

**The United Nations Convention on the
Rights of the Child:
How legislation underpins implementation
in England**

**Further information for the Joint
Committee on Human Rights**

March 2010

Work in progress

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Introduction

1. The Joint Committee on Human Rights (JCHR) published its report on children's rights on 20 November 2009. In its report, the JCHR recommended that 'further information be given by the Government about the extent to which the United Nations Convention on the Rights of the Child's (UNCRC) rights are or are not already protected by UK law.'
2. This document has been compiled in response to this recommendation and sets out how all of the rights and obligations set out in the UNCRC are protected in England and implementation of the Convention is achieved through a substantial body of legislation and by putting the UNCRC at the heart of policies for children and young people.
3. The document demonstrates how England complies with each article in the UNCRC through our legislation and case law, administration and other processes.

Implementing the UNCRC

4. The Government is fully committed to children's rights and the continued implementation of the UNCRC to make the Convention a reality for all children and young people living in the UK.
5. Since ratification of the UNCRC in 1991, implementation of the Convention has been pursued through legislation and policy initiatives, including the Children Act 1989, Children Act 2004, Every Child Matters and policy for 0-19 year olds set out in the Government's 2007 Children's Plan.
6. In general, the UK does not incorporate international treaties directly into domestic law. Instead, if any change in the law is needed to enable the UK to comply with a particular treaty, the Government introduces legislation designed to give effect to that treaty.¹ As set out in this document, existing legislation and policies give effect to the rights and obligations in the UNCRC and regard is given to the UNCRC when developing any new legislation or policy.
7. Article 4 of the UNCRC recognises that implementation of the rights in the Convention may comprise of legislative, administrative and other measures. It is for state parties to decide how best to implement the UNCRC. In doing so, the Government gives appropriate consideration to any general comments or Concluding Observations made by the UN Committee on the Rights of the Child. Article 4 also recognises that, in relation to economic, social and cultural rights, resources are a relevant

¹ There are some exceptions to this, most notably the Human Rights Act 1998, which seeks to ensure the better protection of individuals' fundamental rights and freedoms as set out in the European Convention on Human Rights (ECHR).

issue and can be taken into account when deciding what measures to take in order to implement the Convention.

8. Every five years the Government reports its progress on implementation of the Convention to the UN Committee on the Rights of the Child. The Concluding Observations made by the Committee as a result of the most recent reporting process at the end of 2008 then directly informed further plans for implementation of the Convention.²
9. The Government also works closely with key stakeholders to review progress, including UNICEF UK and Children's Rights Alliance for England, who represent 270 member organisations with an interest in the wellbeing of children and who publish an annual report on the children's rights in England that closely follows progress on implementation of the UNCRC.

Protecting children's rights

10. In most cases, a breach of any duty or obligation imposed on the State or its public authorities that are set out in legislation, or a failure to follow settled policy or have regard to guidance without good reason, will be susceptible to judicial review. An individual who is affected by such a breach (including a child) may bring a claim for judicial review. Where other specific remedies are available they are set out in this document.
11. The criminal law protects children as it does adults, and some legislation specifically protects children, for example section 1 of the Children and Young Persons Act 1933 or the Protection of Children Act 1978. Where services for children are inspected, the inspection regime serves to protect children. There is also the possibility of complaint to the appropriate ombudsman (for example in the case of decisions of a local authority, to the Local Government Ombudsman) where there appears to have been maladministration.
12. As demonstrated in this document, where there is a dispute in respect of domestic legislation or the applicability of common law principles, the Courts have used the UNCRC as an aid to interpretation.

About this document

13. This document focuses primarily on legislation applicable to England³ as

² The last oral hearing held by the UN Committee on the Rights of the Child to scrutinise implementation of the Convention in the UK was held in September 2008. The Concluding Observations of the UN Committee are reflected in the Government's policies for all children and young people in England, as set out in the 2008 *Children's Plan One Year On*.

³ The Westminster Government is responsible for the overall coordination of the UNCRC across the UK. Whilst the Government works with the Devolved Administrations to ensure that the Convention is implemented across the UK and reports regularly to the UN Committee on the Rights of the Child on the progress made, each Devolved Administration (Northern Ireland, Scotland and Wales) takes forward the UNCRC as appropriate to its own requirements.

it aligns with UNCRC articles and does not make reference to other measures that support the delivery of children's rights except where implementation of an article is primarily by way of non-legislative means.⁴

14. The articles are grouped in relevant clusters as guided by the UN Committee on the Rights of the Child, rather than numerical order. This is the format used by the UN Committee and others to scrutinise the progress made by state parties to implement the Convention.
15. This document is not an exhaustive list of all relevant legislation, case law or policy that is relevant in the context of considering the articles of the Convention. However, it sets out the key legislative provisions, case law and/or policy that demonstrate how the rights and obligations set out in the UNCRC are protected in England.

Next steps

16. Whilst this document has been produced for the JCHR, and focuses heavily on the legislative underpinnings for implementation of the Convention, it is expected to be of interest to other groups concerned with the rights of the children.
17. This document is not an exhaustive account of *all* relevant legislation, but aims to identify the key legislation which underpins the implementation of the Convention. This audit of the legislative framework for implementation of the UNCRC continues to be work in progress and feedback on the contents of this document, including errors and omissions, would be very welcome from members of the JCHR as well as any other interested parties.⁵
18. The Government is plan to review this document annually to reflect any changes in the legislation effecting children and young people in England. This will complement the annual review of the progress made to implement policy for children and young people, in particular to deliver the Government's priorities in taking forward the UN Committee on the Rights of the Child's Concluding Observations.⁶
19. Please send any feedback on this document to:

⁴ Other documents give a fuller account of how the Government's policies for children and young people are underpinned by the UNCRC. In particular, see DCSF (2008) *Children's Plan One Year On* and DCSF (2009) *United Nations Convention on the Rights of the Child: Priorities for Action*.

⁵ The Department of Children, Schools and Families have led the compilation of this document, and are very grateful for input from colleagues in the Ministry of Justice, Home Office, Department of Health, Department for Communities and Local Government, Department for Work and Pension, Department of Culture, Media and Sport, Foreign and Commonwealth Office and the Legal Services Commission.

⁶ DCSF (2009) *United Nations Convention on the Rights of the Child: Priorities for Action*, in which the Government commits to an annual review of the progress of the priority policy areas set out in the document.

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Executive Summary

1. This document provides detailed information for the Joint Committee on Human Rights demonstrating how all of the rights and obligations set out in each of the Articles in the United Nations Convention on the Rights of the Child are protected in England and how implementation of the Convention is achieved through a substantial body of legislation and case law and by putting the UNCRC at the heart of policies for children and young people.
2. The 54 Articles in the Convention are considered in eight clusters as guided by the UN Committee on the Rights of the Child, rather than numerical order.

Cluster 1: General Measures of Implementation

3. This cluster of Articles deals with structures and resources to implement the UNCRC. The Westminster Government is responsible for the overall coordination of the UNCRC across the UK and its implementation is achieved through both legislation and policy. Alongside policy measures to promote awareness of the Convention, this chapter highlights:
 - The overarching legal framework for the Government's Every Child Matters programme of reforms to improve the wellbeing of children through the Children Act 2004. This Act also established the Children's Commissioner for England as an independent champion of children's views and interests;
 - The fact that the Government's policies for all children and young people in England set out in the 2007 *Children's Plan*, are underpinned by the Convention. In 2008, the *Children's Plan One Year On* reasserted the Government's commitment to making the UNCRC a reality on the ground and sets out how the UN Committee's Concluding Observations will be met;
 - The UK-wide commitment to implement the UNCRC set out in the 2009 document *Working Together, Achieving More*, which is underpinned by each nation's comprehensive action plan for taking forward the UN Committee's 2008 Concluding Observations; and
 - The regulations and statutory guidance to Children's Trust Boards will set out an expectation that the development of Children and Young People's Plans for the provision of local services will be underpinned by the UNCRC.

Cluster 2: Definition of the Child

4. Article 1 of the UNCRC defines a child as anyone under the age of 18. As set out in this short chapter, there is no single law that defines the age of a child across the UK. Specific age limits relating to different areas of policy are set out in the legislation and there are also differences between the UK nations. However, all legislation upholds the fact that a child is anyone who has not yet reached their 18th birthday.

Cluster 3: General Principles

5. The General Principles of the UNCRC are set out in four Articles covering children's right to non-discrimination; to their best interests being a primary consideration; to life and maximum development; and to express their views and have their views taken seriously. This chapter explains how these principles are underpinned by legislation and delivered through comprehensive policies for all children as well as the most vulnerable groups. As well as the protection afforded by the Human Rights Act 1998 and the European Convention on Human Rights, recent significant steps to recognise these principles are:
 - The consolidation and strengthening of existing legislation to protect all from discrimination in the Equality Bill due to be enacted in 2010;
 - The new statutory duty on the UK Borders Agency to safeguard and promote the welfare of children;
 - The strengthening of the role of coroners and Local Safeguarding Children's Boards in investigating child deaths;
 - The requirement for Children's Trust Boards to consult children and have regard to the importance of acting, so far as possible, in a manner which is compatible with the UNCRC when preparing their local Children and Young People's Plans; and
 - Increased pupil participation in education settings brought about by the Education and Skills Act 2008 and the Apprenticeships Skills Children and Learning Act 2009, including setting up a new Local Government Ombudsman complaints service for pupils and parents.

Cluster 4: Civil Rights and Freedoms

6. This cluster of articles protects children's right to privacy, information about paternity, their freedom of expression and assembly, their right to think and say what they want and protection from degrading treatment or corporal punishment. Further measures in relation to protecting children from degrading treatment are discussed in Cluster 5 and Cluster 8 under Article 19 and Article 37 respectively.

7. Core rights and freedoms of children and young people are set out in the European Convention on Human Rights (ECHR) which includes, children's right to privacy, freedom of assembly, freedom of expression, freedom of thoughts, conscience and religion, which were incorporated in domestic law through the Human Rights Act 1998 (HRA 1998). In addition the Government has set in place a range of legislation and administrative measures to provide additional protection for the rights and freedom of children, including recent steps such as:
 - Changes made to adoption law by the Adoption and Children Act 2002, including powers to arrange contact with adopted children;
 - Changes made to the definition of 'parent' by the Human Fertilisation and Embryology Act 2008;
 - Changes to the British Nationality Act 1981 by the Nationality, Immigration and Asylum Act 2002 to allow children of unmarried parents to derive a nationality claim from their father in the same way as children of married parents;
 - The Education and Inspection Act 2006 which placed a duty on local authorities to have regard to a child's religion or belief in arranging transport to/from school; and
 - The Apprenticeships, Skills, Children and Learning Act 2009 (ASCL 2009) which introduces a requirement for governing bodies of schools to have procedures in place for recording significant incidents involving the use of force by staff on pupils and for reporting these incidents to parents. This is expected to come into force in September 2010.
8. The Government takes all forms of violence against children extremely seriously and has in place clear frameworks and detailed statutory guidance on how organisations and individuals should work together to promote and safeguard the welfare of all children. Corporal punishment has been banned in maintained schools in England since 1987.

Cluster 5: Family Environment and Alternative Care

9. The articles in this cluster give rights to every child to enjoy a supportive, nurturing home environment regardless of their circumstances. It is a key principle of the Children Act 1989 that children are best brought up by their families and local authorities are under a general duty to provide support for children and their families.
10. A child's family environment is widely recognised as the biggest influence on the lives of children and DCSF have a wide-ranging policy programme to support families, particularly those who are struggling to cope. As set out in this chapter, when parents separate and are unable to agree on the arrangements for their children, the Children Act

1989 provides for a comprehensive framework of court orders dealing with contact, residence and the exercise of parental responsibility. Where it is not in the best interests of a child to remain with their family, the care provided by the State must be equally supportive of children. Improving outcomes for children in care and narrowing the gap between this group and those outside the care system is a Government priority as set out in the Care Matters agenda. Other key issues highlighted in this chapter:

- The court cannot make a care order placing a child in the care of a local authority unless it is satisfied that the threshold criteria set out in the Act are met (the child is suffering or likely to suffer significant harm which includes abuse and neglect) and the order is in the best interests of the child;
- The Welfare Reform Act 2009 has now provided for mothers and fathers to register separately the birth of their child which means that unmarried or separated fathers will have parental responsibility for their children;
- The Children and Adoption Act 2006 strengthened the enforcement provisions in relation to contact and DCSF has provided financial assistance for those directed by the court to attend activities which promote contact with a child;
- The Children Act 1989 makes provision for a complaints procedure for those affected by local authority decision making (including children) and the Adoption and Children Act 2002 imposed a duty on local authorities to make arrangements for the provision of advocacy services for such children;
- The Adoption and Children Act 2002 reformed the law relating to adoption including application of the paramountcy principle and the provision of adoption support services. That Act also provides for special guardianship orders and the provision of special guardianship adoption support services; and
- The Children Act 2004 strengthened the duties of local authorities in relation to private fostering and in 2008 the DCSF set up an expert advisory group to look at private fostering which will report in March 2010.

Cluster 6: Basic Health and Welfare

11. The articles in this cluster ensure that children have the right to life, maximum survival and development, health and health services and benefits, and that special consideration is given to children with disabilities.
12. Every child in England is entitled to an adequate standard of health and

welfare. The provision of a comprehensive National Health Service, most recently set out in the National Health Service Act 2006, which is free of charge to children, is the primary means by which the rights in this cluster are protected. Aiming High for Disabled Children is the Government's programme for transforming services for disabled children.

13. The Government's aim is to eradicate child poverty by 2020. The introduction of the Child Poverty Bill will bring new impetus to the goal, alongside policies to ensure that children and young people are not disadvantaged by poverty.
14. The recent improvements to these rights and obligations are highlighted in this chapter:
 - The intention of the government set out in the current Children, Schools and Families Bill to make sex and relationships education compulsory for pupils aged 11 to 16;
 - The new duty in the ASCL Act 2009 requiring local authorities to provide sufficient children's centres to meet local need;
 - The new duty on local authorities set out in the Children and Young Persons Act 2008 to provide short breaks from caring for disabled children;
 - The introduction of the National Service Framework for children setting standards for health and social care services; and
 - The November 2009 revised statutory guidance to local authorities, Special Health Authorities and Primary Care Trusts on promoting the health and well-being of looked-after children which seeks to address the recognised health inequalities of such children.

Cluster 7: Education, Leisure and Cultural Activities

15. Children's right to education that meets their needs and improves the attainment of every child and their right to leisure and cultural activities are captured under this cluster of articles.
16. Primary and secondary education in England is compulsory and available free to all children. The requirements of the National Curriculum set out a rounded education that promotes the spiritual, moral, cultural, mental and physical development of children and prepares them for later life. The *Your child, your schools, our future: building a 21st century schools system* White Paper describes further reforms that will include guarantees for pupils and parents, especially those requiring extra help.
17. The recent legislative steps to improve children's rights are highlighted in

this chapter:

- Schools are required to appoint a designated teacher for looked-after children under section 20 of the Children and Young Persons Act 2008, and there are associated regulations and statutory guidance, with the aim of improving the achievement of this group of children;
- Sections 48 to 52 of the Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act) place duties on local authorities to secure the provision of education and training for children and young people who are detained and to align such provision more closely to that provided to children in the mainstream sector;
- There is an increased focus on pupil participation in the Education and Inspections Act 2006 (for example, the duty in section 88 on governing bodies to consult pupils on behaviour policies) and the ASCL Act (for example, the right to complain to the Local Government Ombudsman set out in Part 7 of the Act);
- There is a requirement, set out in section 248 of the ASCL Act, for schools to enter into partnerships with a view to promoting good behaviour and discipline and reducing persistent absence of pupils; and
- There is a duty on local authorities to secure adequate leisure and recreation facilities and activities for children, set out in the Education and Inspections Act 2006.

Cluster 8: Special Protection Measures

18. This cluster of articles lays down the rights of children and young people who are in custody or detention for immigration purposes, or who are victims of torture, trafficking, sexual exploitation, drug abuse and child labour. The best interests of these children and their wellbeing and development can only be tackled through special measures.
19. The measures set out in this cluster recognise that in some cases children require special protection because of their particular vulnerabilities. A number of these rights are protected by the ECHR, enshrined in law by the Human Rights Act 1998.
20. This chapter highlighted further recent measures that relate specifically to protecting children are:
 - The new statutory duty and guidance under section 55 of the Borders, Citizenship and Immigration Act 2009 furthers the protection of children seeking refugee status in the UK;
 - The introduction of the youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008 as an alternative to

custody for young people;

- The creation of an offence of trafficking people for exploitation in the Asylum and Immigration (Treatment of Claimants etc) Act 2004;
- The publication of statutory guidance on *Safeguarding children and young people from sexual exploitation* in June 2009; and
- The introduction of forced marriage protection orders under the Forced Marriage (Civil Protection) Act 2007.

1. GENERAL MEASURES OF IMPLEMENTATION

GENERAL OVERVIEW

- 1.1 This cluster of articles deals with the structures and resources to implement the UNCRC. The articles seek to ensure that effective measures are in place, which are supported by adequate resources and legislation.
- 1.2 The UK Government has implemented the UNCRC through a mix of legislative provisions and policy initiatives. International treaties ratified by the United Kingdom are not automatically incorporated into UK law. Instead, if any change in domestic law is needed, the Government follows normal parliamentary procedures, before it becomes a party to the treaty. The United Kingdom will not ratify a treaty unless the Government is satisfied that domestic law and practice mean that it can comply. This document demonstrates how the substantial body of legislation puts children, especially the most disadvantaged, at the heart of policy in the UK and shows how the Convention is implemented.
- 1.3 The overarching legal framework for the Government's Every Child Matters programme of reforms to improve the wellbeing of children through the Children Act 2004. This Act also established the Children's Commissioner for England as an independent champion of children's views and interests.
- 1.4 The Government's policies for all children and young people in England set out in the 2007 *Children's Plan*, are underpinned by the Convention. In 2008, the *Children's Plan One Year On* reasserted the Government's commitment to making the UNCRC a reality on the ground and sets out how the UN Committee's Concluding Observations will be met.
- 1.5 The Westminster Government is responsible for overall coordination of the UNCRC across the UK. Each Devolved Administration takes forward the UNCRC, as appropriate to its own requirements.
- 1.6 The UK-wide commitment to implement the UNCRC set out in the 2009 document *Working Together, Achieving More*, which is underpinned by each nation's comprehensive action plan for taking forward the UN Committee's 2008 Concluding Observations. The Government sets out its priorities for action in England in taking forward the UN Committee's 2008 Concluding Observations in the 2009 document, *United Nations Convention on the Rights of the Child: priorities for action*.
- 1.7 The statutory guidance to Children's Trust Boards will set out an expectation that the development of Children and Young People's Plans for the provision of local services will be underpinned by the UNCRC.

- 1.8 Like all States Parties that have signed the UNCRC, the UK Government provides the UN Committee with regular periodic reports (normally every five years) on how it is implementing the Convention. In 2008 the Government completed the last reporting cycle on implementation of the UNCRC and the next periodic report is due in 2014.

ARTICLE 4 – Steps to Implement

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

LEGISLATION

- 1.9 There is a general duty on the Secretary of State to promote the education of children in England and Wales (section 10 Education Act 1996 (EA 1996)) and to promote the wellbeing of children in England (section 7, Children and Young Persons Act 2008).
- 1.10 The Children Act 2004 provides the legal framework for the Government's Every Child Matters programme of reforms for improving the wellbeing of children. Section 10 imposes a duty on local authorities and their partners to cooperate with a view to improving children's wellbeing. The Apprenticeships, Skills, Children and Learning Act, which comes into effect from April 2010, will require local authorities to set up a Children's Trust Board. Statutory guidance, due to be published in spring 2010, will place an expectation on Children's Trust Boards that the preparation and development of the local area Children and Young People's Plans will be consistent with the principles of the UNCRC. All local authorities in England must have in place a director of children's services and appoint a lead member with responsibility for children's services. This will ensure that there is in place appropriate corporate responsibility for children in the local authority area.
- 1.11 The Education and Inspections Act 2006 set up the Office for Standards in Education, Children's Services and Skills and provided for the appointment of the Chief Inspector for Education Children's Services and Skills (Chief Inspector). The Chief Inspector's function is to inspect schools and local authority children's services. The Chief Inspector is also the registration authority under the Care Standards Act 2000. In their work, both Ofsted and the Chief Inspector must have regard to the need to safeguard and promote the rights and welfare of children. One of the staff of Ofsted is to be appointed to the position of Children's Rights Director (CRD). The Office for Standards in Education, Children's Services and Skills (Children's Rights Director) Regulations 2007 sets

out the functions of the CRD. These are to advise and assist the Chief Inspector with her duty, when performing her inspection functions for children in regulated settings or receiving other social services, and to have regard to both the need to safeguard and promote the rights and welfare of children and views expressed by relevant persons about activities within his remit. The CRD must ascertain the views of children and, where appropriate, parents when performing his functions, and must inform the Chief Inspector of any matters in relation to the rights and welfare of children that he considers significant. The Chief Inspector's reports are published and local authorities and others must respond to issues raised in those reports. The Secretary of State also has powers to intervene in appropriate circumstances (section 497/497A, EA 1996).

- 1.12 The Children Act 1989 (CA 1989) reformed the law relating to children and, in particular, set out the framework for the provision of support for children and families and for the protection of children in England and Wales. Section 1(1) of that Act sets out that the welfare of the child shall be the Court's paramount consideration when determining any question with respect to the child's upbringing or the administration of a child's property. The Government considers that this Act ensures the protection of many of the rights of children under the Convention as it stands. The CA 1989 is underpinned by regulations and statutory guidance issued under section 7 of the Local Authority Social Services Act 1970.
- 1.13 The Childcare Act 2006 places duties on local authorities in England to improve the wellbeing of young children in their area, and regulates the provision of childcare and information to parents and others, all of which contribute to the implementation of the Convention rights.
- 1.14 There is a comprehensive legislative framework in relation to the education of children in England, and this is set out in more detail in relation to specific articles covered below, in particular Articles 28 and 29.
- 1.15 The Children Act 2004 also set up the Children's Commissioner for England as an independent champion of children's views and interests (having regard to the UNCRC). The Commissioner has the power to conduct an inquiry and make recommendations where the case of an individual child in England raises issues of public policy of relevance to other children.
- 1.16 Further legislation to give effect to some of the more specific rights in the Convention is set out below under each article.

ARTICLE 42 – Making the Convention Widely Known

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

1.17 At a local level, statutory guidance and regulations for Children's Trust Board places an expectation on them that they will consider the importance of the UNCRC when drawing up the Children and Young People's Plan. This will help to promote the knowledge of the Convention at a local level.

OTHER MEASURES

1.18 The Government has done much to raise awareness of the UNCRC. Following ratification of the Convention in 1991, as reported in the Government's Initial report to the UN Committee on the Rights of the Child in 1994 (www.dcsf.gov.uk/everychildmatters/uncrc), a copy of the Convention was disseminated to all local authorities, regional and district health authorities including NHS Trusts and to the key Non-Governmental Organisations (NGOs) in England.

1.19 In 1993, the Government launched *The Rights of the Child - A Guide to the UN Convention*, developed in conjunction with the Children's Rights Development Unit, a voluntary organization set up to monitor the UK's compliance with the Convention. This was distributed to local authorities, Citizen's Advice Bureaux, libraries, social services departments, regional and district health authorities, including NHS Trusts.

1.20 More recently the 2007 Children's Plan and Children's Plan '*One Year On*' published in 2008 was made available widely to stakeholders. , *Working Together Achieving More* which sets a collaborative approach from the four UK nations on how it will address the UN Committee's Concluding Observations and *UNCRC:: Priorities for Action* sets out the progress made and future plans for England in taking forward the UN Committee's Concluding Observations. These reports were published in November 2009 and made available online.

1.21 In addition, the Government has supported a number of initiatives aimed at raising awareness of the UNCRC, including:

- The citizenship curriculum;
- The development of *Right Here, Right Now - Teaching Citizenship through Human Rights* (www.teachernet.gov.uk)- a curriculum resource for teachers on the UNCRC, to be used with Key Stage 3 pupils; and
- The UNICEF Rights Respecting Schools initiative which encourages schools to embed the UNCRC into their ethos and curriculum.

1.22 For adults who work with children and young people, training and development is underpinned by the *Common Core of Skills and Knowledge for the Children's Workforce* (www.dcsf.gov.uk/everychildmatters/commoncore/), which sets out the skills and knowledge needed by everyone who works with children,

young people and families. It already references the UNCRC and is currently under review. Additional training is in place for some groups who work with children.

- 1.23 The UK Border Agency has in place a programme of training for immigration officials. Officials are required to undertake an e-learning training module, designed to raise their awareness of child protection and welfare issues and relate these issues to their work.
- 1.24 The National Policing Improvement Agency is responsible for providing the national standard for child protection training for police officers. Both the UNCRC and the ECHR (through the Human Rights Act 1998) underpin those learning outcomes that relate to the police's duty to protect and promote the welfare of children, the application of the law, and processes related to protecting children and investigating child abuse.
- 1.25 The Government operates a number of web-based portals, enabling children and adults to access information about the Convention. For parents and young people, DirectGov has a popular UNCRC section. For children under 10, DirectGovKids has a section on the UNCRC, developed in conjunction with UNICEF. There is also specific information available on the web for people who work with children, for example, through teachernet and Every Child Matters websites.

ARTICLE 44(6) – Making Reports Widely Available

States Parties shall make their reports widely available to the public in their own countries.

- 1.26 The UK's initial and second periodic reports were sent out to local authorities and key NGOs. Its consolidated third and fourth periodic report was also distributed to key NGOs.
- 1.27 All periodic reports and a young people's guide to the third and fourth periodic reports are available on the Department for Children Schools and Families (DCSF) and Every Child Matters websites and teachernet.
- 1.28 Following the UK's Oral Hearing in Geneva in September 2008, the Minister for Children wrote to all Parliamentarians informing about the reporting process and the UN Committee's Concluding Observations which was followed by a ministerial statement in the House.
- 1.29 In July 2008 an event was held for children and young people and key stakeholders to discuss UK's reporting to the UN Committee on the Rights of the Child and a follow up event was held in September 2009 to discuss the Concluding Observations and Government's priorities.

2. DEFINITION OF THE CHILD

GENERAL OVERVIEW

- 2.1 There is no single law that defines the age of a child across the UK. Specific age limits are set out in the legislation relating to different areas of policy. For example, at age 13, children can go into part-time employment; at 16, they can go into full-time employment, pay tax and – with parental consent – leave home, get married or join the armed forces; at 17, they can drive a car or motorbike; and at 18, they can serve on a jury. There are also differences between the UK nations. However, there is a common position that a child is a person who has not yet reached their 18th birthday.

ARTICLE 1 – Definition of the Child

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

LEGISLATION

- 2.2 The two principle Acts relating to the protection of children's rights (the Children Act 1989 and the Children Act 2004) both define 'child' as a person under the age of 18, with some extension of the legislation, in certain cases, to those over the age of 18. See, for example, paragraph 16 of Schedule 1 to the Children Act 1989 (orders for financial relief for persons over 18) and section 9 of the Children Act 2004 (care leavers and young persons with learning disabilities). The Childcare Act 2006 also defines 'child' as a person under the age of 18.
- 2.3 In accordance with the increasing autonomy of the child, section 8 orders (residence, contact, specific issue, prohibited steps) under the Children Act 1989 can only be made after the child reaches the age of 16 in exceptional circumstances (section 9(7)).
- 2.4 Where international treaties relating to children set an age limit below 18 for their application, the UK complies with that age limit. For example, the 1980 Hague Convention on the Civil Aspects of International Child Abduction ceases to apply when the child attains the age of 16 (Article 4 1980 Hague and the Child Abduction and Custody Act 1985).

3. GENERAL PRINCIPLES

GENERAL OVERVIEW

- 3.1 The General Principles of the UNCRC are set out in four Articles:
- the right to non-discrimination in the application and enjoyment of rights;
 - for the best interests of the child to be a primary consideration when decisions are being made that affect children;
 - the right to life and maximum development; and
 - the right to express views and have those views taken seriously.
- 3.2 This cluster explains how these principles are underpinned by legislation and delivered through comprehensive policies for all children as well as the most vulnerable groups.
- 3.3 The Equality Bill, to be enacted before summer 2010, will bring together and strengthen existing legislation on discrimination. Children will be protected, in the same way as adults, against discrimination on the grounds of their sex, race, disability, religion or belief or sexual orientation.
- 3.4 *Aiming High for Young People*, published in July 2007, acknowledges that today's young people are faced with the challenge of growing up in a culture that has widespread negative perceptions of youth. It proposes a number of measures to rebalance the public narrative about young people by celebrating the achievements of the majority. There is now a national body for youth leadership, The Youth of Today, which offers a range of opportunities for young people to celebrate achievements.
- 3.5 Policy focuses on ensuring that all people working with children and young people always consider the best interests of the child.
- 3.6 The most vulnerable children in juvenile or immigration settings are a particular concern. The UK Border Agency provides immigration officials with guidance and training on how to safeguard and promote the welfare of children. The Youth Justice Board has developed a Safeguarding Strategy for those in the secure estate. This follows investment in the secure estate through the Child Protection and Safeguarding programme.
- 3.7 In proceedings under the Children Act 1989, a court must take account of the wishes and feelings of the child concerned, as far as they can be

ascertained given the child's age and level of understanding. The court must consider the child's needs and how these are to be met, any relevant personal background, any harm suffered or risk of harm, and the likely effect of a change of circumstances.

- 3.8 *Care Matters: Time for Change* sets out plans for making sure the interests of looked-after children are given priority in all aspects of their lives.
- 3.9 Keeping children safe is a top priority and the *Staying Safe: Action Plan*, includes actions across Government to improve children's safety. The recommendations from Lord Laming's review of safeguarding arrangements were adopted in full. This resulted in *The protection of children in England: action plan* an action plan to improve public scrutiny of local child protection arrangements. A National Safeguarding Delivery Unit drives these reforms.
- 3.10 When a child dies unexpectedly in England, Local Safeguarding Children Boards (LSCBs) collect and analyse information about the death. Where there is abuse, or neglect is suspected, the LSCBs are required to consider a serious case review.
- 3.11 Children and young people's views are essential to the development of policy and practice at every level. Nationally, the Department for Children Schools and Families systematically involves children in policy which affects them and has a Children and Youth Board to advise on policy development. The Children's Commissioner provides an independent voice for children's views, capturing the interests of all children, but particularly those who may not be heard easily. There is now a Minister for Young Citizens and Youth Engagement who will be seeking ways to increase participation of young people in local communities.
- 3.12 At school, governing bodies currently invite and consider children's views. Through the Pupil and Parent Guarantee, announced in *Your child, your schools, our future: building a 21st century schools system*, pupils will have a clear say on how their school is doing and how it can be improved.
- 3.13 All English local authorities and their Children's Trust partners are now required to consult with children and young people while developing their Children and Young People's Plans.
- 3.14 When the welfare of children comes into question in family court proceedings, the Children and Family Court Advisory Support Service provides advice and support to the court, the children and their families, in particular making provision for a child's views to be represented.

ARTICLE 2 – Non-discrimination

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's, or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

LEGISLATION

3.15 The Human Rights Act 1998 (HRA) gave further domestic effect to the fundamental rights and freedoms set out in the European Convention on Human Rights (ECHR). Article 14 of the ECHR prohibits the State and public authorities from discriminating against a person (and this includes a child) 'on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status' in relation to the securing of the fundamental rights and freedoms set out in the ECHR. A child who believes that they are a victim of such an unlawful form of discrimination may bring proceedings against the public authority, or rely on Article 14 in any legal proceedings.

3.16 There is a raft of anti-discrimination legislation which applies to discrimination against all members of society, including children. This includes:

- The Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006, which prohibit discrimination or harassment on the grounds of religion or belief, sexual orientation or age in employment, vocational training or within further and higher education. There are exceptions for some circumstances, such as positive action, or where the national minimum wage sets different rates for different ages. A claim can be brought by way of application to an employment tribunal.
- The Equality Act 2006 set up the Commission for Equality and Human Rights (CEHR), which is an independent body vested with a number of duties and powers to tackle discrimination on the grounds of sex (including gender reassignment), sexual orientation, age, religion and belief, disability and race, and to promote equality of opportunity. Its duties include a duty to promote awareness of human rights, and to monitor the effectiveness of equality and human rights legislation. The CEHR also has powers to apply for certain orders in some cases, including injunctions (for example, to prevent

discriminatory advertising). The Equality Act (Sexual Orientation) Regulations 2007 made under section 81 of the Act prohibit discrimination on the grounds of sexual orientation in the provision of goods, facilities, services, premises or education. The regulations contain exceptions to this prohibition including an exception relating to certain religious organisations in certain circumstances. A claim may be made in tort for breach of statutory duty in respect of any breach of those Regulations.

- The Race Relations Act 1976 (as amended) prohibits discrimination on the grounds of colour, race nationality or ethnic or national origins, and, since 2001, imposes a general statutory duty on public authorities (including certain educational establishments) to have regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people of different racial groups. Remedies include the ability to apply to the employment tribunal in employment matters and actions in tort or for breach of statutory duty. The Race Relations Act 1976 (Statutory Duties) Order 2001 also imposes duties on public authorities and educational establishments to prepare a race equality scheme/policy setting out how they assess and monitor race equality.
- Section 76A of the Sex Discrimination Act 1975 (amended by the Equality Act 2006) requires specified public authorities, in carrying out their functions, to have due regard to the need to eliminate unlawful sex discrimination and harassment, and to promote equality of opportunity between men and women. The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006 then imposes a specific duty on specified public authorities to prepare and publish a gender equality scheme. The duty is enforceable by the CEHR.
- The Disability Discrimination Act 1995 (DDA) (as amended by the Disability Discrimination Act 2005 and the Special Educational Needs and Disability Act 2001) prohibits discrimination, including harassment, on grounds of disability and imposes a duty on public authorities (including schools) to, in carrying out their functions, have due regard to the needs: to eliminate unlawful discrimination and harassment against disabled people; promote equality of opportunity for disabled people; to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons; to promote positive attitudes towards disabled persons; and to encourage participation by disabled persons in public life.
- Section 28C DDA requires schools to make reasonable adjustments for disabled pupils. Regulations made under the Act (the Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005) also impose duties on public authorities to prepare a disability equality scheme, setting out how they intend to fulfil the above duty, and how they have involved disabled people in its preparation. The

DDA also sets out the rights of appeal to the First-tier Tribunal (formerly the Special Educational Needs and Disability Tribunal) by a parent of a child where they consider that their child has been discriminated against by a school or local authority in the exercise of its education functions.

- 3.17 The Equality Bill currently passing through Parliament will consolidate these duties. Subject to Parliamentary approval, children will be protected from discrimination because of race, gender, sexual orientation, religion or belief, disability or gender reassignment. Age discrimination provisions relating to the provision of goods and services will not extend to children because it is almost always appropriate to treat children of different ages in a way which is appropriate to their particular stage of development, abilities, capability and level of responsibility.
- 3.18 For more information on the duties imposed on schools in particular, see discussion under Article 28.

ARTICLE 3 – Best Interests of the Child

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision

LEGISLATION

Article 3(1)

- 3.19 Section 1 of the Children Act 1989 (CA 1989) provides that, in any proceedings relating to the upbringing of a child or the administration of the child's property or application of any income arising from it, the child's welfare is the paramount consideration. This applies to private family law proceedings under Part 2 of the CA and public law proceedings – emergency protection orders, care orders and supervision orders. Section 1 CA 1989 requires that any order made by the court must be in the best interests of the child (although the language used differs) (see paragraph 3.44) "Welfare" is not defined, but section 1(3) indicates the

range of issues to which the court must have particular regard, including the ascertainable wishes and feelings of the child (considered in the light of his age and understanding), his needs and how these are to be met, any relevant personal background, any harm suffered or risk of harm, and the likely effect of a change in circumstances. Section 1(2) provides that, in proceedings relating to the upbringing of a child, the court must bear in mind the general principle that any delay in determining that question is likely to prejudice the welfare of the child. Section 1(5) also provides that the court may not make any order with respect to a child under the CA 1989 unless it considers that doing so would be better for the child than making no order at all.

- 3.20** The CA 1989 further ensures that the wishes and feelings of children are taken into account in the provision of services for children in need, their families and others (section 17(4A)) in relation to any decision by a local authority with respect to a child whom they are looking after (section 22(4) and (5)); and for the purpose of determining what action they should take to safeguard or promote the welfare of a child who is suffering, or is likely to suffer, significant harm (section 47(5A)). Section 22 also includes a duty to take account of looked-after children's religious persuasion, racial origin and cultural and linguistic background when making decisions about them.
- 3.21** Section 1 of the Adoption and Children Act 2002 provides that the child's welfare, throughout his life, is the paramount consideration when an adoption agency or court is coming to a decision relating to the adoption of a child. Section 1(4) sets out a number of matters to which the adoption agency or court must have regard, including the ascertainable wishes and feelings of the child. The Adoption Agencies Regulations 2005 reinforce these principles, and are underpinned by ensuring that an adoption agency must be satisfied that adoption is in the best interests of the child.
- 3.22** Local authorities have a duty under section 22 of the Children Act 1989 to safeguard and promote the welfare of looked-after children (recognising role of parents), and that includes a duty to promote their educational achievement. There are obligations in the suite of Regulations made under the Children Act 1989 underpinning the care planning/case review role of local authorities. The new placement/visiting/independent reviewing officer provisions inserted into Part 3 of the CA 1989 by the Children and Young Persons Act 2008 also ensure that children's best interests are at the forefront of decisions relating to children in care.
- 3.23** Where there are equally important issues at stake, such as the protection of others from harm, then the best interests of the child may be one of several primary considerations taken into account. See, for example, *Re M (a minor) (Secure Accommodation Order)* [1995] 3 All ER 407 where, considering an application for a secure accommodation order under section 25 of the CA 1989, the Court of Appeal held that the welfare of

the child was a relevant consideration that must be taken into account, but that it could be outweighed where a child was likely to abscond and suffer significant harm or likely to injure himself, or others, if he was kept in accommodation that was not secure.

- 3.24** In criminal justice, the court must take into account the welfare of the child (section 44, Children and Young Persons Act 1933). Under section 9 of the Children and Young Persons Act 1969, a local authority, when it is bringing proceedings for an offence committed by a young person, or where notified of such proceedings, is under a duty to make investigations and provide the court with such information relating to the home surroundings, school record, health and character of the child in respect of whom the proceedings are brought as appear to the authority likely to assist the court.
- 3.25** Section 12 of the Criminal Justice and Court Services Act 2000 provides that the Children and Family Court Advisory and Support Service (CAFCASS), the service vested with representing children in family proceedings where the welfare of the child may be in question, has a primary duty to safeguard and promote the welfare of the child.
- 3.26** The Mental Health Act 1983: Code of Practice (the Code) deals with the treatment of people under that Act. In Chapter 1, the Code sets out a set of guiding principles to be considered when making any decision under the Mental Health Act in accordance with section 118 (2A). These include:
- the “purpose” principle – decisions must be taken with a view to minimising the undesirable effects of mental disorder by maximising the safety and wellbeing of patients, promoting their recovery and protecting others from harm
 - the “least restriction” principle – keep to a minimum restrictions on liberty, having regard to the purpose for which the restrictions are imposed
 - the “respect” principle – decision-makers must respect diversity, consider patients’ views and follow them, where practicable and consistent with the purpose of the decision
 - the “participation” principle – give patients the opportunity to be involved, as far as possible.
- 3.27** These principles all apply equally to under 18s. They reflect Articles 3, 12, 13, 15, and 23(1). Whilst regard must be paid to all of the principles, they will need to be balanced in different ways to meet the circumstances of each case (paragraph 1.9 of the Code).
- 3.28** The Code makes clear that the best interests of the child will always be a significant consideration (paragraph 36.4). All restrictions on the child

are motivated by concern for his welfare, and to protect others.

