] EWCA Civ 882
- 57 ZH v Secretary of State for the Home Department [2011] UKSC 4
- 58 R (ota P & Q) v The Secretary of State for the Home Department, 2001, EWCA Civ 1151
- 59 S, C & D v Secretary of State for the Home Department, 2007
- 60 R (SR) v Nottingham Magistrates' Court, 2001; R (The Howard League for Penal Reform) v Secretary of State for the Home Department, 2002
- 61 Procurator Fiscal (Linlithgow) v (1) John Watson. (2) Paul Burrows: HM Advocate v JK, 2002
- 62 Susan Helen Mabon v James Mabon and others, 2005
- 63 Northumberland County Council v (1) Z (2) Y (3) X and (4) Kenya, 2009
- 64 At the time of writing, the UK Government had not ratified the complaints procedures to either the International Covenant on Economic, Social and Cultural Rights or the European Social Charter.
- 65 Joint Committee On Human Rights (2004), *The International Covenant on Economic, Social and Cultural Rights: Twenty-first report of Session 2003-04*
- 66 UN Committee on the Rights of the Child (2003), General Comment 5: *General Measures of Implementation for the Convention on the Rights of the Child*
- 67 HM Treasury, *The Green Book: Appraisal and Evaluation in Central Government*, Annex 5, 95
- 68 Joint Committee on Human Rights (2004), *The International Covenant on Economic, Social and Cultural rights: Twenty-first report of Session 2003-04*
- 69 States that have ratified the UN Convention on the Rights of the Child
- 70 UNICEF Innocenti Research Centre (2008), *Law reform and implementation of the Convention on the Rights of the Child*, pages 5 to 7
- 71 Ibid, page 7
- 72 Ibid, pages 25 to 31
- 73 Ibid, pages 17 to 31
- 74 Ibid, page 21
- 75 Ibid, page 22
- 76 Ibid, page 112
- 77 Ibid, page 103
- 78 Ministry of Justice (2010), *Rights and Responsibilities: Developing our constitutional framework – summary of responses*, paragraph 23
- 79 Linda Moore, *Strengthening Children's Rights through a Bill of Rights: the Northern Ireland experience*, presentation at Rights of the Child UK event, London, 16 October 2008

