

## **Rights of the Child UK (ROCK)**

*For the incorporation of the United Nations Convention on the Rights of the Child into UK law*

### **Response to the UK Government consultation '*Rights and Responsibilities: developing our constitutional framework*'**

February 2010

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#### **About ROCK**

ROCK is a UK-wide coalition of organisations and individuals which seeks the incorporation of the United Nations Convention on the Rights of the Child (CRC) into UK law. Our member organisations are listed at the end of this paper. Details of our individual members are available upon request.

#### **Executive summary**

The ROCK coalition welcomes the UK Government's placing of children at the heart of the Green Paper, and its recognition of the CRC as a crucial instrument to achieve change for children. However, we believe the Government must go much further.

The UK Government has expressed a vision to make this country the best place in the world for children to grow up. We believe this can only be achieved by making the CRC part of UK law, bringing it within the reach of all children in the UK regardless of their circumstances or setting. The proposal for a Bill of Rights and Responsibilities presents an opportunity to make this happen.

The UK Government has taken important steps in this Green Paper by recognising the need to foster greater respect for children and young people and by explicitly acknowledging children as rights holders, as well as drawing attention to the responsibility of wider society towards children. The Government has also crucially emphasised the importance of ensuring that children's existing rights remain in place - including those protected under the Human Rights Act - and that any new measures build on these safeguards.

However, we are disappointed that the UK Government has not set out any plans to incorporate the CRC into UK law, nor to create any new enforceable rights for children. We also remain concerned about the Government's proposals for more explicit links between rights and responsibilities, the implications of which still do not have appear to have been fully thought through.

The UK Government is right to put children 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 more.

In this paper, we focus on the case for CRC incorporation, which we believe should be at the heart of any debate about the creation of a truly progressive Bill of Rights for the UK.

## **Introduction**

### **A shared vision for the UK's children**

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

The Vienna Convention on the Law of Treaties, ratified by the United Kingdom on 25 June 1971<sup>i</sup>, states at article 26, '*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*' However, over 18 years after the CRC was ratified by the United Kingdom (in 1991), it remains far from being fully implemented in the UK.

The Secretary of State for Children, Schools and Families has expressed a vision to make this country the best place in the world for children and young people to grow up.<sup>ii</sup> As Chancellor of the Exchequer, Gordon Brown said, '*Our country's future lies with the hopes, dreams and potential of our children.*'<sup>iii</sup> The Conservatives have expressed their ambition to make the UK the most '*family-friendly country in the world*' and to '*help children maximise their potential.*'<sup>iv</sup> When in Government, they were responsible for the UK's ratification of the CRC, expressing '*strong support*' for the Convention and describing it as '*a landmark for children.*'<sup>v</sup> The Liberal Democrat Spokesperson for Children, Schools and Families, Annette Brooke, has repeatedly called for the UNCRC to be '*embedded in legislation*'<sup>vi</sup>, also commenting, '*It is not enough to sign up, it is all about implementation.*'<sup>vii</sup>

In fact, all three main parties have high ambitions for the UK's children and have recognised the importance of the CRC as an instrument for change. And yet, introducing his first annual report, Professor Sir Al Aynsley-Green, Children's Commissioner for England, said, '*It is incredible that in one of the world's richest economies children and young people continue to live in poverty, suffer abuse and be denied their human rights.*'

We agree with John Denham MP, then Minister for Young People, who explained in his speech to the UN General Assembly in 2002:

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

The CRC was drafted over many years and represents near universal consensus about the rights protection that children need. It offers a complete framework for the protection of children's rights by nation states. These rights for children are inextricably linked with those of their parents and families, whose central role in children's lives is strongly recognised in the Convention.

We believe that all the parties' visions for children and families can only be achieved by making the CRC part of UK law, bringing it within the reach of all children in the UK regardless of their circumstances or setting.

### **Making children's rights real**

Article 4 of the CRC requires Governments to "*undertake all appropriate legislative, administrative and other measures*" to implement it. However, we know that this only happens on a piecemeal and patchy basis in the UK, with uneven application for children in different circumstances and settings. The UN Committee on the Rights of Child recommended in 2002 and 2008 that the UK should incorporate the Convention into domestic law in order to improve its implementation. We believe this is necessary in order to make the Convention real for children.