Article 3(2) – ensuring the protection of children’s wellbeing

- 3.29** Section 17 of the Children Act 1989 places a general duty on local authorities to safeguard and promote the welfare of children who are in need in their area and, so far as is consistent with that duty, to promote the upbringing of such children by their families. The primary child protection provision for children in England is in Parts 4 and 5 of the CA 1989. There is a range of provision intended to ensure that the State can intervene in family life to protect the child, for example section 47 of the Children Act 1989 which imposes a duty on the local authority to investigate and take appropriate action where they have reasonable cause to suspect a child is suffering or is likely to suffer significant harm. This is underpinned by statutory guidance – in particular *Working Together to Safeguard Children*.
- 3.30** There are also duties to safeguard and promote the welfare of children in sections 157 (for independent schools) and 175 of the Education Act 2002 (for maintained schools and FE institutions), section 11 of the Children Act 2004 (CA 2004) (for a range of organisations including local authorities, health bodies, police, probation and prisons) and section 55 of the Borders, Citizenship and Immigration Act 2009 (in relation to immigration, asylum, nationality and customs functions). There is also a suite of associated statutory guidance on safeguarding and promoting children’s welfare.
- 3.31** Section 13A of the Education Act 1996 (inserted by section 1 of the Education and Inspections Act 2006) places a general duty on local education authorities (LEAs) to promote high standards and to promote “the fulfilment by every child concerned of his or her educational potential⁷”. This is an aim that is in keeping with the ethos of the Convention. In this section “child” means a person under the age of 20.
- 3.32** Section 21(5)(a) of the Education Act 2002 requires governing bodies of maintained schools, when exercising their function to conduct the school, to promote the wellbeing of pupils at the school (“wellbeing” is defined in section 10 of the CA 2004).
- 3.33** Section 10 of the CA 2004 places a duty on local authorities to make arrangements with other bodies (health, police, probation, Youth Offending Teams, health authorities and Primary Care Trusts, Connexions and, from January 2010, schools, further education institutions, and Jobcentre Plus) to cooperate to improve children’s wellbeing in relation to the five Every Child Matters outcomes set out in section 10(2). Those bodies must cooperate with the local authority in

⁷ Section 13A was repealed and substantially re-enacted by the Apprenticeships, Skills, Children and Learning Act 2009. The new section 13A inserted by Schedule 2 to that Act will require LEAs in England to promote the fulfilment of “learning potential” which includes both education and training potential. This will come into force in April 2010.

setting up the arrangements. There is associated statutory guidance to the organisations, which is due to be updated in spring 2010.

Article 3(3) – appropriate standards in institutions

- 3.34** Children's homes, residential family centres, independent fostering agencies, voluntary Adoption Agencies and Adoption Support Agencies are all regulated and inspected by the Chief Inspector under the Care Standards Act 2000. Regulations and the National Minimum Standards govern their conduct. (See further Article 37b in relation to children's homes.)
- 3.35** There is a range of provisions regarding the standard of school premises. Section 542 of the Education Act 1996 imposes a duty on LEAs to ensure that the schools maintained by them meet the standards prescribed in the School Premises Regulations 1999.
- 3.36** Schools and other local authority services for children are inspected by the Chief Inspector and appropriate action taken if a local authority is failing to exercise its functions adequately: as detailed in Part 1 of the Education Act 2005, Part 8 and section 497A of the Education and Inspections Act 2006 and section 50 of the CA 2004. Section 20 of the CA 2004 also provides for a joint review of children's services in a local authority area in England by a range of inspection bodies. See also Children Act 2004 (Joint Area Review) Regulations 2005. (See further Article 4, paragraph 1.11).
- 3.37** The provision of health services, both NHS and private sector are regulated and inspected by the Care Quality Commission (CQC) under the Health and Social Care Act 2008. Registered providers must comply with various requirements relating to the safety and quality of the care they provide. The objective of the system is to protect and promote the health, safety and welfare of people who use health and social care services (section 3) which, necessarily, includes children. In performing its functions, the CQC must have regard to "the need to protect and promote the rights of people who use health and social care services (including, in particular, the rights of children)" (section 4(1)).
- 3.38** Under section 46 of the Health and Social Care (Community Health and Standards) Act 2003, the Secretary of State publishes statements of standards in relation to the provision of healthcare by English NHS bodies. The standards must be used by NHS bodies in discharging their duty under section 45 of the Act to put and keep in place arrangements for the purpose of monitoring and improving the quality of healthcare for which they are responsible. The current standards (*Standard for better Health* (updated April 2006)) include as a core standard in relation to safety standard C2: healthcare organisations protect children by following national child protection guidance within their own activities and in their dealings with other organisations.

- 3.39 Statutory rules relating to the management of Young Offender Institutions (YOIs) and Secure Training Centres (STC) are made under section 47 of the Prison Act 1952⁸ (see further Article 37b).
- 3.40 Section 131A was inserted into the Mental Health Act 1983 by an amendment to the 2007 Act, following a recommendation by the JCHR in its report on the 2007 Bill. It applies to all under 18s detained under the Mental Health Act⁹, or admitted as voluntary patients to hospital for mental health treatment. It requires the managers of hospitals to ensure the child's environment is suitable, having regard to his age, but subject to his needs. Managers are required to consult such persons as they consider have the necessary expertise on how best to meet this duty. Further guidance on this is in Chapter 36 of the Code of Practice.

Health and Safety

- 3.41 Health and safety responsibilities derive from the Health and Safety at Work, etc. Act 1974 and the associated Management of Health and Safety at Work Regulations 1999. The Health and Safety Executive has powers to enforce breaches of any relevant health and safety legislation.

School staffing

- 3.42 The School Staffing (England) Regulations 2009 came into force on 2 November 2009 and re-enacted, with modifications, the 2003 Regulations. The Regulations set out the procedure for appointing members of staff at maintained schools, including the requirement for enhanced Criminal Records Bureau (CRB) checks, checks of identity and to ensure that any staff qualification requirements are met. Additionally, with effect from 1 January 2010, the governing body must ensure that any person who interviews an applicant for any post under the regulations has completed the Safer Recruitment training. Where a selection panel interviews the person, at least one member of the panel must have completed the training.
- 3.43 The Safeguarding Vulnerable Groups Act 2006 also makes further provision for the regulation of persons working with children.

CASE LAW

- 3.44 Ward LJ said in *Re P (A Child)(Residence Order; Restriction Order)* [1999] 3 All ER 734,755 (CA) quoting the words of MacDermott J in *J v C* [1970] AC 688 at 710 to 711 - "Welfare is not defined in the 1989 Act, but there is no better formulation of scope and meaning of welfare being the paramount consideration than was given by Lord MacDermott in *J v C*. I think [these words] connote a process whereby, when all relevant facts,

⁸ Secure Training Centre Rules 1998 (as amended) S.I. 1998/472; Young Offender Institution Rules 2000 (as amended) S.I. 2000/3371.

⁹ This section was inserted by the Mental Health Act 2007 after lobbying from children's groups. It will come into force in April 2010.

relationships, claims and wishes, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood."

3.45 A number of cases have considered the effect of Article 3 in the domestic courts: *R v Secretary of State for Education and Employment and others, ex p Williamson* [2005] UKHL 15 per Baroness Hale, "the state is entitled to give children the protection they are given by an international instrument to which the UK is a party [the UNCRC]", when upholding a ban on corporal punishment in independent schools; *R (oao S and others) v SSHD* [2007] EWHC 1654 (Admin) where the court accepted that Article 5 of the ECHR should be read in the light of Article 3 and 37(b) of the UNCRC; *R v F* [2008] EWCA Crim 1558 where in relation to the detention of juveniles, the court held that the more verbose descriptions in the UN Convention and Beijing Rules as to the problems facing the court when sentencing a young person were not in any way at odds with, and did not add to, what the courts in England and Wales had always regarded as their duty when sentencing young persons, namely, to have regard to their welfare; and *R (oao E) v Governing Body of JFS and others* [2009] UKSC 15 where the Court considered Article 3 in relation to direct discrimination under the Race Relations Act 1976.

ARTICLE 6 – Child's Right to Life

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child

LEGISLATION

3.46 Article 2 of the ECHR, provides that 'everyone's right to life shall be protected by law'. The provisions of the Human Rights Act 1998 (HRA 1998) ensure the protection of this right and provide a domestic remedy for its breach.

3.47 Under section 8 of the Coroner's Act 1988, there is a duty to hold an inquest into deaths where the person (including a child):

- has died a violent or an unnatural death
- has died a sudden death of which the cause is unknown
- has died in prison, or in such a place, or in such circumstances as to require an inquest under any other Act.

3.48 The Coroner's and Justice Act 2009, which is not yet in force, makes very similar provisions.

- 3.49 The Coroner's (Amendment) Rules 2008 introduced Rule 57A of the Coroner's Rules 1984. It requires coroners in England to disclose information relating to child deaths to Local Safeguarding Children Boards (LCSBs). Further Amendment Rules due to come into force later this year will require Welsh coroners to disclose information about child deaths to LCSBs in Wales. Rule 43 was also amended to widen coroners' powers and imposes a statutory duty on organisations to respond to a report from the coroner when requested to do so. Coroners also now have a wider remit to make reports to prevent future deaths, and must provide interested persons and the Lord Chancellor with a copy of the report and the response. The Lord Chancellor has the power to publish the report and any response to it. The first bulletin of reports and responses was published in July 2009; the second bulletin is due to be published in March 2010.
- 3.50 More specifically, in relation to children, Part 2 of the Children Act 2004 set up Local Safeguarding Children Boards (LSCBs) in England. The LSCB must undertake a 'child death review' of every child that dies in England and put in place procedures for ensuring that there is a coordinated response by LSCB partners and other relevant persons to an unexpected child death. Where a child dies or is seriously harmed, and abuse or neglect is known or suspected to be a factor in the death, the LSCB must conduct a serious case review (Local Safeguarding Children Boards Regulations 2006, and *Working Together* guidance).
- 3.51 Parts 4 and 5 of the Children Act 1989 are the primary child protection legislation in England which allow the State to intervene in a child's life to protect them from harm.
- 3.52 The Safeguarding Vulnerable Groups Act 2006 reforms arrangements for safeguarding children and vulnerable adults from harm, or the risk of harm, by employees (paid or unpaid) whose work gives them significant access to these groups.
- 3.53 There is a comprehensive set of provisions in criminal law which set out a number of offences that relate to the preservation of life. Some relate specifically to children, such as an offence under section 1 of the Children and Young Persons Act 1933 (cruelty to children), section 1 of the Infanticide Act 1938 (infanticide), and section 5 of the Domestic Violence, Crimes and Victims Act 2004 (causing or allowing the death of a child).

OTHER MEASURES

Prisons and Probation Ombudsman

- 3.54 The Prisons and Probation Ombudsman (PPO) has two functions – to investigate complaints from people in prison, immigration detention, or under the supervision of the Probation Service, and to investigate deaths of people resident in prison, immigration detention or Probation

Approved Premises (formerly known as bail and or probation hostels)
Under the terms of reference between the PPO and the Secretary of State for Justice, no distinction is made in relation to age. A child or young person has the same right of access to the Ombudsman as any adult.

3.55 The PPO investigates all deaths of children (under 18 years old) that occur in Young Offender Institutions and Secure Training Centres (or anyone being escorted to or from these places). This is in addition to the LSCB serious case review and the Coroner's inquest.

ARTICLE 12 – Child's Views

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

LEGISLATION

3.56 In proceedings under Parts 2 and 4 of the Children Act 1989 (CA 1989), the court must have regard to the ascertainable wishes and feelings of the child, considered in light of their age and understanding (section 1(3)(a)). This also applies whenever a court or adoption agency is coming to a decision relating to the adoption of a child (section 1(4)(a), Adoption and Children Act 2002 (ACA 2002)). The Adoption Agencies Regulations 2001 specifically require the adoption agency to provide counselling and information for, and ascertain the wishes and feelings of, the child when considering adoption.

3.57 The Children and Family Court Advisory and Support Service (CAFCASS) was established by the Criminal Justice and Court Services Act 2000. Its primary functions in respect of family proceedings, in which the welfare of children is, or may be, in question, are to:

- safeguard and promote the welfare of the children
- give advice to any court about any application made to it in such proceedings
- make provision for the children to be represented in such proceedings
- provide information, advice and other support for the children and their families.

3.58 A CAFCASS officer must be appointed by the court to represent the child in certain proceedings, including care proceedings and adoption proceedings (section 41 CA 1989 and section 102 ACA 2002 and

relevant rules). The officer's role is to safeguard the interests of the child in the manner set out in the rules.

- 3.59** Local authorities are obliged under the Children Act 1989 to take children's wishes and feelings into account in most actions that will concern them; see sections 17(4A), 22(4) and (5) and 47(5A) CA 1989 (see discussion under Article 3, best interests). The importance of taking children's wishes and feelings into account is also underlined in statutory guidance, such as the *Framework for the Assessment of Children in Need* and the *Working Together to Safeguard Children* guidance. When a local authority prepares its Children and Young People's Plan (CYPP), setting out its strategy for discharging its functions in relation to children, it must consult children and families (regulation 7, Children and Young People's Plan (England) Regulations 2005 as amended). This obligation to consult children in the preparation of a CYPP will also be imposed on Children's Trust Boards when the duty to prepare the CYPP shifts to those bodies¹⁰.
- 3.60** The Children and Young Persons Act 2008 amended Part 3 of the CA 1989 to strengthen the requirements in relation to the appointment of an independent reviewing officer for looked-after children, and to ensure greater involvement of children in their care planning and case review. Regulations and statutory guidance are currently being consulted upon.
- 3.61** When making arrangements about early childhood services, a local authority must have regard to such information about the views of young children as is available to the local authority and appears to them to be relevant to the discharge of those duties (section 3(5) Childcare Act 2006). The local authority is also required to consult such children as it considers appropriate when undertaking a childcare sufficiency assessment under section 11¹¹.

Complaints about local authority services

- 3.62** Sections 26(3) (as amended by the Adoption and Children Act 2002), 24D of the CA 1989 and the Children Act 1989 Representations Procedure (England) Regulations 2006 require local authorities in England to establish a complaints procedure for children and others. Complaints may be made about many of the local authority's functions in respect of children; all functions under Part 3 CA 1989, functions under Parts 4 and 5 CA 1989 relating to care orders, supervision orders, contact with a child in care, child assessment orders and emergency protection orders, local authority adoption services and special guardianship support services. Under the 2006 Regulations, voluntary organisations that are providing accommodation to a child must also set up a complaints procedure to deal with complaints made by children and

¹⁰ By amendments made to the Children Act 2004 by the Apprenticeships, Schools, Children and Learning Act 2009 and forthcoming regulations, expected to come into force in April 2010.

¹¹ Childcare Act 2006 (Childcare Assessments) Regulations 2007, regulation 2(d)(i).

others.

- 3.63** If a complainant is not satisfied with the outcome of their complaint, then they may take a complaint to the Local Government Ombudsman. Part 3 of the Local Government Act 1974 established the Commission for Local Administration in England and sets out what matters may be complained about, the powers of the Commissioners etc. Any individual, who claims to have suffered injustice or hardship as a consequence of a service or failure to provide a service by a local authority, or as a consequence of maladministration by a local authority, may make a complaint.

Provision of advocacy services

- 3.64** Section 26A CA 1989 (inserted by the Adoption and Children Act 2002) imposes a duty on local authorities to make arrangements for the provision of advocacy services in relation to complaints under section 24D and 26. The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004 make further provision for this. There is also statutory guidance on local authority complaints and advocacy services issued under section 7 of the Local Authority and Social Services Act 1970.

Participation in educational settings

Consulting pupils

- 3.65** Currently section 176 of the Education Act 2002 (as amended) (EA 2002) requires governing bodies of maintained schools and Local Education Authorities (LEAs), in the exercise of their schools' functions, to have regard to guidance issued by the Secretary of State on consulting pupils on matters affecting them. Pupils' views are to be considered in light of their age and understanding. This provision is designed to encourage greater participation by children and young people. Statutory guidance *Working Together: Listening to the Voices of Children and Young People* has been issued.
- 3.66** Section 157 of the Education and Skills Act 2008 (ESA 2008) inserts a new section 29A into the EA 2002. The effect of this is to place duties on governing bodies of maintained schools to invite the views of registered pupils about prescribed matters, and to consider any views on those matters expressed by pupils (whether or not in response to an invitation), in light of their age and understanding. The matters on which governing bodies in England must consult pupils are to be prescribed by regulations made by the Secretary of State.
- 3.67** The intention is for section 157 to be commenced on 1 September 2010 in England. Draft regulations, prescribing the matters on which governing bodies of maintained schools must invite the views of their pupils, are currently out to consultation, with the intention that they also come into force on 1 September. It is intended that the duty in section 176 EA 2002

to have regard to the guidance *Working Together: Listening to the Voices of Children and Young People* will remain in force for the time being. This is being kept under review.

- 3.68** Section 3A of the Local Government Act 1999 (which was inserted by section 138(1) of the Local Government and Public Involvement in Health Act 2007) requires certain local authorities in England, including LEAs, to involve representatives of local persons in the exercise of their functions, where they consider it is appropriate to do so. Statutory guidance issued to local authorities on this duty makes clear that the term 'local persons' covers children and young people, as well as adults.
- 3.69** Governing bodies also are already required to consider pupils' views when revising their statement of general principles (to which the head teacher must have regard when formulating the behaviour policy) under section 88 of the Education and Inspections Act 2006 (EIA 2006), and before introducing extended services that impact on pupils under section 28 EA 2002.
- 3.70** The Pupil Guarantee, if the Children, Schools and Families Bill receives royal assent, will also contain further provisions relating to the consultation of pupils and it will require governing bodies of maintained schools to have a system in place for obtaining pupils' views.
- 3.71** The Special Educational Needs (SEN) Code of Practice's chapter on pupil participation cites relevant articles of UNCRC. Local authorities, school governing bodies and all those assisting them to perform SEN functions are obliged to have regard to the Code.

Chief inspector's duty to consult

- 3.72** In conducting an inspection of a school, the Chief Inspector is required to have regard to any views expressed by pupils at the school (section 7 Education Act 2005).

School organisation/planning

- 3.73** There are duties to consult parents, pupils and their families before publishing statutory proposals to open/close or make prescribed alterations to maintained schools, pursuant to Part 2 of the EIA 2006 (The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations (as amended), the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations (as amended), plus guidance).

School/sixth form transport

- 3.74** Section 53 of the Apprenticeships, Skills, Children and Learning Act 2009 (ASCL) amends section 509AB(6) of the Education Act 1996 (EA 1996) so that when preparing their transport policy statement, LEAs have

a duty to consult persons in the LEA area who will be of sixth form age when the statement has effect, and their parents. This amendment is designed to ensure that young people's views (and those of their parents) are taken into account when the local authority is planning its transport provision.

- 3.75** The Department for Children, Schools and Families will be issuing statutory guidance to local authorities on preparing and publishing their transport policy statements under section 509AA EA 1996. This will include guidance on how to ensure that the consultation methods employed are age-appropriate and can most effectively elicit the views of young people.
- 3.76** Section 55(1) ASCL Act 2009 amends section 509AB EA 1996 to insert a new subsection (7A). This requires LEAs to have regard to the need to include sufficient information in their transport policy statement, and the need to publish the statement in good time, so that young people and their parents are able to take account of those matters when choosing a school.

Admissions

- 3.77** Section 86A of the School Standards and Framework Act 1998 (SSFA 1998) (inserted by section 150 of the ESA 2008, with effect from 26 Jan 2009 in relation to England¹²) places a duty on LEAs to make arrangements to enable a child to apply for a place at a school, independently of his or her parents, either to study in the sixth form or, if they are above compulsory school age, to study at any level of education, for example to resit their GCSEs (parents retain the right to apply to schools on behalf of their children).

Admissions – appeals

- 3.78** Section 152 ESA 2008 amends section 94 SSFA 1998 to provide that those children given the right to apply to a school, have a corresponding right to appeal to an independent appeal panel against any decision refusing him or her admission to the school, whether in response to an application by the young person or his or her parents. The child, the parent, or the child and parent acting jointly can appeal against a refusal to admit the child.
- 3.79** For children of compulsory school age, their parents have a right, under section 94 SSFA 1998, to appeal to an independent appeal panel against an admission authority's decision to refuse their child admission to a school. The Appeals Code, in accordance with which admission authorities, governing bodies and admission appeal panels must act, outlines the appeals process. It states that the parent and child may both attend the hearing.

¹² SI 2008/3077, art 5(a).

Exclusions

- 3.80** Regulations¹³ on exclusions (made under section 52 EA 2002) provide for hearings in front of the governing body or independent appeal panel (for a permanent exclusion). Guidance¹⁴ relating to exclusions states in relation to appeals: “An excluded pupil under the age of 18 should be allowed and encouraged to attend the hearing and to speak on his or her own behalf, if he or she wishes to do so, subject to their age and understanding.”

SEN provision

- 3.81** Rule 24 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 provides that the child in an SEN appeal and a Disability Discrimination Act claim has the right to attend the hearing. This is qualified, though, by rule 26(5) which allows the Tribunal to exclude the child where attendance would be adverse to his interests, or where he is disrupting/likely to disrupt the hearing, or where his presence is likely to prevent another person from giving evidence or making submissions freely.

School transport – complaints

- 3.82** Section 56 of ASCL 2009 inserts section 509AE into the EA 1996, which makes provision about sixth form transport complaints. A sixth form transport complaint is a complaint about how an LEA has carried out (or failed to carry out) its transport responsibilities in relation to people of sixth form age. It can be made by a person who is, or will, be of sixth form age at the relevant time, or the person’s parent.
- 3.83** Section 509AE(1) allows LEAs to revise transport policy statements to amend transport provision or financial assistance arrangements as a result of a sixth form transport complaint, if they deem this to be necessary. Section 509AE(2) requires them to do so if the Secretary of State directs them to as a result of a sixth form transport complaint. Section 509AE(3) states that any LEA that amends its statement following a complaint must publish the revised statement as soon as practicable, along with a description of the changes. Under section 509AE(4), the Secretary of State need not consider whether to use direction-making powers in response to a sixth form transport complaint unless it has already been brought to the attention of the LEA concerned and the LEA has had a reasonable opportunity to investigate and respond.

¹³ The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, [SI 2002/3178](#) as amended.

¹⁴ Improving behaviour and attendance: Guidance on exclusion from schools and pupil referral units (2008)

School complaints- general

- 3.84** Governing bodies must have a complaints procedure (section 29 EA 2002) and the Government intends to issue new statutory guidance during 2010 to help schools ensure that their internal procedures are accessible and enable children, young people, and their parents to have their views/complaints heard fairly and effectively. There is also a complaints toolkit, setting out some examples of good practice and principles of fairness.
- 3.85** The Government recognises the importance of ensuring that children (and their parents) have an independent route of redress where their complaints have not been dealt with satisfactorily by the school. Part 10 ASCL 2009 introduces a new Complaints Service, run by the Local Government Ombudsman (LGO). Pupils at qualifying schools (and their parents) will be able to complain to the LGO where they believe they have sustained an injustice in consequence of an act of the governing body or an exercise of, or failure to exercise, certain prescribed functions of the head teacher of the school.¹⁵
- 3.86** Section 218 ASCL 2009 puts a duty on the LGO to publish information about the procedures for making a complaint. Such information must include details of the assistance available to looked-after children¹⁶, a person with disabilities¹⁷ and children with special educational needs.¹⁸ This is to ensure that vulnerable children are given adequate support and advice to enable them to utilise the new complaints service.
- 3.87** The LGO, having investigated the complaint, will be able to make a recommendation. This could include recommending that the school revise its procedures, provide further training to staff or ensure that the pupil receives additional tuition or support. Where the school fails to comply with a recommendation, the Secretary of State has the power to direct the governing body to comply (section 220 ASCL 2009).
- 3.88** There is a phased roll-out of the new service and the provisions are due to be commenced in April 2010, for a limited number of authorities initially.
- 3.89** Currently, under sections 496 and 497 EA 1996, any person can complain to the Secretary of State that a governing body or LEA has exercised its Education Act functions unreasonably or has failed to perform an Education Act function. This includes a child or young person.

¹⁵ Complaints about admissions are excluded from the remit of the service. Regulations made under section 206(b) will also exclude complaints about other matters where there is an existing right of appeal (such as permanent exclusions). A draft of these regulations is currently out for consultation.

¹⁶ "Looked-after children" has the meaning given by section 22(1) of the Children Act 1989.

¹⁷ "Disability" within the meaning of section 1(1) of the Disability Discrimination Act 1995.

¹⁸ "A child with special educational needs" under section 312 of the Education Act 1996.

Participation in other settings

Health

3.90 Section 242 of the NHS Act 2006 imposes a duty on each NHS body to make arrangements with a view to securing, as respects health services which they provide or arrange, that users of those health services (i.e. persons to whom those services are being, or may be, provided), whether directly or through representatives, are involved (whether by being consulted or otherwise) in:

- planning the provision of those services,
- the development and consideration of proposals for changes in the way those services are provided
- decisions to be made by that body affecting the operation of those services.

3.91 This duty covers child users as well as adults, although involvement may well be via representatives, such as parents, patient groups, local involvement networks, etc.

Health service complaints

3.92 Complaints about NHS care are now governed by the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009. These cover all NHS care, whatever the type of organisation is providing it, so they cover NHS care provided by NHS organisations, such as NHS Trusts, primary care providers and independent, non-NHS organisations, such as voluntary organisations.

3.93 Regulation 5 deals with who may make complaints. A child may make a complaint about NHS care if they have received that care, or if they are in some other way affected by the actions or decision of an organisation to which these regulations apply. A representative may make a complaint on behalf of a child, but the organisation to which the complaint is made should not consider the complaint unless satisfied that there are reasonable grounds for the complaint being made by the representative rather than the child. If the organisation to which the complaint is made believes that the representative is not acting in the best interests of the child then they must not consider the complaint.

3.94 If a complainant is not satisfied with the outcome of their complaint then they may take a complaint to the Health Service Commissioner. The Health Service Commissioners Act 1993 established the Health Service Commissioner and set out what matters may be complained about etc. Any individual who claims to have suffered injustice or hardship as a consequence of a service or failure to provide a service by a health service body, or as a consequence of maladministration by a health service body, may make a complaint. Generally, complaints must be

made by the person aggrieved, but a family member or other suitable representative may make the complaint if the person aggrieved is unable to do so.

Police complaints

- 3.95** The Police Reform Act 2002 set up the Independent Police Complaints Commission (IPCC), which has powers to investigate complaints about the police. There are also powers for the IPCC to ensure that complaints against the UK Border Agency (UKBA), Serious Organised Crime Agency (SOCA) and HM Revenue & Customs (HMRC) are dealt with effectively. It investigates complaints made about SOCA and, in the most serious of cases, also about HMRC and UKBA. Complaints can be made by children, or on their behalf.

Independent Mental Health Advocates (IMHA)

- 3.96** Part 10 of the Mental Health Act 1983 sets out duties relating to the appointment of IMHAs for patients. There is a duty on the appropriate national authority (the Secretary of State in relation to England) to make such arrangements as he thinks reasonable to enable IMHAs to be available to “qualifying patients”¹⁹. IMHAs provide assistance in obtaining information about why the patient is detained and about their rights and gives help in exercising those rights. Section 130D imposes a duty to ensure patients understand that IMHAs are available to them.

Care Quality Commission (CQC)

- 3.97** In performing its regulatory, inspection and Mental Health Act 1983 functions, the CQC must have regard to the experiences of people who use health and social care services, their families and friends. It must also be aware of the need to protect and promote the rights of people who use health and social care services (including, in particular, the rights of children) (section 4 Health and Social Care Act 2008).

Opportunity to be heard in family proceedings

- 3.98** The Family Proceedings Rules 1991 (FPR 1991) make separate provision for “specified proceedings” (essentially public law children proceedings) and other proceedings involving children. For “specified proceedings”, rule 4.10 requires a children’s guardian to be appointed as soon as practicable after commencement of the proceedings, unless the court considers that this is not necessary to safeguard the welfare of the child. Rule 4.11A states that the guardian should then appoint a solicitor for the child (unless one is already appointed), advise the child as

¹⁹ A qualifying patient is defined in s130C. It includes all patients detained under the Mental Health Act. In addition, it applies to any under 18 with [suggest “for” instead of with] whom [there is] the possibility of using ECT or a surgical operation for removing brain tissue for mental health purposes, even where that child is a voluntary patient.

appropriate according to the child's understanding, and instruct the solicitor. The guardian must also (rule 4.11A(4)), unless excused by the court:

“attend all directions, appointments in, and hearings of the proceedings and shall advise the court on (a) whether the child is of sufficient understanding for any purpose ... (b) the wishes of the child in respect of any matter relevant to the proceedings”.

- 3.99** Rule 4.12 allows for the child to instruct the solicitor himself or herself if, in the guardian's view, the child is “able, having regard to his understanding, to give such instructions on his own behalf”. Judicial guidance on the operation of these provisions is set out in *Re H (A Minor) (Care Proceedings: Child's Wishes)* [1993] 1 FLR 440.
- 3.100** For proceedings other than “specified proceedings”, Part IX of the FPR 1991 provides for a child to conduct proceedings via a next friend or guardian *ad litem*, or (rule 9.2A) also to do so directly, where the court gives permission or the solicitor considers the child is able, having regard to his understanding, to give instructions in relation to the process. Rule 9.5 also provides for the court in any family proceedings, if it appears to the court that it is in the best interests of any child to be made a party to the proceedings, to make the child a party and appoint a guardian *ad litem* to represent the child.
- 3.101** For adoption proceedings, Part 7 of the Family Procedure (Adoption) Rules makes similar provision to the provisions of FPR 1991 outlined above.

Civil proceedings

- 3.102** For civil proceedings, the position of children as parties is covered by Part 21 of the Civil Procedure Rules. Rule 21.2(2) requires that a child party have a litigation friend, unless the court makes an order permitting the child to conduct the proceedings without a litigation friend (which will principally depend on an assessment of the child's capacity, in view of the child's age and understanding, to instruct in relation to the proceedings). Where the child instructs directly, they will advance their views directly; otherwise the child's views will be advanced via the litigation friend.

Civil legal aid for children

- 3.103** Legal aid is available to fund representation for children where they are a party in civil proceedings. In some proceedings, such as applications for care orders, the child will automatically be a party, whilst in other proceedings, for example applications for contact orders, they may be joined as a party by the court under rule 9.5 FPR 1991.
- 3.104** In family proceedings, under the tandem model of representation, a

guardian will be appointed for the child who will instruct a solicitor to deal with the legal aspects of the case. The guardian is funded by CAFCASS (a non-departmental public body accountable to the Secretary of State for Children, Schools and Families) and, in the majority of cases, the solicitor is funded by the Legal Services Commission.

3.105 In addition, where a child has sufficient capacity to do so, they may directly instruct a solicitor to represent them in court, without the need for a guardian. In these cases, the child will still be able to apply for legal aid in the usual way.

Public law children proceedings

3.106 Although, in most proceedings, applications for legal aid are subject to a means and merits test, non means and non merits-tested legal aid is available to the key parties in most public law Children Act proceedings (Regulation 3(1)(c) of the Community Legal Service (Financial) Regulations 2000 and Criterion 11.7 of the Funding Code. Non means, non merits-tested legal representation will, therefore, be available to children who are the subject of applications for:

- Section 31 (a care or supervision order)
- Section 43 (a child assessment order)
- Section 44 (an emergency protection order)
- Section 45 (extension or discharge of an emergency protection order)
- Section 25 (use of secure accommodation).

CASE LAW

3.107 *Re M (Children) (Abduction)* [2007] UKHL 55, per Baroness Hale: “These days, and especially in the light of Article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views.”

3.108 *R (oao K) v Parole Board* [2006] EWHC 2413 (Admin) considered Article 12 and upheld the right for a 14-year old to be provided with assistance in applying to the parole board.

Views of children in consent to medical treatment

3.109 Section 8 of the Family Law Reform Act 1969 provides that children aged 16 or over can consent to medical, surgical or dental treatment. Under this age, the concept of ‘Gillick competence’ applies. The case of *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 (HL) sets out the test to be applied to establish whether a child is competent to give consent. The ‘Fraser guidelines’, based on Lord Fraser’s judgment in the case, set out the considerations to be taken into account. Although not set out in statute, the principles of this ruling have been extended beyond the original ruling, which related to contraception

access. The principles are routinely used, and recognised as good practice, by the professional bodies across health.

OTHER MEASURES

3.110 An important development, led by the Department of Health, has been the "*You're Welcome quality criteria: Making health services young people friendly* (www.dh.gov.uk) for making health services young people-friendly. The current edition (2007) reinforces the need for health services and commissioners to improve their responses to young people, both in terms of service delivery and development. Young people's participation at an individual and group level is specifically referenced in the criteria. To meet the criteria, services need to demonstrate that they have age-appropriate mechanisms in place to enable young people's views to be heard and responded to. You're Welcome is currently in the NHS operating framework, demonstrating its commitment to making sure that local areas adopt the approaches described in the criteria. This includes handling complaints.

4. CIVIL RIGHTS AND FREEDOMS

GENERAL OVERVIEW

- 4.1 This cluster of articles protects children's right to privacy, information about paternity, their freedom of expression and assembly, their right to think and say what they want and protection from degrading treatment or corporal punishment. Further measures in relation to protecting children from degrading treatment are discussed in cluster 5 and cluster 8 under article 19 and 37 respectively.
- 4.2 Core rights and freedoms of children and young people are set out in the European Convention on Human Rights (ECHR) which includes, children's right to privacy, freedom of assembly, freedom of expression, freedom of thoughts, conscience and religion and incorporated in domestic law through the Human Rights Act 1998 (HRA 1998). In addition the Government has set in place a range of legislation and administrative measures to provide additional protection for the rights and freedom of children, including recent steps such as:
- changes made to adoption law by the Adoption and Children Act 2002, including powers to arrange contact with adopted children
 - changes made to the definition of 'parent' by the Human Fertilisation and Embryology Act 2008
 - changes to the British Nationality Act 1981 by the Nationality, Immigration and Asylum Act 2002 to allow children of unmarried parents to derive a nationality claim from their father in the same way as children of married parents
 - The Education and Inspection Act 2006 placed a duty on local authorities to have regard to a child's religion or belief in arranging transport to/from school.
 - The Apprenticeships, Skills, Children and Learning Act 2009 (ASCL 2009) introduces a requirement for governing bodies of schools to have procedures in place for recording significant incidents involving the use of force by staff on pupils and for reporting these incidents to parents. This is expected to come into force in September 2010.
- 4.3 The Government takes all forms of violence against children extremely seriously and has in place clear frameworks and detailed statutory guidance on how organisations and individuals should work together to promote and safeguard the welfare of all children. Corporal punishment has been banned in maintained schools in England since 1987.

ARTICLE 7 - Birth Registration etc.

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

LEGISLATION

4.4 The Births and Deaths Registration Act 1953 (BDRA 1953), as amended, provides for the registration of births and sets out the duties and processes in relation to the registration of births. Section 1 BDRA 1953 provides that the birth of every child born in England or Wales shall be registered by the registrar of births and deaths for the sub-district in which the child was born. Re-registration is also provided for, in certain circumstances. The Human and Fertilisation Act 2008 extended the legal definition of parent to include second female parents, subject to certain conditions.

4.5 Information which is required to be registered is set out in the Registration of Births and Deaths Regulations 1987.

4.6 Married parents both have their names on the birth certificate as there is a presumption of paternity. If parents are not married the father is only named on the birth certificate if the mother consents, or with a court order. In practice, most unmarried parents attend the registry office together or alone with a statutory declaration from the other.

4.7 Changes introduced in the Welfare Reform Act 2009, which are likely to come into force in early 2011, keep the status quo for married people and make it easier for cooperating unmarried parents to register together with a new form of declaration. In the majority of cases, unmarried parents will register the birth jointly in cooperation with each other. In most of the remaining cases, where the unmarried parents are not cooperating with one another, the mother will be required to provide the father's details to the registrar, in order to enable the registrar to contact the father and ascertain whether he is the father and include his details on the birth register. Similarly, an unmarried father will have a corresponding right to provide his details to the registrar independently of the mother, and to have his name entered on the register, subject to acknowledgement by the mother that he is the child's father. There are some cases where a mother will be exempt from the duty to provide the father's details, in which case sole registration will take place. These will include cases where the mother does not know the identity of the father (or his whereabouts), or where she fears that her safety – or that of her

child – might be put at risk were the father to be contacted. Where paternity is unclear, couples will be able to use a DNA test as proof of paternity. If a birth has already been registered in the mother's name either parent will be able to ask for it to be re-registered in both names subject to confirmation from the other. The duty to give information is subject to the Perjury Act 1911.

- 4.8 Any person (provided domicile requirements are met) can apply to a court in England and Wales for a declaration of parentage that a person named in the application either is, or is not, the parent of another person named in the application, (s55A Family Law Act 1986 (FLA 1986)). In such proceedings, the court can direct or request provision of a sample for paternity test (s20 FLA 1986) and draw inferences from refusal (s23 FLA 1986). A sample can be obtained from a child under 16 with consent of the person with the care and control of the child, or by court order if the court considers this is in the child's best interests (s21 FLA 86).
- 4.9 If a Declaration of Parentage is made by the court, it will notify the Registrar General's office. If it appears to the Registrar General that the birth should be re-registered he shall authorise the re-registration (s14A Births and Deaths Registration Act 1953).
- 4.10 The British Nationality Act 1981 (BNA 1981) was amended by the Nationality, Immigration and Asylum Act 2002 so that children born outside marriage on or after 1 July 2006 can now derive a nationality claim or entitlement from their father in the same way as if they had been born to married parents. Section 3(1) BNA 1981 also gives the Secretary of State the discretion to register as British citizens such children who were born before 1 July 2006.

Adoption

- 4.11 Part 5 of the Adoption and Children Act 2002 makes provision in relation to the Adopted Children Register (ACR) and the Adoption Contact Register. Further provisions are set out in the Adopted Children and Adoption Contact Registers Regulations 2005. The Registrar General has a duty to maintain the ACR (section 77) and when a court makes an adoption order it must communicate that order to the Registrar General. Any record of the child in the register of live births must be marked 'adopted', and the Registrar General must, under section 79, make traceable the connection between any such entry and any corresponding entry in the ACR. This information, and any other information enabling an adopted person to obtain a certified copy of their birth records, must be disclosed to the appropriate adoption agency, if requested. Once a child reaches the age of 18, they have the right to obtain that information. The Adoption Contact Register allows for an adopted person, once they are 18, to make contact with birth relatives where each party has expressed a wish for contact.

Human fertilisation and embryology

- 4.12 Section 24 of the Human Fertilisation and Embryology Act 2008 (the 2008 Act), which came into force in October 2009, substitutes section 31 of the Human Fertilisation and Embryology Act 1990 (the 1990 Act) with new sections 31 to 31ZG. Section 31 of the 1990 Act required the Human Fertilisation and Embryology Authority (HFEA) to keep a register of information obtained by it about people born as a result of treatment services, amongst other matters. That section also enabled a person who had reached the age of 18, who was conceived as a result of donated gametes since the 1990 Act came into effect, to require the HFEA to provide certain information. The Human Fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004 list the personal information that the HFEA must provide, but prior to 1 April 2005 this did not include information that would identify the donor. Applicants conceived from donations since that date will also become entitled to be given identifying information about the donor. This could happen sooner if someone who donated before April 2005 elected to re-register as identifiable, and a person conceived from his or her donation requested identifying information from the HFEA.
- 4.13 These Regulations and the register continue in effect under the amendments made by the 2008 Act. A donor-conceived person is now able to request information from age 16, including information about the number, sex and year of birth of their donor-conceived half-siblings, who were conceived using gametes of the same donor but are not the donor's legal children (section 31ZA(2)(b)). They cannot be given identifying information about the donor before they reach the age of 18.
- 4.14 A donor-conceived person can also find out whether they are related to someone they propose to marry, enter a civil partnership or intimate physical relationship with, or with whom they are having an intimate physical relationship (section 31ZB). Section 31ZC gives the HFEA the power to inform a donor of the fact that a donor-conceived person has requested information about him. Section 31ZD enables donors (including past donors) to be provided with information, on request, about the number, sex and year of birth of children born as a result of their donations. Section 31ZE enables donor-conceived people to request and obtain identifying information about their genetic half-siblings, who were conceived using gametes from the same donor, where neither is the donor's legal offspring. Section 31ZF introduces a power for the HFEA to set up, or keep, a voluntary contact register of people who would like to receive information about any person to whom they are genetically related as a consequence of the provision to any person of assisted conception treatment services in the United Kingdom, involving donors before the HFEA's register began on 1 August 1991. If the HFEA keeps a register under the new section 31ZF, it may charge a fee to people wishing to join it, arrange for DNA samples of people who join to be analysed, with their consent, and matched with those of others on the register, and make arrangements for information to be disclosed between people who are genetically related. It is intended that the fee

charged would recover all or part of the costs of keeping the register. Such a voluntary contact register, UK DonorLink, has been run as a national pilot project since 2004 by After Adoption Yorkshire, a voluntary organisation.

ARTICLE 8 - Preservation of Identity

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations, as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

LEGISLATION

4.15 Under the Births and Deaths Registration Act 1953 the Registrar General is under a duty to keep a register of births, and ensure the safe-keeping of that register.

4.16 Where there is a residence order, special guardianship order or care order in force with respect to a child, or the child is placed for adoption or authorised to be placed for adoption or there is a placement order in place, no one can cause the child to be known by a new surname or remove the child from the UK without either the written consent of everyone with parental responsibility for the child or the permission of the court (sections 13, 14C and 33(7) Children Act 1989 and section 28 of the Adoption and Children Act 2002 (ACA 2002)).

Contact with adopted children

4.17 Once an adoption agency is authorised to place a child for adoption (either by consent of the birth parents or by a placement order), or when the child is actually placed for adoption with prospective adopters, the child, birth parent or relative can make an application to the court under section 26 ACA 2002 for an order to be made requiring the person with whom the child lives or is to live to allow contact between the child and birth family.

4.18 The court can also make an order for contact of its own initiative when it makes a placement order. Before making a placement order, the court has a duty under section 27 to consider the contact arrangements that are in place, or that the adoption agency is proposing to put in place, and must invite the parties to the proceedings (this would include the birth parents) to comment on those arrangements.

4.19 Under section 46(6) ACA 2002, before making an adoption order the

court, again, has a duty to consider whether there should be arrangements for allowing any person (including the birth parents/relatives) contact with the child and to obtain the views of the parties the proceedings.

4.20 These provisions and those mentioned in paragraph 4.5 give effect to the right in Article 8 to preserve family relations by allowing the child to maintain contact with their birth family, where appropriate, once the decision has been taken that the child should be adopted, and by enabling an adopted adult to access support in tracing and making contact with their birth family.

British nationality and statelessness

4.21 There are six types of British nationality status: British citizen, British overseas territories citizen, British overseas citizen, British national (overseas), British protected person and British subject. Acquisition of these statuses is governed by the British Nationality Act 1981 and can be achieved automatically, by registration or by naturalisation. The status of British national (overseas) is now only relevant to adults.

4.22 Part 1 of the Act deals with British citizenship:

- Sections 1(1), 1(2), 1(5) and 2(1) specify the circumstances in which certain children born in the UK, or to a British parent, or who are adopted by a British parent will automatically become British citizens.
- For children who do not automatically qualify for citizenship, there are registration provisions in Part 1 of the Act which they may take advantage of. These are in sections 1(3) and 1(4) and sections 3 to 5 and include an absolute discretion to register a child as a British citizen (section 3(1)). The policy applicable to that discretion can be found in Chapter 9 of the Nationality Instructions.

4.23 Part 2 of the Act deals with British overseas territories citizenship: sections 15 and 16 deal with acquisition by birth, adoption or descent and section 17 sets out the provisions for registration as such a citizen which are relevant to minors (defined in the Act as persons under 18).

4.24 Part 3 provides a registration provision for a minor to become a British overseas citizen in section 27. A minor can apply to be registered as a British subject under section 32 in Part 4 of the Act. Where a child is otherwise stateless, Schedule 2 of the Act sets out provisions for that child to acquire citizenship:

- If the child is born in the UK to a parent who is a British overseas territories citizen, British overseas citizen or British subject and would otherwise be stateless, then they would acquire the same nationality as the parent (Schedule 2, paragraph 1).

- If the child is born in an overseas territory to a parent who is a British overseas citizen or British subject and would otherwise be stateless, then they would acquire the same nationality as the parent (Schedule 2, paragraph 2).
- If a child born in the UK is, and has always been, stateless, they can apply to be registered as a British citizen before their 22nd birthday, based on a period of five years' residence (Schedule 2, paragraph 3).
- If a child is, and has always been, stateless an application for registration can be made on the basis of three years' residence in the UK or an overseas territory if their parent is a British citizen, British overseas territories citizen, British Overseas citizen or British subject. The child would get the same nationality as the parent (Schedule 2, paragraph 4).

4.25 The policy applicable to the automatic acquisition provisions for stateless children can be found in Chapter 5 of the Home Office UK Border Agency Nationality Instructions. The policy applicable to the registration provisions for stateless children can be found in Chapter 15 of the Nationality Instructions.

4.26 In addition, a child who is born outside the United Kingdom to a parent who is a British citizen "by descent" can be registered under section 3(2) of the Act if the parent has lived in the United Kingdom for a continuous period of three years at any time before the child's birth. This parental residence requirement can be waived if the child is stateless. The policy applicable to this registration provision can be found in Chapter 10 of the Nationality Instructions.

4.27 The UK also makes provision for the children of British protected persons (BPPs) who would otherwise be stateless. A child born to a BPP in the United Kingdom or a British overseas territory, who would otherwise be stateless, will be a BPP by virtue of section 7(1) of the British Protectorates, Protected States and Protected Persons Order 1982. Section 7(2) of that Order also provides for a child who has always been stateless to be registered as a BPP if their parent was a BPP at the time of the birth and they have lived in the UK or an overseas territory for a period of three years.

4.28 Children born to British overseas citizens or British nationals (overseas) (who acquired that status through a connection with Hong Kong) can also acquire the status of British overseas citizen if they would otherwise be stateless, by virtue of section 6 of the Hong Kong (British Nationality) Order 1986.

4.29 These provisions in UK legislation meet the UK's obligations under the Convention on the Reduction of Statelessness and, in many instances, provide more favourable terms than the Convention requires.

ARTICLE 13 - Freedom of Expression

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others; or
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

LEGISLATION

4.30 A child's right to freedom of expression is protected by Article 10 of the European Convention on Human Rights (ECHR), incorporated into domestic law through the Human Rights Act 1998.

4.31 Where legislation restricts a child's right to freedom of expression, this complies with Article 13 UNCRC and Article 10 ECHR. For example, the Video Recordings Act 1984 (VRA 1984) restricts the child's freedom to receive information by restricting the accessibility of DVDs, videos and some video games based upon the age classification given to such material by the designated authority. The purpose of classification is to strike a balance between preserving a general freedom to view DVDs, videos and video games without restriction and recognising that the viewing of certain material may be detrimental to the wellbeing of children. A classification regime is, therefore, necessary for the protection of public health and morals.

4.32 The VRA 1984 seeks to avoid the use of disproportionate restrictions on the freedom of children to receive information by:

- specifically providing that certain DVDs, videos and video games may be certified as suitable for viewing only by children of a particular age or above
- preserving the freedom of parents and guardians to determine what material may be suitable for viewing by their child, irrespective of its classification, without fear of prosecution.

ARTICLE 14 - Freedom of Thought, Conscience and Religion

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of

his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

LEGISLATION

4.33 A child's right to freedom of thought, conscience and religion is, in part, protected by Article 9 of the European Convention on Human Rights (ECHR), incorporated into domestic law through the Human Rights Act 1998. The non-discrimination provisions relating to religious beliefs set out under Article 2 are also relevant to the protection of this right.

4.34 In some cases, there is further protection of this right in relation to children, in particular in legislation. Examples of this are set out below.

Children's homes

4.35 Regulation 11(2) (promotion of welfare) of the Children's Homes Regulations 2001 provides that the registered person shall make suitable arrangements to ensure that the home is conducted in a manner which respects the privacy and dignity of the children accommodated there, and with due regard to the sex, religious persuasion, racial origin, cultural and linguistic background and the disability of any children.

4.36 Regulation 19 (religious observance) of the Children's Homes Regulations 2001 provides that the registered person shall ensure that each child accommodated in the home is enabled, as far as practicable, to attend services, receive instruction and observe any requirement (whether as to dress, diet or otherwise) of the religious persuasion to which they belong.

Article 14 in education

4.37 Section 80 of the Education Act 2002 requires that the curriculum for every maintained school must comprise a basic curriculum which includes provision for religious education for all registered pupils at the school, in accordance with the provisions of Schedule 19 of the School Standards and Framework Act 1998 which apply to the school. Section 69 of the 1998 Act, which applies to any community, foundation or voluntary school, requires a school head teacher to secure that religious education is given in accordance with the basic curriculum and that the local education authority and the governing body exercise their functions with a view to securing such religious education.

4.38 By virtue of section 71 of the 1998 Act, the parent of a pupil at a community, foundation or voluntary school may request that the pupil be excused from receiving religious education (RE), or from attending

collective worship at such a school. The school must accede to the request. But, where the parent of the pupil desires the pupil to receive RE of a kind which is not provided in the school, the pupil can be withdrawn from the school if arrangements have been made for him to receive RE of that kind elsewhere. This is provided the local education authority is satisfied that the arrangements will not interfere with the pupil's attendance at school, except at the beginning or end of a school session on that day.

- 4.39 Section 71 provides for a pupil to request to be excused from attending collective worship at such a school (and for the school to accede to this), but this provision applies only to pupils attending the sixth form. There is no power for a child, other than one at sixth form, to make a request for excusal from collective worship. The Government considers that younger children's interests are protected by their parents who do have the right to request excusal. Parents are expected to take account of the views of their child in exercising this right.
- 4.40 By virtue of section 375(3) of the Education Act 1996, the syllabus for RE must reflect the fact that the religious traditions in Great Britain are, in the main, Christian, whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.

School transport

- 4.41 Section 509AD of the Education Act 1996 (as inserted by Part 6 of the Education and Inspections Act 2006) places a duty on LEAs, in fulfilling their duties and exercising their powers relating to travel, to have regard to, amongst other things, any wish of a parent for their child to be educated at a particular school or institution on grounds of the parent's religion or belief.
- 4.42 Part 5 of the statutory guidance on *Home to School Travel and Transport Guidance* deals with this duty and paragraph 132 states that the Secretary of State: "continues to attach importance to the opportunity that many parents have to choose a school or college in accordance with their religious or philosophical convictions, and believes that, wherever possible, transport arrangements should support the religious or philosophical preferences that parents express."

CASE LAW

- 4.43 *R (oao Begum) v Head Teacher and Governors of Denbigh High School* [2006] UKHL 15 (ruling on the lawfulness of a uniform policy that did not permit the wearing of a jilbab) held that Article 9 ECHR did not require that one should be allowed to manifest one's religion at any time and place of one's own choosing. It was settled law that the right to manifest belief was qualified and that what constituted interference would depend on all the circumstances of the case, including the extent to which, in the circumstances, an individual could reasonably expect to be at liberty to

manifest her beliefs in practice. Strasbourg jurisprudence made it clear that, in the circumstances of the instant case, there had been no infringement of Article 9. The claimant's family had chosen the school for her, with knowledge of its uniform requirements. She could have sought the help of the school and the local education authority in solving the problem. They would, no doubt, have advised her that if she was firm in her belief, she should change schools. Indeed, there was nothing to stop her from going to a school where she was allowed to wear a jilbab. It followed that there had been no interference with the claimant's right to manifest her belief in practice or observance

ARTICLE 15 - Freedom of Association

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

LEGISLATION

- 4.44** A child's right to freedom of association is protected by Article 11 of the ECHR, incorporated into domestic law through the Human Rights Act 1998.
- 4.45** From 12 January 2010, the Policing and Crime Act 2009 repealed sections 14 and 15 of the Crime and Disorder Act 1998 to remove the power of a local authority to create a local child curfew scheme.

ARTICLE 16 - Right to Privacy

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

LEGISLATION

- 4.46** This right is also protected by Article 8 of the European Convention on Human Rights (ECHR), incorporated into domestic law through the Human Rights Act 1998.
- 4.47** The protection offered by the Data Protection Act 1998, which provides

for safeguards against the misuse of personal data, applies to children in the same way that it applies to adults. Children are also afforded the same protection as adults under the general law (for example, laws on defamation and breach of a duty of confidence).

4.48 Some further protection particularly relevant to children is set out below.

Children's homes

4.49 Regulation 11(2) (promotion of welfare) of the Children's Homes Regulations 2001 provides that the registered person shall make suitable arrangements to ensure that the home is conducted in a manner which respects the privacy and dignity of the children accommodated there.

4.50 Regulation 15 (contact and access to communication) of the Children's Homes Regulations 2001 provides that the registered person shall promote the contact of each child with his parents, relatives and friends, in accordance with the arrangements set out in the child's placement plan. The registered person must also ensure that there are suitable facilities to enable the child to meet privately, at reasonable times, with parents, relatives and friends, as well as certain other people set out in the regulation (i.e. solicitors and social workers).

Education

Searching in schools

4.51 There are common law powers to search pupils where a pupil consents to the search. There are also powers for authorised school staff to search pupils without consent for guns, knives and offensive weapons contained in section 550AA Education Act 1996. The section sets out specific safeguards for pupils who are searched. For example, a pupil can only be searched where there is reasonable suspicion that he is carrying a gun or a knife; searches must be conducted and witnessed by a member of staff of the same sex as the pupil; the pupil cannot be required to remove clothing other than outer clothing. The Apprenticeships, Skills, Children and Learning Act 2009 extends the power to search without consent to cover controlled drugs, alcohol and stolen items. There is also a power to make regulations to add further items to the list.

Admissions, exclusions and SEN appeals

4.52 The Admissions Appeals Code states that the appeal hearings must be heard in private (paragraph 2.25). Further, the notes of appeals panel proceedings are not subject to freedom of information legislation because admission appeal panels are not public authorities for the purposes of the Freedom of Information Act 2000. Exclusions appeals are to be held in private (regulation 11, Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002), as are SEN

appeals (Rule 26(2), Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 No. 2699).

Civil/family proceedings involving children

Family proceedings

4.53 While the general principle of open justice indicates that judicial proceedings should generally be in open court, it has long been recognised that family proceedings, particularly those involving children, involve consideration of private matters in a way that requires different treatment. There are, accordingly, restrictions to protect the privacy of children in particular, both by restricting those who may attend such proceedings, and also by restricting what may be published about such proceedings.

Attendance at family proceedings

4.54 For family proceedings courts (magistrates' courts), section 69(2) and (3) of the Magistrates' Courts Act 1980 generally limits attendance at family proceedings in a magistrates' court to officers of the court, parties and their legal representatives, witnesses and others directly involved in the case. For proceedings other than adoption proceedings, it permits representatives of newspapers or news agencies to attend, as well as any other person that the court, in its discretion, allows. Rule 16A of the Family Proceedings Courts (Children Act 1989) Rules 1991 makes provision for media representatives to be excluded from proceedings, other than adoption proceedings (which they are not permitted to attend in any event), where this is necessary in the interests of the child, the safety of any party or witness or person connected with them, or in the interests of justice).

4.55 For the county courts and High Court, rule 10.28 of the Family Proceedings Rules 1991 makes provision for a similar position to that for magistrates' courts, so that where the court sits in private (in the sense that the general public is not permitted to attend), accredited media representatives are, nevertheless, able to attend unless the court directs that they be excluded for similar reasons to those provided for magistrates' courts. In adoption proceedings, media representatives are not allowed to attend save at the court's discretion.

Publication of information relating to proceedings

4.56 Family proceedings involving children are, as outlined above, generally held in private. Section 12 of the Administration of Justice Act 1960 provides that the publication of information relating to proceedings before a court sitting in private shall not, of itself, be a contempt, except in the cases listed in the section. These include proceedings which:

- relate to the exercise of the inherent jurisdiction of the High Court with

- respect to minors (wardship),
- are brought under the Children Act 1989 or the Adoption and Children Act 2002,
- or otherwise relate wholly, or mainly, to the maintenance or upbringing of a minor.

4.57 In those cases – essentially all family proceedings concerning children - publication of the information will be a contempt if the proceedings were held in private. Judicial guidance makes it clear that “publication” means communication to any person, and apart from provision made in rules of court permitting communication in specific circumstances, it is a contempt of court to communicate to any person not involved in the proceedings anything more than the bare gist, unless the court authorises it.

4.58 Section 12 is a stringent restriction but does not, in itself, prevent the identification of a particular child as being involved in the proceedings. Section 97(2) of the Children Act 1989, however, prohibits the publication of material (including the child’s address or school) intended, or likely, to identify the child “as being involved” in proceedings where Children Act or Adoption and Children Act powers may be exercised, subject to the power of the court to authorise publication. This is limited to publications made “to the public at large or any section of the public”; and it was decided by the Court of Appeal in *Clayton v. Clayton* [2006] EWCA Civ 878 that it ceases to apply when the proceedings come to an end. Breach of the prohibition is an offence.

Civil proceedings

4.59 For civil proceedings, rule 39.2(1) of the Civil Procedure Rules 1998 (CPR) sets out the general rule that a hearing is to be in public. However, rule 39.2(3) provides for circumstances in which a hearing, or part of it, may be in private (which, in this case, means that media representatives, as well as the general public, will not generally be allowed to attend). This includes where “a private hearing is necessary to protect the interests of any child or protected party”. Where a hearing is held in private, it will, generally, not be possible to report it, but the court is also empowered by CPR rule 39.2(4) to order that the identity of a party or witness must not be disclosed if it considers non-disclosure necessary to protect the interests of that party or witness. This may be used to protect the privacy or other interests of a child involved in proceedings.

4.60 Section 39 of the Children and Young Persons Act 1933 also provides the court with the power to prohibit publication of any identifying features of a child concerned in the proceedings.

Criminal proceedings

4.61 With the exception of the Youth Court, Section 39 of the Children’s and

Young Persons Act 1933 gives the court discretion to impose restrictions on the identity of a child or young person.

4.62 In the case of the Youth Court, Section 49 of the Children's and Young Person Act 1933 imposes automatic restrictions on reporting the identity of a young person involved in the proceedings. Following conviction, however, the Youth Court has the discretion to remove the restriction relating to young defendants. It is an offence to publish something in contravention of section 49, or a direction made under section 39.

4.63 See further, Article 40 administration of juvenile justice.

Mental Health Act 1983

4.64 Hearings before the First – tier Tribunal in mental health cases are held in private, unless the Tribunal considers that it is in the interests of justice for the hearing to be held in public (rule 38 Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008).

4.65 The duty to allow free communication, subject to certain rules, in section 134 of the Mental Health Act 1983 also applies to under 18s.

Retention of DNA of children by the police

4.66 Currently, children who are 10 or over may have their DNA retained indefinitely. (Children under the age of 10 have their DNA samples, profiles and fingerprints destroyed.)

4.67 Clause 14 of the Crime and Security Bill provides for all DNA samples to be destroyed as soon as DNA profile has been derived from the sample, or, if sooner, within six months of the sample being taken. It is intended, subject to the approval of Parliament, that as regards fingerprints and DNA profiles:

- children under 18 convicted of a serious offence (as defined in clause 13), or of more than one minor offence, will have their fingerprints and DNA profile kept indefinitely
- children under 18 convicted of a single minor offence will have their fingerprints and DNA profile retained for five years
- 16- or 17-year olds arrested for, but not convicted of, a serious offence will have their fingerprints or profile retained for six years
- All other under 18-year olds arrested but not convicted will have their fingerprints and profile retained for three years.

4.68 This contrasts with the approach for adults, which allows for the retention of fingerprints and DNA profiles for six years where the person is arrested but not convicted and for indefinite retention for those who are convicted. The Government considers that this accords with the judgment of the European Court of Human Rights in *S and Marper v UK* which encouraged an approach to retention that takes into account the

age of the person concerned.

CASE LAW

4.69 *Murray v Express Newspapers plc and anor* [2008] EWCA Civ 446 considered Article 16 when ruling that a child's right to respect for their private life under Article 8 of the ECHR may, in some case, outweigh a publisher's right to freedom of expression under Article 10 of the ECHR.

ARTICLE 17 - Access to Information

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

LEGISLATION

Broadcasting

4.70 This right is, in part, protected via the broadcasting licensing system, together with Ofcom's standards codes²⁰. Content on UK television channels and UK radio services is required to be appropriate. If broadcasters fail to meet this requirement, Ofcom has the power to impose sanctions on those broadcasters. Both children and adults have the right to complain to Ofcom in the event that broadcasters fail to meet the requirements of the standards codes.

4.71 A simplified breakdown of the regulation of content standards is set out below:

- Broadcasters must obtain licences from Ofcom in order to broadcast content (with the exception of the BBC, whose authorisation to broadcast derives from the BBC Charter and Agreement, which

²⁰ Ofcom, the communications regulator, regulates the TV and radio sectors as well as other communications sectors. Its regulatory functions are governed by the Communications Act 2003.

contains the various obligations and rights of the BBC, and of S4C, whose remit is similar to the BBC's).

- One of the conditions of each broadcasting licence (and one of the stipulations of the BBC Agreement) is that broadcasters must only broadcast content which complies with Ofcom's standards objectives. The standards objectives are listed at section 319 of the Communications Act 2003, and include (but are not limited to):
 - that persons under the age of eighteen are protected
 - that generally accepted standards are applied to the content of television and radio services, so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material
 - that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.
- These section 319 objectives are enshrined in a set of codes, which include, for example, the Ofcom Broadcasting Code, the Cross-Promotion Code, and the Advertising Codes for Broadcasting.²¹ Broadcasters must comply with the Codes, or face sanctions for breach of their licence terms.
- The Code most relevant to UNCRC concerns is the Ofcom Broadcasting Code, in particular Section 1: Protecting the Under 18s and Section 2: Harm and Offence. These are attached as Annex 1. The Code should be read in conjunction with the corresponding guidance, links to which are also given in Annex 1.
- Members of the public can complain to Ofcom if they perceive there has been a breach of the Codes. Ofcom can then investigate the alleged breach and, if the breach is substantiated, impose any of a large number of sanctions. The table at Annex 2 gives a summary of the various sanctions available in relation to the various broadcasters.

4.72 In addition to the above framework, the recent implementation of the Audio Visual Media Services Directive (2007/65/EC) by way of the Audio Visual Media Services Regulations 2009 has introduced new protections in relation to video-on-demand services²². The Regulations insert a new Section 368G into the Communications Act 2003 which requires that, where a video-on-demand service contains "material which might seriously impair the physical, mental or moral development of persons

²¹ The Advertising Codes for Broadcasting are administered by the Advertising Standards Authority (ASA), Ofcom's co-regulator on advertising issues. Broadcasters are obliged to comply with the Advertising Codes under their broadcast licences from Ofcom. When the ASA adjudicates on an advertisement, broadcasters comply with rulings immediately under the conditions of their licences. However, where necessary and appropriate, the ASA is able to refer licensees to Ofcom for regulatory action.

²² "Video-on-demand" is a service whose principal purpose is to allow the public to access television programmes as and when they want them rather than at the time when they are scheduled by the broadcaster. One well-known UK example is the BBC iPlayer.

under the age of eighteen”, that content must “be made available in a manner which secures that such persons will not normally see or hear it.”

Video Recordings Act 1984 (VRA 1984)

4.73 Article 17(e) requires the development of appropriate guidelines to protect children from information and material injurious to their wellbeing. The VRA 1984 specifically provides a framework for the development of such guidelines, both to restrict children’s access to such material on video formats and to assist parents in determining the suitability of viewing material within the family home. By enabling restrictions on access to DVDs, videos and some video games to be relaxed as the child becomes older, the Act ensures that the guidelines recognise and respect the child’s right to receive information (Article 13). The Act also recognises the parents’ responsibility for the child’s upbringing and development (Article 18) by preserving their right to determine the suitability of material for viewing by their child at home.

OTHER MEASURES

Bookstart

4.74 Bookstart is a national programme that encourages all parents and carers to enjoy books with children from as early an age as possible. It is administered by an independent charity (Booktrust), and central funding is provided by the devolved administrations and the Department for Children, Schools and Families. Bookstart provides dual language books and guidance material. These are available in 28 languages.

ARTICLE 37 (A) - Prohibition of Torture, Inhuman or Degrading Treatment

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

LEGISLATION

4.75 Article 3 of the European Convention on Human Rights (ECHR), incorporated into domestic law through the Human Rights Act 1998, provides that ‘no one shall be subjected to torture or to inhuman or degrading treatment or punishment.’

4.76 The UK has signed the 6th protocol of the ECHR, and there is no death penalty for any crime in the UK.

4.77 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000, as amended provides for the possibility of release if a child or young person is sentenced to detention for life under section 91. Where a child is detained at Her Majesty's Pleasure for murder under section 90 of the Sentencing Act, a tariff will be set under Schedule 21 of the Criminal Justice Act 2003 (the CJA 2003), which also allows for the possibility of release.

Treatment under the Mental Health Act 1983

4.78 Treatment may be given, without consent, to most detained mental health patients, including children, under the direction of the approved clinician²³ in charge of the treatment for three months after the initial detention (section 63). After those three months, medication can only be given with the consent of the patient, or with the agreement of a second opinion from a doctor appointed by the Secretary of State (SOAD) (section 58), except in an emergency (section 62).

4.79 Certain forms of treatment are subject to special restrictions and additional safeguards for children. For example, except in an emergency, section 58A provides that electro-convulsive therapy (ECT) can only be given to an under 18, whether or not compulsorily detained, if:

- the child consents and a SOAD has certified he is capable of, and has given, consent and that the treatment is appropriate; or
- a SOAD certifies, in writing, that the child is not capable of understanding the treatment and its purpose but it is appropriate to give it. In this case, the SOAD must have consulted two other persons who have been professionally concerned with the child's treatment. These must not include their responsible clinician or the approved clinician in charge of the treatment.

4.80 It should be noted that where consent is required it is the consent of the child. If the child is capable of giving consent but does not do so, he cannot receive the treatment. There is guidance on the meaning of being "capable of consent" in the Code of Practice for the Mental Health Act, chapter 36²⁴.

²³ As defined in s.145 Mental Health Act 1983

²⁴ The Code is issued under s.118 of the Mental Health Act 1983. All persons to whom it is addressed must have regard to the Code (s.118(2D))

5. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

GENERAL OVERVIEW

- 5.1 The articles in this cluster give rights to every child to enjoy a supportive, nurturing home environment regardless of their circumstances and we should support parents in providing that home environment. But where it is not in the best interests of a child to remain with their family, the support provided by the State must be equally supportive of children and allow them to maintain contact with their family and friends consistent with their welfare.
- 5.2 We have in place a legislative framework which recognises the role of parents in bringing up their children. The Children Act 1989 which has been in place for nearly 20 years provide for a comprehensive framework of court orders dealing with contact, residence and the exercise of parental responsibility where parents separate and are unable to agree the arrangements for their children.
- 5.3 It is a key principle of the Act that children are best brought up by their families and local authorities are under a general duty to provide support for children and their families but where a child cannot remain with their family the State will step in and provide that care.
- 5.4 The court cannot make a care order placing a child in the care of a local authority unless it is satisfied that the threshold criteria set out in the Act are met - shortly that the child is suffering or likely to suffer significant harm which includes abuse and neglect - and the order is in the best interests of the child.
- 5.5 Other recent improvements to these rights and obligations are summarised below:
 - Family support is recognised as the biggest influence on the lives of children and DCSF have embarked on a radical programme which included the publication in January 2010 of Support for All, the Families and Relationships Green Paper.
 - The important role of both parents in the lives of their children has been recognised. Joint birth registration provisions in the Adoption and Children Act 2002 enable unmarried fathers to acquire parental responsibility by jointly registering the birth of their child. The Welfare Reform Act 2009 has now provided for mothers and fathers to register separately the birth of their child which means that those fathers will have parental responsibility for their children.
 - Children and Adoption Act 2006 strengthened the enforcement

provisions in relation to contact and DCSF has provided financial assistance for those directed by the court to attend activities which promote contact with a child.

- Improving outcomes for children in care and narrowing the gap between this group and those outside the care system has been a key priority as evidenced by the Care Matters agenda.
- Children Act 1989 makes provision for a complaints procedure for those affected by local authority decision making (including children) and the Adoption and Children Act 2002 imposed a duty on local authorities to make arrangements for the provision of advocacy services for such children.
- Children Act 1989 has recently been amended by the Children and Young Persons Act 2008 to enable local authorities to make cash payments to families supported by local authorities and strengthens the provisions for children in care. Key measures - strengthening the provisions in relation to placement particularly recognising the important role family and friends play and the need for stability in placements, strengthen the role of the independent reviewing officer and reviews and makes further provision in relation to short breaks for disabled children and in relation to independent visitors for looked after children and in relation to visiting children who are looked after and are then detained following a court order and for those in long term care. We are in the process of consulting on a new and comprehensive suite of regulations and guidance.
- The Adoption and Children Act 2002 reformed the law relating to adoption including application of the paramountcy principle and the provision of adoption support services. That Act also provides for special guardianship orders and the provision of special guardianship adoption support services.
- The Children Act 2004 strengthened the duties of local authorities in relation to private fostering and in 2008 the DCSF set up an expert advisory group to look at private fostering which will report in March of this year.

ARTICLE 5 - Parental Guidance

States Parties shall respect the responsibilities, rights and duties of parents

or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

LEGISLATION

Parental responsibility

What is parental responsibility?

5.6 Sections 2 to 6 of the Children Act 1989 make provision in relation to parental responsibility for children and for the appointment of guardians.

5.7 Section 3 of the Children Act 1989 defines “parental responsibility” and follows the recommendations of the Law Commission Report No 172 in 1988 (Family Law, Review of Child Law, Guardianship and Custody). Section 3 provides:

In this Act “parental responsibility” means all the rights, duties, powers, responsibilities and authority which, by law, a parent of a child has in relation to the child and his property.

5.8 Parental responsibility is the primary legal concept which establishes the link between a child and the person or persons who have authority to care for him and to take decisions concerning his upbringing.

5.9 Section 3(5) provides that a person who does not have parental responsibility for a child, but who has care of that child, may (subject to the provisions in the Children Act 1989) do what is reasonable for the purpose of safeguarding or promoting the child’s welfare.

Who has parental responsibility?

5.10 People with parental responsibility are as follows:

- parents married to each other at the time of a child’s birth (section 2(1))
- if the parents of a child were not married to each other when the child was born, the mother automatically has parental responsibility but the father does not unless he has acquired it (section 2(2)) either:
 - i) by jointly registering the birth with the mother (if the child was born on or after 1 December 2003) (section 4(1)(a));
 - ii) by entering into an agreement with the child’s mother that he will have parental responsibility (section 4(1) (b));
 - iii) by court order (section 4(1) (c));

iv) by marrying the mother of the child (see section 2 (3)).

- 5.11** This document sets out under Article 7 the new provisions for joint birth registration, which will enable unmarried mothers and fathers to register the birth of their child separately, subject to certain protections (although it is expected that, in most cases, unmarried parents will jointly register the child). The effect of registration under these provisions will be to give the father parental responsibility for his child. The mother will already have parental responsibility.
- 5.12** Where a father acquires parental responsibility under section 4(1) (as set out above), he only ceases to have that responsibility if the court so orders (section 4(2A)).
- 5.13** The Children Act 1989 was amended (new section 4A) by the Adoption and Children Act 2002 and by the Civil Partnership Act 2004 to provide for step-parents and civil partners to acquire parental responsibility by agreement or court order and the Human Fertilisation and Embryology Act 2008 (new section 4ZA) to make provision for the acquisition of parental responsibility by a second female parent.
- 5.14** A person, other than a child's natural parents, can also acquire parental responsibility through:
- being granted a residence order (section 8)
 - being granted a special guardianship order (section 14A)
 - being appointed a guardian (section 5).
- 5.15** A local authority will acquire parental responsibility if it obtains an emergency protection order or a care order in respect of a child.
- 5.16** More than one person can have parental responsibility at the same time. A person's parental responsibility does not cease when another person obtains parental responsibility. However, applications may be made to the court to restrict the exercise of parental responsibility (prohibited steps/specific issue orders made under section 8 of the Children Act 1989). Those who can make such applications are set out in section 10; others may make application with the permission of the court.
- 5.17** If two people have parental responsibility for the same child, they do not need to act together in meeting those needs, i.e. they do not need to consult each other on every issue, or obtain the other person's consent. The exception to this is if there is a specific enactment which requires more than one person to consent to something concerning a child, in which case they must obtain each other's consent and cannot act unilaterally (see section 2(7)).
- 5.18** A person cannot surrender or transfer, in a permanent manner, his parental responsibility for a child. However, if the person with parental

responsibility needs someone else to assist them in order to fulfil the requirements of parental responsibility, they may ask for assistance.

- 5.19** Where a child is looked after by a local authority (within the meaning of section 22(1) of the Children Act 1989), the authority, before making any decision with respect to the child, must, so far as is reasonably practicable, not only ascertain the wishes and feelings of the child, but also ascertain the wishes and feelings of their parents and any other person with parental responsibility. They must give these wishes and feelings due consideration (in the case of the child, having regard to their age and understanding) in making the decision (section 22 (4) and (5)). Such persons should also be involved in the review by the local authority of the child's case (this is set out in more detail below).
- 5.20** The law recognises the increasing autonomy of the child. For example, a person aged 16 can consent to medical treatment under section 8 of the Family Law Reform Act 1969. Case law also recognises the increasing competence of the child, for example, the concept of Gillick competence (for further discussion of this see Article 12). In *Mabon* [2005] EWCA Civ 634 a Court of Appeal case concerning representation of children in family proceedings recognised the growing autonomy and consequential rights of children both nationally and internationally.

Parental involvement in education

- 5.21** Section 537 of the Education Act 1996 provides the Secretary of State with the power to make regulations which require the governing body of a maintained or special school, or the proprietor of an independent school, to provide information about that school. Regulation 5 of the School Information (England) Regulations 2008 provides that, each year, LEAs must publish and make available a prospectus of all schools in their area. Regulation 10 provides that, each year, governing bodies must publish a school prospectus and make it available to parents and other persons on request.
- 5.22** Section 30A of the Education Act 2002 (as amended by the Education Act 2005) requires governing bodies of maintained schools to complete a School Profile, setting out: the DCSF performance data for the school; a summary of the latest Ofsted report; and narrative sections covering such issues as successes, goals for improvement, how the school makes sure every child gets teaching to meet their individual needs and is healthy, safe and well-supported, and how the school is working with parents and the community.
- 5.23** Section 408 of the Education Act 1996 provides a regulation-making power for the Secretary of State to require, in relation to maintained schools, that the local education authority (LEA), the governing body or the head teacher should make certain information available. Regulations 4 and 5 of the Education (Pupil Information) (England) Regulations 2005 provide that the governing body of a maintained school or special school

is under a duty to keep a record of every registered pupil (academic achievements, skills and abilities, and progress) and make it available to the pupil's parent within 15 days of their request. Regulation 6 provides that the head teacher is under an obligation to prepare a primarily academic annual report for each registered pupil at the school and to provide a copy to the parent or, in the case of a pupil over 18, to the pupil.

- 5.24** The Education (School Performance Information) (England) Regulations 2007 provide that governing bodies must provide LEAs or the Secretary of State with information regarding pupil performance in examinations. Schedule 27 of the Education Act 1996 provides that LEAs, before making a statement of special educational needs, are under a duty to provide parents with a copy of a proposed statement.
- 5.25** Under sections 110 and 111 of the SSFA 1998, the governing body is required to have in place a written home school agreement, which is drawn up in consultation with parents and pupils and reviewed from time to time.

Considering views of parents

- 5.26** The Secretary of State and LEAs have an overarching duty to have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents (section 9 of the Education Act 1996). Governing bodies of maintained schools must also have regard to any views expressed by parents of registered pupils under section 21(7) of the Education Act 2002. LEAs are also required, under section 14A of the Education Act 1996, to consider any representations made by parents about the LEA's exercise of its functions to secure the provision of sufficient schools for providing primary and secondary education in its area.
- 5.27** Parents are involved in the governance of all maintained schools. All maintained schools are required to have parent governors on the school's governing body (section 19 of the Education Act 2002 and the School Governance (Constitution) (England) Regulations 2007 and associated guidance). Certain maintained schools are also required to have a parent council (section 23A of the Education Act 2002 and the School Governance (Parent Council) (England) Regulations 2007).
- 5.28** In relation to SEN, there is a chapter in the SEN Code of Practice on working in partnership with parents. Parents are involved in the statementing process and reviews etc. They are invited to send information about their child's needs to the LA, and this is appended to the statement.

Parental responsiveness duty

- 5.29** In the Government's *White Paper 'Your child, your school, our future:*

building a 21st century schools system' (published 30 June 2009)²⁵, the Government sets out its vision for the role of the school, the role of parents and the local authority. It sets out a guarantee to parents, providing them with a clear statement of their entitlements at an individual level. The overriding policy aim is for parents to have a strong voice at all levels of the system and to have a clear legal mechanism to ensure that local authorities improve/make changes where school provision in their area is not satisfactory.

- 5.30 To help achieve this aim, clause 6 of the Children, Schools and Families Bill will place a new duty on local authorities to survey parents' views annually on the provision of schools in their area and to assess and publish a summary of the results. If the results demonstrate "material parental dissatisfaction" with the provision of schools in the area, the local authority will be under a duty to prepare and publish a "response plan". The plan will respond to the dissatisfaction expressed. Parents will be consulted on the contents of the plan and where their representations are not "sufficiently favourable", the local authority will have to refer the plan to the schools adjudicator.

Admissions

- 5.31 For children of compulsory school age the cornerstone of admissions policy is "parental preference", as it is presumed that parents will have the best interests of their children at heart when deciding on the most appropriate type of educational provision. Section 86 of the School Standards and Framework Act 1998 requires LEAs to enable parents to express a preference for which school they would like their child to attend and give reasons for that preference. Subsection (2) imposes a qualified duty on admission authorities for maintained schools to comply with any preferences expressed. LEAs are relieved of their duty to comply with parental preference where compliance would prejudice the provision of efficient education or the efficient use of resources, or if compliance would be incompatible with admission arrangements for the preferred school, which are wholly based on selection of all pupils by high ability or aptitude²⁶.
- 5.32 Subsection (1A) of section 86 (inserted by s42 of the Education and Inspections Act 2006) requires LEAs to provide parents with advice and assistance to help them express their preference for a school. (The Explanatory Notes to the 2006 Act states that advice and assistance includes providing parents with good, easy-to-understand information about schools in their area. This includes how the admission arrangements work and the level of priority their child will have for a place, whether the child will be entitled to school transport and how that will work if the child does not live within walking distance of the school, and whether the school has any special features that may be of interest

²⁵ http://publications.dcsf.gov.uk/eOrderingDownload/21st_Century_Schools.pdf

²⁶ Section 86 does not generally apply to nursery schools or special schools or children under compulsory school age or having sections of special educational needs: see s98.

to the parent. It may also include the development of “choice advisors” to provide practical support to parents most likely to need extra help to make an informed choice.)

Religious and sex education

- 5.33** See commentary under Article 14 regarding the right of withdrawal from RE.
- 5.34** Sex education is required to be taught in maintained secondary schools as part of the basic curriculum (section 80 of the Education Act 2002). By virtue of section 405 of the Education Act 1996, the parent of a pupil at such a school may request that the pupil be excused from receiving sex education and, in such a case, the pupil will be excused from sex education except when that education is part of the National Curriculum.
- 5.35** Amendments are made to the Education Act 2002 by the Children, Schools and Families Bill, which is currently before Parliament, to make personal, social, health and economic education, which includes sex and relationships education, compulsory for children aged 11 to 16 in maintained schools, academies, city technology colleges and city colleges for the technology of the arts. Understanding physical development, health and wellbeing would become compulsory for children aged five to 11 in maintained schools. Section 405 of the 1996 Act is amended so that the parent of a pupil under the age of 15 may request that the pupil be excused from receiving sex and relationships education (whether that education is provided as part of “understanding physical development, etc” or as part of personal, social, health and economic education) and the pupil is required to be so excused until the request is withdrawn or the pupil attains the age of 15. The right of withdrawal does not extend to a right for the pupil to be withdrawn from the study of human reproduction in science.

ARTICLE 9 - Separation from Parents

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

Such determination may be necessary in a particular case, such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both

parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family, unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall, of itself, entail no adverse consequences for the person(s) concerned.