The UK courts already take some account of the CRC when interpreting children's rights. Incorporation of the Convention would therefore be a natural progression for the development of our domestic law. The UK has benefited greatly from incorporating the European Convention on Human Rights into domestic law. Since the passage of the Human Rights Act 1998 (HRA), the UK has been taken to the European Court of Human Rights much less often than before, as we are now able to address any violations in our own courts. The HRA offers vital protection for children and must be preserved. However, we can and should do more. The CRC is children's 'Magna Carta', recognising their unique status and needs and, if made part of UK law – operating alongside the HRA – would offer much more comprehensive protection.

Children are especially vulnerable to their rights being dependent upon their circumstances rather than belonging to them, be they at home, school, looked after by the state or in custody or immigration detention. Incorporating the CRC into UK law would make children's Convention rights inalienable and realisable, with the potential to effect real change for the better. Incorporating the CRC would make children's rights '*portable*' – travelling with them at all times.

### **Why seek incorporation now?**

There are many reasons why now is a good time to talk about making the CRC part of our national law:

- 2011 will see the 20<sup>th</sup> anniversary of CRC ratification by the UK. Incorporation of the CRC into UK law 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, most recently in its October 2008 Concluding Observations
- The UK Government's withdrawal of two significant reservations to the Convention in 2008 was a very positive step
- 2007 saw the appointment of the first Cabinet Minister for children and the publication of the first Children's Plan in England. The Secretary of State for Children, Schools and Families has proactively emphasised the crucial need to protect children's rights (including participation rights) in contexts such as child protection
- The appointment of Children's Commissioners in all of the UK's nations was a significant step forward (the relevant legislation having been introduced in Wales in 2001<sup>ix</sup>; in Northern Ireland<sup>x</sup> and Scotland<sup>xi</sup> in 2003; and in England in 2004<sup>xii</sup>)
- Incorporation of the CRC would be the natural next step to build on the HRA
- Civil society in Northern Ireland has made clear that it seeks the incorporation of justiciable children's rights through the Northern Ireland Bill of Rights
- The Child Poverty Act will place Government targets for ending child poverty on a legal footing
- In the Green Paper, the UK Government recognises CRC as a 'crucial instrument' to achieve change for children and explicitly acknowledges the need to foster greater respect for children and young people in UK society
- There is an ongoing public discussion of human rights in the UK in the context of proposals for a Bill of Rights from all three main parties.

### **Children's views**

Views and experiences reported by children make clear that they struggle to exercise their rights in many areas of their lives. This is particularly true for vulnerable children, as can be seen from the 2008 '*What do they know?*' report by the Children's Rights Alliance for England (CRAE).<sup>xiii</sup>

In December 2009, CRAE and UNICEF helped convene a national consultation event on the Green Paper giving 20 young children's rights activists (aged under 18) the opportunity to share and discuss their views and aspirations with Ministry of Justice officials. Some consistent messages came through from children and young people on the day. A delegation of young people discussed these broad "demands" with the Minister in January 2010. To summarise, children and young people said they wanted a Bill of Rights that would:

- Change their lives for the better (there was strong support for 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.

### **Public opinion**

Political and public discussions about a UK Bill of Rights present an opportunity for a positive shift in the general public's understanding of children's rights. Public engagement in the idea of incorporation, and education about its effect, would be crucial to ensuring this.

However in any event, public opinion may not be as far behind as some believe. An opinion poll carried out for the Northern Ireland Human Rights Commission found overwhelming support for "special rights for children"<sup>xiv</sup> in that country's emerging Bill of Rights, and similar support may be anticipated across the rest of Britain.

The UK Parliamentary Joint Committee on Human Rights has noted that 88% of those questioned in a recent Joseph Rowntree State of the Nation poll thought that the right to hospital treatment on the NHS within a reasonable time should be included in a Bill of Rights (1% less than the 89% who thought the right to a fair trial before a jury should be included); and 65% thought the right of the homeless to be housed should be included.<sup>xv</sup> These views on the incorporation of economic and social rights can be seen as an indicator of likely views on incorporation of the CRC. We hope to find out more about the public's views as part of our work in the ROCK coalition.