LEGISLATION

Article 9(1)

- 5.36** It is a key principle of the Children Act 1989 that children are best brought up by their families. There are duties on the local authority to support children and families under Part 3 of that Act, but once child protection (which includes cases of neglect, as well as cases of abuse) is an issue, the local authority has a duty under section 47 to investigate and decide whether they should take any action to safeguard or promote the child's welfare, such as applying for an emergency protection order/care order under that Act. The Children Act Statutory Guidance on Court Orders (issued to local authorities under section 7 of the Local Authority Social Services Act) was revised and reissued in April 2008.
- 5.37** A court may only make a care order if it is satisfied the threshold criteria set out in section 31(2) are met and that making the order is in the best interests of the child (section 1 applies, so the child's welfare is paramount). The court must also have regard to the welfare checklist set out in section 1(3). The no-order principle applies – that is, the court cannot make a care order unless it is satisfied that doing so would be better for the child than not making an order. Removing a child from their family is a fundamental interference in family life and the application of that criteria must be ECHR Article 8 compliant. An application may be made for the discharge of a care order by the child, the local authority and any person having parental responsibility for the child. Local authorities are required to consider at the statutory reviews for a looked-after child whether to apply for the discharge of any care order. There is a provision for appeals in relation to care orders, including interim care orders.
- 5.38** If an application for a care order is made and the proceedings adjourned, the court may make an interim care order if it is satisfied that there are reasonable grounds for believing that the threshold criteria are met and an interim care order is in the best interests of the child. An interim care order may be in place for some time before a full care order is made. Often, the court will want further assessments to be carried out before

making a full care order. The court will also want to be satisfied about the local authority's long-term care plan for the child before making a full care order. Once a full care order is made, the court has no further role unless an application is made to discharge the care order.

- 5.39** The court must be satisfied that the threshold criteria are met. The threshold criteria are: that the child is suffering, or likely to suffer, significant harm and that is attributable to the care given to the child, or likely to be given to the child, if the order was not made, not being what it would be reasonable to expect a parent to give to that child.
- 5.40** The effect of a care order/interim care order is that the child is placed in the care of the local authority. The local authority has parental responsibility for the child. The parent continues to have parental responsibility, but the local authority determines the extent to which the parent can be involved in the child's upbringing (section 33(3)).
- 5.41** A child who is subject to a care order is a looked-after child and the duties on the local authority under the Children Act 1989 apply. Particularly under section 22, the local authority must safeguard and promote the child's welfare and this includes promoting their educational achievement. They must then decide, in accordance with the statutory framework, with whom the child should be placed. The provisions in the Children Act 1989 relating to placement of looked-after children have been amended by the Children and Young Persons Act 2008, but those provisions are not yet in force. New care planning, placement and review of cases, and statutory guidance are currently out for consultation.
- 5.42** Other orders available under the Children Act 1989 include emergency protection orders and supervision orders.
- 5.43** Where there is a dispute between parents after separation about who their child should live with, then an application may be made by either parent (including a father who does not have parental responsibility) for a residence order under section 8 of the Children Act 1989. A residence order is an order settling the arrangements to be made as to the person a child is to live with. The court may make a shared residence order. The welfare of the child is the paramount consideration - section 1(1) applies, as does the welfare checklist (section 1(3)) and the no-order principle (section 1(5)). Applications may be made to vary/discharge section 8 orders and provision is made for appeals.

Detention in hospital under mental health legislation

- 5.44** A child can only be taken away and detained in a mental hospital if the child meets the conditions set out in the Mental Health Act 1983 which, broadly speaking, require that the detention be justified in the interests of the child's health or safety, or for the protection of others. Although the conditions are not expressed in terms of the child's best interests, read

with the “purpose” principle in the Code of Practice²⁷ it is clear that the interests of the child are at the heart of these conditions. A child suffering from a mental disorder, who puts the safety of others at risk, has his best interests served by providing the care and treatment that he needs. Similar issues have been considered in relation to secure accommodation under the Children Act 1989.

5.45 A child can also be admitted to hospital as a voluntary patient (section 131). A child who has capacity (within the meaning of the Mental Capacity Act 2005²⁸) and is 16 or more can only be a voluntary patient if they consent. A younger child may, sometimes, be admitted as a voluntary patient on the basis of a parent’s consent, but Chapter 36.43 of the Code of Practice suggests that reliance should not be placed on the consent of a parent where the child is Gillick-competent and is objecting. Even where a child is assessed as not being able to make a particular decision, Chapter 36.47 advises that their views should still be obtained and taken into account.

Article 9(2)

5.46 The Family Proceedings Rules provide (in relation to applications under the Children Act 1989) who has party status and who may participate in proceedings. For example, where there are proceedings to take a child into care, the child and any person with parental responsibility have party status. The court may also direct that other persons may be joined in the proceedings. In addition, section 41 provides that the court must appoint a CAFCASS officer for the child concerned, unless it is satisfied that it is not necessary to do so to safeguard their interests. The CAFCASS officer is under a duty to safeguard the interests of the child in the manner set out in the rules of court. If there is no CAFCASS officer, then the court may appoint a solicitor, if this is in the child’s best interests and the child is able, and wishes, to instruct a solicitor (see Mabon case referred to earlier).

Article 9(3)

5.47 Where a child is looked-after (see section 22 (1) of the Children Act 1989), the local authority has a duty under Schedule 2 paragraph 15, unless it is not reasonably practicable or consistent with the child’s welfare, to promote contact between the child and their family. Section 34 applies to children in care and imposes a duty on the local authority to allow reasonable contact with the child’s parents and others. Applications can be made under section 34 for contact orders. There is statutory guidance (section 7 of the Local Authority Social Services Act 1970) in relation to contact and looked-after children.

²⁷ The Code is issued under s.118 of the Mental Health Act 1983. All persons to whom it is addressed must have regard to the Code (s.118 (2D)).

²⁸ The Mental Capacity Act in general only applies to persons of 16 or over

- 5.48** Section 26 of the Adoption and Children Act 2002 makes free-standing provision for contact where a child is authorised to be placed for adoption or is less than six-weeks old and is placed. The provisions in the Children Act 1989 do not apply but that section enables applications to be made for contact orders by the child, their parents and others. When making a placement order under section 22 of the 2002 Act, the court may make a contact order on its own initiative. And, before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child (see section 46(6)).
- 5.49** In court proceedings for divorce, judicial separation or nullity of marriage, the court must consider (section 41 Matrimonial Causes Act 1973, England and Wales) whether the arrangements for any children of the family made or proposed mean the court should exercise any of its Children Act 1989 powers with respect to any of them. Under section 8, a non-resident parent may apply to the court for a contact order (an order requiring the person with whom the child lives to allow the child to visit or stay with the person named in the order, or for that person and the child to otherwise have contact with each other). Section 1 of the Children Act applies, so the welfare of the child is paramount. The courts have recognised that, where the parents are separated, it is almost always in the interests of the child to maintain contact with both parents. In such cases, the court may ask CAFCASS to provide a welfare report in relation to the child.
- 5.50** Part of the Children and Adoption Act 2006, which was implemented on 8 December 2008, amended the Children Act 1989 to provide the courts with more powers to facilitate and resolve contact disputes between parents, with the aim of avoiding the need for enforcement action later on. These provisions enable the court to direct any party in the proceedings to undertake a 'contact activity', such as attending information sessions about mediation, parenting information programmes or classes to help parents make child-focused arrangements, or other activities that can assist in dealing with a contact dispute.
- 5.51** The courts can, if they consider it appropriate, ask a CAFCASS officer to monitor compliance with a contact activity direction and/or an order for contact or compliance, with any conditions attached to that order. Any contact order made (or varied) after 8 December 2008 will have a "warning notice" attached about the possible consequences of breaching it.
- 5.52** Where a contact order has been breached by either parent without reasonable excuse, there are provisions in the Act to enforce the order, enabling the courts to impose unpaid work on the person who breaches it. Either parent can, therefore, apply to the court under Section 11J of the Children Act 1989 to enforce the contact order if it has been breached. There are also provisions to enable the court to award compensation for financial loss from one person to another, for example,

where the cost of a holiday has been lost as the result of a failure to comply with a contact order. These provisions are in addition to the existing powers to treat the breach of a contact order as a contempt of court.

Article 9(4)

5.53 Whether or not the family is told where a looked after child is placed will depend on whether there is a risk to the child.

5.54 Where a parent is detained and a child wishes to know the whereabouts of the parent, the National Offender Management Service operates a Prisoner Location Service (PLS), which deals with enquiries from individuals and others who are trying to trace the whereabouts of a detained prisoner. More information on the operation of the PLS can be found on the HM Prison Service website. Where a prisoner is considered to pose a risk to children, then statutory guidance on the issues to be considered when facilitating contact between prisoners and children is issued to governors of prisons in Chapter 2, Section 2 of the Public Protection Manual. The over-riding principle in relation to such contact is that the child's welfare is paramount.

ARTICLE 10 - Entering or Leaving Country for Family Reunification

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

LEGISLATION

5.55 The Immigration Rules provide a comprehensive regulation of entry into the UK. There are various routes of 'managed migration' into the UK for children and parents visiting children:

- Child visitors – paragraph 46A
- Parent visitors of a child at school – paragraphs 56A
- Children of teachers and language assistants – paragraphs 125-127
- Children of persons with indefinite leave to remain under paragraphs 128-193 and paragraphs 197-199
- Children of persons with leave to remain under paragraphs 200-239 and paragraphs 243-245
- Tier 4 (child students) paragraphs 245ZZ-245ZZD
- People exercising right of access to a child resident in the UK – paragraphs 246-248F
- Children of a parent, parents or relatives settled or seeking settlement in the UK (HM Forces) – paragraphs 276X-277AG
- Children of armed forces members who are exempt –276AG-276AI
- Children seeking settlement – paragraphs 296-316F

5.56 All routes have very slightly different requirements however they all require the ability to maintain and accommodate the applicant without recourse to public funds and require that the child must not be married and living an independent life. The only exception is 276X-277AG, which doesn't carry a maintenance and accommodation requirement.

5.57 The child visitor route (46A) has an added requirement that the applicant or sponsor must demonstrate that suitable arrangements have been made for the travel, reception and care of the child entering the UK, in accordance with UKBA guidance. This route further requires the consent of the parent to those arrangements.

5.58 Paragraphs 352D-352F and 352FG-352FI of the Rules provide criteria under which leave to enter or remain in the UK will be granted to a child who is seeking to join, or remain with, a parent who has been granted asylum or (on or after 30 August 2005) granted humanitarian protection in the UK. This is known as "family reunion". A key feature is that, for leave to be granted, it is not necessary for the parent to be able to maintain and accommodate the child without recourse to public funds.

5.59 The family reunion paragraphs in the immigration rules do not provide for leave to be granted to a parent applying to join or remain with a child who has been granted asylum or humanitarian protection. However, the Secretary of State's policy may allow such leave to be granted in compelling compassionate circumstances.

ARTICLE 11 - Illicit Transfer and Non-Return of Children

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

LEGISLATION

- 5.60 The UK is a Contracting State to the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the 1980 European (Council of Europe) Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children, the main provisions of both being incorporated into UK law in the Child Abduction and Custody Act 1985. The UK participates fully in Hague Conference consideration of the 1980 Hague Convention. The UK works at ministerial, judicial and official level to promote the effective operation of the Convention and to encourage other countries to become contracting states. This includes participation in the Malta Process with Islamic states under the auspices of the Hague Conference, and bilateral work with, in particular, Pakistan and Egypt.
- 5.61 The UK is also bound by the Council Regulation (EC) No 2201/2003, which includes provisions on international child abduction between member states.
- 5.62 Within the UK, work is carried out at official level to improve public and official knowledge of how to prevent international parental child abduction.

ARTICLE 18 - Parents' Joint Responsibilities

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

LEGISLATION

- 5.63 Who has parental responsibility for a child and what that means was discussed under Article 5.
- 5.64 Under section 10(3) of the Children Act 2004, when a local authority in England is setting up its Children's Trust arrangements to cooperate with other partners to improve the wellbeing of children, it must have regard to the importance of parents and other persons caring for children in improving the wellbeing of children.

Maternity leave and pay

- 5.65** Employed mothers are entitled to 52 weeks' maternity leave, 39 weeks of which are paid. Statutory Maternity Pay (SMP) is paid at 90% of the woman's average earnings for the first six weeks and then at a standard rate (£123.06 per week in 2009/10) for 33 weeks. There are employment and qualifying conditions attached to SMP. Working mothers who do not qualify for SMP will usually receive Maternity Allowance which is paid at the standard rate (£123.06 per week in 2009/10) for 39 weeks.
- 5.66** Rights to maternity leave are set out in sections 71-75 of the Employment Rights Act 1996 (ERA) and the Maternity and Parental Leave etc. Regulations 1999.
- 5.67** Rights to SMP are set out in sections 164-171 of the Social Security Contributions and Benefits Act 1992 (SSCBA) and the Statutory Maternity Pay (General) Regulations 1986.
- 5.68** Rights to maternity allowance are set out in the Social Security Act 1975 and the Social Security (Maternity Allowance) Regulations 1987.

Ordinary Paternity leave and pay

- 5.69** Employed fathers who have completed the relevant qualifying service are able to take one or two weeks' statutory paternity leave. If they also meet earnings requirement, they will be entitled to two weeks' Statutory Paternity Pay, paid at a standard rate (£123.06 per week in 2009/10). Paternity leave and pay also apply when a child is placed for adoption.
- 5.70** Rights to paternity leave are set out in sections 80A to 80BB and the Paternity and Adoption Leave Regulations 2002.
- 5.71** Rights to ordinary paternity pay are set out in sections 171ZA to 171ZD of the SSCBA and the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002.

Adoption leave and pay

- 5.72** Employed adopters who have completed the relevant qualifying service are able to take 52 weeks' adoption leave with 39 weeks' Statutory Adoption Pay (SAP), along the same lines as maternity leave and pay. SAP is paid for 39 weeks at a standard rate (£123.06 per week in 2009/10).
- 5.73** Rights to adoption leave are set out in sections 75A to 75D of Employment Rights Act (ERA) and the Paternity and Adoption Leave Regulations 2002.

5.74 Rights to Statutory Adoption Pay are set out in sections 171ZL to 171ZP of the SSCBA and the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002.

Parental leave

5.75 Employed parents have a right to 13 weeks' unpaid leave to be taken up to their child's fifth birthday. Parents of disabled children are able to take 18 weeks' leave up to their child's 18th birthday.

5.76 Rights to parental leave are set out in sections 76 to 80 of ERA and the Maternity and Parental Leave etc. Regulations 1999.

Time off for dependants

5.77 Employees have a right to a reasonable amount of unpaid time off to deal with certain family emergencies involving dependants. Rights are set out in section 57A of ERA.

Right to request flexible working

5.78 Employed parents of children aged 16 and under, parents of disabled children under 18 and carers of adults have a right to request a flexible working arrangement. Their employer must seriously consider the request and may only refuse on set business grounds.

5.79 The right to request flexible working is set out in section 80F to 80I of ERA, the Flexible Working (Procedural Requirements) Regulations 2002 and the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002.

Additional paternity leave and pay

5.80 Subject to parliamentary procedure, the Government intends to introduce Additional Paternity Leave and Pay for parents of babies due on or after 3 April 2011. This will enable a father to take leave in the child's second six months if the mother returns to work. The father will be able to receive pay if there is any of the mother's maternity pay period remaining. This will be paid at the same standard rate as Statutory Maternity Pay.

5.81 Rights to Additional Paternity Leave are set out in set out in s80AA and 80BB (to be commenced from 6 April 2010) and in Statutory Instruments to be introduced in 2010.

5.82 Rights to Additional Statutory Paternity Pay are set out in s171ZEA – 171ZEE SSCBA (to be commenced from 6 April 2010) and in Statutory Instruments to be introduced in 2010.

OTHER MEASURES

- 5.83 Parents' influence is the single most important factor in shaping their children's attainment, their health and wellbeing, as well as social and cultural development.
- 5.84 The Government is committed to making sure families can access high quality local information services which make it easy for them to find and access the services they need.
- 5.85 Each local area now has a Families Information Service (FIS), providing impartial information and advice about locally-available childcare and other services which may help mums, dads, grandparents and others looking after children. Family Information Direct, (formerly Parent Know How) continues to support mums, dads, grandparents and other adults responsible for a wide variety of adults involved with bringing up children and not restricted to parents alone. This programme is transforming the quality, choice, provision and awareness of parental information and support available to parents and families to help improve outcomes for children and young people.
- 5.86 With support from the DCSF, the National Association of Family Information Services (NAFIS) has developed the Families First awards quality scheme, which provides national standards for local delivery of information to parents and carers.
- 5.87 The Government's parental engagement in learning strategy was embedded within The *Children's Plan: Progress Report*, published in December 2008. This work aims to help parents understand what more they can do with their children to support the learning going on at school, and to develop best practice guidance for schools, professionals and other organisations on working with parents and families (including fathers, family breakdown, and engagement with teaching and learning).
- 5.88 Going further, the White Paper *Your child, your schools, our future: building a 21st century schools system* outlined plans to legislate to strengthen Home School Agreements (HSAs) to make clear the specific responsibilities of parents, schools and children. The introduction of a Parent Guarantee will ensure that all parents can have a consistent expectation of the services and support they will receive from their child's school. These commitments are being fulfilled through the introduction of the Children, Schools and Families Bill on 19 November 2009.
- 5.89 Parent Support Advisors (PSAs) work with parents, in a schools context, to help improve behaviour and attendance, overcome barriers to learning and increase the number of parents involved in their child's education, both at school and at home. So far, there are over 4,000 PSAs, family link workers and equivalent roles in post.

- 5.90** Sure Start Children's Centres are a universal service and support children under the age of five and their families, providing easy access to health services, including ante-natal and post-natal advice, and advice and support for parents and families. The offer drop-in sessions, outreach services, integrated early education and childcare, and links to training and employment opportunities. The Government is on track to meet its target for at least 3,500 children's centres by March 2010.
- 5.91** Further support to families experiencing multiple disadvantages is provided through the national roll-out of Think Family. Think Family practice ensures that children's, adult and family services are focussed on improving outcomes for children, young people and families by providing a coordinated response to families with additional needs. Since April 2009, all local authorities have received funding to support these reforms and introduce targeted services for parents and families. As part of this programme, targeted parenting support is being offered by Parenting Experts and through the Parenting Early Intervention Programme. For families with the most complex problems Family Intervention Projects (FIPs) are being introduced in every local authority using whole-family intensive support. These projects deliver a multi-agency support package, led by a key worker, which addresses the needs of the whole family. The projects provide help with parenting, life skills, housing, mental health, drug and alcohol problems and getting children back into school.

ARTICLE 19 - Protection from Violence

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

LEGISLATION

Corporal punishment

- 5.92** Section 58 of the Children Act 2004 strengthened the protection of children in relation to smacking by limiting the use of the defence of reasonable punishment, so that it could no longer be used when people are charged with offences against a child, such as causing actual bodily harm or cruelty.

- 5.93 Amendments to the Charging Standard acknowledge the additional vulnerability of children. Parents who cause injuries to a child, such as grazes, scratches, abrasions, bruising and superficial cuts risk being charged with actual bodily harm which carries a maximum of five years' imprisonment.
- 5.94 The Government does not condone smacking. We want to progress to the point where smacking is seen as unacceptable by the vast majority of parents. Our approach is to provide parents with positive support and guidance to help them manage their children's behaviour more effectively, without smacking. This works with parents and not against them.
- 5.95 As part of this approach, in August 2009 in conjunction with Parent Know How partners, the Government published a booklet, intended for parents, which includes information about the law on smacking and actively discourages the practice. The booklet, Being a Parent in the Real World, is now being widely distributed.
- 5.96 We set out in the table below the position in relation to corporal punishment in other settings.

Setting/person	Ban/effect	Legislation	Extent
Schools ²⁹ ; education provided under arrangement by LEA; nursery provision by or arranged by local authority	Corporal punishment given to a child by staff cannot be justified in any proceedings – i.e. teacher or any other worker who has lawful charge of a child cannot use reasonable punishment defence	s548 Education Act 1996	England and Wales (though definitions slightly different)
Further Education	Member of staff may use reasonable force to prevent a student committing an offence, causing personal injury or damage to property, or to maintain order and discipline, but this does not permit corporal punishment. <u>NB No explicit ban</u>	s85C Further and Higher Education Act 1992	England only

²⁹ Section 92 of the Education and Skills Act 2008 refines the definition to comprise (i) schools (ii) independent schools and (iii) other institutions that provide education to one or more persons of compulsory schools age for at least 12.5 hours a week for at least 28 weeks if person is under the age of 12, or for at least 15 hours a week for at least 28 weeks if person is aged 12 or over. This refined definition is not yet in force.

Private nursery, childminders etc.	<p>Registered early years providers must not use corporal punishment on a child and, so far as is reasonably practicable, must ensure that corporal punishment is not used on any such child by (a) any person who cares for, or is in regular contact with, children or (b) any person living or working on the premises on which the early years provision is provided. Breach is an offence by the registered provider; HMCI takes proceedings, though provider has opportunity to make representations.</p> <p>Same restriction applies to later years providers (age 5-8). Breach is an offence by the registered provider. [CPS prosecution]</p> <p>Same restriction also applies to childminders (early years and later years, including 8+) who are voluntarily registered. HMCI takes breach into account (e.g. for deregistration; incentives to be registered are (i) reassurance to parents and (ii) can accept childcare vouchers)</p>	<p>Early Years Foundation Stage (Welfare Requirements) Regulations 2007</p> <p>Childcare (General Childcare Register) Regulations 2008</p>	England
Foster parent	Fostering service provider must take all reasonable steps to ensure that no form of corporal punishment is used on any child placed with a foster parent; foster care agreement must specify that foster parent is not to administer corporal punishment.	Regulation 13, Regulation 28 and Schedule 5, of the Fostering Services Regulations 2002	England
Children's homes	Corporal punishment is prohibited in children's	Regulation 17(5)	England

	homes	Children's Homes Regulations 2001	
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Safeguarding Vulnerable Groups Act 2006

- 5.97** The Safeguarding Vulnerable Groups Act 2006 reforms arrangements for safeguarding children and vulnerable adults from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. The new arrangements it introduces include barring and referral arrangements which, from October 2009, broadly replaced those provided for under the Protection of Children Act 1999, the Care Standards Act 2000, the Criminal Justice and Court Services Act 2000 and the Education Act 2002.
- 5.98** The Act also introduces a new vetting scheme which, in general, requires individuals engaging in work with children or vulnerable adults (or other types of work that provides them with the opportunity for frequent contact with vulnerable groups) to apply to be subject to continuous monitoring.

Schools

- 5.99** Section 89 of the Education and Inspections Act 2006 provides that head teachers of maintained schools and pupil referral units must determine measures to be taken with a view to: promoting, among pupils, self-discipline and proper regard for authority; encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils; securing that the standard of behaviour of pupils is acceptable; securing that pupils complete any tasks reasonably assigned to them in connection with their education; and otherwise regulating the conduct of pupils. These measures, which must include the making of rules and provision for disciplinary penalties, are set out in the school's behaviour policy. There is an obligation to draw this to the attention of pupils, staff and parents at least once within every school year to ensure that pupils who are being bullied know how to seek help, and to provide transparency in relation to disciplinary sanctions adopted by the school.
- 5.100** Section 93 of the 2006 Act enables school staff to use such force as is reasonable in the circumstances for the purpose of preventing a pupil from: committing any offence; causing personal injury to, or damage to the property of, any person (including the pupil himself); or prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise. Members of staff may also use reasonable force in conducting searches for weapons and other prohibited items. However, use of unreasonable force would constitute an assault. Also, section 246 of the Apprenticeships, Skills, Children and Learning Act 2009

introduces a requirement that there must be a procedure in place ensuring that incidents where significant force is used on a pupil must be notified to their parents or to the local authority. Section 548 of the Education Act 1996 (above) provides that corporal punishment cannot be used as a defence in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff to impose a disciplinary penalty on a pupil.

Laws relating to domestic violence

5.101 As part of the violence against women strategy, the Government is creating domestic violence protection orders in clauses 21 to 30 of the Crime and Security Bill. This will provide the police with the power to issue an alleged perpetrator of an offence relating to domestic violence with a Domestic Violence Protection Notice, requiring the perpetrator to vacate the premises of the victim and not to contact the victim. The notice must be heard by a magistrates' court within 48 hours, whereupon, a domestic violence protection order can be made, lasting for up to 28 days. This is intended to allow the victim time to decide what to do and, if necessary, to take steps to protect themselves and any children living in the house, e.g. by applying for a non-molestation or occupation order.

ARTICLE 20 - Children Deprived of Family Environment

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall, in accordance with their national laws, ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

LEGISLATION

5.102 Section 20 of the Children Act 1989 imposes a duty on local authorities to provide accommodation for any child in need in their area who appears, to them, to require accommodation because there is no one with parental responsibility for them, or they are lost, or have been abandoned, or the person who has been caring for them is prevented (in the short or longer-term) from providing the child with suitable accommodation. A child will be voluntarily accommodated under these provisions but, in some cases, the local authority will need to take action

under the Act to apply for a care order.

5.103 Where the child is looked-after, within the meaning of section 22(1), the local authority is under a duty to provide that child with accommodation and to maintain them. Section 23 provides that the authority may place the child with a family, or relative, or any other suitable person, in a children's home, or make other arrangements for providing the child with accommodation. There is a suite of regulations made under the Children Act governing the arrangements for placing children, and statutory guidance has been issued to local authorities. These provisions have been amended by the Children and Young Persons Act 2008, particularly the placement duties on the local authority.

5.104 Section 22C (inserted by the Children and Young Persons Act) applies in relation to looked-after children. It requires that, where a local authority is looking after a child, provided it is consistent with the child's welfare and is reasonably practicable, it must make arrangements for the child to live with a person who is: (a) the child's parent, (b) someone who has parental responsibility for the child, or (c) where a residence order was in force immediately before the child became the subject of a care order, the person in whose favour the residence order was made.

5.105 Only where the local authority is unable to make such an arrangement does it go on to consider a placement under section 22C(5), such as with a foster parent (who may be a relative, friend or other person connected with the child) or in a children's home. The DCSF is currently consulting on new Care Planning, Placement and Case Review Regulations and new draft statutory guidance.

5.106 Section 22(2) provides that where a local authority is looking after a child, it must safeguard and promote his welfare (and that includes promoting the child's educational achievement). All schools must now have a designated teacher for looked-after children (section 20 of the Children and Young Persons Act 2008) and there is statutory guidance to local authorities on this duty, issued under section 7 of the Local Authority Social Services Act 1970. Section 22(4) requires that, before making any decision about a child who it is looking after, or proposing to look after, the local authority must, so far as is reasonably practicable, ascertain the wishes and feelings of the child. Subsection (5) requires that, in making any such decision, the local authority must give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain. Section 22(5) (c) provides that the local authority must also give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

Children's homes

5.107 The Children's Homes Regulations 2001 (the Regulations) are made under the Care Standards Act 2000. They provide a comprehensive

regulatory scheme for the operation of children's homes. Under regulation 4, each home must provide a 'statement of purpose' and a children's guide to the home, which covers matters set out in Schedule 1 to the Regulations. This must be provided to any child accommodated in the home, and his or her parents.

5.108 Part III of the Regulations makes detailed provision about the conduct of the home, in particular as to child protection, welfare, health, education and religious observance, arrangements for contact and visitors, the management of behaviour, and the use of surveillance devices. Provision is also made about the staffing of homes and the fitness of workers, and about complaints, record-keeping and notification of significant events.

5.109 Regulation 41 provides that a breach of the Regulations may found an offence on the part of the registered person carrying on the children's home.

Private fostering

5.110 Section 67 of the Children Act 1989 requires local authorities to satisfy themselves that the welfare of privately-fostered children in their area is safeguarded and promoted. Local authorities also have powers to impose requirements on arrangements, or to prohibit them altogether. The Children Act 2004 amended the 1989 Act to ensure that the local authority's responsibilities extend not only to those children who are privately-fostered, but also to those who are proposed to be privately-fostered.

5.111 Section 67 gives the Secretary of State the power to make regulations about visits by the local authority to privately-fostered children. The regulations may say what local authorities have to do when they are told that a child is going to be privately-fostered, or when they are told that a child is being privately-fostered. Accordingly, the Children (Private Arrangements for Fostering) Regulations 2005, made under section 67, set out the detail underpinning the current notification scheme.

5.112 Notification to the local authority by the proposed private foster carer has to be given at least six weeks before the private-fostering arrangement begins. Notification must be made immediately, where the arrangement is to begin within six weeks. Other persons who are required to give notification under regulation 3 must do so as soon as possible after the arrangement has been made, or as soon as possible after they become aware of the arrangement. Schedule 1 of the 2005 Regulations sets out the information which must be included alongside the notification

5.113 Once the local authority receives the notification, regulation 4 requires that it should arrange for an officer of the local authority to visit the place where the child will live and to speak to the proposed private foster carer,

members of the household, the child and others. The officer must establish such matters, listed in Schedule 2, as appear relevant to the officer. The officer then has to make a written report to the local authority.

ARTICLE 21 - Adoption

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot, in any suitable manner, be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

LEGISLATION

5.114 The Adoption and Children Act 2002 reformed the law relating to adoption. Only adoption agencies - local authorities and registered adoption societies - may make arrangements for adoption. It is a criminal offence for others to make arrangements for adoption. Registered adoption societies must be voluntary non-profit making organisations and are regulated under the Care Standards Act and the 2002 Act.

5.115 Section 1 of the 2002 Act provides that the paramount consideration of the court or an adoption agency must be the child's welfare throughout his life. Section 1(4) provides for a welfare checklist similar to that in section 1(3) of the Children Act. In placing a child for adoption, an adoption agency must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background (section 1(5)). The court and the adoption agency must always consider the

whole range of options available to them in the child's case.

5.116 A child may only be placed for adoption if the parents consent (and that consent must be witnessed independently by CAFCASS officers), or the local authority obtains a placement order from the court which authorises the local authority to place the child. The adoption agency must be satisfied that the child ought to be placed for adoption (section 18 of the 2002 Act). The application for a final adoption order can only be made once the prospective adopters have had the child living with them for at least 10 weeks before the application is made. An adoption order may only be made if the conditions set out in section 47 of the 2002 Act are satisfied.

5.117 Adoption agencies must comply with the Adoption Agencies Regulations 2005 which govern the process in relation to adoption, particularly: the process leading to the decision that a child should be placed for adoption (which includes a detailed assessment of all relevant and pertinent information); the approval of prospective adopters; and the matching of a child with prospective adopters and monitoring the placement.

Inter-country adoption

5.118 The legislative framework for adoption allows for inter-country adoption to be considered as an alternative to domestic adoption, where this is in the child's best interests, which is in accordance with Article 21(b). Under section 85 of the Adoption and Children Act 2002, a child who is habitually resident in the UK may be taken abroad for the purposes of adoption, providing that requirements are provided for. Similarly, section 83 of the 2002 Act provides that a child who is resident outside of the British Islands may be brought into the UK for the purpose of adoption, or subsequent to an overseas adoption, if certain requirements are fulfilled. The UK has ratified and implemented the 1993 Hague Convention on inter-country adoption, which recognises that inter-country adoption can be considered as an alternative to domestic adoption.

5.119 The requirements to be fulfilled before a child from the UK can be adopted abroad, or a child from the outside the UK can be brought to the UK to be adopted, or subsequent to being adopted abroad, are set out in the Adoptions with a Foreign Element Regulations 2005 (the FERs). In respect of children being brought into the UK, there is a requirement for the prospective adopters to be assessed and approved as suitable to adopt by a UK adoption agency. The assessment process is conducted in accordance with the Adoption Agencies Regulations 2005, which also apply to UK domestic adoptions. Where children are being placed outside of the UK for adoption, the adoption agency must confirm that it has complied with Part 3 of the Adoption Agencies Regulations (which require the agency to prepare a permanence report for the child and to make a decision on whether adoption is appropriate for the child, as they would for UK domestic adoptions), before the court will grant an order for

Parental Responsibility to the prospective adopters. These provisions ensure that the child enjoys the safeguards and standards that are equivalent to those for domestic adoptions, in accordance with Article 21(c).

5.120 The FERs also give effect in domestic law to the 1993 Hague Convention and, therefore, ensure that where a child is being adopted from, or is to be adopted in, another Hague Convention country, the child is afforded the protection provided under the Hague Convention.

ARTICLE 25 - Right to Periodic Review of Treatment

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

LEGISLATION

Children in care

5.121 The Children Act 1989 statutory framework currently provides that every child who is looked-after must have a periodic case review and that an Independent Reviewing Officer (IRO) should be appointed for each child (see section 26(2) (A) to (C) of the Children Act 1989 and the Review of Children's Cases Regulations 1991).

5.122 The new Care Planning, Placement and Case Review (England) Regulations 2010 are out for consultation and will consolidate provisions requiring local authorities to ensure that a care plan is in place for every looked-after child. A care plan must set out the local authority's plan for the future care of the child, including assessments of the child's health and educational needs, and Part 6 of the Regulations will require the local authority to review the child's case at regular intervals.

5.123 The role of the IRO appointed to the child's case by the local authority has been extended by sections 25A-25C of the Children Act (inserted by the Children and Young Persons Act 2008, although not yet in force). The IRO will attend, and usually chair, review meetings and will be required to discuss the matters to be considered at the review with the child (subject to the child's ability to understand). The IRO has a role in monitoring the local authority's performance of its functions in relation to a child's case. If the IRO considers that the local authority is failing in its duties toward a child, he may refer the child's case to CAFCASS under section 25B(3) of the Children Act 1989 (inserted by the Children and Young Persons Act).

Mental health

- 5.124 Detention under mental health legislation is always for a maximum period, after which the patient must be discharged unless the detention is renewed. Detention for assessment under section 2 of the Mental Health Act 1983 (MHA) is for a period of up to 28 days. Detention under section 3 of the MHA for treatment is for an initial period of up to six months. At the end of the period, the patient's responsible clinician must decide, in accordance with section 20, whether the patient continues to meet the criteria for detention. If they think the patient does, they must obtain the written agreement of another professional, and then submit their report to the hospital managers. Unless the hospital managers discharge the patient under section 23, the detention is renewed for a further period. In addition, the patient may be discharged at any time by the responsible clinician, the hospital managers or his nearest relative³⁰, but the nearest relative can be overruled by the responsible clinician if that clinician certifies to the hospital managers in a report that the patient, if discharged, is likely to act in a manner dangerous to himself or others.
- 5.125 In addition, the patient (and in some cases, the nearest relative) may apply to the Tribunal for discharge at any time (although normally only once in each period of detention) (s.66). The Tribunal is the First Tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007, with appeal to an Upper Tribunal.
- 5.126 There is additional provision in section 67 for references to the Tribunal to be made by the Secretary of State if he thinks fit, at any time. This allows for exceptional cases to be referred where, due to some unusual combination of circumstances, there would not otherwise be a referral in a case that appeared to merit it.
- 5.127 There is also a duty in section 68 on hospital managers. There should be a referral after the first six months of detention if there has not been an application to the Tribunal in that time. There should also be a referral to a Tribunal if three years has elapsed since a Tribunal considered the case, but for children under 18, this period is 12 months.
- 5.128 These provisions ensure that there is periodic review of all children's cases.
- 5.129 Slightly different arrangements apply in respect of patients (including children) detained under the MHA in connection with criminal proceedings, but those arrangements also ensure that the detention is kept under review.

ARTICLE 27 (PARAGRAPH 4) - Recovery of Maintenance

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In

³⁰ The nearest relative is defined in s.26, and in the case of a child, would usually be a parent.

particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

5.130 The UK is a Contracting State to the 1973 Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and to a number of other international instruments on the international recovery of maintenance, including: the 1956 UN (New York) Convention on the Recovery Abroad of Maintenance (see the Maintenance Orders (Reciprocal Enforcement) Act 1972, UK-wide); the 1968 Brussels Convention; the 1988 Lugano Convention (for the 1968 and 1988 Conventions see Civil Jurisdiction and Judgments Act 1982, UK-wide); and the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The UK will be a party to the 2007 Hague Maintenance Convention and the Council Regulation (EC) No 4/2009 on Maintenance. The UK participates fully in reviews of the operation of the 1973 Hague Convention.

5.131 Within the UK, child maintenance is calculated and enforced under a single statutory scheme, set out the Child Support Act 1991. The Child Maintenance and Other Payments Act 2008 has transferred responsibility for administering the scheme in Great Britain to the Child Maintenance and Enforcement Commission. The Commission's main objective is to maximise the number of children living apart from one or both of their parents for whom effective maintenance arrangements are in place (section 2). The 2008 Act sets out new enforcement powers, such as direct deductions from bank accounts (this is already in force) and removal of passports. It also contains provisions for simplification of the scheme, expected to be implemented in 2011.

ARTICLE 39 - Rehabilitation of Child Victim

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

LEGISLATION

5.132 The provisions which set out the rights under article 39 are discussed in cluster 8, Special Protection Measures.

6. BASIC HEALTH AND WELFARE

GENERAL OVERVIEW

- 6.1 The articles in this cluster ensure that children have the right to life, maximum survival and development, health and health services and benefits, and that special consideration is given to children with disabilities.
- 6.2 Every child in England is entitled to an adequate standard of health and welfare. The provision of a comprehensive National Health Service, most recently set out in the National Health Service Act 2006, which is free of charge to children is the primary means by which the rights in this cluster are protected.
- 6.3 The Government's aim is to eradicate child poverty by 2020. Our determination to do so is as firm as ever and this is demonstrated by the introduction of the Child Poverty Bill, which will bring new impetus to the goal. It will provide a definition of success and set a framework to guarantee that the Government and its partners at national and local levels make a clear and vital contribution towards ending child poverty.
- 6.4 The National Service Framework for Children (NSF) aims for long-term and sustained improvement in children's health. Setting standards for health and social services for children, young people and pregnant women, the NSF aims to ensure fair, high quality and integrated health and social care, from pregnancy right through to adulthood.
- 6.5 Aiming High for Disabled Children is the Government's programme for transforming services for disabled children. Legislation listed in this cluster places duties on local authorities to support those who care for disabled children, through short breaks. From September 2009, Ofsted began inspecting schools to see how well they promote equality of opportunity for disabled children.
- 6.6 Other recent improvements to these rights and obligations are summarised below:
 - The intention of the government set out in the current Children, Schools and Families Bill to make sex and relationships education compulsory for pupils aged 11 to 16.
 - The new duty in the ASCL Act 2009 requiring local authorities to provide sufficient children's centres to meet local need.

- The new duty on local authorities set out in the Children and Young Persons Act 2008 to provide short breaks from caring for disabled children.
- The Infant Formula and Follow-on Formula (England) Regulations 2007 prohibit the marketing of such formula unless it meets with certain requirements that seek to promote the superiority of breastfeeding.
- The introduction of the National Service Framework for children setting standards for health and social care services.
- The November 2009 revised statutory guidance to local authorities, Special Health Authorities and Primary Care Trusts on promoting the health and well-being of looked-after children which seeks to address the recognised health inequalities of such children.
- The commitment to eradicating child poverty made by the introduction of the Child Poverty Bill.

ARTICLE 6 - Right to Life

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

LEGISLATION

- 6.7** This right is in part protected by Article 2 of the ECHR, incorporated into domestic law through the Human Rights Act 1998.
- 6.8** See further discussion of this right in Article 6, discussed under cluster 3, General Principles.

ARTICLE 18 PARAGRAPH 3 - Right to Benefit from Childcare

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

LEGISLATION

- 6.9** The Childcare Act 2006 forms the statutory framework for early years services and childcare provision in England. Section 1 places a general duty on English local authorities to improve the wellbeing of young children in their area and reduce inequalities. Section 3 places more specific duties on the local authority to make arrangements to facilitate access to early childhood services, and maximise the benefit of those services to parents, prospective parents and young children. The local authority must take steps to identify and encourage 'hard to reach'

families to take advantage of the services (section 3(3)). There is also a duty on health authorities and the Secretary of State (in relation to his Jobcentre Plus functions) to work with the local authority in the making of these arrangements.

- 6.10 New sections 5A to 5G of the Childcare Act (inserted by the Apprenticeships Skills Children and Learning Act 2009) also require local authorities to provide sufficient children's centres to meet local need.
- 6.11 Section 6 places a duty on local authorities to secure sufficient childcare for working parents, and regulations made under section 7³¹ require them to secure that part of that provision is free of charge for three and four-year olds (who are under compulsory school age) for 12 ½ hours a week for no fewer than 38 weeks in any year. This is to be increased to 15 hours a week from September 2010.
- 6.12 Statutory guidance for local authorities '*Securing sufficient childcare and Raising Standards – Improving Outcomes* Statutory Guidance has also been issued under these sections.

ARTICLE 23 - Rights of Disabled Children

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to, and receives, education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of, and access to, information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their

³¹ Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations [document??] 2008/1724.

experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

LEGISLATION

- 6.13** Part 3 of the Children Act 1989 (CA) sets out local authorities' powers and duties to provide support services for children in need and their families. The definition of "children in need" includes children who are disabled within the meaning of the Act. Section 17(11) provides that "... a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity ...".
- 6.14** New paragraph 6(1)(c) of Schedule 2 to the CA places every local authority in England and Wales under a new, specific duty to provide services designed to assist individuals who care for disabled children to continue to do so, or to do so more effectively, by giving them breaks from caring. The new legal provision makes it clear that breaks should not just be provided to those carers struggling to maintain their caring role, but also to those for whom a break would improve the quality of the care they can offer. Short breaks should, therefore, not just be used as a crisis intervention, but should also be used routinely to help parents and carers to maintain and improve the quality of care they naturally wish to provide.
- 6.15** The Government intends to bring the new duty into force in April 2011, and to make regulations at the same time.
- 6.16** Currently, short break provision is provided by local authorities through the use of their powers under section 17(6) (a power to provide accommodation as part of a broad range of services in order to discharge their general duty to safeguard and promote the welfare of children in need) and/or section 20(4) (a power to provide accommodation for any child to safeguard and promote their welfare) of the 1989 Act.
- 6.17** Section 2 of the Chronically Sick and Disabled Persons Act 1970 (when read with section 28A of that Act) requires a local authority with children's services responsibilities to consider the position of any disabled child in its area. For these purposes, the definition of "disabled" is given by section 17(11) of the 1989 Act.
- 6.18** Under section 2, the local authority must consider whether it is necessary, in order to meet the needs of a disabled child, for the local authority to provide support of the types categorised in paragraphs (a) to (h) of that section. Where the local authority is satisfied that this test is met, it should ensure that it meets the needs in question. The section 2 duty may be enforced by the would-be recipient of the support. This is not affected by the fact that a local authority will meet its obligations under this provision by the exercise of its functions under Part 3 of the 1989 Act, of which section 17 is particularly relevant.

Special educational provision

6.19 If a child has learning difficulties, they are entitled to receive special educational provision. All children with special educational needs who do not have statements must be educated in a mainstream school. There is also a presumption that a child with a statement of special educational needs will be educated in a mainstream school unless it is incompatible with the wishes of the parent, or the provision of efficient education for other children at the school. Children with disabilities are entitled not to be discriminated against in the provision of education and associated services, and not to be refused admission to, or excluded from, a school for reasons relating to their disability; see Special Educational Needs and Disability Act 2001, which amends the Education Act 1996. There is a right of appeal for parents to the First-tier Tribunal if they dispute specified decisions made by local authorities relating to their special educational needs or the contents of their statement. Disability discrimination claims may also be made to the Tribunal by the parents of children with disabilities. Where the disability discrimination claim is related to admission or exclusion, and is in relation to admission or exclusion, the claim is made to a local panel.

6.20 Guidance on legal duties has been issued to local authorities on looked-after children with special educational needs placed out of authority in 2009.

ARTICLE 24 - Right to Health and Health Services

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children, with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

LEGISLATION

National Health Service Act 2006 (the NHS Act)

General

6.21 The Act provides for the National Health Service in England. Section 1(1) of the Act imposes a duty on the Secretary of State to:

“continue the promotion in England of a comprehensive health service designed to secure the improvement:

- (a) in the physical and mental health of the people of England, and
- (b) in the prevention, diagnosis and treatment of illness.”

6.22 Section 1(2) of the Act requires the Secretary of State to provide, or secure, the provision of services under the Act for that purpose and section 1(3) provides that such services must be free of charge unless expressly provided otherwise under any enactment.

6.23 Section 3(1)(e) imposes a duty on the Secretary of State to provide, “to such extent as he considers necessary to meet all reasonable requirements”:

- hospital accommodation
- other accommodation for the purpose of any service provided under this Act
- medical, dental, ophthalmic, nursing and ambulance services
- such other services or facilities for the care of pregnant women, women who are breastfeeding, and young children as he considers are appropriate as part of the health service
- such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as he considers are appropriate as part of the health service
- such other services or facilities as are required for the diagnosis and treatment of illness.

6.24 This list covers hospital services and what are described as “community health services” (see paragraphs (d) and (e)).

6.25 Parts 1 and 2 of the Act contain provision for Secretary of State to direct bodies established under the Act (i.e. Strategic Health Authorities (SHAs)

and Primary Care Trusts (PCTs)) to perform his functions under the Act (see sections 7 and 8, and 13 to 24), and for the establishment of bodies to provide NHS services (i.e. NHS trusts and NHS foundation trusts) (see sections 25 to 27 and 30 to 51).

- 6.26 Part 3 of the Act provides for cooperation and joint working between NHS bodies and local authorities providing social care and education.
- 6.27 Parts 4 to 7 of the Act provide for Primary Care Trusts to secure the provision of “primary care services”, e.g. services provided by GPs, dentists, community pharmacists and opticians.

Parts 1 and 2 of the NHS Act

Hospital and community health services

- 6.28 The general duties on the Secretary of State in sections 1 and 3, in so far as they ensure a health service designed to secure improvement in the health of children, are relevant to compliance with Articles 19 and 24. These provisions are the basis on which Primary Care Trusts in England provide, or secure, the provision of hospital and community health services for children.
- 6.29 In particular, the duty to provide services in section 3(1)(e) includes services for pregnant women, breastfeeding women and young children and are relevant to fulfilling the UK’s obligations under Article 24(2).
- 6.30 In addition to section 3, paragraphs 1 to 7 of Schedule 1 to the Act impose a duty on the Secretary of State to provide for the medical inspection and treatment of pupils at state schools, and a power to provide similar services for pupils in other schools.
- 6.31 Paragraph 7A of Schedule 1 confers a power on the Secretary of State to make arrangements with education authorities for the weighing of pupils in junior schools.
- 6.32 Paragraph 8 of Schedule 1 to the Act imposes a duty on the Secretary of State to arrange for contraceptive services, including advice on contraception and the supply of contraceptive substances and appliances. This has direct application to the obligation under Article 24(2)(f).

Parts 4 to 7 of the Act - primary care services

- 6.33 This makes provision for primary medical services (e.g. GP services), primary dental services, primary ophthalmic services and pharmaceutical services. Primary Care Trusts have a duty to make arrangements to secure the provision of these services in their area.

Primary medical services

- 6.34 Each Primary Care Trust must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers to provide or secure the provision of primary medical services within the PCT's area (section 83 of the NHS Act 2006). PCTs may provide primary medical services themselves (e.g., have a PCT-run practice) and may contract with others (e.g., individual GPs, partnerships of GPs, companies owned by GPs) to provide primary medical services. The most common type of contract is a general medical services (GMS) contract, but there are two other types of contract. The regulations and directions governing these contracts are, in respect of children, materially the same.
- 6.35 Primary medical services contractors who provide essential primary medical services maintain a list of patients. Anyone can apply to be included on a contractor's list of patients, and contractors with an "open" list may only refuse an application on reasonable, non-discriminatory grounds (paragraph 17 of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004 (SI 2004/291)). A reasonable ground for refusal is that the person does not live in the contractor's practice area. A person's age is not a reasonable ground for refusal. Application for inclusion on a list of patients may be made by the child, or on behalf of the child by either of the child's parents, a guardian or other adult who has care of the child, or by an authorised carer (paragraph 15 of Schedule 6 to the GMS Regulations).
- 6.36 Primary medical services contractors may opt to participate in the Quality and Outcomes Framework (QOF). Many of the existing QOF indicators include children and young people, in accordance with best practice in the care of those patients. QOF also rewards primary medical services contractors for offering child development checks based on national guidelines and for addressing child protection issues.
- 6.37 Primary medical services contractors may also agree to provide "additional services" under the contract. Two types of additional services are childhood vaccinations and immunisations, and child health surveillance services for children under five (Schedule 2 to the GMS Regulations). Very few primary medical services contractors opt out of providing these two additional services. In addition, there is a "directed enhanced service" (which Primary Care Trusts are directed to offer to primary medical services contractors) relating to childhood vaccinations and immunisations, which incentivises primary medical services contractors to increase uptake of vaccinations and immunisations. Again, most primary medical services contractors are signed up to this.
- 6.38 Primary medical services are, with very few exceptions, provided free of charge.

Primary dental services

- 6.39 Each PCT must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers to provide or secure the

provision of primary dental services within the PCT's area (section 99 of the NHS Act 2006).

- 6.40 Primary dental services are provided under general dental services contracts or personal dental services agreements. Contractors may agree to provide services under the contract or agreement to a child if a request is made for such services by the child or on behalf of the child by either of the child's parents, or by an authorised carer (paragraph 1 of Schedule 3 of the National Health Service (General Dental Services Contracts) Regulations 2005 (SI 2005/3361) and paragraph 1 of Schedule 3 to the National Health Service (Personal Dental Services Agreements) Regulations 2005 (SI 2005/3373)).
- 6.41 Primary dental services contractors shall only refuse to provide services under the contract if the contractor has reasonable, non-discriminatory grounds for doing so. A person's age is not a reasonable ground for refusal.
- 6.42 Unlike primary medical services, primary dental services may be charged for, in accordance with regulations. However, no charge may be made under the regulations in respect of dental treatment provided under a primary dental services contract to any person who, at the time of the initial examination and assessment that led to the course of treatment, was under 18, or was under 19 and receiving qualifying full-time education (section 177 of the NHS Act 2006).
- 6.43 PCTs must provide, or secure the provision of, dental public health services. This includes dental inspection of pupils in attendance at schools maintained by local education authorities (regulation 2 of the Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006 (SI 2006/185)). Primary dental services contractors shall not charge patients for the provision of dental public health services (regulation 3 of the National Health Service (Dental Charges) Regulations 2005 (SI 2005/3477)).

Primary ophthalmic services

- 6.44 Each PCT must exercise its powers so as to provide, or secure the provision of, within the PCT's area, certain primary ophthalmic services - including sight-testing for those aged under 16 and those aged 16, 17 or 18 who are receiving qualifying full-time education (section 115 of the NHS Act 2006). Regulations must also provide for the meeting of, or a contribution towards, an optical appliance for which a prescription has been given in consequence of a sight-test under the NHS Act to people under 16 or those aged 16, 17 or 18 who are receiving qualifying full-time education (section 180 of the NHS Act 2006).
- 6.45 Regulations require a contribution towards the cost of sight-testing for certain eligible people, including a person who used to be looked after by a local authority and is 16 or 17, whom a responsible local authority is supporting under the Children Act 1989 (regulation 3 of the National

Health Service (Optical Charges and Payments) Regulations 1997 (SI 1997/818)). These regulations also require a contribution towards optical appliances supplied to certain eligible people, including a person who used to be looked after by a local authority and is aged 16 or 17, whom a responsible local authority is supporting under the Children Act 1989 (regulation 8).

Pharmaceutical services

- 6.46** Each PCT must make arrangements as respects the PCT's area for certain pharmaceutical services (section 126 of the NHS Act 2006). When section 25 of the Health Act 2009 is commenced, each PCT will be required to assess needs for pharmaceutical services in their area, and publish the resulting needs assessment (section 128A of the NHS Act 2006). It is planned that regulations about needs assessments will be laid out following consultation in spring 2010. The Department of Health would expect a PCT, when undertaking a needs assessment, to consider the needs of all of its population, including the needs of young people. PCTs are already able to commission local pharmaceutical services specific to the needs of young people, such as a schools service or medicines assessment and compliance support (paragraph 1 of Schedule 12 to the NHS Act 2006). PCTs can also contract directly for a Local Pharmaceutical Services scheme, if appropriate, to meet such needs under section 144 of and paragraph 1 of Schedule 12 to the NHS Act 2006. Some doctors can also provide dispensing services, chiefly in rural areas, to young people and appliance contractors also provide specialist services for those prescribed appliances, such as incontinence aids.
- 6.47** The National Health Service (Charges for Drugs and Appliances) Regulations 2000 (SI 2000/620) prescribe the amount that a pharmacist (or dispensing doctor or walk-in centre) recovers from a patient for supplying drugs and appliances. No charge is payable by a person under 16, or a person under 19 who is receiving qualifying full-time education (regulation 7).
- 6.48** Regulations also provide that a person who used to be looked after by a local authority, who is 16 or 17, and is supported by a local authority under the Children Act 1989 is entitled to remission of the NHS pharmaceutical charge (regulation 5 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (SI 2003/2382)).
- 6.49** An application to a pharmacist for pharmaceutical services may be made on behalf of any child by either parent, a guardian or other person who has care of the child. Similarly, an application may be made on behalf of any person under 18 who is in the care of an authority or in the care of a voluntary organisation, by a person authorised by the authority or organisation.

Local authorities

6.50 Section 254(1) of and paragraph 1 of Schedule 20 to the NHS Act 2006 state that local authorities may provide certain services, including arrangements for the care of pregnant women and women who are breastfeeding (other than for the provision of residential accommodation) (see paragraph 1 of Schedule 20). The services provided under this section are in addition to any services provided by local authorities under their social services functions.

6.51 Section 80(6) and (7) of the Act imposes a duty on the Secretary of State (delegated to PCTs by directions under section 7 of the NHS Act 2006) to make NHS staff and others providing NHS services available to local authorities, so far as is reasonably necessary and practicable, to enable local authorities to discharge their functions relating to social services, education and public health. This could cover assisting local authorities in the provision of services to children.

Breastfeeding and infant formula

6.52 The *Infant Formula and Follow-on Formula (England) Regulations 2007* prohibit the marketing or sale of infant formula or follow-on formula unless it meets certain requirements. This includes labelling products so as not to discourage breastfeeding, and with an 'important notice' that sets out the superiority of breastfeeding, and recommending that the product be used only on the advice of professionals (regulation 17). The regulations also restrict advertising of such formula so that it does not imply or create a belief that bottle-feeding is equivalent or superior to breastfeeding (regulation 21). Regulation 24 prohibits the provision of informational or educational material dealing with the feeding of infants unless it includes clear information promoting breastfeeding and setting out the possible negative effects on breastfeeding of introducing partial bottle-feeding. It is an offence to contravene the regulations. Guidance has also been issued to health commissioners on '*Commissioning Local Breastfeeding Support Services*' (Oct 2009) with the aim of consolidating the case for breastfeeding care and support as an integral part of strategies for improving child health and reducing inequalities.

6.53 The Equalities Bill (subject to the will of parliament) will contain legislation that will prevent the unfavourable treatment of a woman because she is breastfeeding.

Female genital mutilation

6.54 The Female Genital Mutilation Act 2003 prohibits female genital mutilation. Penalties for an offence under the Act are imprisonment or a fine or both.

Health in pregnancy grant

6.55 The Health and Social Care Act 2008 amended the Social Security

Contributions and Benefits Act 1992 to provide for the payment of a 'health in pregnancy' grant of £190 to encourage and promote maternal health. A woman is not entitled to the grant unless she has received advice on matters relating to maternal health from a health professional (section 140A SSCB Act 1992).

International cooperation and aid

6.56 The International Development Act 2002 provides the legal basis for the Secretary of State to provide international aid for the purposes of furthering sustainable development, or improving the welfare of people, in countries outside the UK, if that assistance is likely to reduce poverty.

6.57 The International Development (Reporting and Transparency) Act 2006 requires the Secretary of State to lay an annual report before parliament on international aid, development policies and programmes and an assessment of the year in which he expects that the target for expenditure on official development assistance to amount to 0.7% of gross national income will be met by the United Kingdom (thus confirming the UK's commitment to achieving the UN's 0.7% target in legislation). The report is to include reference to the effectiveness of aid provided to assist in the achieving of the UN's Millennium Development Goals (MDGs), Goal 4 of which is to reduce child mortality. The Department for International Development provides significant assistance to achieving this, and other MDGs. Some examples of aid provided that have a direct impact on children's health are:

- doubling the provision of aid for access to clean water in sub-Saharan Africa to £95 million a year by 2007/08 and, again, to £200 million by 2010/11
- launching major water, sanitation and hygiene programmes in Ethiopia, Sierra Leone and China
- supporting the international year of sanitation, including the funding of two films made with UNICEF about sanitation
- contributing to global initiatives, such as the Global Fund to fight AIDS, TB and Malaria, the GAVI Alliance (which increases access to immunisations) and the Roll Back Malaria campaign.
- in November 2006 the Prime Minister launched the International Finance Facility for Immunisation. This has already raised over \$1.2 billion of aid which has allowed the GAVI Alliance to immunise more than 100 million children against polio, help poor countries target 26 million women with immunisations against maternal and neonatal tetanus and provide 194 million children in 32 countries with lifesaving measles vaccines
- in September 2008, at the UN High Level Meeting on the MDGs in New York, the Prime Minister announced a Taskforce on Innovative

Financing for Health Systems to help save the lives of three million mothers and seven million newborns over the next seven years. The additional finance raised in 2009 of £3.2 billion will help to provide over one million new health workers and ensure that 400 million births take place in good quality facilities.

OTHER MEASURES

The National Service Framework for Children

6.58 The NSF for children is a 10-year programme that aims for long-term and sustained improvement in children's health. Setting standards for health and social services for children, young people and pregnant women, the NSF aims to ensure fair, high quality and integrated health and social care, from pregnancy right through to adulthood.

6.59 The NSF for children is a fundamental change in thinking about health and social care services. It aims to lead to a cultural shift, and result in services being designed and delivered around the needs of children and families. It is aimed at everyone who comes into contact with, or delivers services to, children, young people or pregnant women. It is composed of a number of documents, see http://www.dh.gov.uk/en/Healthcare/Children/DH_4089111

Good Medical Practice guidance

6.60 The General Medical Council's Good Medical Practice guidance, which is provided to doctors, says:

- The guidance that follows in paragraphs 25-27 is relevant whether or not you routinely see children and young people as patients. You should be aware of the needs and welfare of children and young people when you see patients who are parents or carers, as well as any patients who may represent a danger to children or young people.
- You must safeguard and protect the health and wellbeing of children and young people.
- You should offer assistance to children and young people if you have reason to think that their rights have been abused or denied.
- When communicating with a child or young person you must:
 - a. treat them with respect and listen to their views
 - b. answer their questions to the best of your ability
 - c. provide information in a way they can understand.

6.61 There is also guidance, 0-18 years: Guidance for all doctors, which

develops these duties and principles further – see http://www.gmc-uk.org/guidance/ethical_guidance/children_guidance_index.asp

6.62 While this is not statutory guidance, serious or persistent failure to follow the guidance will put a doctor's registration at risk.

ARTICLE 26 - Right to Social Benefits

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

LEGISLATION

6.63 Generally, children do not qualify for benefits themselves. Their parents qualify for child benefit under Part IX Social Security Contributions and Benefits Act 1992. This is extended to legal guardians (section 77 SSCBA 1992). A child is defined as someone who has not attained the age of 16 or is a qualifying young person. A qualifying young person is defined in the Child Benefit (General) Regulations 2006 (SI 2006/223) as being someone who has not attained the age of 20, who is in full-time education at a school (not a university) or its equivalent in training (regulation 4). There is an extension period for 16- and 17-year olds where they have left school but are looking for work and are not in employment. (regulation 5).

6.64 The rationale is to allow the child benefit up to 16 and, after that, until 20 if the young person is in school, or 18 if unemployed and looking for work. If someone is in full-time employment then there is felt to be no need for child benefit.

6.65 In addition to this, there is the tax credit system which gives a child tax credit and the child tax element of working tax credit (sections 8 and 12 Tax Credits Act 2002). This is a means-tested benefit for those responsible for children and in work and is designed to boost their income to enable them to provide better childcare. The Child Tax Credit Regulations 2002 (SI 2002/2007) define "child" in similar terms to that in the Child Benefit Regulations (and is carried into the Working Tax Credit Regulations 2002 (SI 2002/2005).

ARTICLE 27 PARAGRAPH 1-3 - Adequate Standard of Living

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

LEGISLATION

Homelessness

- 6.66** Under Part 7 of the Housing Act 1996 (HA96) where an applicant is eligible for assistance, has a priority need for accommodation and is unintentionally homeless, the local authority has a duty to secure that accommodation is available for occupation by the applicant. This is known as the main homelessness duty. When a local authority has determined that an applicant is eligible and homeless, or threatened with homelessness, it will owe them a duty under Part 7. In determining which duty is owed, the local authority must decide whether the applicant has a priority need for accommodation.
- 6.67** The priority need categories are set out in s189 HA96 and the Homelessness (Priority Need for Accommodation) (England) Order 2002 (SI 2002/2051). The relevant categories relating to children include:
- Pregnant Women (s189 (1)(a)) - A pregnant woman or a person with whom she resides, or might reasonably be expected to reside, has a priority need for accommodation.
 - Dependant Children (s189(1)(b)) - A person with whom dependant children reside, or might reasonably be expected to reside, has a priority need for accommodation.
 - 16/17-Year Olds (SI 2002/2051) - 16- and 17-year old homeless applicants have a priority need for accommodation, except for those who are a relevant child or a child in need owed a duty under s20 of the Children Act 1989.

Suitability of accommodation

6.68 The Homelessness (Suitability of Accommodation) (England) Order 2003 (SI 2003/3326) specifies that the use of bed and breakfast accommodation is not to be regarded as suitable for an applicant with family commitments where accommodation is provided under a duty under Part 7.

6.69 If there is no alternative accommodation for the family, the local authority may house them in bed and breakfast accommodation but only for a period not exceeding six weeks.

Cooperation in certain cases involving children

6.70 Under s213A of the HA96 where a homeless family with children is not owed the main homeless duty (they may have been found not to be eligible for assistance or to be intentionally homeless or threatened with homelessness), the local housing authority must seek the applicant's consent for a referral to Social Services.

6.71 Where consent is obtained, the local housing authority is under a duty to make Social Services aware of the facts of the case and the subsequent decision of the housing authority in respect of the case.

6.72 Under Part 3 of the Children Act 1989, the local authority has a general duty to safeguard and promote the welfare of children who are in need. Where a local authority considers a child of a homeless family to be 'in need', then services (which may include accommodation) may be provided to the family (section 17). In certain cases, the local authority has a duty to provide accommodation for an unaccompanied child in need (or where his or her parents or carers are prevented from providing the child with suitable accommodation or care) (section 20).

6.73 In November 2009, revised statutory guidance (made under sections 10 and 11 of the Children Act 2004, and section 7 of the Local Authority and Social Services Act 1970) was published for local authorities, SHAs and PCTs on *Promoting the Health and Wellbeing of Looked-After Children*. This recognised that looked-after children often experience health risks and problems to a greater degree than their peers, and it seeks to address these inequalities.

Child poverty

6.74 The Government has committed to eradicating child poverty by 2020. The Child Poverty Bill, currently passing through parliament, seeks to place this commitment on a statutory footing. It will:

- place a duty on the Secretary of State to meet four UK-wide poverty targets by 2020;
- require the UK Government to publish a regular child poverty strategy and annual progress reports;

- establish a Child Poverty Commission to provide advice on the strategies; and
- place duties on local agencies to work together to tackle child poverty.

Free school meals

6.75 Section 512 of the Education Act 1996 empowers local authorities to provide school meals, milk and other refreshments to pupils. Where a pupil's parent receives certain benefits or support, the pupil will qualify for free school meals and milk, and the local authority is then under a duty to provide the pupil with such, if so requested by either the pupil or on his or her behalf (section 512ZB).

7. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

GENERAL OVERVIEW

- 7.1 Children's right to education that meets their needs and improves the attainment of every child and their right to leisure and cultural activities are captured under this cluster of articles. Given the importance of education to children's lives there are number articles in the UNCRC where England's law and policy relating to education are important. There is further specific mention of such law and policies are discussed under the following articles: Article 2, Article 3, Article 5, Article 14, Article 16 and Article 30.
- 7.2 Education continues to be a high priority and the Government is committed to ensuring that all children and young people have the opportunity to achieve their full potential. The policy and legislation in place ensures there is a raft of high quality education, leisure and cultural activities available to children and young people.
- 7.3 Primary and secondary education in England is compulsory and available free to all children. The requirements of the National Curriculum set out what the Government considers to be a rounded education that promotes the spiritual, moral, cultural, mental and physical development of children and prepares them for later life.
- 7.4 The Your Child, Your Schools, Our Future: Building an 21st century schools system White Paper describes further reforms that will include guarantees for pupils and parents, especially those requiring extra help.
- 7.5 The 2009 New Opportunities White Paper: Fair Chances for the Future includes plans for attracting the best teachers, free learning and childcare to the most disadvantaged two-year olds and additional support for the most disadvantaged at secondary school.
- 7.6 A suite of guidance to help those that work with children and young people tackle bullying in and out of school was published in 2009.
- 7.7 Providing children and young people with places to go, leisure and play facilities is a particular focus for the Children's Plan 2007 and a high priority for families. The Play Strategy published in December 2008 puts in place plans for creating new and refurbished play spaces for children in England. Youth facilities are being developed through My Place, as part of *Aiming High for Young People: A Ten Year Strategy* for positive

activities.

- 7.8 Creative activities are a key route to important life skills – e.g. confidence, self-discipline, effective communication and the ability to work in teams. Investment in programmes, such as Creative Partnerships, Renaissance in the Regions and Find Your Talent, is offering children and young people opportunities to participate in a quality creative and cultural activity.
- 7.9 The recent legislative steps to improve children’s rights in this area are:
- Schools are required to appoint a designated teacher for looked-after children under section 20 of the Children and Young Persons Act 2008, and there are associated regulations and statutory guidance, with the aim of improving the achievement of this group of children.
 - Sections 48 – 52 of the Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act) place duties on local authorities to secure the provision of education and training for children and young people who are detained and to align such provision more closely to that provided to children in the mainstream sector.
 - There is an increased focus on pupil participation in the Education and Inspections Act 2006 (for example, the duty in section 88 on governing bodies to consult pupils on behaviour policies) and the ASCL Act (for example, the right to complain to the Local Government Ombudsman set out in Part 7 of the Act).
 - There is a requirement, set out in section 248 of the ASCL Act, for schools to enter into partnerships with a view to promoting good behaviour and discipline and reducing persistent absence of pupils.
 - There is a duty on local authorities to secure adequate leisure and recreation facilities and activities for children, set out in the Education and Inspections Act 2006.

ARTICLE 28 - Right to Education

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures, such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

LEGISLATION

Education is compulsory and available free to all

7.10 Section 7 of the Education Act 1996 provides that:

“The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable (a) to his age, ability and aptitude and (b) to any special educational needs he may have, either by regular attendance at school or otherwise”.

The words “or otherwise” establish the lawfulness of home education.

7.11 Section 451 of the Education Act 1996 prohibits any maintained school from charging any registered pupil in connection with education provided. This will include any maintained primary and secondary school.

Raising the participation age

Duty on young people to participate

7.12 Part 1 of the Education and Skills Act 2008 puts a duty on young people to participate in education or training until the age of 18, with corresponding duties on local education authorities and employers to enable and support participation. Parents are also expected to assist their children in fulfilling their duty to participate.

7.13 Section 2 provides that a young person to whom the duty applies must either participate in appropriate full-time education or training, participate in training in accordance with a contract of apprenticeship, or be in full-time occupation and participate in sufficient relevant training or education.

7.14 The general policy aims behind raising the participation age is in line with Article 28(1). The new duties are planned to be commenced in phases

beginning in June 2013.

Primary and Secondary education and education for those over compulsory school age

- 7.15** Under section 13 of the Education Act 1996, Local Education Authorities (LEAs) must, so far as their powers enable them to do so, contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary and secondary education are available to meet the needs of the population of their area.
- 7.16** Section 14 requires LEAs to secure that there are sufficient schools for providing primary and secondary education for compulsory school age children in their area. Sufficient schools means that the schools are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education, which is education which offers such variety of instruction and training as may be desirable in view of the pupils' different ages, abilities and aptitudes, and the different periods for which they may be expected to remain at school, including practical instruction and training appropriate to their different needs. LEAs must also exercise their functions under this section with a view to securing diversity in the provision of schools, and increasing opportunities for parental choice.
- 7.17** Part 2 of the Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act 2009) transfers responsibility for securing the provision of education and training for 16-19 year olds to LEAs (from the Learning and Skills Council). Under new section 15ZA of the Education Act 1996 (inserted by section 41 of ASCL Act 2009), LEAs must secure that enough suitable education and training is provided to meet the reasonable needs of persons over compulsory school age but under 19 in their area (and also for persons who are over 19 but under 25 and subject to learning difficulty assessment).
- 7.18** In exercising this duty, LEAs must act with a view to encouraging diversity in the education and training available to persons and increasing opportunities for persons to exercise choice. LEAs must also have regard to the persons' ages, abilities and aptitudes and any learning difficulties they may have. This duty will commence on 1st April 2010.
- 7.19** Part 2 of ASCL Act 2009 also transfers responsibility to LEAs (from the Learning and Skills Council) for ensuring that the core and additional diploma entitlements are satisfied in relation to persons over compulsory school age but under 19. The core entitlement is to a course of study in mathematics, English and information and communications technology. The additional entitlement is to a course of study in a diploma entitlement area specified by the Secretary of State. Young people who are over compulsory school age but under 19 may elect for either or both of the core entitlement and the additional (diploma) entitlement.

Financial assistance

- 7.20** Part 3 of the ASCL Act 2009 also establishes the Young People's Learning Agency for England (YPLA), which is a small non-departmental public body, sponsored by the DCSF and reporting to the Secretary of State. Its core purpose is to provide the funding to enable local education authorities to fulfil their duties in Part 2. Under section 61(4), the YPLA will have the power to pay grants and allowances to learners of all ages. These powers enable the YPLA to secure, for example, Care to Learn grants (which are provided to young people who begin their course or learning programme before their 20th birthday), Education Maintenance Allowances (EMAs) (provided to 16 to 18 year olds) and the Adult Learning Grant (a means-tested grant provided to adults of all ages).
- 7.21** Section 65 requires the YPLA to ensure, so far as is practicable, that no charge is made for education or training funded by the YPLA that is provided for young people over compulsory school age. This duty is intended to be commenced on 1 April 2010.

Access to higher education

- 7.22** The Higher Education Act 2004 set up the office of the Director of Fair Access to Higher Education (the Director). The Director's role is to approve and monitor plans submitted by higher education institutions who wish to charge fees higher than the 'basic amount' (set out in regulations made under that Act). The plans must specify provisions relating to the institution's promotion of equality of opportunity, and the Director also has the power to identify and promote good practice relating to the promotion of equality of opportunity in higher education.
- 7.23** Section 22 of the Teaching and Higher Education Act 1998 provides regulation-making powers which require the Secretary of State to make grants or loans to 'eligible students' in connection with them undertaking further or higher education courses. There are a number of sets of regulations made under this section which set out the detail concerning when a loan or grant should be made. The aim of these provisions is to ensure that higher education is available to all by appropriate means.

Information and guidance on education and vocational training

- 7.24** Section 68 of the Education and Skills Act 2008, which came into force on 29 January 2009, provides that an authority must make available to young persons and relevant young adults for whom it is responsible such services as it considers appropriate to encourage, enable or assist the effective participation of those persons in education or training.
- 7.25** Part 7 of the Education Act 1997 makes provision about the careers education duties of schools. Section 43 requires maintained secondary

schools and academies providing secondary education to provide a programme of careers education to pupils during what is described as the relevant phase of their education (from age 14 to 16). By virtue of changes made to section 43 by section 81 of the Education and Skills Act 2008, any information given under that duty must be impartial and any advice must promote the best interests of the child. A further change is being made by section 250 of the Apprenticeships, Skills, Children and Learning Act 2009 which specifically requires the programme of careers education to include information on options available in respect of 16-18 education or training and apprenticeships.

7.26 Section 44 of the Education Act 1997 makes provision requiring maintained secondary schools and academies providing secondary education and institutions within the further education (FE) sector to give careers advisers access to pupils at the school.

7.27 Section 45 requires maintained secondary schools and academies providing secondary education and institutions within the FE sector to provide persons attending the institution with access to both guidance materials, and a wide range of up-to-date reference materials, relating to careers education and career opportunities. The scope of this provision has been extended by the Education and Skills Act 2008 (s. 81(3)) so that, in the case of maintained schools, the materials, taken as a whole, must present pupils with a full range of options available in respect of both 16-18 education or training and career opportunities.

Inclusive education

Education of children who are detained

7.28 Currently, under section 562 of the Education Act 1996, functions of LEAs, the Secretary of State, the Welsh Ministers and parents under the Education Act 1996 (and those Education Acts read as one with that Act) do not apply in relation to persons detained pursuant to a court order or an order of recall of the Secretary of State. Instead, provision regulating education and training of detained children and young people is made in the secondary legislation governing the conduct of the institution and also in contractual arrangements.

7.29 Section 49 of the ASCL Act 2009 reverses the effect of section 562 for children and young people detained in relevant youth accommodation. Therefore, functions of LEAs, the Secretary of State, the Welsh Ministers and parents under those Acts will generally apply towards such persons detained pursuant to a court order or an order of recall of the Secretary of State in relevant youth accommodation (that is, young offenders' institutions used to detain persons wholly or mainly under the age of 18, secure training centres and criminal justice beds in secure children's homes).

7.30 Sections 48 to 52 of the ASCL Act 2009 make further provision in respect of children and young people detained in relevant youth accommodation and place duties on local education authorities to secure the provision of education and training for such persons. There are also new duties in relation to those detained persons with special educational needs, and duties designed to ensure that education and training provision in juvenile custody is aligned, as far as practicable, with that in the mainstream education sector. Local authorities are also required to have regard to guidance issued by the Secretary of State when exercising their new functions. The intention is for sections 48 to 52 of the ASCL Act 2009 to be commenced in phases, beginning in September 2010.

Alternative provision

7.31 Under section 19 of the Education Act 1996, local authorities have a legal obligation to arrange suitable education for children of compulsory school age who cannot attend school because of illness, exclusion or otherwise. The duty is to arrange full-time education for those children who have been excluded from school. It is the Government's intention, through the Children, Schools and Families Bill, to extend the duty on local authorities to arrange full-time education for all children, including those that are ill or unable to attend school for other reasons.

7.32 In 2001, the Government issued statutory guidance on the education of children unable to attend school because of medical needs. Earlier this year statutory guidance on Information Passports, Personal Learning Plans and a Core Entitlement for Pupils in Alternative Provision was released for consultation.

Fair access to education

7.33 Section 13A of the Education Act 1996 places a duty on LEAs to ensure fair access to educational opportunity for all children of compulsory school age and all children under or over that age who are registered as pupils at schools maintained by the LEA. This duty also applies to asylum-seeking and traveller children.

7.34 The latest School Admissions Code came into force on 10 February 2010. The Code, and related legislation, ensures that admission authorities, whether local authorities or schools, operate in a fair way that promotes social equity and community cohesion. All maintained schools, including Academies, must comply with admissions legislation and the School Admissions Code. Together, these help ensure that admission arrangements are fair and that fair access for all children, including those from black and minority ethnic communities, traveller and asylum seekers, is promoted.

Behaviour, discipline and attendance

Attendance

7.35 The Education (School Attendance Targets) (England) Regulations 2007 provide a requirement for schools to set attendance targets. There is a general duty in section 7 of the Education Act 1996 for parents to secure the education of their children by “regular attendance at school or otherwise”. Section 437 of that act provides that parents may be served with school attendance orders to require attendance at a specified school and, where necessary, to ensure that a child is receiving suitable education. Where a child is registered at a school, there are criminal law sanctions and penalty notices for parents who do not ensure the regular attendance of their child at school. These are set out in section 444 and 444A of the act.

Enforcement provisions for those over compulsory school age

7.36 The Education and Skills Act 2008 provides that where a young person who is over compulsory school age but not yet 18 fails to participate, a local authority can take enforcement action. Section 40 to 44 of the Act provide that the local authority may enter into a parenting contract or apply to the Magistrates’ Court for a parenting order with the parent of a young person, if it is considered that it would be desirable in the interests of the young person’s fulfilment of their duty to participate. Section 45 of the Act provides that the local authority can issue an attendance notice against a young person specifying that he must attend training or education specified in the notice. Section 51 provides that it is an offence for a young person to fail, without reasonable excuse, to comply with the requirements in an attendance notice. If a young person fails to comply with an attendance notice, the local authority may issue a penalty notice enabling the young person to discharge his liability to conviction in respect of the offence to which the notice relates by the payment of a penalty. A young person may appeal against the imposition of an attendance notice or the subsequent penalty notice, or the local authority’s decision to institute proceedings to an attendance panel. Section 52(5) explicitly provides regulations must provide that the young person has an opportunity to make representations to the attendance panel. It is intended that these provisions will come into force in 2013.

7.37 Part 7 of the Education and Inspections Act makes provision about discipline, behaviour and exclusions. Section 88 provides that a governing body of a relevant school must ensure that there are policies in place to promote good behaviour and discipline amongst pupils. Section 89 provides that head teachers must determine a behaviour policy for the school. Sections 90 to 92 provide that members of staff can impose disciplinary penalties on pupils at school, which may include detention but not corporal punishment. Section 93 allows school staff to use reasonable force to prevent a pupil from committing any offence, causing personal injury to, or damage to the property of, any person (including the pupil himself), or prejudicing the maintenance of good order and discipline at the school, or among any pupils receiving

education at the school, whether during a teaching session or otherwise. Corporal punishment purportedly administered under this section is precluded by section 93(4) and any unreasonable force used would be an assault.

- 7.38 The Government has strengthened schools' powers to impose discipline. It has reaffirmed the statutory power of school staff to use reasonable force to control or restrain pupils in section 93 of the Education and Inspections Act 2006. Sections 97 and 98 reinforced parental responsibility by enabling schools and local authorities to make parenting contracts and seek court-imposed parenting orders relating to children's behaviour. The ASCL Act 2009 imposes a requirement on governing bodies of schools to have procedures in place for the recording of significant incidents involving use of force by staff on pupils, and for the reporting of such incidents to parents. It introduces powers to search pupils for weapons without consent, extending them to include alcohol, illegal drugs and property suspected of being stolen. The Act also made participation in Behaviour and Attendance Partnerships mandatory for secondary schools, academies and special schools.
- 7.39 The Government published over-arching guidance - *Safe to Learn: Embedding Anti-bullying Work in Schools*, and has tailored advice for schools covering all the equality strands: race, religion, sexual orientation, disability and gender and gender identity. We also produced guidance to schools on how to prevent and tackle online harassment and bullying of pupils and teachers.
- 7.40 The Government intends to introduce a new duty on maintained schools and short-stay schools in 2010 to record incidents of bullying between pupils, racist incidents and incidents of verbal and physical abuse against school staff.

OTHER MEASURES

Narrowing attainment gap

- 7.41 All local authorities and schools have access to cross-phase support and guidance from National Strategies which focuses on supporting teachers to meet the needs of pupils who have arrived in school as a result of international migration. A key principle is that this group of pupils has a right to access the National Curriculum. The focus is on assessing the pupil's prior learning and building on that to develop learning and teaching in the mainstream classroom environment. The Government also funds the SMILE project which seeks to redress the stress felt by asylum seekers and refugee children and the impact that it has on their educational achievement.
- 7.42 The Government has introduced a number of policy initiatives which benefit Gypsy, Roma and Traveller (GRT) children including one-to-one tuition, Every Child a Reader, Every Child a Writer and Every Child a

Counter. The National Strategies have devised and manage the GRT achievement programme, which aims to raise the ascription, attendance and attainment of children in this group. The Government supports the National Association of Teachers of Travellers in their management of an E-learning and Mobility programme, which ensures that children can keep in touch and submit work to their host schools while travelling.

ARTICLE 29 - Aims of Education

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

LEGISLATION

Maintained schools; curriculum

7.43 Part 6 of the Education Act 2002 (the Act) makes provision for the curriculum in maintained schools in England. Section 78 requires every maintained school and maintained nursery school to have a balanced and broadly-based curriculum which promotes the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, and prepares pupils at the school for the opportunities, responsibilities and experiences of later life. Section 79 provides that the Secretary of State, governing bodies and head teachers are required to exercise their functions with a view to securing that the curriculum for every maintained school and nursery school satisfies those requirements.

7.44 Section 80 of the Act requires there to be a basic curriculum for every maintained school which makes religious education compulsory for all registered pupil and sex education compulsory for those in secondary

school. It also makes provisions for a compulsory National Curriculum, the aim of which is to enable all young people to become successful learners, confident individuals and responsible citizens. In particular, the aim is to ensure young people have respect for others and act with integrity, understand their own and others' cultures and traditions within the context of the British heritage, appreciate the benefits of diversity, are committed to human rights and strive to live peaceably with others, and sustain and improve the environment, locally and globally.