### **Why make the CRC part of UK law?**

#### **Failings of the piecemeal approach**

UNICEF research reveals a variety of different approaches that have been taken to improving the protection of children's rights in countries around the world.<sup>xvi</sup>

The approach taken in the United Kingdom, like most common law countries, could be described as 'sectoral' law reform – namely the gradual examination of legislation concerning different areas in order to identify and make the changes needed to bring existing legislation into conformity with the CRC. However, this description suggests something more systematic than what currently happens in the UK, which is actually piecemeal. Although the publication of the first Children's Plan for England in 2007 was a huge step forward, and its reference to the CRC a welcome development, the plan is not framed by the CRC and this shows in the patchy development of children's rights protection in the UK. The first step towards law reform must be the recognition that reform is needed, and this is often wanting in the UK Government's thinking.

There have been many positive developments in CRC compliance in the last 20 years, including progress in children's participation in education, some strengthening of child protection law and the promise to legislate to end child poverty. Children now have their own Cabinet Minister. However, as the UNICEF study makes clear, no one approach is sufficient in and of itself. The disadvantages of sectoral law reform (even where it is approached systematically) are that it tends to focus only on specific areas, neglecting some CRC rights (e.g. privacy and freedom of movement and association) and recognising obligations to respect children's views only in specific circumstances or contexts, with inadequate mechanisms for accountability.

### **Children's rights violations in the UK**

It is sometimes said that the UK is already fully complying with the CRC. However it is all too obvious, not least from the 2008 Concluding Observations of the UN Committee on the Rights of the Child as well as criticism from a range of other international human rights bodies, that this is far from the case. Incorporation of the CRC would provide a welcome measure of accountability which would both demonstrate the Government's commitment to upholding children's rights under the Convention and require this commitment to be maintained on an ongoing basis.

Yet despite the increasing political commitment to children, there is still resistance to a rights-based approach. The last examination of the UK by the UN Committee on the Rights of the Child resulted in well over a hundred recommendations for reform. Continuing CRC violations include the following:

- We have the 5<sup>th</sup> richest economy and the second worst infant mortality rate of the 24 wealthiest countries in the world
- Treatment of children in the criminal justice system is regularly subject to severe criticism by international and domestic human rights bodies and inspectorates (cf. low minimum age of criminal responsibility; large numbers in custody; child deaths and self-harm in custody; restraint law and practices; strip searching and segregation)
- Despite the withdrawal of the immigration reservation to the CRC in 2008, immigration detention of children and the destitution of asylum seeking families are amongst the continuing, serious violations of the CRC for these children
- The rights of children to privacy – including young children - are not taken seriously, as seen in the blanket retention of children's data (including under 10s) in the National DNA database prior to the European S & Marper judgment, the deliberate use of negative publicity against children receiving ASBOs (including young children), and the erosion of privacy for children involved in family court proceedings
- There is no comprehensive national strategy for the inclusion of disabled children in society, who continue to be denied their rights guaranteed by the CRC.

### **Calls for incorporation from human rights bodies, Parliamentarians and civil society**

Calls for the CRC to be made part of UK law come from a wide range of domestic and international human rights bodies and non-governmental organisations.

- **UN Committee on the Rights of the Child**  
Article 4 of the Convention requires the UK to “*undertake all appropriate legislative, administrative, and other measures for the implementation*” of the Convention. In its November 2003 ‘general measures general comment’ on what states must do to ensure the full implementation of the CRC, the UN Committee welcomed ‘*the incorporation of the Convention into domestic law*’ as a method of implementation.<sup>xvii</sup>

In 2002, while noting the entry into force of the Human Rights Act 1998, the UN Committee on the Rights of the Child expressed its concern that the provisions and principles of the CRC, which it noted '*are much broader than those contained in the European Convention on Human Rights*', had not yet been incorporated into domestic law, nor was there any formal process to ensure that new legislation fully complied with the Convention.