- 7.45** The requirements of the National Curriculum are set out in sections 84 and 85 of the Act. Mathematics, English, science, information and communication technology and physical education are compulsory for children of all ages. In relation to pupils aged 11 to 16, citizenship is compulsory and other subjects, such as history, geography and music, are compulsory up to the age of 14. The Government considers that the National Curriculum ensures the education of the child is directed to the provisions set out in the Convention.
- 7.46** It is intended that the Government will amend Part 6 of the Act by the Children, Schools and Families Bill, which was introduced in parliament on 19 November 2009, for personal, social, health and economic education (PSHE) to be compulsory for pupils aged 11 to 16, and for understanding physical development, health and wellbeing to be compulsory for pupils aged five to 11. PSHE will include, amongst other things, education about emotional health and wellbeing, sex and relationships education, careers, business and economic education.

Article 29(2) – Choice and diversity in education

Independent schools

- 7.47** There is no restriction on the ability to found independent schools, subject to complying with Part 7 of the Education Act 2002 (registration and regulation), and not contravening any legislation of general application (e.g. anti-discrimination).
- 7.48** Independent schools are currently regulated under Part 7 of the Education Act 2002. Section 159 of the Act provides that it is an offence to conduct an independent school without being entered on the register kept by the Secretary of State. Section 157 provides that the Secretary of State is required to make regulations setting out the standards independent schools must meet. Amongst other things, the regulations must include provision about the welfare, health and safety of pupils, the suitability of staff and accommodation. These standards are currently set out in the Education (Independent Schools Standards) (England) Regulations 2003. Part 4 of the Education and Skills Act 2008 will make further provision for the regulation, registration and inspection of independent schools.

7.49 Section 1 of the Care Standards Act 2000 provides that some independent schools, which provide accommodation for a significant part of the year, also have to be registered as a children's home. If the school is not registered as a children's home but provides accommodation to pupils, section 87 of the Children Act 1989 provides that there is a requirement to safeguard and promote the welfare of children accommodated at the school.

Academies

7.50 Academies are set up pursuant to section 482 of the Education Act 1996 (as amended). The funding agreement between the Secretary of State and the Academy Trust inter alia, regulates the standards applicable to academies. There are also provisions which place a duty on the Academy Trust to promote the wellbeing of pupils and community cohesion.

7.51 Academies should have a broad curriculum. Section 482 of the Education Act 1996 requires academies to have a curriculum that meets the requirements of section 78 of the Education Act 2002, but with an emphasis on a particular subject area ('specialism'), as specified in the funding agreement.

7.52 Annex [3] shows a Model Funding Agreement (MFA) which is tailored to the needs of the particular academy.

ARTICLE 31 - Play, Leisure and Cultural Activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

LEGISLATION

Play

7.53 Section 507A and 507 B of the Education Act 1996 (inserted by the Education and Inspections Act 2006) place a duty on local authorities to secure adequate leisure and recreation facilities and activities for children and young people in their area.

Media

7.54 Section 264(6) of the Communications Act 2003 requires that public service television broadcasting must include a suitable quantity and

range of high quality and original programmes for children and young people.

7.55 The main United Kingdom terrestrial television channels are all required to provide a proportion of high quality children's programming in their schedules, and they all include readily identifiable children's programme strands, including "CBBC" and "Cbeebies". Programmes cater for a range of age groups, from pre-school to teenagers, and cover various genres including drama, factual and knowledge-building programmes, news and current affairs for children. Additionally, the BBC, Channel 4 and S4C provide a range of schools programming to complement the National Curriculum. CBBC and Cbeebies are included in the BBC Statements of Programme Policy and listed as UK Public Services in the BBC Agreement. The Government has included in the Digital Economy Bill, currently before parliament, a requirement for the Channel 4 Corporation to include content for older children and young adults in its services.

Culture

7.56 Under the Public Libraries and Museums Act 1964, local authorities have a duty to provide books and other material to satisfy the recreational, educational, cultural and information needs of all members of the population, including 'any special requirements both of adults and children' (section 7). Book loan is free of charge (section 8). Where a local authority maintains any museums or art galleries, it may charge for admission but, in deciding whether and what charge to impose, it must take into account the need to secure that such museum or gallery plays its full part in the promotion of education in the area, with particular regard to the interests of children and students (section 13). In many cases, children are admitted free to such museums or art galleries.

OTHER MEASURES

Play

7.57 The Play Strategy was launched in December 2008, as a direct response to over 9,000 consultation responses from children and young people, including over 1,200 from those with disabilities. The strategy has put children's and young peoples' views at the heart of the design and future development of their local neighbourhoods.

7.58 All local authorities are now in receipt of funding from the DCSF which is to be used to improve play opportunities in areas of greatest need. Local children, young people and their families are consulted, in accordance with Article 12, about where the funding should be used and what the improved play provision in their area will look like. All of the play areas funded by the DCSF must be inclusive and accessible to all children and young people, including those from minority ethnic communities and those who are disabled. Guidance has been issued to Children's Trusts

on developing and adopting an effective play strategy as part of the Children's and Young People's Plan. Senior decision-makers in transport, housing, accident and crime prevention, and public health are required to consider, and promote, child-friendly spaces to improve outcomes for children and young people.

Museums and libraries

7.59 The Department for Culture Media and Sport sponsors free admission for children 16 and under to many museums in England. Museums and libraries offer a safe environment, often free of charge, to children and young people for both formal and informal learning and leisure activity.

7.60 By encouraging greater contact between libraries and local schools and early years settings, there is a consistent increase in the issue of children's books. In 2008, the Museums, Libraries and Archives Council published the Youth Libraries Offer as a statement of what young people could expect of their library and how libraries might improve their services to young people.

7.61 The National Year of Reading was a promotion through national and local media of the joy and benefits of reading to people of all ages and abilities. Libraries' programmes for children provided a natural opportunity for special emphasis. Libraries have gained several hundred thousand new members, including children.

7.62 English Heritage is the Government's agency for the promotion and protection of the historic environment. It aims to encourage children and young people to enjoy, understand and value their historic environment. This includes schools, colleges, teacher training institutions and other educational organisations, as well as families, youth groups and adult lifelong learners. English Heritage allows free access to its 400+ properties for children under nineteen, with an accompanying adult who is a member, and for all children under five. The Heritage Lottery Fund (HLF) supports access for children and young people to the historic environment. The 'Young Roots' grant programme aims to engage young people in their local heritage and funds projects.

Sport

7.63 The PE and Sport Strategy for Young People sets out to offer five hours of sport to five to 16-year olds and three hours to 16-19 year olds a week. Jointly delivered by the DCSF and the Department for Culture, Media and Sport (DCMS), it supports a network of school sport partnerships engaging more pupils in physical education (PE) and sport.

7.64 Sport England is the Government agency responsible for building the foundations of sporting success, by creating a world-leading community sport system of clubs, coaches, facilities and volunteers. Its aim is to create a vibrant sporting culture, working in partnership with national

governing bodies, our national partners, the HE/FE sector, local Government and community organisations. Outcomes include: more children taking part in five hours of sport or PE a week, fewer 16-18 year olds dropping out of sport and improved talent development of those taking part. Sport England has a statutory role in protecting playing fields and must be consulted if community playing fields are threatened by potential developments.

Cultural activities

7.65 The Children's Plan made a commitment to ensure that all children and young people, no matter where they live and or what their background, can get involved in high quality cultural activities in and out of school, working towards a five-hour offer to match that for sport (see above). The aim will be to give young people the chance to develop as:

- informed spectators (through attending top quality theatre and dance performances, world class exhibitions, galleries, museums and heritage sites)
- participants and creators (through learning a musical instrument, playing and singing in ensembles, taking part in theatre and dance performances, producing a piece of creative writing, producing an artwork, making films and media art, or curating an exhibition).

7.66 Creative Activities are a key route to important life skills, such as confidence, self-discipline, effective communication and the ability to work in teams. Investment in programmes like Creative Partnerships, Renaissance in the Regions and Find Your Talent is offering children and young people opportunities to participate in a quality creative and cultural activity.

7.67 Arts Council England gives regular funding to over 880 organisations in England, encompassing a huge and diverse range of artistic, creative and cultural activities in all parts of the country.

7.68 Youth Dance England provides leadership and focus for dance and young people, both in and out of schools, and there will be a network of regional youth dance specialists located in every English region. This is about creating opportunity and high quality experiences for young people, reaching those who may never have thought about dancing, or who have wanted to but perhaps didn't know where to go for more information on dance clubs and courses.

Positive activities

7.69 The Government is committed to providing more and better places for young people to go, particularly those who are less advantaged, including those with disabilities. Aiming high for young people: a ten year strategy for positive activities set out the Government's vision for new

and improved youth facilities in every area. Through the Youth Opportunity and Capital Funds, which are providing £220 million over three years to 2011, young people are making decisions about what activities and facilities they want in their localities. Myplace (a multi-million pound government programme to deliver world-class places for young people to go) is increasing young people's access to world class facilities, offering young people a safe place to go, access to an exciting range of positive leisure time activities and to support services as and when they are needed. Myplace is only funding projects where young people, particularly those who are disadvantaged, have been, and will be, fully involved in the development, design and future running of the project.

8. SPECIAL PROTECTION MEASURES

GENERAL OVERVIEW

- 8.1 This cluster of articles lays down the rights of children and young people who are in custody or detention for immigration purposes, or who are victims of torture, trafficking, sexual exploitation, drug abuse and child labour. The best interests of these children and their wellbeing and development can only be tackled through special measures.
- 8.2 The measures set out in this section recognise that in some cases children require special protection because of their particular vulnerabilities. A number of these rights are protected by the ECHR, enshrined in law by the Human Rights Act 1998. Some further recent measures that relate specifically to protecting children are
- 8.3 The Youth Crime Action Plan takes forward measures to help prevent young people from getting involved in crime and anti-social behaviour. Work is targeted on prevention and is focussed on tackling anti-social behaviour, through support to those who receive ASBOs.
- 8.4 The youth rehabilitation order set up by the Criminal Justice and Immigration Act 2008 provides alternatives to custody and new Sentencing Guidelines will provide over-arching principles for sentencing young people.
- 8.5 When, as a last resort, young people are brought into custody, reforms to the secure estate are ensuring safety through the Youth Justice Board review of Safeguarding in the Secure Estate, published in December 2008. It covered self-harm, suicide and bullying-prevention programmes. All young people have access to an advocacy service and have a complaints procedure.
- 8.6 When families are detained for immigration purposes, everything is done to ensure that children are not separated from their parents and the UK Border Agency (UKBA) is looking at alternatives to detention.
- 8.7 Children are sometimes victims of the worst forms of abuse, such as trafficking, sexual exploitation, exposure to drugs or torture. Guidance, such as *Safeguarding children and young people from sexual exploitation*, June 2009 and the UK Action Plan on Tackling Human Trafficking, is the UK's comprehensive victim-centred strategy to combat trafficking.
- 8.8 The establishment of the UKBA provides an opportunity to bring a stronger focus not just on the status of children and young people arriving in the UK, but on their safety and welfare. We have transformed policy relating to asylum-seeker and refugee children, introduced a code

of practice and have legislated to impose a duty on UKBA to ensure that while children are in the UK they are safe from harm.

8.9 The Ministry of Defence (MOD) takes the welfare of its personnel very seriously. It recognises the importance of providing special treatment for young people under the age of 18 serving in the Armed Forces and, accordingly, has robust and effective safeguards in place to ensure that they are cared for properly and are not placed unnecessarily at risk.

8.10 The MOD ensures that its policies on under-18s are robust and compliant with national and international law, but continues to keep them under review.

8.11 Some further recent legislative measures that relate specifically to protecting children are listed below;

- The new statutory duty and guidance under section 55 of the Borders, Citizenship and Immigration Act 2009 furthers the protection of children seeking refugee status in the UK
- The introduction of the youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008 as an alternative to custody for young people
- The creation of an offence of trafficking people for exploitation in the Asylum and Immigration (Treatment of Claimants etc) Act 2004
- The publication of statutory guidance on *Safeguarding children and young people from sexual exploitation* in June 2009
- The introduction of forced marriage protection orders under the Forced Marriage (Civil Protection) Act 2007

ARTICLE 22 - Refugee Children

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order

to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

LEGISLATION

Immigration

- 8.12** Section 55 of the Borders, Citizenship and Immigration Act 2009 (as set out above) introduced, from 2 November 2009, a statutory duty on the Home Secretary to make arrangements to ensure that the UK Border Agency (UKBA) functions (and services carried out by third parties on UKBA's behalf) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.
- 8.13** The Immigration Rules made by the Home Secretary lay down the practice to be followed in the administration of the Immigration Acts for regulating entry into, and the stay of persons in, the United Kingdom. They are laid before parliament and subject to a negative resolution procedure. Under the Immigration Rules, paragraph 349, a child is defined, for the purpose of an asylum application, as a person who is under the age of 18, or, in absence of any documentary evidence, appears to be under that age. The Immigration Rules make specific provision for asylum-seeking children and the safeguarding and promotion of their welfare during key parts of the asylum process. Paragraph 350 provides for unaccompanied children and requires that particular priority and care be given to the handling of their cases, in light of their vulnerability. Paragraph 351 requires account to be taken of the applicant's maturity when assessing the asylum application. In particular, an application should not be refused solely because the child is too young to understand his situation. Close attention should be given to the welfare of the child at all times. Paragraph 352 requires that when a child is subject to a substantive asylum interview, it should be conducted in the presence of a responsible adult by an interviewer with specialist training in the interviewing of children. Paragraph 352ZA makes requirements in respect of representation or assistance that must be provided to the child in relation to the asylum application and interview.
- 8.14** The power to take fingerprints from asylum seekers (and others) in section 141 of the Immigration and Asylum Act 1999 contains protections for persons under the age of 16, including a requirement that a responsible adult be present.
- 8.15** Part V of the Nationality, Immigration and Asylum Act 2002 provides for immigration and asylum appeals. Subject to certain exceptional and limitations, where an immigration decision (as defined in section 82) has been made in respect of a person, he has the right of appeal to the Tribunal. A UKBA decision which does not give rise to a statutory right

of appeal may be amenable to judicial review.

Support

- 8.16** Under Section 122 of the Immigration and Asylum Act 1999, if it appears that adequate accommodation is not being provided for the child of a destitute asylum seeker, the Secretary of State must offer, and if his offer is accepted, provide or arrange for the provision of, adequate accommodation for the child as part of the asylum seeker's household. Likewise, if it appears that the essential living needs of the child are not being met, he must offer, and if his offer is accepted, provide or arrange for the provision of, essential living needs for the child as part of the asylum seeker's household.
- 8.17** Regulation 3 of Asylum Seekers (Reception Conditions) Regulations 2005 requires the Secretary of State, when providing or arranging for the provision of accommodation for an asylum seeker and his family members under section 95 or 98 of the 1999 Act, to have regard to family unity and ensure, in so far as it is reasonably practicable to do so, that family members are accommodated together.
- 8.18** Regulation 4 of the Reception Conditions Regulations requires the Secretary of State to take into account the specific situation of vulnerable persons when providing support under Sections 95 and 98 of the Immigration and Asylum Act 1999, or when considering whether to provide support under those provisions. The definition of "vulnerable persons" includes a minor who has had an individual evaluation of his situation that confirms he has special needs.
- 8.19** Regulation 6 of the Reception Conditions Regulations requires the Secretary of State to endeavour to trace an unaccompanied minor's family members as soon as possible. This may either be in their country of origin, or if they have been abandoned in the United Kingdom, it could be in the United Kingdom. However, in cases where there may be a threat to the safety of the minor or his family, the Secretary of State shall ensure that these enquiries are undertaken on a confidential basis so as not to jeopardise either the minor's or his family's safety.
- 8.20** Support for failed asylum seekers who are destitute, and their dependents, including children, may be provided under section 4 of the Asylum and Immigration Act 1999.
- 8.21** Local authorities have a duty under sections 17 and 20 of the Children Act 1989 to provide support for unaccompanied asylum-seeking and refugee children. The nature of the support will depend on a local authority's assessment of the individual's needs. UKBA currently reimburses local authorities for the costs of this support under a grant agreement.
- 8.22** All refugee children have exactly the same entitlement to access

services as UK citizen children (see above). Asylum-seeker children of compulsory school age are entitled to free education and all asylum-seeker children are entitled to receive health and welfare support (see above).

OTHER MEASURES

8.23 The UK Border Agency has a policy commitment that no unaccompanied child will be removed from the United Kingdom unless the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be removed. Many unaccompanied asylum-seeking children are, therefore, granted discretionary leave to remain in the UK until they are 17 and a half, even if their asylum claim (and any human rights claim) has failed.

8.24 The Statutory Guidance to the UKBA on making arrangements to safeguard and promote the welfare of children, issued under section 55 of the Borders, Citizenship and Immigration Act 2009 sets out the key arrangements for safeguarding and promoting the welfare of children as they apply both generally to public bodies who deal with children (Part 1) and specifically to the UKBA (Part 2). Any person exercising immigration, asylum, nationality and customs functions are required to have regard to this guidance. The guidance indicates that UKBA must act in accordance with the following principles:

- Every child matters, even if they are someone subject to immigration control.
- The best interests of the child will be a primary consideration when making decisions affecting children.
- Ethnic identity, language, religion, faith, gender and disability are taken into account when working with a child and their family.
- Children should be consulted and the wishes and feelings of children taken into account, wherever practicable, when decisions affecting them are made. Where parents and carers are present, they will have primary responsibility for the children's concerns.
- Children should have their applications dealt with in a way that minimises the uncertainty that they may experience.

8.25 The Statutory Guidance to the UKBA sets out at paragraph 2.19 some of the key policy commitments that apply at different stages of the process to work with individual children, including that special care must be taken when dealing with unaccompanied asylum-seeking children, for instance by checking with them that they understand the process for making and resolving their asylum claim, and ensuring that the physical settings in which their applications are dealt with are as child-friendly as possible to ensure that the child feels safe and protected. The Statutory Guidance

further provides that arrangements must be put in place to secure the support needed by the individual child as they mature and develop into adulthood, and that the UKBA must always make a referral to a statutory agency responsible for child protection or child welfare when a potential indicator of harm has been identified; when a child appears to have no adult to care for them and the local authority has not been notified; when the child appears to be cared for by a person who is not a close relative; when a child is a potential victim of trafficking; and when a child is identified as having run away from their parents, or where they are looked after by a local authority and have gone missing from their care placement.

- 8.26** UKBA policy is that all unaccompanied minors arriving in the UK must be referred, within 24 hours of the application being made, to the Refugee Council's Children's Panel. Its role is to advise and assist an unaccompanied child in their dealings with the UKBA and other central and local government agencies while their application is outstanding.
- 8.27** Asylum-seeking children are eligible to receive legal aid to help them with their asylum application and appeals in relation to immigration decisions. Public legal funding is subject to a means and merits test.
- 8.28** The UKBA has a procedure by which members of the public can raise complaints regarding its operations. It indicates that if the agency cannot deal with the complaint immediately, it will let the complainant know who is dealing with it. The agency aims to give a full response within 20 working days. If a complaint alleges serious professional misconduct by UKBA staff or people working for it, it may take up to 12 weeks to carry out a detailed, independent investigation and the complainant may be contacted during an investigation for further information. The Independent Police Complaints Commission ("IPCC") has a remit to oversee certain serious complaints relating to the exercise of the UKBA's immigration, asylum and customs functions. If a complainant makes a very serious complaint related to the exercise of these functions by UK Borders Agency officers in England and Wales, the matter will be referred to the IPCC. The Agency is also overseen by the Prisons and Probation Ombudsman (PPO). If a person is detained in an immigration removal centre and is unhappy with the way UKBA has dealt with a complaint, they can report the complaint to the PPO.

ARTICLE 30 - Children of Minorities

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

LEGISLATION

General

8.29 As noted above, the Human Rights Act 1998 (HRA) gives domestic effect to the fundamental rights and freedoms set out in the European Convention on Human Rights (ECHR), which includes a number of rights relevant to the protection of the Article 30 rights of children of minorities:

- The right to respect for his private and family life, his home and his correspondence.
- The right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- The right to freedom of expression.
- The right to freedom of peaceful assembly and to freedom of association with others.

8.30 Further, as noted above (Article 2, non-discrimination), Article 14 of the ECHR prohibits the State and public authorities from discriminating against a person in relation to the enjoyment of the fundamental rights and freedoms set out in the ECHR on “any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

8.31 As noted above (Article 2, non-discrimination), the Race Relations Act 1975 (RRA 1975) (as amended) prohibits discrimination on grounds of colour, race, nationality or ethnic or national origins and imposes a duty on public authorities (including schools) to have regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people of different racial groups.

8.32 Under section 19B of RRA 1975, it is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination on racial grounds. Further, it is unlawful for a public authority to subject a person to harassment in the course of carrying out any functions relating to social security, healthcare, or provision of social protection. Discrimination on racial grounds in relation to the provision of goods and services, employment, and education is also unlawful.

8.33 Under the Public Order Act 1986 (as amended), use of threatening words or behaviour or display of threatening behaviour is an offence if the person doing so intends to stir up racial and religious hatred. The Act also creates race and religious hatred offences in relation to the publication or distribution of threatening, abusive or insulting material

(including in written form, plays, broadcasts) and the possession of inflammatory material.

Educational settings

8.34 All local authorities, as public authorities, should have regard to equality legislation which places obligations on them and their schools. The Race Relations (Amendment) Act 2000 places a general duty on local authorities and schools to work towards eliminating unlawful racial discrimination, and to promote equality of opportunity and good relations between people of different racial groups. The Act requires local authorities and schools to have a written race equality policy and to monitor the impact of their policies on black and minority ethnic groups, including, in particular, the impact on attainment.

Admissions

8.35 As mentioned above (Article 2, non-discrimination), the School Admission Code states that admission authorities and governing bodies must ensure that their admission authorities arrangements and other school policies are fair and do not unfairly disadvantage, either directly or indirectly, a child from “a particular social or racial group” (paragraph 1.72).

8.36 The Code also allows admission authorities to operate “catchment areas” when setting their over-subscription criteria (i.e. giving priority to local children). However, the Code explicitly says that admission authorities should ensure that they reflect the diversity of the community served by the school and may not exclude a particular housing estates or addresses in a way that might disadvantage particular social groups (paragraph 2.40). This is intended to ensure that admission polices do not unfairly disadvantage any particular section of, or minority group within, the community.

Attainment and progression

8.37 Under the Education (School Performance Targets) (England) Regulations 2004/2858 (as amended) and the Education (Local Education Authority Performance Targets) (England) Regulations 2005/2450 (as amended), schools and local authorities must set specific targets for attainment and progression in relation to minority groups identified as under-achieving (and also children on free school meals).

ARTICLE 32 - Child Labour

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

LEGISLATION

8.38 The Children and Young Persons Act 1933 (the 1933 Act) (as amended) and the Children and Young Persons Act 1963 (the 1963 Act) (as amended) are the main pieces of legislation that govern child employment (including in entertainment). For the purposes of child employment legislation, section 558 of the Education Act 1996 defines a child as someone under the school leaving age (the school leaving age is the last Friday in June in the school year in which a child turns 16, by virtue of section 8 of the 1996 Act and the Education (School Leaving Date) Order 1997).

Children in employment (other than entertainment)

8.39 The main restrictions on child employment, other than in entertainment, are contained within section 18 of the 1933 Act. This requires that no child under 14 shall be employed at all, except that 13-year olds may be employed in certain limited occupations, as authorised by local authority bylaws. It also requires that children may only do light work and may not be employed: before the close of school hours (save that local authority bylaws may authorise up to one hour's employment in the morning before school starts); before 7am or after 7pm; for more than two hours on a school day; for more than 12 hours in a school week; for more than two hours on a Sunday; or on other non-school days for more than eight hours or more than five hours if under 15 years; in a non-school week for more than 35 hours or 25 hours if under 15 years old; for more than four hours without a rest-break; and a child must have two consecutive weeks free from employment each year during school holidays.

8.40 Employment is not defined for these purposes, but its usual definition is extended to include where a child assists in a trade or occupation carried out for profit, even where the child is unpaid (s30).

8.41 There are also restrictions on children's involvement in street trading (s20); performances endangering life or limb (s23) and performing abroad for profit (s25). Section 21 provides that contravention of sections 18 or 20 shall be punishable by a fine of up to £1000 and section 26 provides that contravention of section 25 may also be punishable by

imprisonment for up to three months.

8.42 Causing or allowing persons under sixteen to be used for begging is an offence under section 4 of the 1933 Act.

8.43 Other legislation relevant to this area:

- The Licensing Act 2003 and the Gambling Act 2005 prohibit or restrict the employment of a child to, for example, make unsupervised sales of alcohol, provide facilities for gambling or perform any function on premises where bingo is played, where gaming machines are situated or where betting or casino facilities are available.
- It is an offence to employ a child in a sex establishment business (see Article 34).

Children in entertainment

8.44 Part 2 of the 1963 Act deals with employment of children in entertainment (the provisions of the 1933 Act do not apply to activities caught by the 1963 Act).

8.45 Section 37(1)(a) of the Act requires that children must be licensed to take part in certain public performances listed at 37(2) - essentially those which are broadcast; where a charge is made in connection with the performance; or where the performance is on licensed premises. Whether or not the child is paid is not relevant. The term "performance" itself is not defined but, in the Government's view, it may be interpreted widely to include children's participation in some "reality TV" programmes.

8.46 Section 37(1)(b) further requires that children must be licensed to otherwise take part in sports or modelling where the child is paid to take part.

8.47 Performance licences must be obtained by the person putting on the performance, from the local authority where the child lives. Section 37(3) of the 1963 Act contains two exceptions to the licence requirement for performances where a child is not paid: no licence is required the first four days of performance in six months; or for performances put on by schools or other bodies of persons approved for these purposes by the local authority or the Secretary of State. Section 37(4) contains conditions that the local authority must consider are satisfied before granting a licence: that the child is fit to perform; that provision has been made to secure the child's health and kind treatment; and that the child's education will not suffer.

8.48 Licences are granted subject to conditions and restrictions set out in the Children (Performances) Regulations 1968 made under the 1963 Act. The Regulations contain requirements for child performances relating to:

medicals; tuition; chaperoning and safeguarding; hours of work and rest; lodgings; and the form of an application for a licence. Non-statutory Guidance was produced in 1968 to accompany the coming into force of the Act and Regulations.

8.49 Section 38 of the 1963 Act provides that a performance licence can only be granted to a child under 14-years of age where it is for: a musical performance; acting a part of a child of their own age; or dancing a part of a child of their own age in an opera or ballet. Section 40 makes it an offence for a person to cause or procure a child, or being their parent to allow them, to do anything in contravention of the s.37 requirements; or to breach a condition of a licence; or to make a false statement in a licence application. Enforcement action is taken by local authorities.

Minimum wage

8.50 Section 3 of the National Minimum Wage Act 1998 (NMWA 1998) provides a legal basis for setting different national minimum wage (NMW) rates for people of different ages and Regulation 13(1A) of the NMW Regulations 1999 prescribes the hourly NMW rate for under 18s (currently £3.57 per hour).

8.51 A provision in the Equality Bill allows employers to continue to pay a lower level of the NMW to young people, based on the development bands of the NMW regulations, without the threat of legal challenge on the grounds of age discrimination.

8.52 The Government has been careful to set rates which protect people from exploitation, whilst not damaging people's employment prospects or the economy. Unemployment rates are higher for young people and employment rates lower. Both are more sensitive to the economic cycle.

8.53 The Government is concerned that removing the youth rates would adversely affect employment levels for this group. Whilst the Government believes that continuing to participate in education or training to at least age 18 is in the long-term best interest of young people, it is important that those who have chosen to work rather than to stay in education do not lose their jobs, or find it harder to access the important employment opportunities that get them into the world of work.

8.54 We know that young workers experience substantially worse unemployment and employment rates than adults. Both are more sensitive to the economic cycle. That is why the Low Pay Commission (LPC) recommended a separate youth rate from the outset in 1999 and continues to believe that there is a case for retaining it. The LPC stated in its 2009 report that "Young people have continued to do less well in the labour market than older workers and are particularly vulnerable in an economic downturn. Therefore, we believe that lower NMW rates for young people are still justified in order to protect employment and, at the same time, reflect the training element attached to younger workers."

8.55 There is currently no NMW for young people aged 13-15 (s1 NMWA 1998). The Government believes that these young people should be in full-time education and we do not wish to encourage them to seek work. At this age, young people are viewed as financially dependent and the State provides financial support to their parents in recognition of this.

ARTICLE 33 - Children and Drug Abuse

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances, as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

LEGISLATION

8.56 The Misuse of Drugs Act 1971 (MDA 1971) regulates the control, production and supply of controlled drugs (narcotic drugs and psychotropic substances). It creates a range of offences in relation to the production, supply and possession controlled drugs including:

- unlawful possession of a controlled drug (s5)
- producing, or concern in the production of a controlled drug (s4(2))
- supplying, offering to supply, concern in the supply of or offer to supply a controlled drug (s4(3)).

8.57 The MDA 1971 provides that, where a court is considering the seriousness of an offence of supplying under s4(3), it shall take into account, as aggravating factors, whether:

- the offence was committed on, or in the vicinity of, school premises at any time when the premises are in use by children, or one hour before or after any such time
- the offence used a courier who, at the time the offence was committed, was under the age of 18.

8.58 It is an offence under the Intoxicating Substances (Supply) Act 1985 for a person to supply, or offer to supply, any substance (other than a controlled drug) to a child or person acting on behalf of anyone under 18 if he knows, or has reasonable cause to believe, that the substance is, or its fumes are, likely to be inhaled by the person under 18 for the purpose of causing intoxication.

8.59 It is also an offence under the Cigarette Lighter Refill (Safety) Regulations 1999 to supply cigarette lighter refill canisters containing butane to anyone under 18.

8.60 The Video Recordings Act 1984 (section 4A) requires that the classifying

body for DVDs, videos and some video games must have special regard to the potential harm that may be caused to a viewer, or through their behaviour to society, by the way in which the work or game deals with illegal drugs, whenever they classify anything under that Act.

- 8.61 Ofcom's Broadcasting Code regulates the broadcasting of material on television or radio that depicts the use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol where it is likely to be viewed by children (see Annex 1).

OTHER MEASURES

- 8.62 Reducing drug use by young people, particularly the most vulnerable, is central to the Government's Updated National Drug Strategy. Choosing not to take illegal drugs is an aim within the Every Child Matters outcome, "Be healthy".

- 8.63 Learning that health and body functions can be affected by drugs (including alcohol, tobacco, volatile substances and medicines) is a compulsory part of science in the National Curriculum.

ARTICLE 34 - Sexual Exploitation of Children

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

LEGISLATION

General

- 8.64 The Sexual Offences Act 2003 (SOA 2003) is central to the protection of children from sexual exploitation and abuse in England and Wales. It creates a range of criminal offences in relation to sexual activity with, or in relation to, children under 16, from the most serious rape or assault of a child under 13 by penetration (s5 / s6) to engaging in sexual activity in the presence of a child under 16 (s11) and causing a child under 16 to watch a sexual act for the purpose of obtaining sexual gratification (s12).
- 8.65 These are serious offences, with maximum penalties ranging from life imprisonment (in the case of the s5 or s6 offence) to 10 years (s11 and s12).

- 8.66 The SOA 2003 also creates various offences in relation to sexual activity with, or in relation to, children of 16-18 where there is an element of exploitation, such as an abuse of a position of trust.
- 8.67 The SOA 2003 also creates offences relevant to the protection of children from inducement or coercion. These include:
- causing or inciting a child under 13 to engage in sexual activity (maximum penalty 14 years imprisonment (s8)).
 - causing or inciting a child under 16 to engage in sexual activity (maximum penalty 14 years imprisonment (s10)).
 - arranging or facilitating commission of a child sex offence (maximum penalty 14 years imprisonment (s14)).
 - meeting a child following sexual grooming (maximum penalty 10 years imprisonment (s15)).
- 8.68 Persons convicted of specified sex offences (which include the offences above) are, in most circumstances, required to notify the police of specified information. Failure to comply with notification requirements is a criminal offence (Part 2, SOA 2003).
- 8.69 Legislation is in place to prevent people who pose a risk (including a sexual risk) to children working in positions in which they have contact with children, or in certain positions of authority in relation to children.
- 8.70 Under the Safeguarding Vulnerable Groups Act 2006 (SVGA 2006), persons who have been convicted of specified offences are put on the 'children's barred list' automatically (where the inclusion is subject to consideration of representations, they may be removed from the children's barred list if it appears to the Independent Safeguarding Authority that their inclusion is not appropriate). A person may also be put on the children's barred list if it appears to the Independent Safeguarding Authority that they have, at any time, engaged in conduct likely to endanger a child, involving sexual material or sexually explicit images, or inappropriate sexual conduct in relation to a child, or if there is a risk that the person may harm, attempt to harm or put a child at risk of harm. A person may also be banned if he may cause a child to be harmed or incite another to harm a child.
- 8.71 A person on the children's barred list commits an offence if he engages in, or seeks, or offers to engage in, regulated activity from which he is barred (s7 SVGA 2006). An employer who knowingly permits a barred person to engage in regulated activity also commits an offence (s9 SVGA 2006).

Child prostitution and pornography

- 8.72 The Sexual Offences Act 2003 creates specific offences in relation to the exploitation of children in prostitution and pornography.
- 8.73 Under s47 SOA 2003, a person obtaining sexual services of a child for payment commits an offence.
- 8.74 Causing, inciting, arranging and facilitating child prostitution, or pornography, and controlling the activities of a child prostitute or child involved in pornography are also offences (s48 to s50).
- 8.75 Making and distributing indecent photographs of children and involvement in the making or distribution of those photographs are offences under section 1 Protection of Children Act 1978. And, under section 160 Criminal Justice Act 1988, it is an offence for a person to have any indecent photograph of a child in his possession.
- 8.76 Paragraph 23 of Schedule 3 to the Local Government (Miscellaneous) Provisions Act 1982, makes it an offence for a licence holder to knowingly permit a person under 18 to enter a sex establishment without reasonable excuse or to employ such a person in the business of the establishment.

OTHER MEASURES

- 8.77 The statutory guidance, *Safeguarding children and young people from sexual exploitation*, was published in June 2009. This guidance should inform procedures drawn up by Local Safeguarding Children's Boards to ensure that local agencies work effectively to address this type of abuse. The guidance provides information about different forms of sexual exploitation to help practitioners identify those at risk. It sets out the roles and responsibilities of different organisations involved in safeguarding and promoting the welfare of children, identifies action that can be taken to prevent and reduce sexual exploitation and provides advice on how to manage individual cases. It also sets out what needs to be done to identify and prosecute perpetrators.
- 8.78 The Government made clear in parliament during the recent Policing and Crime Bill that children found loitering or soliciting for the purposes of prostitution are victims and should be treated as such, and that criminal justice intervention should only be used in exceptional circumstances. But, the Government also made clear that there are important reasons for maintaining the current offence of loitering and soliciting for the purpose of prostitution (contrary to section 1 of the Street Offences Act 1959) for under 18s. It provided criminal justice intervention is the last resort for the following reasons:
- Decriminalising under 18s would risk sending out a message that we do not think it is acceptable for adults to be involved in street prostitution, but that we consider that it is acceptable for a child or young person to loiter or solicitor for the purposes of prostitution. By

retaining the offence, it was felt that we may deter some young people or children from engaging in street prostitution in the first place.

- Abolishing the offence could encourage pimps to target children as they would know that child prostitutes could not be arrested by the police if they were found loitering or soliciting (albeit that, if caught, the pimp is likely to be guilty of the more serious offences of inciting, controlling or arranging child prostitution, as opposed to the equivalent adult offences).
- Although children will only be prosecuted for the offence as a last resort, there may be exceptional cases where support from other agencies has been made available but has not been accessed, or not been effective in helping a child to exit street prostitution. The rehabilitative orders we introduced in section 17 of the Policing and Crime Act 2009 will provide an opportunity to address the child's continued involvement in prostitution.

ARTICLE 35 - Prevention of Abduction, Sale and Trafficking

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

LEGISLATION

Trafficking

- 8.79** The Government is firmly committed to instituting a strong enforcement response against those who commit human trafficking to ensure that the United Kingdom is a hostile environment to traffickers.
- 8.80** The Government has introduced comprehensive legislation to criminalise trafficking, with the introduction of the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, along with the equivalent Scottish provisions of the Criminal Justice (Scotland) Act 2003 and the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.
- 8.81** People trafficking for the purpose of sexual exploitation, into, out of, or within the UK are offences (s57-s59 SOA 2003). Under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2003, it is an offence to arrange or facilitate a person's travel into, within, or out of the UK with the intention of exploiting the passenger in the UK or elsewhere, or in the belief that another person is likely to exploit the person in the UK or elsewhere.
- 8.82** The definition of exploitation covers forced labour and slavery, exploitation in relation to human organs/tissue etc., and being subjected

to force, threats or deception designed to induce the person to provide services or benefits of any kind, or to enable another person to acquire benefits of any kind.

- 8.83** In 2009, the definition of exploitation was amended to provide additional protection to children and vulnerable people from targeted exploitation in a situation where a person who was not young or vulnerable would be likely to have refused to cooperate with the exploiter.

Abduction

- 8.84** Legislation is in place to protect children from abduction from care (s49, Children Act 1989).
- 8.85** It is an offence under the Child Abduction Act 1984 (s1 and s6) for a person connected with a child to take or send the child out of the United Kingdom without the appropriate consent. A person who is not connected with a child commits, under the law of England and Wales, an offence under the same Act (s2) if, without lawful authority or reasonable excuse, he takes or detains a child under the age of sixteen, so as to remove him from the lawful control of any person having lawful control of the child; or so as to keep him out of the lawful control of any person entitled to lawful control of the child.
- 8.86** The Child Abduction and Custody Act 1985 gives effect to the Hague Convention on the Civil Aspects of International Child Abduction and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children. Proceedings may be brought in relation to those Conventions under the Act for recovery of children who have been wrongfully removed from the jurisdiction of a contracting state.
- 8.87** The Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption (1993) has been implemented in the United Kingdom by the Adoption (Inter-country Aspects) Act 1999 and related regulations. These establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights, as recognised in international law. They provide for a system of cooperation amongst Contracting States to ensure that those safeguards are respected and, thereby, prevent the abduction, sale of, or traffic in children.

OTHER MEASURES

- 8.88** The UK signed the Convention on Action against Trafficking in Human Beings (the Convention) on 23rd March 2007 and ratified it on 17 December 2008. It came into force on 1 April 2009.
- 8.89** Government guidance on safeguarding children who may have been trafficked sets out the roles and functions of relevant agencies and how

practitioners should follow procedures to ensure the safety and wellbeing of children who it is suspected have been trafficked.

ARTICLE 36 - Protection from Other Forms of Exploitation

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Forced marriage

- 8.90** The Marriage Act 1949 and the Matrimonial Causes Act 1973 govern the law on marriage in England and Wales. The minimum age at which a person is able to consent to marriage is 16. A person between the ages of 16 and 18 may not marry without parental consent (unless the young person is a widow/widower).
- 8.91** Section 12c of the Matrimonial Causes Act 1973 states that a marriage shall be voidable if “either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise”.
- 8.92** The Government regards forced marriage as an abuse of human rights and a form of domestic abuse and, where it affects children and young people, as child abuse. Although there is no specific criminal offence of “forcing someone to marry” within England and Wales, criminal offences such as conspiracy, threatening behaviour, assault, kidnap, abduction, theft (of passport), threats to kill, imprisonment and murder may, nevertheless, be committed by perpetrators. Sexual intercourse without consent is rape under the Sexual Offences Act 2003, regardless of whether this occurs within a marriage or not.
- 8.93** There are a number of civil and family orders that can be made to protect those threatened with, or already in, a forced marriage. For children, an application for a care or supervision order can be made under the Children Act 1989 (see Article 20) or wardship proceedings may be issued in the High Court.
- 8.94** A Forced Marriage Protection Order can be sought under 63A Family Law Act 1996 (as amended by the Forced Marriage (Civil Protection) Act 2007) (FLA 1996) to protect people (including children) at risk of being forced into marriage and to offer protection for those who have already been forced into marriage. This Act is designed to enable the courts to tailor the terms of an order to protect and meet the specific needs of victims of forced marriage or potential forced marriage. A power of arrest may be attached to the order.
- 8.95** Typical provisions of a Forced Marriage Protection Order include:

- preventing respondent(s) from removing the person to be protected (PTBP) from the jurisdiction of the court; applying for a new passport for the PTBP; and/or surrendering the PTBP's passport
- forbidding respondent(s) from entering into arrangements for marriage of the PTBP in or out of the jurisdiction
- forbidding the use by respondent(s) of threats, intimidation, harassment or force against the PTBP.

8.96 *The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage* was issued under section 63Q(1) FLA 1996 in November 2008. Practice guidelines on handling such cases were issued to guide frontline workers in July 2009. The Forced Marriage Unit (FMU) in British Foreign & Commonwealth Office (FCO) leads on policy on forced marriage across Government. It speaks at about 90 events a year to raise awareness and understanding of forced marriage, runs a public helpline and provides information and support to victims, concerned individuals and professionals handling cases of forced marriage. It can be asked to take action in relation to a person taken abroad.

Tattooing and piercing

8.97 Tattooing of children and young people under 18 years of age is prohibited by the Tattooing of Minors Act 1969.

8.98 Guidance for local authorities on issues about the age of consent for cosmetic piercing is contained in the Health and Safety Executive's (HSE) Local Authority Circular (LAC) 76/2: Enforcement of skin piercing activities. This guidance recommends that businesses are advised to adopt reasonable age restrictions and involve parents where appropriate. The guidance is available on the HSE website at:
www.hse.gov.uk/lau/lacs/76-2.htm

Gambling and licensing

8.99 The Licensing Act 2003 introduced a unified system of regulation of the activities of: the sale and supply of alcohol (it is illegal to sell alcohol to anyone under 18); the provision of regulated entertainment; and the provision of late night refreshment. The system of licensing is to promote four objectives, one of which is the protection of children from harm. Access by a child to the performance of plays, live music and dance, film and indoor sporting events – as well as to recreational facilities, such as bars and restaurants in which alcohol is sold - is, therefore, regulated in accordance with whether there is evidence that the child's exposure to these activities will cause him harm. Harm prevention can be achieved either by requiring the licensed premises to prohibit the child's access (e.g., at all times when the premises is offering adult entertainment), or to allow access only with adult supervision (e.g., in a bar, or at the performance of a play which contains adult themes).

8.100 Under the Children and Young Persons Act 1933 (as amended), a person who sells tobacco or cigarette papers to a person under the age of 18 years, whether for his own use or not, is guilty of an offence.

8.101 The Gambling Act 2005 requires gambling operators to exclude or restrict access by children (in most cases this is defined as under the age of 18) to premises which provide facilities for gambling. In those cases where children can access gambling facilities, this is regulated in accordance with whether such access is consistent with protecting children from harm or exploitation by gambling. This can be achieved by restricting or further prohibiting access by children to such facilities.

8.102 In both the licensing and gambling regimes, intervention in the operation of licensed premises by bodies with other enforcement roles (e.g., the police, child protection or health and safety units) can take the form of objecting to an application for a new licence, or making an application for a review of an existing licence. A review can result in a licence under the 2003 Act or 2005 Act being subject to more stringent conditions, suspended or revoked. In more serious cases, the licence holder can face criminal sanctions, either under this or other legislation (depending on the nature of the transgression).

Advertising codes

8.103 The various advertising codes – including the Advertising Codes for Broadcasting – protect the general public, and therefore children, from financial exploitation. Further, the recent implementation of the Audio Visual Media Services Directive (2007/625/EC) by way of the Audio Visual Media Services Regulations 2009 has introduced restrictions on advertising, sponsorship and product placement in video-on-demand services which specifically protect children. The Regulations also prohibit product placement in children’s television programmes.

Dangerous goods

8.104 Legislation also prohibits the sale of dangerous goods to children:

- Under section 141A of the Criminal Justice Act, it is an offence for a person to sell to a child under 18 any knife, knife blade, razor blade, axe or sword, or any article which has a blade or which is sharply pointed and which is made, or adapted for use, for causing injury to the person.
- The sale of fireworks to children of under 18 is prohibited by the Firework (Safety) Regulations 1997.

8.105 See also Article 36, child labour in relation to children in entertainment.

ARTICLE 37 - Deprivation of Liberty

States Parties shall ensure that:(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults, unless it is considered in the child's best interest not to do so, and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

LEGISLATION

Article 37(b)

8.106 As noted above, the Human Rights Act 1998 (HRA) gives domestic effect to the fundamental rights and freedoms set out in the European Convention on Human Rights (ECHR). Article 5(1) of the ECHR provides that:

“Everyone [this includes children] has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

8.107 Section 44 of the Children and Young Persons Act 1933 provides that every court, in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to, among other things, the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

8.108 Preventing young people entering custody is a cornerstone of the Government’s Youth Justice policy and the range of pre-court diversions has been expanded and strengthened in recent years. Depending upon the age and seriousness of the offence the “out of court” disposals include:

- Fixed Penalty Notices which may be issued under section 43 of the Anti-Social Behaviour Act 2003 for criminal damage, such as graffiti
- Penalty Notices for Disorder under sections 1-11 of the Criminal Justice and Police Act 2001, as amended, for offences such as being drunk and disorderly in a public place
- Youth Restorative Disposals have been piloted and are being analysed – these are intended as a quick and speedy response to low level offending. The Youth Restorative Disposal allows a young person to apologise for committing an offence and take responsibility for their actions at the scene
- Reprimands issued under section 65 of Crime and Disorder Act 1998 – for any summary and certain either way offences
- Warnings under the same provision for any summary and certain either way offences
- Youth Conditional Cautions (for 16- and 17-year olds only, at present) under s66A of Crime and Disorder Act 1998 for similar offences for which a reprimand or warning may be given.

8.109 If the matter proceeds to court and the child or young person pleads guilty, or is convicted, then the court will generally have to have regard to:

- the principal aim of the youth justice system, which is to prevent

offending by persons aged under 18 (s 37(1) Crime and Disorder Act 1998)

- the welfare of the offender (s 44 of the Children and Young Persons Act 1933).

8.110 In deciding on the appropriate sentence, the court has to determine the seriousness of the offence - section 143(1) of the CJA 2003. Depending on that assessment and any mitigating or aggravating factors, the court has the following powers:

- discharge – absolutely or conditionally; or make a reparation order (section 73 of the Sentencing Act), requiring the child or young person to make reparation to the victim of the offence or to the community
- fine – under section 164 of the CJA 2003 the amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence and the court must take into account the circumstances of the case
- a referral order under section 16 of the Sentencing Act must be imposed if the child or young person pleads guilty and had never been convicted of an offence and, among other things, the court is not proposing to make a custodial order. In other circumstances, a referral order may be imposed
- a youth rehabilitation order (YRO) made under section 1 of the Criminal Justice and Immigration Act 2008. Under section 148 of the CJA 2003, a court must not impose a YRO on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence. Even where an offence crosses this threshold, a court is not obliged to make a YRO.

8.111 A YRO is the new community sentence for young people. It may impose a range of conditions (for example, in relation to residence, activity, supervision, education, treatment or curfew). Options include a YRO with intensive supervision and surveillance and a YRO with fostering.

8.112 If the court imposes a YRO on a child or young person, the particular requirement or requirements forming part of must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and the restrictions on liberty imposed by the order must be such as, in the opinion of the court, are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it (section 148(2) of the CJA 2003).

Use of custody

- 8.113 Where a custodial sentence is contemplated, the pre-sentence report made available to the court must be in writing (section 158(1B) of the CJA 2003). The court may only impose a discretionary custodial sentence on a young person if, under sections 152 and 153 of the CJA 2003, it is of the opinion that the offence (or combination of offences) was so serious that neither a fine alone nor a youth rehabilitation order could be justified for the offence. Even if it is so satisfied, a court is not obliged to impose custody – it is a power if this “custody threshold” is met.
- 8.114 Furthermore, as the only custodial sentence for less serious offences for a child or young person is a detention and training order (DTO), which has a minimum period of four months (section 101(1) of the Sentencing Act), any case that warrants a DTO of less than four months must result in a non-custodial sentence. The custody threshold for young people is, therefore, higher than for adults. Even if the custody threshold has been crossed, and the court considers custody would be appropriate, it must first consider whether a YRO with intensive supervision and surveillance, or fostering, would be appropriate (section 1(4) of the CJIA 2008). If the offender was under 15 at the time of conviction, such an order may be imposed only where the offender is a “persistent offender”.
- 8.115 If the court decides that, nevertheless, custody is appropriate, it must state its reasons for being satisfied that the offence(s) is (are) so serious that no other sanction is appropriate and, in particular, why a youth rehabilitation order with intensive supervision and surveillance, or with fostering, cannot be justified (section 174(4B) of the CJA 2003).
- 8.116 Where a custodial sentence is imposed, it must be for the shortest term commensurate with the seriousness of the offence (or combination of offences) (section 153(2) of the CJA 2003).
- 8.117 The DTO is the only custodial sentence available to the youth court and has a minimum term of four months and a maximum term of two years (the DTO periods are for four, six, eight, 10, 12, 18 or 24 months). Half the order is served in custody and the other half under supervision in the community. The aim of the DTO is to provide a clear focus on the planned and constructive use of time spent in custody and effective supervision and support after release.
- 8.118 The custodial sentences available in the Crown Court are:
- a DTO
 - long-term detention under section 91 of the Sentencing Act, for serious offences where an adult offender (over the age of 21) may receive a custodial sentence of 14 years or more
 - extended sentence of detention or detention for public protection

under the “dangerousness” provisions under sections 226 and 228 of the CJA 2003

- detention at Her Majesty’s pleasure under section 90 of the Sentencing Act for murder.

8.119 Early release (up to a maximum of 135 days) under an electronically-monitored Home Detention Curfew (HDC) is available for some young offenders who are serving sentences under section 91 of Powers of Criminal Courts (Sentencing) Act 2000 (PCCSA 2000).

8.120 Section 55 of the Borders Citizenship and Immigration Act 2009 places a duty on the Secretary of State to make arrangements to ensure that immigration functions are carried out having regard to the need to safeguard and promote the welfare of children who are in the UK. It requires staff who are exercising immigration functions to have regard to guidance when exercising that function. As noted above (Article 22, refugees) that guidance is “Every Child Matters: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children.” Part 2 Paragraph 2.19 of that guidance states that detention should be used only as a last resort and for the shortest possible period of time. During any period of detention, reasonable steps should be taken to ensure that a child is able to continue his or her education, maintain contact with friends and practice his or her religion.

CASE LAW

8.121 In the case of *Simpson and Others v Secretary of State for the Home Department* (2007) EWHC 1654, the claimant sought to challenge her continued detention and that of her son by reference to Article 37 of the UNCRC. The administrative court found that the Home Office policy in respect of detention was already in line with Article 37 of the UNCRC. It was the failure to apply the policy in that case which caused the problem.

8.122 *In the case of R v F and another*, [2008] EWCA Crim 1558, the Court of Appeal looked at whether the custodial sentence imposed on a 15-year old defendant for dealing drugs was excessive. The court expressly considered Articles 3(1), 37 and 40(1) of the UNCRC. The Court of Appeal held that consideration of the UNCRC made no difference in this case. The court did not think that the provisions of the Convention are “in any way at odds with, or add to, what the courts of England have always seen as their duty when sentencing such persons to have regard to the welfare of the child or young person”. This was demonstrated, said the Court of Appeal, in the case in question, by the fact that the judge in the lower court gave the youngest defendant a sentence less than half of that given to defendants in their late teens and early twenties for substantially the same offences.

OTHER MEASURES

8.123 The Sentencing Guidelines Council guideline “*Overarching Principles – Sentencing Youths*”, published on 20 November 2009, sets guidelines for the judiciary to follow when sentencing under 18s. This states that “under both domestic law and international convention, a custodial sentence must be imposed only as a “measure of last resort”; statute provides that such a sentence may be imposed only where an offence is “so serious that neither a community sentence nor a fine alone can be justified”.” By virtue of section 172 of the CJA 2003, every court must have regard to relevant guidelines.

[Article??] 37 (c)

8.124 Children in police custody are held separately from adults. Code of Practice C, issued under section 66 of the Police and Criminal Evidence Act 1984, provides that a juvenile shall not be placed in a police cell unless no other secure accommodation is available and the custody officer considers it is not practicable to supervise them if they are not placed in a cell, or that a cell provides more comfortable accommodation than other secure accommodation in the station. A juvenile may not be placed in a cell with a detained adult (8.8). If a juvenile is placed in a cell, the reason must be recorded.

8.125 Sentenced children and young people are held in separate accommodation from adults. If the child or young person is sentenced to a DTO, they will be detained in “youth detention accommodation” as defined in section 107 of the Sentencing Act, which includes:

- a local authority Secure Children’s Home
- a Secure Training Centre
- a Young Offender’s Institution.

8.126 Children and young people subject to different custodial sentences will also be detained in this accommodation. Young people will only ever be accommodated with adults in exceptional circumstances. Similarly, remanded children and young people will be placed in one of these forms of accommodation.

Secure Children’s Homes

8.127 Secure Children’s Homes provide care and accommodation to young people who have been placed under secure welfare orders by local authorities under s25 Children Act 1989, or under criminal justice legislation by the Youth Justice Board. They are regulated under the Children’s Home Regulations 2001 (CHRs) (see also discussion under Article 20, above).

8.128 Under regulation 11, the registered person must ensure that the children’s home is conducted so as to promote children’s welfare and

make proper provision for the welfare, care, education, supervision and, where appropriate, treatment of children accommodated there. The home must be conducted in a manner that respects the privacy and dignity of children accommodated there, and with due regard to the sex, religious persuasion, racial origin, cultural and linguistic background and any disability of children accommodated there.

8.129 A written placement plan must be drawn up in respect of each child. It must set out:

- how, on a day-to-day basis, he will be cared for, and his welfare safeguarded and promoted by the home;
- the arrangements made for his healthcare and education; and
- any arrangements made for contact with his parents, relatives and friends.

8.130 The person preparing or reviewing the placement plan must, so far as practicable, having regard to the child's age and understanding, seek and take account of his views (regulation 12).

8.131 No measure of control, restraint or discipline that is excessive or unreasonable may be used at any time on children accommodated in a children's home. The regulations specifically prohibit corporal punishment and a range of other punishments, including: any punishment relating to the consumption or deprivation of food or drink; any requirement that a child wear distinctive or inappropriate clothes; or any requirement involving restrictions on contact, visits, communications etc. as a disciplinary measure (regulation 17).

Young Offender Institutions

8.132 Pursuant to the Young Offender Institution Rules 2000 (YOI Rules) made under section 47 of the Prison Act 1952, the aim of a young offender institution is to help offenders to prepare for their return to the outside community. This is achieved, in particular, by:

- providing a programme of activities, including education, training and work designed to assist offenders to acquire or develop personal responsibility, self-discipline, physical fitness, interests and skills and to obtain suitable employment after release
- fostering links between the offender and the outside community
- cooperating with the services responsible for the offender's supervision after release.

8.133 The YOI Rules require that order and discipline shall be maintained, but with no more restriction than is required in the interests of security

and well-ordered community life, except where an inmate has been assessed as being suitable to participate in a stricter regime (rule 40). Force must not be used unnecessarily in dealing with an inmate and, when the application of force to an inmate is necessary, no more force than is necessary shall be used (rule 50). Inmates may be restrained (upon the order of the governor) where this is necessary to prevent the inmate from injuring himself or others, damaging property, or creating a disturbance, but for no longer than necessary. Under 17s may only be restrained by handcuffs (rule 52).

8.134 The right to maintain contact with family is protected by Article 8 of the ECHR, incorporated into domestic law through the Human Rights Act 1998 and any interference with this right must be necessary and proportionate. This is reflected in YOI Rules 9 -11.

8.135 Under rule 5 of the YOI Rules, the Secretary of State may release, temporarily, an inmate to assist him in maintaining family ties or in his transition from life in the young offender institution to freedom.

8.136 Inmates are entitled to make complaints to the governor or independent monitoring board, either orally or in writing, and in confidence, if desired. The governor or independent monitoring board must hear the complaints in accordance with rules 8 and 82. Complainants who have exhausted the internal complaints procedure but are still dissatisfied can refer their complaint to the independent Prisons and Probation Ombudsman.

Secure Training Centres

8.137 The aims of a Secure Training Centre, set out in rule 3 of the Secure Training Centre Rules 1998 (STC Rules), made under section 47 of the Prison Act 1952, are to accommodate trainees in a safe environment within secure conditions; and to help trainees prepare for their return to the outside community by:

- (a) providing a positive regime offering high standards of education and training
- (b) in the case of convicted trainees, establishing a programme designed to tackle the offending behaviour of each trainee and to assist in his development
- (c) fostering links between the trainee and the outside community
- (d) in the case of convicted trainees, cooperating with the services responsible for the trainee's supervision after release.

8.138 Under the STC Rules when read with the Prison Act 1952 and section 7 of the Criminal Justice and Public Order Act 1994 and the court's decision in 'C' (see below), no trainee shall be physically restrained save

where necessary for the purpose of preventing him from escaping from custody, injuring himself or others, damaging property or inciting another trainee to do any of things, and then only where no alternative method is available. No trainee may be physically restrained, except by an officer with appropriate training and in accordance with methods approved by the Secretary of State (rule 38). Officers shall not use force unnecessarily and, when the application of force to a trainee is necessary, no more force than is necessary shall be used. No officer shall act deliberately in a manner calculated to provoke a trainee (rule 37).

- 8.139** Under the STC Rules, trainees may be classified, in accordance with any direction of the Secretary of State, taking into account their ages, characters and circumstances (rule 4). An STC must establish systems of privileges, incentives and sanctions approved by the Secretary of State and appropriate to the classes of trainees and their ages, characters and circumstances.
- 8.140** STCs must make arrangements for the education and training of each trainee according to his age and personal needs, as assessed and recorded in a training plan drawn up under rule 27. Activities provided must, so far as practicable, be such as will foster personal responsibility and a trainee's interests and skills and help him to prepare for his return to the community. In the case of a trainee who is of compulsory school age, the curriculum shall be appropriate to his age, ability and aptitude and to any special educational needs he may have. It shall, as far as possible, reflect the requirements of the National Curriculum within the meaning of the Education Act 1996 .
- 8.141** A library shall be provided in every centre and, subject to any directions of the Secretary of State, every trainee shall be allowed to have library books appropriate to his age and to exchange them (rule 21).
- 8.142** The STC Rules require the governor to ensure that special attention is paid to the maintenance of such relations between a trainee and his family as seem desirable in the best interests of the trainee (rule 29). A trainee is entitled to received one visit a week, to make and received telephone calls, and to send and receive any number of letters (three per week at the expense of the centre), subject to any restrictions the Secretary of State may impose with a view to securing discipline and good order, or the prevention of crime, or in the interests of any persons (rules 9 – 11).
- 8.143** STCs are required to establish and operate a grievance procedure for dealing with grievances from trainees or their parents approved by the Secretary of State (rule 8, STC Rules).

CASE LAW

- 8.144** In *R (oao C) v Sec of State for Justice* [2008] EWCA Civ 882, the court held that [it] the use of physical restraint in secure training centres for the

purpose of ensuring good order and discipline was unlawful and a breach of Articles 3 and 8 of the ECHR.

8.145 In *R (on the application of the Howard League for Penal Reform) v Secretary of State for the Home Department and another* [2002] All ER (D) 465 (Nov), the court held that the Children Act 1989 applies to children in Prison Service establishments (including Young Offender Institutions), subject to the necessary requirements of imprisonment. Accordingly, the functions, powers, duties, responsibilities and obligations conferred or imposed on local authorities by the Act (and, in particular, by sections 17 and 47 of the Act) do not cease to arise merely because a child is in a Young Offender Institution or other Prison Service establishment. However, such functions, powers, duties, responsibilities and obligations take effect and operate subject to the necessary requirements of imprisonment.

8.146 *Selmouni v France* (1999) 29 EHRR 403, para 99-100 (when considering Article 3 of the ECHR) “In any event, the court reiterates that, in respect of a person deprived of his liberty, resort to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 ... The court considers that ... the 'minimum severity' required for the application of Article 3 [is], in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the age and state of health of the victim, etc.”

OTHER MEASURES

8.147 The Youth Justice Board’s code of practice *Managing Children and Young People’s Behaviour in the Secure Estate* requires that restraint: must only be used following a risk assessment; must only be used as a last resort, when there is no alternative available or other options have been exhausted; and must not be used as a punishment, or merely to secure compliance with staff instructions. Staff must be mindful of the particular needs and circumstances of the child or young person being restrained (for example, medical conditions or pregnancy).

8.148 An independent review of the use of restraint in the under 18 secure estate by Peter Smallridge and Andrew Williamson was published in December 2008. This review (which took the AC judgment into account) recommended that legislation and guidance on the use of restraint in the under 18 secure estate should be reviewed in the light of six principles:

- Force should be used only as a last resort.
- Force should be used only to prevent the risk of harm.
- The criteria for using force should be consistent across settings.
- The minimum force necessary should be used, and this is proportionate to the identified risk.
- Only approved restraint techniques should be used.

- Force should only be used in the context of an overall approach to behaviour management, including de-escalation and de-briefing, in which children and young people are actively involved.

8.149 The Government accepts this recommendation. There is a need for greater consistency and it will re-examine the relevant legislation and guidance on use of force. The prevention of harm – to young people, to staff, to visitors and to the overall safety of the establishment, as detailed in the independent review – is central to this.

Article 37(d)

8.150 As noted above, the Human Rights Act 1998 (HRA) gives domestic effect to the fundamental rights and freedoms set out in the European Convention on Human Rights (ECHR).

8.151 Article 5(4) of the ECHR provides a right for the child to challenge the legality of the deprivation of his or her liberty:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

8.152 Article 5(5) provides a right to compensation if they have been detained in contravention of the provisions of Article 5:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”

8.153 Article 6(1) provides that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

8.154 Children detained in STCs or YOIs are entitled to receive visits from, and correspond with, their legal advisors (rules 13-14, STCRs), (rules 16-17 YOIRs).

8.155 See further: Article 40, administration of juvenile justice

OTHER MEASURES

8.156 All young people in STC or YOI custody have free access to an advocacy service, which is able to assist them in accessing available services and resolving any issues affecting their care. These services,

which are child-led and confidential, are operated by two national charities Voice and Barnardo's

ARTICLE 38 - Children in Armed Conflict

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years, but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

LEGISLATION

- 8.157** Article 38 should be read in conjunction with the Optional Protocol on the involvement of children in armed conflict (Optional Protocol).
- 8.158** The United Kingdom ratified the Optional Protocol on 24 June 2003 and remains firmly committed to it. The Government recognises the importance of providing special treatment for young people under the age of 18 serving in the Armed Forces and, accordingly, has robust and effective safeguards in place to ensure that they are cared for properly and are not placed unnecessarily at risk.

Recruitment

- 8.159** All recruitment into the UK Armed Forces is voluntary. The minimum age of entry into the Armed Services is 16 (Regulation 4, Armed Forces (Enlistment Regulations) 2009). The age of anyone seeking to join the UK Armed Forces is carefully checked against original birth certificates and other identity documents.
- 8.160** No person under 18 years may be enlisted without the written consent of a person with parental responsibility for him, or, in certain circumstances, any person in whose care the young person may be (Regulation 5, Armed Forces (Enlistment) Regulations 2009). Great care is taken to explain the terms of enlistment and to ensure that the precise nature of the commitment is fully understood by potential recruits and

their parents.

8.161 Recruits under the age of 18 have a statutory right of discharge within the first six months of service by giving not less than 14 days' notice (28 days for the RAF) in writing to the Commanding Officer (Regulation 9 Army Terms of Service Regulations 2007, Regulation 8 Royal Air Force Terms of Service Regulations 2007, Regulation 7.2 Royal Marines Terms of Service Regulations 2006, Regulation 7.2 Royal Navy Terms of Service Regulations).

8.162 The Armed Forces (Enlistment) Regulations 2009 are made under Section 328 of the Armed Forces Act 2006.

OTHER MEASURES

8.163 The UK Armed Forces operate a policy whereby service personnel under 18 years three months who have passed the statutory six month period for 'discharge as of right' may be discharged at the discretion of their commanding officer if they have, before their 18th birthday, indicated clear unhappiness about their choice of career. This policy is published in the Naval Service's BR8748 (Terms of Service for RN Ratings and RM Other Ranks (Article 1003)); Queen's Regulations paragraph 9.414 (in respect of the Army).

ARTICLE 39 - Rehabilitation of Victims

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

LEGISLATION

8.164 As set out elsewhere in this document, section 17, Children Act 1989 places a general duty on local authorities to safeguard and promote the welfare of children within their area who are in need.

8.165 Pursuant to section 17(10), a child shall be taken to be in need if:

- he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under [Part III Children Act 1989]
- his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services
- he is disabled.

- 8.166 Children (including child victims of any form of neglect, exploitation, abuse, torture, or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts) have access to health and social welfare services, as set out in cluster six of this document.

Treatment of victims in the criminal justice system

- 8.167 The introduction of a statutory Code of Practice for Victims of Crime gives victims legal rights for the first time in England and Wales. The Code also legally entitles vulnerable victims to an enhanced level of information and support from the criminal justice system.
- 8.168 The Code of Practice for Victims of Crime is a statutory instrument made under section 32 of the Domestic Violence, Crime and Victims Act 2004. It places legal duties on criminal justice agencies to provide certain services to victims. The Code defines a victim as “any person who has made an allegation to the police, or had an allegation made on his or her behalf, that they have been directly subjected to criminal conduct under the National Crime Recording Standard (NCRS).” It also includes parents and guardians of those under the age of 17, and family members, where the victim has been killed as a result of criminal activity.
<http://www.homeoffice.gov.uk/documents/victims-code-of-practice?view=Binary>
- 8.169 Whether or not they are called to give oral evidence, all victims also have a right to make a written Victim Personal Statement (VPS) to the court, and to the defendant, that explains the physical, emotional and financial impact the crime has had on them. Consolidated Criminal Practice Direction III.28 requires the court to consider any written VPS made by the victim.
http://www.justice.gov.uk/criminal/procrules_fin/contents/practice_direction/part1.htm#id6446983

http://www.cjonline.gov.uk/victim/coming_forward/victim_personal_statement/
- 8.170 As part of the Youth Crime Action Plan (YCAP), five pilot projects explored the best ways to support young victims of crime and published guidance based on this. The Department for Children Schools and Families’ Youth Taskforce is working with the 69 YCAP priority areas to improve local services for young victims.
<http://frontline.cjonline.gov.uk/guidance/victims-and-witnesses/young-victims-of-crime/>

ARTICLE 40 - Administration of Juvenile Justice

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms

of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as, or accused of, having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision, and any measures imposed in consequence thereof, reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

LEGISLATION

Article 40(1). States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

8.171 As noted above, the Human Rights Act 1998 (HRA) gives domestic effect to the fundamental rights and freedoms set out in the European Convention on Human Rights (ECHR) which includes a number of rights relevant to the protection of the Article 40 rights of children:

- Article 5: the right to liberty and security of person
- Article 6(1): the right to a fair and public hearing etc.
- Article 6(2): the right to be presumed innocent
- Article 6(3): which sets out minimum rights in relation to criminal charges
- Article 7: the prohibition on retrospectively.

8.172 As noted above (Article 37, deprivation of liberty), the courts have a duty to have regard for the welfare of children and young people in their dealings with them and must, if appropriate, take steps to remove them from undesirable surroundings and to secure proper provision for their education and training (s44 Children Act 2004).

8.173 Section 11 Children Act 2004 places a duty on the police and probation services, prison governors, and youth offending teams to discharge their functions having regard to the need to safeguard and promote the welfare of children.

Article 40(2)(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.

8.174 Article 40(2)(a) rights of children are protected by the incorporation of Article 7 of the ECHR into domestic law. Article 7(1) provides that:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. “

Article 40(2)(b)(i) To be presumed innocent until proven guilty according to law.

8.175 Article 40(2)(b)(i) rights of children are protected by the incorporation of Article 6 of the ECHR into domestic law. Article 6(2) provides that:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

Article 40(2)(b)(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians...

8.176 Article (6)(3)(a) of the ECHR provides a right:

“to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him”

8.177 See below (article 40(3)) regarding court procedures applicable to children and young people.

8.178 Code of Practice C, issued under section 66 of the Police and Criminal Evidence Act 1984, sets out the procedures that police officers should follow in relation to detention, treatment and questioning. The Code of Practice includes provisions specifically applicable to juveniles (under 18s). In particular, a juvenile must be provided with an appropriate adult, whilst at the police station, who will be present during any police interview.

8.179 An appropriate adult may be the juvenile’s parent, guardian or, if the juvenile is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person representing that authority or organisation; a social worker of a local authority; or failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

8.180 The Code of Practice goes on to say that if a juvenile’s parent is estranged from the juvenile, they should not be asked to act as the appropriate adult if the juvenile expressly and specifically objects to their presence (Note 1C). If a juvenile admits an offence to, or in the presence of, a social worker or member of a youth offending team other than during the time that person is acting as the juvenile’s appropriate adult, another appropriate adult should be appointed in the interest of fairness.

8.181 A juvenile must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless an officer of superintendent rank or above considers that the consequent delay would lead to the interference with or harm to evidence, or other people, or serious loss of or damage to property, and is satisfied that the interview would not significantly harm the person’s physical or mental state (11.15).

8.182 The custody officer must, if it is practicable, ascertain the identity of a person responsible for a juvenile's welfare. This person must be informed, as soon as practicable, that the juvenile has been arrested, why they have been arrested and where they are detained (3.13) and ask the adult to come to the police station to see the detainee (3.15). Where a person has been arrested and is being held in custody in a police station or other premises, he is entitled requests, to have one friend or relative or other person who is known to him, or who is likely to take an interest in his welfare, told that he has been arrested and is being detained there (this right is additional to the general right not to be held incommunicado).

8.183 The Code of Practice further provides that when a detainee is charged they shall be given a written notice showing particulars of the offence and, subject to paragraph 2.6A, the officer's name and the case reference number. As far as possible, the particulars of the charge shall be stated in simple terms, but they shall also show the precise offence in law with which the detainee is charged. If the detainee is a juvenile, the notice should be given to the appropriate adult (16.3).

Article 40(2)(b)(ii) ...to have legal or other appropriate assistance in the preparation and presentation of his or her defence.

8.184 Pursuant to the Police and Criminal Evidence Act section 58(1), a person (including under 18s) arrested and held in police custody is entitled to consult a solicitor privately at any time.

8.185 Anyone under the age of 18 who is either being investigated in relation to a criminal offence, or has been charged with an offence is entitled to free advice and assistance and representation from a lawyer. The entitlement of all individuals, including a child, to receive such legal advice, assistance and representation as required by the interests of justice is defined by section 12 of the Access to Justice Act 1999. The funding of these cases is provided by Criminal Defence Service (General) (No.2) Regulations 2001 and subsequent amendments.

Article 40(2)(b)(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law...

8.186 Article 40(2)(b)(iii) rights of children are protected by Article 6(1) of the ECHR which provides that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

Article 40(2)(b)(iii)...in the presence of legal or other appropriate assistance

and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.

Magistrates' Court

- 8.187** Anyone under the age of 18 who has been charged with a criminal offence is exempt from the means test that applies to an application for representation by a solicitor. They are only required to demonstrate that it is in the interest of justice that they receive legal assistance. Given the age of the defendant, this is generally sufficient to warrant the grant of the representation order.
- 8.188** Once the order is issued, this will cover all the costs of the defence, including all related disbursements and costs. The courts will meet the cost of the interpreter. The representation order will also cover any appeal against conviction.
- 8.189** Should the defendant not have seen a solicitor before they arrive in the court, they can speak with the Court Duty Solicitor who will be able to advise and provide representation at a single hearing should it be required.

Crown Court

- 8.190** Should the case be committed to the Crown Court, the representation order issued in the magistrates' court will be extended to include a barrister. The order can be subsequently amended, on application to the court, to include an additional barrister if the case is sufficiently serious. Again, the order will cover all costs incurred in relation to the defence.

Article 40(2)(b)(iii) ... unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians

- 8.191** See below, Article 40(3).

Article 40(2)(b)(iv) Not to be compelled to give testimony or to confess guilt.

- 8.192** At common law, a person suspected of, or charged with, an offence has the right to remain silent under questioning and, pursuant to section 76(2) of the Police and Criminal Act 1984, a court must not allow a confession to be given in evidence if it was, or may have been, obtained by oppression of the person who made it, or in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession.
- 8.193** The defendant cannot be required to give evidence at trial, but under section 35 of the Criminal Justice and Public Order Act 1994 (the 1994 Act), the court may draw such inferences as appear proper from the

defendant's failure to give evidence or refusal to answer questions once in the witness box, unless it appears to the court that the physical or mental condition of the accused makes it undesirable for him/her to give evidence. Under section 35(2) of the 1994 Act and the *Consolidated Criminal Practice Direction*, para IV.44, no inference may be drawn unless the court is satisfied at the conclusion of the prosecution case that the accused is aware that s/he can give evidence and that an adverse inference can be drawn if he or she does not.

8.194 As a general rule, all persons are competent to give evidence in criminal proceedings unless they are unable to understand questions put to them as a witness, or to give understandable answers to those questions. However, a person charged in criminal proceedings is not competent to give evidence in the proceedings for the prosecution (s53(4) Youth Justice and Criminal Evidence Act 1999). Further, pursuant to section 1(1) of the Criminal Evidence Act 1898 (as amended), a person charged in criminal proceedings may not be called as a witness in those proceedings except upon his own application.

Article 40(2)(b)(iv) to examine or have examined adverse witnesses...

8.195 In criminal proceedings, the defendant has a common law right to examine or have examined adverse witnesses. The defendant may usually conduct the cross-examination in person, however, this right is restricted in relation to certain sexual offences and offences against children (ss 34-35 Youth Justice and Criminal Evidence Act 1999). The right may also, in certain circumstances, be restricted by court order (s36 Youth Justice and Criminal Evidence Act 1999). Where the right to cross-examine is restricted, but the defendant does not arrange for a legal representative to act for him or does not notify the court that he has such legal representation, the court must consider whether it is necessary, in the interests of justice, for the witness to be cross-examined by a legal representative appointed to represent the interests of the accused. If so, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the accused (s38 YJCEA 1999).

CASE LAW

8.196 *JB v Switzerland* [2001] ECHR 31827/96: "the right to remain silent and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6(1) of the Convention. The right not to incriminate oneself, in particular, presupposes that the authorities seek to provide their case without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the person charged."

Article 40(2)(b)(iv) ... to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.

8.197 Generally, any person may lawfully be required to give evidence for either the prosecution or defence.

8.198 The defendant may secure the attendance of a witness by application to the court. The court must issue a summons requiring the witness to attend if it is satisfied that the witness is likely to be able to give evidence likely to be material evidence in the criminal proceedings and it is in the interests of justice to issue a summons (s2 Criminal Procedure (Attendance of Witnesses) Act 1965, s97 Magistrates' Court Act 1980).

Article 40(2)(b)(v) If considered to have infringed the penal law, to have this decision, and any measures imposed in consequence thereof, reviewed by a higher competent, independent and impartial authority or judicial body according to law.

8.199 Pursuant to the Criminal Appeal Act 1968, a person convicted of an offence on indictment in the Crown Court may appeal to the Court of Appeal:

- against conviction with the leave of the Court of Appeal, or if the court of trial grants a certificate that the case is fit for appeal (s1)
- or against sentence (provided it was not a sentence fixed by law) (s9(1)).

8.200 A person convicted by a magistrates' court, including a youth court, may appeal to the Crown Court if he pleaded guilty, against conviction or sentence if he pleaded not-guilty, or against his sentence alone if he pleaded guilty (s108 Magistrates' Court Act 1980). An appeal from the youth court must be heard by a judge or recorder of the Crown Court sitting with two lay justices (one man and one woman) who are authorised to sit in the youth court.

8.201 An appeal to the High Court by way of case stated, or an application for judicial review, is available to either party in the magistrates' court if they are aggrieved at the outcome of proceedings. An appeal by way of case stated or application for judicial review is heard by a Divisional Court of the Queen's Bench Division of the High Court.

Article 40(2)(b)(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used.

8.202 Article 40(2)(b)(vi) rights of children are protected by Article 6(3)(e) of the ECHR which provides a person with the right to "have the free assistance of an interpreter if he cannot understand or speak the language used in court".

Article 40(2)(b)(vii) To have his or her privacy fully respected at all stages of the proceedings.

8.203 Under Article 6(1) of the ECHR, the press and public may be excluded from all or part of a trial where the interests of juveniles, or the protection of the private life of the parties so require.

8.204 Pursuant to section 47 of the Children and Young Persons Act 1933, there is no access for the general public to youth courts. The only people who may be present at any sitting of a youth court are:

- (a) members and officers of the court
- (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case
- (c) bona fide representatives of newspapers or news agencies
- (d) such other persons as the court may specially authorise to be present.

8.205 In cases before the Crown Court, the public is permitted unless the court decides to sit in camera.

Reporting restrictions in criminal proceedings in the youth courts etc.

8.206 Section 49(1) of the Children and Young Persons Act 1933 (the 1933 Act) applies, among other things, to proceedings in a youth court and an appeal from a youth court³², and provides as follows:

- (a) no report shall be published which reveals the name, address or school of any child or young person concerned in the proceedings or includes any particulars likely to lead to the identification of any child or young person concerned in the proceedings
- (b) no picture shall be published or included in a programme service as being or including a picture of any child or young person concerned in the proceedings.

8.207 The overarching test, therefore, is whether the particulars in question are likely to lead to the child or young person being identified as someone concerned in the proceedings. This provision applies to reports and pictures in a newspaper and reports included in a programme service (section 49(3) of the 1933 Act). The court may lift the ban on publicity in a number of circumstances. The first situation is under section 49(5) of the 1933 Act where:

- it is necessary to do so to avoid injustice to the child or young person himself (s. 49(5)(a)); or
- the child or young person is unlawfully at large and:
 - it is necessary to lift the ban for the purpose of apprehending him and bringing him before a court or returning him to custody; and

³² Section 49(2)

- he has been charged or convicted of a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for 14 years or more (s.49(5)(b)).

8.208 The second situation where the ban may be lifted is under subsection 49(4A) where the court has to be satisfied that it is in the public interest to do so. The court may do so in relation to a child or young person who has been convicted of an offence by dispensing, to any specified extent, with the requirements of the section in relation to things such as the prosecution or conviction of the offender and the enforcement, amendment, variation, revocation or discharge of any order made in respect of the offence. Under subsection (4B), the court shall not exercise this power without giving the parties an opportunity to make representations.

Reporting restrictions in the Crown court, adult magistrates' court and county court

8.209 Under the s.39(1) of the 1933 Act, a Crown Court, adult magistrates' court or civil court may direct that no newspaper report of proceedings before the court shall reveal the name, address, or school, or any particulars calculated to lead to the identification of any child or young person concerned in the proceedings. A direction may also be given that no picture of the child or young person shall be published. Section 39 applies to sound and television broadcasts, just as it applies to reports in newspapers (see section 57(4) of the Children and Young Persons Act 1963).

8.210 Under section 39 of the 1933 Act, the onus is on the court to make an order restricting publicity. If no order is made, the media is at liberty to report the names etc. of children or young people, just as they are at liberty to report the names of adults. The protection of the section may be extended not just to a child or young person accused but to any child or young person involved in the proceedings (e.g., as a witness). Publication of matter in contravention of a direction given under s. 39(1) is a summary offence punishable with a fine.

CASE LAW

8.211 In *McKerry v Teesdale and Wear Valley Justices* it was held that the power to dispense with anonymity under s.49(4A) of the 1933 Act had to be exercised with very great care, caution and circumspection. It was said that it would be wholly wrong for any court to dispense with a young person's prima facie right to anonymity as an additional punishment, and that it was also very difficult to see any place for 'naming and shaming'. The court must be satisfied that the statutory criterion, that it was in the public interest to dispense with the reporting restrictions, is satisfied. The court said this will very rarely be the case, and justices making an order under s.49(4A) must be clear why it is in the public interest to dispense with the restrictions. In weighing up the public interest, it was held to be

entirely proper for the justices to ask a reporter who was present in court if he wished to say anything. Inviting the observations of the press could be a valuable process in these circumstances, and the justices had not been in error in that case.

8.212 In respect of reporting restrictions in the case of the *Central Criminal Court, ex parte S* (1999), the Divisional Court held that there has to be a good reason for making an order under s. 39 of the 1933 Act preventing identification of a child or young person who appears before an adult court. The court cited earlier case law stating that the age of the defendant, though a factor of considerable importance, is not the only factor. Moreover, in deciding whether or not to make such an order, the weight which the court should attach to the various factors relevant to the decision might be different at differing stages of the proceedings. For example, after the child or young person has been convicted, it might be appropriate to place greater weight on the interest of the public in knowing the identity of those who have committed serious crimes.

Article 40(3) States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law...

8.213 The Children Act 1908 established a system of juvenile courts, renamed youth courts in the Criminal Justice Act 1991.