In its 2002 Concluding Observations the UN Committee encouraged the UK to incorporate into domestic law the rights, principles and provisions of the Convention in order to ensure that all legislation complied with the Convention and that the provisions and principles of the Convention were widely applied in legal and administrative proceedings.

In 2008, the UN Committee specifically recommended that the UK Government should '*continue to take measures to bring its legislation in line with the Convention. To this aim, the State party could take the opportunity given in this regard by the development of a Bill of Rights in Northern Ireland and a British Bill of Rights, and incorporate into them the principles and provisions of the Convention, e.g. by having a special section in these Bills devoted to child rights.*' (para 11)

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

The Parliamentary Joint Committee on Human Rights has recommended incorporation of "*at least some*" of the CRC into domestic law, recently recognising the strength of the case for improving children's rights protection in its inquiry into a UK Bill of Rights.<sup>xviii</sup>

- **Children's commissioners for England, Wales, Scotland and Northern Ireland**

The four UK children's commissioners issued a joint public statement in February 2010, endorsing the Children's Rights Bill currently going through Parliament and calling for the CRC 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>xix</sup>

- **Parliamentarians**

Baroness Walmsley introduced a Private Members Bill in November 2009 – the Children's Rights Bill – which uses a similar model to the Human Rights Act to incorporate the CRC into UK law. The Bill is supported by the ROCK coalition. At the time of writing, Peers from the Labour, Liberal Democrat and Cross Benches have declared support for the Bill and their intention to participate in debating the Bill upon its 2<sup>nd</sup> reading.

- **Non-governmental organisations**

Human rights organisations have long advocated for the incorporation of the CRC's provisions into UK domestic law. The ROCK coalition now has 24

member organisations from across the UK who have joined together to campaign actively for CRC incorporation and are listed at the end of this submission, as well as many individual members.

## **The benefits of incorporation**

### **Raising awareness of the CRC**

Many children, parents and professionals are unaware of the Convention's existence, let alone what it contains and what it should mean for children. The incorporation of part of the CRC into South Africa's constitution has raised awareness of the Convention at all levels of South African society. Raising awareness of the CRC would be one undoubted benefit of incorporation in the UK.

### **Increasing accountability**

When we talk about incorporation, we mean that the CRC itself will form part of national law, be binding on public agencies and will be applicable in the UK courts.<sup>xx</sup> The status of the CRC within our unwritten constitution and in relation to our other laws would depend on the method of incorporation.

Some models of incorporation allow for rights and principles to have symbolic value only. However we believe that, for incorporation of the CRC to have real meaning for children, the rights and principles contained in it must be justiciable – i.e. individuals must be able to go to court to enforce their Convention rights. This would give the Convention real 'teeth', creating legal liability for public authorities.

It is often impossible to ensure the implementation of chosen policies without such 'teeth'. An example would be the development of equality law, which has effected real cultural change through the introduction of legal liability for public authorities, private bodies and individuals.

As can be seen below, there are some good examples of how the CRC has been used in the UK courts, specifically in the context of claims made under the HRA. The CRC could be used in judicial decision making to a greater degree than presently occurs even without incorporation. However, the CRC will always be of limited effect until it is made part of our domestic law.

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

### **The increased influence of the CRC on UK and devolved law and policy**

To date, the UK Government has rejected the idea of incorporating the CRC. However, in this Green Paper, it has recognised the need to improve protection of children's rights.<sup>xxi</sup> The Green Paper includes a proposal to include a right for children to achieve wellbeing and suggests more generally 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>xxii</sup> These are welcome proposals although they do not go far enough.

In September 2007 the UK Government submitted its report to the UN Committee on the Rights of the Child explaining how the CRC had been implemented in the UK and responding to the Committee's previous recommendations. The report opened with a clear statement that "*The United Kingdom's commitment to implementing the*

*Convention remains unwavering.*<sup>xxiii</sup> The report detailed some significant steps that the Government has taken to uphold children's human rights, including the introduction of a new duty on local authorities, when working with children in need or making enquiries based on suspected significant harm, to ascertain the child's wishes and feelings and use them to inform decision making<sup>xxiv</sup>; the introduction of the first Cabinet Minister for Children, Schools and Families; and the introduction of Children's Commissioners in all four UK jurisdictions.

However, despite the commitments made above, it is disappointing that the UK Government has not yet taken the opportunity of its proposals for a UK Bill of Rights to propose the incorporation of the CRC into UK law, nor the creation of any new enforceable rights for children. There is no doubt that now is an uncertain time for human rights in the UK, with confusing messages coming from both the Government and the Opposition on the future of human rights in the UK, and justifiable concerns that children may lose the crucial protection they currently enjoy under the HRA.

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. For example, in England the Government has used the language of promoting children's welfare, whereas other UK jurisdictions have embraced a stronger concept of children's rights.

There are notable differences in the way that political leaders in each nation have discussed the Convention. For example in July 2009 Rhodri Morgan, the then First Minister of the Welsh Assembly Government, stated his intention to:

*....explore further the possibility of introducing a Measure to embed the principles of the United Nations Convention on the Rights of the Child into law on behalf of Welsh children.*<sup>xxv</sup>

It has been demonstrated that a positive approach to rights can result in real and tangible improvements for children and young people. For example the Scottish Executive instituted a policy in Autumn 2007 establishing that asylum-seeking children who have spent at least three years in Scottish schools should have the same rights and access as Scottish children to full time further and higher education.<sup>xxvi</sup>

### **The CRC in the UK courts**

The importance of principles and rights contained within the CRC is already being recognised by the UK Courts in a variety of domestic cases covering a range of issues.

Prior to the entry into force of the HRA, Lord Browne-Wilkinson in a decision in the House of Lords recognised that while the CRC had not been incorporated into English law, it was legitimate to assume that Parliament had not maintained on the statute book a power capable of being exercised in a manner inconsistent with the principle of the best interests of the child, which is found at Article 3(1) of the Convention.<sup>xxvii</sup>

Since the entry into force of the Human Rights Act in October 2000, the judiciary has applied provisions of the CRC in order to proclaim, reaffirm or elucidate articles contained in the European Convention on Human Rights (ECHR). ECHR jurisprudence requires article 3 of the ECHR, as it relates to children, to be interpreted in the light of international conventions, in particular the CRC.<sup>xxviii</sup> Baroness Hale of Richmond has

also emphasised the authority of the UN UN Committee on the Rights of the Child, which is.<sup>xxxix</sup>

*Charged with monitoring our compliance with the obligations which we have undertaken to respect the rights of children...the authoritative international view of what the UN convention requires.*

In the case of *R (P & Q) v The Secretary of State for the Home Department [2001]* the Court of Appeal applied principles and articles contained in the CRC in order to ensure that its approach to the right to family life under Article 8 of the ECHR was in accordance with present day standards.<sup>xxx</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 European Convention must be read in light of provisions found in the CRC.<sup>xxxi</sup>

The judiciary has also recognised the importance of principles and articles contained within the CRC in order to inform 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>xxxii</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 CRC to inform its understanding of fair trial provisions under the ECHR.<sup>xxxiii</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 CRC so long as judges correctly focus on the sufficiency of the child's understanding of a situation by reflecting on the extent to which in the 21<sup>st</sup> Century there is a keener appreciation of the autonomy of the child and the child's consequential right to participate in decision-making processes that fundamentally affect his or her family life.<sup>xxxiv</sup>

The CRC is recognised as enshrining important principles of public policy in the domestic and international sphere, to which the court must have close regard in a case concerning the illicit transfer, abduction, sale or trafficking of children and young persons across international boundaries.<sup>xxxv</sup>

## **Is CRC incorporation possible in the UK?**

### **Justiciability**

The aim must be to obtain consensus on a model for incorporation that would allow the CRC to become a more meaningful and powerful instrument for positive change for all children, especially for the most vulnerable. For incorporation to have real meaning for all children in the UK, we believe this must include an effective role for the judiciary. However undesirable litigation may be for many reasons, in reality it often plays a crucial role in allowing the most vulnerable in our society to exercise their rights. More importantly, legal liability acts as a powerful incentive to avoid violations of rights, without the need to go to court.

### **International treaties and justiciable economic, social and cultural rights already in UK law**

The creation of justiciable economic, social and cultural rights and the incorporation of international treaties into domestic law are not new concepts for the UK.

The HRA creates a successful precedent for incorporation of an international human rights treaty into UK law and has been used as a model for the Children's Rights Bill currently going through Parliament. The Hague Convention on Child Abduction provides another example.

The HRA has been crucially important to the development of children's rights, providing protection in its own right and acting as a mechanism for judges to consider the CRC in their decision-making. However, the HRA does not on its own provide the protection specific to children's status and needs that is offered by the CRC and only includes limited protection of economic, social and cultural rights. We need to retain the protection it provides, and build on it by incorporating the CRC.

The CRC is made up to a large extent of economic, social and economic rights, and there is opposition within Government to incorporating such rights into domestic law. However, we believe that incorporation of such rights could not only be workable, but could prove critical in seeking to address the massive inequalities in our society. These inequalities have a disproportionate effect on children. The position of children in care gives just one stark example of the vulnerability of children in the UK to their setting and circumstances, and the effect of this on their life chances. Incorporating the CRC into UK law would be a powerful way to demonstrate an explicit commitment to giving all children an equal chance in life.

By introducing the Child Poverty Bill, the UK Government has committed itself to addressing one of the most serious child rights violations facing this country today - the vast numbers of children in the UK living in poverty. The Bill in its current form places strong duties on the Secretary of State to ensure that targets in relation to relative low income, combined low income and material deprivation, absolute low income and persistent poverty are met by the financial year beginning April 2020.

The Child Poverty Bill has received cross-party support, with each of the parties stating that they will support and vote to ensure it becomes law. At second reading the Conservative party spokesperson for work and pensions, Theresa May MP, said that *'the bill must mark a second phase in our nation's progress towards ending child poverty.'*<sup>xxxvi</sup> Steve Webb, the Liberal Democrat spokesperson for Work and Pensions said in the same debate, *'I unreservedly welcome the fact that this one contains a commitment to tackling child poverty.'*<sup>xxxvii</sup>

The cross-party support for this Bill gives a clear indication from Government and opposition parties that social and economic rights can be protected under domestic legislation and that it accepts the legal responsibilities that come with that. Whilst on its own it can not solve the plight of child poverty in the UK, the introduction of this Bill does demonstrate that Government increasingly accepts it should be held to account for its record on children's rights.

It is sometimes said that it would not be possible to incorporate the CRC because its phraseology is so broad that implementation would require additional legislation.

However, many countries have succeeded in making the CRC's provisions – including in the sphere of economic and social rights – justiciable in their domestic courts (see below). The same can be done for the UK's children.

Another objection raised is that judges do not want to adjudicate on economic, social and cultural rights, or that giving them this power would threaten democracy. However, UK judges already regularly deal with resource and reasonableness principles. They would receive training upon CRC incorporation as they did under the HRA. Domestic courts in other jurisdictions cope with this type of decision-making subject to prescribed limitations.

### **Lessons from abroad**

Direct incorporation is a widespread practice in every corner of the globe. From Japan to Togo, Lebanon to Argentina, fellow States Parties<sup>xxxviii</sup> to the CRC have accepted their treaty obligations by directly incorporating the Convention's full set of children's rights into national law.<sup>xxxix</sup> Closer to home in the European Union, the CRC has been directly incorporated or holds a preeminent place in the domestic laws of fellow Member States France, Belgium, Cyprus, Finland, Norway, Portugal and Spain, among many others.<sup>xl</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 children's right to be heard, have been almost universally embraced.<sup>xli</sup> In many cases, these principles and the provisions they give rise to have been immortalised in Constitutions and feature heavily in comprehensive children's legislation.<sup>xlii</sup> Although all-inclusive laws on children are not common in Western Europe, there have nonetheless been landmark legal reforms in the region, including a recent revision to the Spanish child protection legal regime to incorporate the CRC into national law and expand children's civil rights.<sup>xliii</sup> By contrast, the UK's Children Act 1989 and its Scottish and Northern Irish analogues, although billed as wide-reaching enactments of the CRC, are limited largely to matters of child protection, family care, and alternative placements.<sup>xliv</sup>

Meanwhile, countless other nations around the world have introduced stronger and stronger measures to ensure that children within their borders receive and benefit from the rights they have been granted under the CRC. Indeed, over the past two decades, laws around the world have been and continue to be steadily revised to recognise and expand the rights of the child.<sup>xlv</sup> Nearly every State Party to the CRC has made substantial changes to their legislation following ratification, seeking full implementation of these rights as international law demands.<sup>xlvi</sup>

### **Traps to avoid**

There are a number of traps that should be avoided, including the following:

- Incorporation alone will not do the job - sectoral law reform must continue alongside it - but making the CRC part of our national law will mean that this happens in a systematic way
- There must be significant investment in public education and positive, consistent messages from Government in order to try and avoid the misunderstandings suffered by the HRA
- As under the HRA, training must be provided to judges on CRC use (note examples of Finland, Italy and Latin America where judges are already using the CRC effectively)

## Contact details

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### **Rights of the Child UK (ROCK)**

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The coalition's member organisations are: Article 12 in Scotland, the British Humanist Association, the Centre for Studies on Inclusive Education, the Child Rights Information Network (CRIN), the Children's Legal Centre, the Children's Rights Alliance for England (CRAE), The Children's Society, the Fatherhood Institute, the Howard League for Penal Reform, the National Youth Advocacy Service, the National Youth Agency, NCB, the National Society for the Prevention of Cruelty to Children (NSPCC), the Royal College of Paediatrics and Child Health, Save the Children UK, Scope, the Scottish Alliance for Children's Rights, Sefton Voices, Shelter Children's Legal Service, Unicef UK, Voice, Who cares? Scotland and YoungMinds. Details of individual coalition members are available upon request.

***The contents of this document do not necessarily reflect the views of all members.***

<sup>i</sup> Foreign and Commonwealth Office, UK Treaties Online website, accessed 25 February 2010, <http://www.fco.gov.uk/en/treaties/treaties-landing/records/02600/02624>

<sup>ii</sup> Department for Children, Schools and Families press release (11 December 2007). *Ed Balls launches plan for children.*

<sup>iii</sup> HM Treasury press release (15 November 2000). *Speech by the Chancellor of the Exchequer to the Children And Young People's Unit conference at the Design Centre, Islington.*

<sup>iv</sup> Conservative Party (2010). *Draft Manifesto 2010.*

<sup>v</sup> Quotes taken from statements by the then Secretary of State for Health, Virginia Bottomley, on 14 April 1994 during the House of Commons Parliamentary debate on Family Policy and on 19 December 1991, following the UK's ratification of the UNCRC, during the House of Commons Parliamentary debate on Adoption and Fostering.

<sup>vi</sup> House of Commons: Apprenticeships, Skills, Children and Learning Bill, 5 May 2009.

<sup>vii</sup> House of Commons: Public Bill Committee, Children and Young Persons Bill, 24 June 2008.

<sup>viii</sup> 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.

<sup>ix</sup> Children's Commissioner for Wales Act 2001

<sup>x</sup> The Commissioner for Children and Young People (Northern Ireland) Order 2003 (SI 2003 No. 439 (N.I. 11))

<sup>xi</sup> Commissioner for Children and Young People (Scotland) Act 2003, passed by the Scottish Parliament in 2003

<sup>xii</sup> Children Act 2004

<sup>xiii</sup> Davey C and Dimmock S (2008). *What do they know?* Children's Rights Alliance for England.

<sup>xiv</sup> Northern Ireland Human Rights Commission (October 2001) *A Bill of Rights for Northern Ireland. Summary of opinion poll findings.* NIHRC.

<sup>xv</sup> Parliamentary joint committee on human rights (August 2008). *A Bill of Rights for the UK?* Twenty-ninth Report of Session 2007-08 (HL Paper 165-I; HC 150-I)

<sup>xvi</sup> UNICEF Innocenti Research Centre (2007). *Law reform and implementation of the Convention on the Rights of the Child.* UNICEF.

<sup>xvii</sup> UN Committee on the Rights of the Child General Comment No. 5 (2003) *General Measures of*

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*Implementation of The Convention on the Rights of the Child.*

- <sup>xviii</sup> Parliamentary joint committee on human rights (August 2008). *A Bill of Rights for the UK?* Twenty-ninth Report of Session 2007-08 (HL Paper 165-I; HC 150-I)
- <sup>xix</sup> 11 Million press release (3 February 2010). *Joint statement from Children's Commissioners for England, Wales, Northern Ireland and Scotland on the Children's Rights Bill.*
- <sup>xx</sup> UNICEF Innocenti Research Centre (2007). *Law reform and implementation of the Convention on the Rights of the Child.* UNICEF.
- <sup>xxi</sup> Ministry of Justice (March 2009). *Rights and responsibilities: Developing our constitutional framework.*
- <sup>xxii</sup> *Ibid.*
- <sup>xxiii</sup> United Kingdom of Great Britain & NI (2007). *State Party Report to the UN Committee on the Rights of the Child.*
- <sup>xxiv</sup> Ss. 17(4A) and 47(5A) respectively, Children Act 1989.
- <sup>xxv</sup> National Assembly for Wales, Record of Proceedings, 14/07/2009.
- <sup>xxvi</sup> Scottish Executive (2007). *A Report on implementing the UN convention on the rights of the child in Scotland 1999-2007.*
- <sup>xxvii</sup> *R v Secretary of State for the Home Department, Ex Parte Venables* [1997] 3 All ER 97, [1997] 2 FLR 471, [1997] UKHL 25, [1997] 3 WLR 23, [1998] AC 407, [1997] Fam Law 786
- <sup>xxviii</sup> *R (R) v Durham Constabulary* [2005] 1 WLR 1184 [26] *per* Baroness Hale of Richmond. Followed in *R (C) v Secretary of State for Justice* [2008] EWCA Civ 882 [60] *per* Buxton LJ
- <sup>xxix</sup> *R (Williamson) v Secretary of State for Education* [2005] 2 AC 246 [84]-[86]; followed in *R (C) v Secretary of State for Justice* [2008] EWCA Civ 882 [60] *per* Buxton LJ
- <sup>xxx</sup> *R (ota P & Q) v The Secretary of State for the Home Department* [2001] EWCA Civ 1151
- <sup>xxxi</sup> *S, C & D v Secretary of State for the Home Department (2007)*
- <sup>xxxii</sup> *R (SR) v Nottingham Magistrates' Court (2001)* and *R (The Howard League for Penal Reform) v Secretary of State for the Home Department (2002)*
- <sup>xxxiii</sup> *Procurator Fiscal (Linlithgow) v (1) John Watson. (2) Paul Burrows: HM Advocate v JK (2002)*
- <sup>xxxiv</sup> *Susan Helen Mabon v James Mabon and others (2005)*
- <sup>xxxv</sup> *Northumberland County Council v (1) Z (2) Y (3) X and (4) Kenya (2009)*
- <sup>xxxvi</sup> House of Commons: Second Reading, Child Poverty Bill, 20 July 2009: Hansard Column 619
- <sup>xxxvii</sup> *Id.*, 20 July 2009: Hansard Column 624
- <sup>xxxviii</sup> States that have ratified the CRC.
- <sup>xxxix</sup> UNICEF Innocenti Research Centre (2007). *Law reform and implementation of the Convention on the Rights of the Child.* At pages 5-7.
- <sup>xl</sup> *Id.* at 7.
- <sup>xli</sup> *Id.* at 25-31.
- <sup>xlii</sup> *Id.* at 17-31.
- <sup>xliii</sup> *Id.* at 21.
- <sup>xliv</sup> *Id.* at 22.
- <sup>xlv</sup> *Id.* at 112.
- <sup>xlvi</sup> *Id.* at 103.