8.214 With certain limited exceptions, when a young person is charged with an offence, they will appear before a youth court – a magistrates' court constituted in accordance with section 45 of the 1933 Act or section 66 Courts Act 2003 (judges having the powers of District Judges (Magistrates' Courts)) and sitting for the purpose of:

- (i) hearing any charge against a child or young person or
- (ii) exercising any other jurisdiction conferred by youth courts by or under an Act.

The court is served by youth panel magistrates and district judges.

8.215 If the case is very serious, i.e. meets the criteria in section 91 of the Sentencing Act, and would be likely to receive a custodial sentence of more than two years, the youth court will remit the case to the Crown Court for trial and/or sentence. Appeals against sentences given in magistrates' courts or youth courts are also heard in the Crown Court.

8.216 Section 34A(1) of the 1933 Act provides that, if a child or young person is aged under 16, the court must (and if the juvenile is aged 16 or 17, the court may) require a parent or guardian to 'attend at the court during all the stages of the proceedings, unless, and to the extent that the court is satisfied that, it would be unreasonable to require such attendance, having regard to the circumstances of the case'. In cases where the local

authority has parental responsibility, under section 34A(2) of the 1933 Act, its representative, rather than, or in certain cases as well as, the parent must (or may) be required to attend.

8.217 Under the practice direction applicable to the conduct of proceedings in relation to children and young people in the Crown Court (*Consolidated Criminal Practice Direction* at Part III.30.3 to 30.18), procedures analogous to those in use in youth courts are extended to Crown Courts and magistrates' courts in relation to vulnerable defendants (which includes those aged under 18).

8.218 Part III 30.3 of the Practice Direction sets out the overriding principle that:

“The purpose of criminal proceedings is to determine guilt, if that is in issue, and decide on the appropriate sentence if the defendant pleads guilty or is convicted. All possible steps should be taken to assist a vulnerable defendant to understand and participate in those proceedings. The ordinary trial process should, so far as necessary, be adapted to meet those ends. Regard should be had to the welfare of a young defendant as required by section 44 of the Children and Young Persons Act 1933, and generally to Parts 1 and 3 of the Criminal Procedure Rules (the overriding objective and the court's powers of case management).”

8.219 The practice direction requires that, if appropriate:

- the proceedings should, if practicable, be held in a courtroom in which all the participants are on the same or almost the same level
- the young defendant should normally, if he wishes, be free to sit with members of his family or others in a like relationship, and with some other suitable supporting adult, such as a social worker, and in a place which permits easy, informal communication with his legal representatives;
- the court should ensure that a suitable supporting adult is available throughout the course of the proceedings
- the court should explain the purpose of the proceedings (and, in the Crown Court, the role of the jury) in terms that the young defendant can understand
- the timetable should take account of the young defendant's ability to concentrate
- the court should ensure, so far as practicable, that the trial is conducted in simple, clear language that the young defendant can understand and that cross-examination is conducted by questions that are short and clear

- a young defendant who wishes to give evidence by live link, in accordance with section 33A of the Youth Justice and Criminal Evidence Act 1999, may apply for a direction to that effect
- robes and wigs should not normally be worn
- and the court should be prepared to restrict attendance by members of the public and reporters.

8.220 Certain vulnerable defendants, including children, may be able to give oral evidence by live link (sections 33A-C, Youth Justice and Criminal Evidence Act 1999 as inserted by the Police and Justice Act 2006).

8.221 The Government has also legislated in the Coroners and Justice Act 2009 to enable certain vulnerable defendants to be assisted by an intermediary when giving oral evidence as a witness (sections 33BA-33BB, Youth Justice and Criminal Evidence Act 1999 as introduced by section 104 Coroners and Justice Act 2009). This provision has not yet been implemented.

Courts-Martial

8.222 Members of the armed forces under the age of 18 are subject to the same military justice system as adults, however, when referring an under 18 for court-martial trial a commanding officer must write to notify his or her parents (see for example Army Queen's Regulations (QR) 6.175 and RAF QR 1149). A court-martial's attention will always be drawn to an accused's age if they are under 18, and witnesses under that age before a court-martial are eligible for assistance and special measures equivalent to those that apply in relation to such witnesses in a civilian trial (Armed Forces (Court-Martial) Rules (CMR) 2009/2041). Provisions governing the sentencing of such persons by courts-martial broadly correspond to the civilian system, with any differences in the sentencing options available reflecting service conditions. There are no punishments specific to under 18s available when an accused is dealt with summarily.

8.223 Detailed special measures provisions relating to witnesses under the age of 18 can be found in CMR part 12 Chapter 6 (Rules 89 et seq).

Article 40(3)(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

8.224 Pursuant to section 50 of the Children and Young Persons Act 1933, it shall be conclusively presumed that no child under the age of 10 years can be guilty of any offence.

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

8.225 See above (Article 37, children in detention) regarding out-of-court disposals

OTHER MEASURES

8.226 The Youth Crime Action Plan includes a commitment to roll out the “triage” model in the 69 YCAP priority areas, whereby Youth Offending Team (YOT) staff work together with the Police and the Crown Prosecution Service (CPS) to tackle young people’s offending at the point of arrest, make rapid assessments of young offenders and inform decisions on next steps.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

8.227 See above (Article 37, children in detention) regarding out of court disposals and non-custodial disposals, including the youth rehabilitation order, (Article 9, separation from parents) regarding care and supervision orders, (Article 20, children deprived of family environment) regarding fostering.

ANNEX 1: EXTRACTS FROM THE OFCOM BROADCASTING CODE

NB: These sections should be read in conjunction with their corresponding Guidance, available at http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section1_2009.pdf (Section 1 Guidance) and http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section2_2009.pdf (Section 2 Guidance).

SECTION 1: PROTECTING THE UNDER-EIGHTEENS

Relevant legislation includes, in particular, sections 3(4)(h) and 319(2)(a) and (f) of the Communications Act 2003, Article 22 of the Audiovisual Media Services and Article 10 of the European Convention on Human Rights.) This section must be read in conjunction with Section Two: Harm and Offence.

Principle

To ensure that people under eighteen are protected.

Rules

Scheduling and content information

- 1.1 Material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast.
- 1.2 In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen. For television services, this is in addition to their obligations resulting from the Audiovisual Media Services Directive (in particular, Article 22, see Appendix 2).
- 1.3 Children must also be protected by appropriate scheduling from material that is unsuitable for them.

Meaning of "children":

Children are people under the age of fifteen years.

Meaning of "appropriate scheduling":

Appropriate scheduling should be judged according to:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start time and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

1.4 Television broadcasters must observe the watershed.

Meaning of "the watershed":

The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not, in general, be shown before 2100 or after 0530.

On premium subscription film services which are not protected as set out in Rule 1.24, the watershed is at 2000. There is no watershed on premium subscription film services or pay per view services which are protected as set out in Rules 1.24 and 1.25 respectively.

1.5 Radio broadcasters must have particular regard to times when children are particularly likely to be listening.

Meaning of "when children are particularly likely to be listening":

This phrase particularly refers to the school run and breakfast time, but might include other times.

1.6 The transition to more adult material must not be unduly abrupt at the watershed (in the case of television) or after the time when children are particularly likely to be listening (in the case of radio). For television, the strongest material should appear later in the schedule.

1.7 For television programmes broadcast before the watershed, or for radio programmes broadcast when children are particularly likely to be listening, clear information about content that may distress some children should be given, if appropriate, to the audience (taking into account the context). (For the meaning of "context" see Section Two: Harm and Offence.)

The coverage of sexual and other offences in the UK involving under-eighteens

1.8 Where statutory or other legal restrictions apply preventing personal identification, broadcasters should also be particularly careful not to provide clues which may lead to the identification of those who are not yet adult (the defining age may differ in different parts of the UK) and who are, or might be, involved as a victim, witness, defendant or other perpetrator in the case of sexual offences featured in criminal, civil or family court proceedings:

- by reporting limited information which may be pieced together with other information available elsewhere, for example in newspaper reports (the 'jigsaw effect');
- inadvertently, for example by describing an offence as "incest"; or
- in any other indirect way.

(Note: Broadcasters should be aware that there may be statutory reporting restrictions that apply even if a court has not specifically made an order to that effect.)

1.9 When covering any pre-trial investigation into an alleged criminal offence in the UK, broadcasters should pay particular regard to the potentially vulnerable position of any person who is not yet adult who is involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving

picture of them. Particular justification is also required for the broadcast of such material relating to the identity of any person who is not yet adult who is involved in the defence as a defendant or potential defendant.

Drugs, smoking, solvents and alcohol

1.10 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;
- must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification;
- must not be condoned, encouraged or glamorised in other programmes likely to be widely seen or heard by under-eighteens unless there is editorial justification.

Violence and dangerous behaviour

1.11 Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio) and must also be justified by the context.

1.12 Violence, whether verbal or physical, that is easily imitable by children in a manner that is harmful or dangerous:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;
- must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.

1.13 Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;
- must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.

(Regarding Rules 1.11 to 1.13 see Rules 2.4 and 2.5 in Section Two: Harm and Offence.)

Offensive language

1.14 The most offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio).

1.15 Offensive language must not be used in programmes made for younger children except in the most exceptional circumstances.

1.16 Offensive language must not be broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless it is justified by the context. In any event, frequent

use of such language must be avoided before the watershed.(Regarding Rules 1.14 to 1.16 see Rule 2.3 in Section Two: Harm and Offence.)

Sexual material

1.17 Material equivalent to the British Board of Film Classification ("BBFC") R18-rating must not be broadcast at any time.

1.18 'Adult sex material' - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access.

In addition, measures must be in place to ensure that the subscriber is an adult.

Meaning of "mandatory restricted access":

Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view.

1.19 Broadcasters must ensure that material broadcast after the watershed which contains images and/or language of a strong or explicit sexual nature, but is not 'adult sex material' as defined in Rule 1.18 above, is justified by the context.

(See Rules 1.6 and 1.18 and Rule 2.3 in Section Two: Harm and Offence which includes meaning of "context".)

1.20 Representations of sexual intercourse must not occur before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, or when children are particularly likely to be listening, and must be appropriately limited.

Nudity

1.21 Nudity before the watershed must be justified by the context.

Films, premium subscription film services, pay per view services

1.22 No film refused classification by the British Board of Film Classification (BBFC) may be broadcast unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of classification by the BBFC may be transmitted in a version which includes the cut material unless:

- the BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or
- the BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.

1.23 BBFC 18-rated films or their equivalent must not be broadcast before 2100 on any service (except for pay per view services), and even then they may be unsuitable for broadcast at that time.

1.24 Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided that mandatory restricted

access is in place pre-2000 and post-0530.

In addition, those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of "mandatory restricted access" under Rule 1.18 above.)

1.25 Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2100 and post-0530.

In addition:

- information must be provided about programme content that will assist adults to assess its suitability for children;
- there must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of "mandatory restricted access" under Rule 1.18 above.)

1.26 BBFC R18-rated films must not be broadcast.

Exorcism, the occult and the paranormal

1.27 Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio). Paranormal practices which are for entertainment purposes must not be broadcast when significant numbers of children may be expected to be watching, or are particularly likely to be listening. (This rule does not apply to drama, film or comedy.)(See Rules 2.6 to 2.8 in Section Two: Harm and Offence and Rule 4.7 in Section Four: Religion.)

The involvement of people under eighteen in programmes

1.28 Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.

1.29 People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.

1.30 Prizes aimed at children must be appropriate to the age range of both the target audience and the participants.(See Rule 2.16 in Section Two: Harm and Offence.)

SECTION 2: HARM AND OFFENCE

(Relevant legislation includes, in particular, sections 3(4)(g) and (l) and

319(2)(a), (f) and (l) of the Communications Act 2003, and Articles 10 and 14 of the European Convention on Human Rights.)

This section must be read in conjunction with Section One: Protecting the Under-Eighteens. The rules in this section are designed not only to provide adequate protection for adults but also to protect people under-eighteen.

Principle

To ensure that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.

Rules

Generally Accepted Standards

2.1 Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.

2.2 Factual programmes or items or portrayals of factual matters must not materially mislead the audience. (Note to Rule 2.2: News is regulated under Section Five of the Code.)

2.3 In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

Meaning of "context":

Context includes (but is not limited to):

- the editorial content of the programme, programmes or series;
- the service on which the material is broadcast;
- the time of broadcast;
- what other programmes are scheduled before and after the programme or programmes concerned;
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
- the likely size and composition of the potential audience and likely expectation of the audience;
- the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and
- the effect of the material on viewers or listeners who may come across it unawares.

Violence, dangerous behaviour, and suicide

2.4 Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour. (See Rules 1.11 to 1.13 in Section One: Protecting the Under-Eighteens.)

2.5 Methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context. (See Rule 1.13 in Section One: Protecting the Under-Eighteens.)

Exorcism, the occult and the paranormal

2.6 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these that purport to be real (as opposed to entertainment) must be treated with due objectivity. (See Rule 1.27 in Section One: Protecting the Under-Eighteens, concerning scheduling restrictions.)

2.7 If a demonstration of exorcism, the occult, the paranormal, divination, or practices related to any of these is for entertainment purposes, this must be made clear to viewers and listeners.

2.8 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals. (Religious programmes are exempt from this rule but must, in any event, comply with the provisions in Section Four: Religion. Films, dramas and fiction generally are not bound by this rule.)

Meaning of "life-changing":

Life-changing advice includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.

Hypnotic and other techniques, simulated news and photosensitive epilepsy

2.9 When broadcasting material featuring demonstrations of hypnotic techniques, broadcasters must exercise a proper degree of responsibility in order to prevent hypnosis and/or adverse reactions in viewers and listeners. The hypnotist must not broadcast his/her full verbal routine or be shown performing straight to camera.

2.10 Simulated news (for example in drama or in documentaries) must be broadcast in such a way that there is no reasonable possibility of the audience being misled into believing that they are listening to, or watching, actual news.

2.11 Broadcasters must not use techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds without their being aware, or fully aware, of what has occurred.

2.12 Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item.

Broadcast competitions and voting

2.13 Broadcast competitions and voting must be conducted fairly.

2.14 Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting.

2.15 Broadcasters must draw up rules for a broadcast competition or vote.

These rules must be clear and appropriately made known. In particular, significant conditions that may affect a viewer's or listener's decision to participate must be stated at the time an invitation to participate is broadcast.

2.16 Broadcast competition prizes must be described accurately.

(See also Rule 1.30 in Section One: Protecting the Under-Eighteens, which concerns the provision of appropriate prizes for children.)

Note:

For broadcast competitions and voting that involve the use of premium rate services (PRS), broadcasters should also refer to Rules 10.9 and 10.10.

Meaning of "broadcast competition":

A competition or free prize draw featured in a programme in which viewers or listeners are invited to enter by any means for the opportunity to win a prize.

Meaning of "voting":

Features in a programme in which viewers or listeners are invited to register a vote by any means to decide or influence, at any stage, the outcome of a contest.

ANNEX 2: SANCTIONS AVAILABLE TO OFCOM

Broadcaster	Possible sanction	Source of Ofcom's power to impose sanction
BBC	<ul style="list-style-type: none"> Financial penalty (maximum £250,000) Direction not to repeat a programme Direction to make a correction and/or give a statement of findings 	<ul style="list-style-type: none"> Section 198 CA 2003 BBC Agreement at paragraphs 46, 93 94 and 95
S4C	<ul style="list-style-type: none"> Financial penalty (maximum £250,000) Direction to make a correction and/or give a statement of findings Direction not to repeat an advertisement 	<ul style="list-style-type: none"> Sections 338 and 341 CA 2003 Schedule 12 paragraphs 12 and 15 CA 2003
Channel 4	<ul style="list-style-type: none"> Financial penalty (maximum £250,000) Direction not to repeat a programme or advertisement Direction to make a correction and/or give a statement of findings 	<ul style="list-style-type: none"> Sections 325 (makes compliance with Codes a licence condition), 344 (introduces concept of "statement of findings") and 345 (imposes financial penalties in Schedule 13) CA 2003. NB CANNOT SHORTEN LICENCE PERIOD – SEE SECTION 41(6) BA 1990
Channel 3	<ul style="list-style-type: none"> Financial penalty Direction not to repeat a programme Direction to make a correction and/or give a statement of findings Shorten the licence period Revoke licence 	<ul style="list-style-type: none"> Sections 40, 41 and 42 BA 1990
Channel 5	<ul style="list-style-type: none"> Financial penalty Direction not to repeat a programme Direction to make a correction and/or give a statement of findings Shorten the licence period Revoke licence 	<ul style="list-style-type: none"> Sections 40, 41 and 42 BA 1990
Digital Programme Services	<ul style="list-style-type: none"> Financial penalty Direction not to repeat a programme Direction to make a correction and/or give a statement of findings Shorten the licence period 	<ul style="list-style-type: none"> Section 23 BA 1996 NB CANNOT REVOKE LICENCE – SEE SECTION 23(9)(b)
Television Licensable Content Services e.g. satellite or cable channels	<ul style="list-style-type: none"> Direction not to repeat a programme Direction to make a correction and/or give a statement of findings Financial penalty Revoke licence 	<ul style="list-style-type: none"> Sections 236 – 238 CA 2003

MODEL MAY 2009

**ANNEX 3: ACADEMIES - MODEL STANDARD
FUNDING AGREEMENT Oct 2009**

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ACADEMY

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MODEL FUNDING AGREEMENT

October 2009

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**ACADEMY
FUNDING AGREEMENT**

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INTRODUCTION

- 1) This Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between the Secretary of State for Children, Schools and Families (“the Secretary of State”) and [] (the “Academy Trust”).
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Academy Trust number xxxxxxxx [and is registered as a charity (charity number xxxxxxxx)]. The Academy Trust shall be registered as a charity by no later than [3 months] after the date of this Agreement.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
 - a) “Academies Financial Handbook” - clause 94;
 - b) "Academy Financial Year" - clause 88;
 - c) “Accounting Officer” – clause 93;
 - d) "annual letter of funding" - clause 87;
 - e) “Chief Inspector” means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
 - f) "GAG" – clause 61;
 - g) "Capital Expenditure" - clause 62;
 - h) “Capital Grant” – clause 62;
 - i) "EAG" - clause 61;
 - j) “Minimum Period” means a period determined according to the following table:

113) If at the time the Special Measures Notice is given the Academy shall have been opened for:	114) The Minimum Period will be
115) Less than 12 months	116) 36 months
117) Less than 24 months but 12 months or more	118) 24 months
119) 24 months or more	120) 12 months

k) "recurrent expenditure" – clause 61;

l) "School Development Plan" – clause 19;

m) "Start-up Period" – clause 77;

4) In this Agreement the following words and expressions shall have the following meanings:-

"Business Day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;

"DCSF" means Department for Children, Schools and Families;

"Further Governors" means Governors who may be appointed by the Secretary of State under the Articles if a Special Measures Termination Event, as defined in this Agreement, occurs;

"Principal" means the head teacher of the Academy;

"LA" means the Local Authority in the area in which the Academy is situated;

121) "Memorandum" and "Articles" means the Memorandum and Articles of Association of the Academy Trust for the time being in force, a copy of the current version of which is annexed to this Agreement as Annex A;

"parents" means parents or guardians;

"persons" includes a body of persons, corporate or incorporate;

references to "school" shall where the context so admits be references to the Academy;

"SEN" means Special Educational Needs;

7) The Interpretation Act 1978 shall apply for the interpretation of this

Agreement as it applies for the interpretation of an Act of Parliament.

8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.

9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust

10) Section 482 (1) of the Education Act 1996 as substituted by the Education Act 2002 states that -

"(1) The Secretary of State may enter into an agreement with any person under which-

a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and

b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

LEGAL AGREEMENT

11) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school to be known as the **[INSERT]** Academy ("the Academy") and having such characteristics as are referred to in clause 12, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

CHARACTERISTICS OF THE ACADEMY

12) The characteristics of the Academy set down in section 482 (2) of the

Education Act 1996, as substituted by the Education Act 2002, are that the school:

- a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the Agreement; and
- b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

CONDITIONS OF GRANT³³

General

13) Section 482(4) of the Education Act 1996 provides for the agreement to specify other conditions and requirements. These conditions in respect of the Academy are that:

- a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;
- b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;
- c) *[the admissions policy and arrangements for the school will be in accordance with admissions law, and the DCSF Codes of Practice, as they apply to maintained schools]*³⁴;

³³ Subject to Variation, by agreement between the Secretary of State and the Academy Trust

³⁴ It is for the Academy Trust's Directors/Governors (the trustees, at charity law, of the Academy Trust) to decide which of the potential beneficiaries of their charity they would wish to concentrate on in furthering their purpose and how such beneficiaries should be selected. The Directors/Governors, as charity trustees, will need to consider whether any particular constraints imposed by DCSF, as funding body, are ones which they are willing to adopt, including any potential future changes to the code or the law that cannot be predicted. The Directors/Governors should have regard to the Charity Commission's public benefit and other published guidance.

- d) teachers will be required to have qualified teacher status; levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust;
- e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

Donations (13g to be used only where there is no requirement on sponsors to set up an endowment fund).

The Academy Trust shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles

Governance

- 14) The Academy will be governed by a governing body (“the Governing Body”) who are the Directors of the company constituted under the Memorandum and Articles of the Academy Trust.
- 15) The Governing Body shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of academies that the Secretary of State may publish.

Conduct

- 16) The Academy shall be conducted in accordance with:
 - a) the Memorandum and Articles, which shall not be amended by the Academy Trust without the explicit consent of the Secretary of State, such consent not to be unreasonably withheld;
 - b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent

schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;

- c) the terms of this Agreement.

Pupil well-being; Community Cohesion; and the Children & Young

People Plan

17) In conducting the Academy and in providing community facilities the Academy Trust shall, so far as is reasonably practicable –

- a) promote the well-being of pupils at the Academy;
- b) promote community cohesion; and
- c) have regard to any plan published by the LA under section 17 of the Children Act 2004 or (where the LA is not required to publish such a plan) any plan published by the LA setting out their strategy in relation to children and relevant young people.

Designated Teacher for Children in Care

18) The Academy Trust will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust.

School Development Plan and target setting

19) The Academy Trust shall provide to the Secretary of State a School

Development Plan for the Academy each Academy Financial Year in accordance with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:

- a) in accordance with a format and timetable to be advised by the Secretary of State, set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable; and
- b) describe the Academy Trust's proposals for the Academy to work with other schools and with the wider community.

20) The Academy Trust shall in relation to the Academy set targets each Academy Financial Year in areas which are prescribed for maintained schools in regulations made by the Secretary of State under section 19 of the Education Act 1997 (or any statutory amendment or re-enactment of that section) or such variation of those targets as may be agreed between the Academy Trust and the Secretary of State. For the avoidance of doubt such targets shall solely be in the minimum areas required to enable the Secretary of State to monitor performance, and it shall remain open to the Academy Trust to set targets for the Academy in areas that are additional to those that are so prescribed.

21) The Academy Trust shall consult the Secretary of State before setting these targets in respect of the Academy and shall take into account (but not be bound by) any comments received from the Secretary of State. The Academy Trust shall set its targets for the Academy in accordance with the timetable for target setting which applies to maintained schools.

Pupils

22) The Academy will be an all ability and inclusive school. The arrangements for:

- a) the admission of pupils to the Academy together with the arrangements for making changes to such arrangements, including the requirement to

secure the consent of the Secretary of State to such changes, such consent not to be unreasonably withheld or delayed, are set out in Annex B to this Agreement;

- b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) (including the appointment of a responsible person) together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, are set out in Annex C to this Agreement;
- c) pupil exclusions are set out in Annex D to this Agreement.

Teachers and other staff

23) Subject to clause 24, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England; or
- b) otherwise eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the Academy were a maintained school.

24) Clause 23 and the requirement in clause 13(d) for teachers to have qualified teacher status do not apply to anyone who:

- a) was transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations

2006;

- b) immediately prior to the transfer, was employed to do specified work;
- and
- c) immediately prior to the transfer, was not:
 - i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England, or
 - ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

(“transferred staff member”). The Academy Trust shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 23(a) or clause 23(b) meets such requirements as soon as possible.

25)*[The Academy Trust shall ensure that all teachers employed at the Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme].*

26)*[The Academy Trust shall ensure that all employees at the Academy other than teachers have access to the Local Government Pension Scheme].*

27)Reasonable notice shall be given to the Secretary of State of any meeting of the Governing Body or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a Principal is being considered and a representative of the Secretary of State shall be entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 135 of this Agreement. Advice given by any such representative shall be taken into account by (but, for the avoidance of doubt, is not binding on) those persons considering the appointment of the Principal before a decision is made.

28)It shall be the responsibility of the Academy Trust to agree levels of pay and conditions of service with its employees, and to determine and employ

such numbers of staff as may be appropriate. The Academy Trust shall approve policies for:

- a) staffing structure, and staff remuneration
- b) staff discipline and performance management.

14-19 entitlement

29)The Academy Trust shall make arrangements to ensure that, so far as reasonably practicable, a pupil at the Academy in the fourth key stage has the same curriculum entitlements as are conferred on such a pupil at a maintained school by section 85A(1) of the Education Act 2002.

30)The Academy Trust shall make arrangements to ensure that, so far as reasonably practicable, a course of study in the core subjects and a course of study in one of the entitlement areas is made available (whether at the Academy or otherwise) to any pupil at the Academy who is above compulsory school age.

31)Nothing in clauses 29 and 30-

- (a) requires the Academy Trust to incur disproportionate expenditure in making these arrangements;
- (b) confers any greater entitlements on a pupil than are conferred by section 85A(1) of the Education Act 2002 and section 3A of the Learning and Skills Act 2000.

32)In making arrangements under clauses 29-30 the Academy Trust shall have regard to any guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Development Agency (QCDA).

33) For the purpose of clauses 29-30, “course of study”, “core subjects” and “entitlement areas” have the same meaning as in sections 3A, 3B and 3C respectively of the Learning and Skills Act 2000.

Curriculum, curriculum development and delivery and RE and collective worship

34) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis on [insert specialism(s)].

35) The Academy Trust shall ensure that the National Curriculum programmes of study for English, Mathematics and Science for the time being prescribed by the Secretary of State under section 87 of the Education Act 2002 are taught so far as appropriate to any pupils admitted to the Academy in Years 1-11. In any event, the Academy Trust must ensure that such programmes of study have been covered in full at the Academy by the end of the final year of the Key Stage relevant for each Year group.

36) The Academy Trust shall ensure that if the Academy admits pupils in Years 1-6, the curriculum for these Years is sufficiently broad and has such depth as to enable such pupils to be adequately prepared for study at Key Stage 3 whether at the Academy or any other mainstream educational institution, including those institutions not sharing the Academy’s specialism.

37) Despite clauses 35-36, the Academy Trust is not required to teach an individual pupil or group of pupils in one or more subjects where, in the opinion of the Principal, it is inappropriate to do so by reason of the pupil’s or group’s ability or attainment.

38) The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.

39) Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

a) subject to clause 41, the Academy Trust shall ensure that provision is

made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;

- b) subject to clause 41, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
- c) the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

40) Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

- a) subject to clause 41, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the QCDA's national framework for religious education in schools;

b) subject to clause 41, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

41) Section 71(1) – (4) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to “Religious Education” and to “Religious Worship” in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 39 or 40 as appropriate.

42) The Academy Trust shall have regard to any guidance issued by the Secretary of State on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

Careers Education: Information and Advice

42A The Academy Trust shall ensure that in the provision of Careers Education to its pupils the Academy provides impartial advice in accordance with sections 43, 45 and 45A of the Education Act 1997 as amended by section 81 of the Education and Skills Act 2008.

Assessment

43) The Secretary of State will notify the QCDA about the Academy.

44)The Academy Trust shall ensure that the pupils at the Academy take part at the end of Key Stage 3 in teacher assessments of pupil's performance in English, Maths and Science.

[Where an all age Academy use the following alternative clause 44

44)The Academy Trust shall ensure that the pupils at the Academy take part in Key Stages 1 and 2 assessments in English, Maths and Science and in teacher assessments of pupil's performance in those subjects. The Academy Trust shall also ensure that teacher assessments of pupils' performance in those subjects are carried out at the end of Key Stage3.]

45)The Academy Trust shall report to the QCDA and its agencies on the assessments required under clause 44 and shall provide the QCDA with such information as the QCDA may require in order for the requirements of clause 44 to be met.

46)In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements. The Academy Trust shall choose for the Academy to be monitored either:-

- a) by the LA, with the consent of that LA; or
- b) by an Agency accredited by the QCDA.

47 The Academy Trust shall notify the Secretary of State about the basis upon which it has chosen to have the Academy monitored, or any change to that choice. The QCDA will conduct an annual audit of the monitoring arrangements.

48 The Academy Trust shall ensure that the Academy complies with the relevant provisions of the 'Assessment and Reporting Arrangements' as published from time to time by the QCDA, as they apply to maintained schools.

49)The results of any test or assessment conducted in accordance with

clause 44 shall also be reported to the Secretary of State and/ or the LA as required and as set out in the 'Assessment and Reporting Arrangements', in a format approved by the Secretary of State.

50) The Academy Trust may not offer courses at the Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives approval for such courses under section 98 of that Act.

Crisis Management Plan

51) Before the Academy opens to pupils it shall have in place a Crisis Management Plan setting out steps to be taken in the event of an emergency situation at the Academy.

Exclusions Agreement

52) From 1 April 2009, the Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

- a) the Academy Trust admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
- b) the Academy Trust permanently excludes a pupil from the Academy

payment will flow between the Academy Trust and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

School Meals

53)The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clauses 54 and 55 charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG.

54)In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Academy Trust's GAG.

55) All food and drink provided by or on behalf of the Academy shall comply with legislation governing the provision of food and drink in maintained schools as this applies from time to time. In particular, the Academy Trust shall ensure that school meals (breakfasts, lunches, or other meals) and food and drink available on the Academy's premises through other outlets such as tuck shops and vending machines comply, as a minimum, with the relevant standards set out in regulations.

Charging

56)Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 shall be deemed to apply to the Academy with the following modifications:

- a) references to any maintained school shall be treated as references to the Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the Academy;

- c) references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
- d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
- e) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

Provision of Information to parents and others

57) The Academy Trust shall publish a prospectus for the Academy annually. The Academy Trust shall send the prospectus free of charge to parents of pupils at the Academy and the Secretary of State, upon request. The Academy Trust shall also make the prospectus available for inspection by other persons at the Academy.

58) The prospectus for the Academy shall include details of admissions arrangements and, except insofar as such information is published in a document known as a School Profile which must accompany the prospectus, include the following information:

- a) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;
- b) the details of any religious affiliation of the school;
- c) the policy on providing for children with SEN;
- d) the arrangements for pupils with disabilities (as specified in Annex C to this Agreement);
- e) the pupil absence rates;

- f) the destination of school leavers;
- g) any further information as set out in Schedule 3 of The School Information (England) Regulations 2008 as it applies to maintained schools; and
- h) such other information as the Academy Trust may determine.

59) The prospectus referred to in clauses 57-58 shall be published in the Academy Financial Year immediately preceding the Academy Financial Year to which it relates and shall be published at least six weeks before the closing date for applying for a place at the Academy, provided always that, in the case of the first Academy Financial Year of the Academy, it is recognised that it might not be possible to publish the prospectus within this timeframe, in which case the prospectus shall be published before the opening of the Academy.

59A The Secretary of State may provide to the LA the information which the Academy Trust has provided to the Secretary of State:

- a) under Schedules 2-5 to the Education (School Performance Information) (England) Regulations 2007 ; and
- b) under paragraphs 1-3 of Part 3 to Schedule 1 to the Education (Information about Individual Pupils) (England) Regulations 2006.

59B The Academy Trust shall ensure that all pupils at the Academy and their parents are informed via Fair Processing Notices that the pupils' personal data may be transferred in accordance with clause 59A.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

60) The Secretary of State shall pay grants towards capital and recurrent expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may

be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

61)“Recurrent expenditure” means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 62. The Secretary of State shall pay two separate and distinct grants in respect of recurrent expenditure: General Annual Grant (“GAG”) and Earmarked Annual Grant (“EAG”).

Capital Grant

62)“Capital Expenditure” means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;
- h) works of a permanent character other than the purchase or replacement of minor day-to day items;

- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

“Capital Grant” means grant paid to the Academy Trust in respect of Capital Expenditure.

63) Where the Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State will be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, he will provide funding to the LA in accordance with either [arrangements made under the Building Schools for the Future programme/ arrangements made under the BSF National Construction Contractors' Framework for Academies and Educational Facilities as the Secretary of State considers appropriate}.

64. Any Capital Expenditure incurred in respect of the Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

65. Any payment of Capital Grant to the Academy Trust under this Agreement is subject to the fulfilment of the following conditions:

- a. such grants are used solely to defray expenditure approved by the Secretary of State;

- b. the Academy Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place.

Arrangements for Payment of Capital Grant

66) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 65 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

Implementation Grant

67) "Implementation Grant" means payments towards recurrent expenditure incurred for the establishment of the Academy prior to it opening.

68) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of the Academy. Where such an agreement has been entered into, the Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.

68A) The Academy Trust shall prepare and submit to the Secretary of State a budget showing expected recurrent expenditure to be incurred by the Academy Trust before the Academy opens and for which grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate ("Approved Implementation Budget").

68B) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.

68C) The Secretary of State will pay Implementation Grant to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.

68D) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Academy Trust by the date on which the Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust after the Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust.

General Annual Grant

69) GAG will be paid by the Secretary of State to the Academy Trust in order to cover the normal running costs of the Academy. These will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
 - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
 - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money

will be available for pupils with statements of special educational needs);

l) administration;

m) establishment expenses and other institutional costs.

70) Subject to clauses to 78-79, GAG for each Academy Financial Year for the Academy will be the total of the following areas of funding;

a) Formula Funding: Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;

b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA Block, if the Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 52 Budget Return which are relevant to that Academy.

c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with the Academy's characteristics would receive in respect of their participation in the specialist schools programme;

71) The GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained schools:

a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and

b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

72) Subject to clause 73, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for the Academy will be the Academy Trust's estimate each November for numbers on roll in the following September for the Academy.

73) Once the conditions specified in clause 74 have been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Financial Year in question; and
- b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

74) For the purpose of clause 73, the conditions are:

- a) all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
- b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, which is [INSERT].

75) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 72, an adjustment will be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than

or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

76) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 73, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

77) The Secretary of State recognises that:

- a) Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively. The Academy Trust will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;
- b) Where the Academy opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum.

78) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the

Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 70-76 to allow the Academy to:

- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;
- b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

After the Start-up Period these costs will be met through the ordinary GAG.

79)The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively.

80)The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of pupils at the Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

81)GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the Academy.

Earmarked Annual Grant

82)Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Academy Trust in respect of either recurrent or Capital Expenditure for

such specific purposes as may from time to time be agreed between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

83) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

Arrangements for Payment of GAG and EAG

84) The Secretary of State shall notify the Academy Trust in December preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of the Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.

85) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:

- a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;
- b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

86) If GAG or EAG is calculated incorrectly because the Academy Trust provides incorrect information to the Secretary of State then;

- a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;

b) If this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

87) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy will be notified to the Academy Trust in a funding letter not later than 1 April preceding that Academy Financial Year (the "annual letter of funding"). The annual letter of funding will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the annual letter of funding or as soon as practicable thereafter.

88) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

Other relevant funding

89) The Secretary of State shall meet a proportion of the Academy Trust's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employees' prior eligible service, being service prior to the opening of the Academy, and the Academy Trust will meet the costs of service after the opening of the Academy. The Academy Trust shall seek the Secretary

of State's consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies.

90)The Secretary of State may meet costs incurred by the Academy Trust in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Academy Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.

91)The Academy Trust may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy Trust shall ensure that all provision detailed in statements of SEN is provided for such pupils.

92)The Academy Trust may also receive funding for the Academy from the LA's Standards Fund. This is a scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAs and schools and permits LAs to receive grants on behalf of Academies in the same way as they can do for maintained schools. The Academy Trust must ensure that the Academy uses any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Academy Trust from the Standards Fund are not paid under this Agreement.

Financial and Accounting Requirements

93)The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

94)In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DCSF and amended from time to time, which sets out in detail

provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.

95)The formal budget plan should take into account items in the School Development Plan requiring expenditure and must be approved each Academy Financial Year by the Governing Body.

96)Any payment of grant by the Secretary of State in respect of the Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
- b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
- c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clauses d) and g) below, financial statements are published at the end of each Academy Financial Year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each Academy Financial Year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;
- d) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;

- e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
- f) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated;
- g) the Academy Trust files the Directors' report and accounts together with a copy of the scrutiny report and its Annual Return with the Charity Commission as required by charity law and in accordance with the relevant Statement of Recommended Practice;
- h) the Academy Trust shall comply with their obligation under the Charities Act 1993 and the Charities Act 2006 (or any statutory re-enactment or modification of those Acts) with regard to the preparation of an annual report and its transmission to the Charity Commission;
- i) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State.

97) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.

98) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials of the DCSF and the National Audit Office and to contractors retained by the DCSF or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause

'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

99) The Academy Trust shall submit indicative budgets relating to the Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:

- a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
- b) a statement of proposed recurrent expenditure for that Academy Financial Year;
- c) a statement of proposed capital expenditure for that Academy Financial Year.

100) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

- a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Academy Trust for any of the purposes for which GAG is paid;

- b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the Academy, and on capital expenditure relating to the Academy.
- 101) Notwithstanding clause 100, any additional grant provided over and above that set out in clauses 70-76 and made in accordance with clauses 77-79 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 79 come to an end.
- 102) Any savings of GAG not allowed to be carried forward under clauses 100-101 will be taken into account in the payment of subsequent grant.
- 103) The Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.
- 104) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
- a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
 - b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
 - c) make any sale or purchase of freehold property; or

d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

104A) The Academy Trust shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:

a) give any guarantees, indemnities or letters of comfort;

b) write off any debts owed to it or offer to make any ex gratia

payments;

c) make any sale or purchase of freehold property; or

d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

105) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

106) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Academy Trust from:

a) carrying a surplus from one Academy Financial Year to the next; or

b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

Borrowing Powers

107) The Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

107A) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 107 above.

Disposal of Assets

108) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.

109) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Academy Trust shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

- a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or
- b) the asset was transferred to the Academy Trust from an LA for no or nominal consideration.

Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and

reinvestment exceeding £1,000,000 or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

110) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

111) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Academy Trust from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Academy Trust. The Secretary of State will have regard to any representations from the Academy Trust and the LA from which the asset was transferred before giving consent under this clause.

112) Except with the consent of the Secretary of State and such consents as the Charity Commission may require, the Academy Trust shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

112A) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 112 above.

TERMINATION

- 113) **Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August ● or any subsequent anniversary of that date.**
- 114) **If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of this Agreement or that the conditions and requirements set out in clauses 13-59B of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.**
- 115) **Any such notice shall be in writing and shall:**
- a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of this Agreement or is not meeting the conditions and requirements of clauses 13-59B of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;**
 - b) specify the measures needed to remedy the situation or breach;**
 - c) specify a reasonable date by which these measures are to be implemented; and**
 - d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.**
- 116) **If no response is received by the date specified in accordance with clause 115(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.**

117) If a response is received by the date specified in accordance with clause 115(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:

- a) he is content with the response and/or that the measures which he specified are being implemented; or**
- b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or**
- c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.**

118) In the circumstances of clause 117(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 13-59B of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.

119) If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted)

has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 118 may be shortened to a period deemed appropriate by the Secretary of State.

120) A “Special Measures Termination Event Occurs” when:

- a) the Chief Inspector gives a notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 (the “Special Measures Notice”) stating that in his opinion special measures are required to be taken in relation to the Academy; and
- b) not less than the Minimum Period after the Special Measures Notice, the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- c) the Secretary of State shall have requested the Academy Trust to deliver within 10 Business Days a written statement (a “Further Action Statement”) of the action the Academy Trust proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
- d) the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

121) If a Special Measures Termination Event occurs, the Secretary of State may:

- a) **by notice in writing to the Academy Trust terminate this Agreement forthwith; or**
- b) **appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.**

122) **In the event that the Secretary of State appoints Further Governors in accordance with clause 121(b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Sponsor Governors (as defined in the Articles) in accordance with the Articles.**

123) **The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-**

- a) **the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or**
- b) **the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or**
- c) **the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or**
- d) **the Academy Trust has a receiver and manager (with the**

exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or

- e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or**
- f) the Academy Trust has passed a resolution for its winding up; or**
- g) an order is made for the winding up or administration of the Academy Trust.**

124) The Academy Trust shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Academy Trust and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

Effect of Termination

125) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee (if any) shall resign as a member of the Academy Trust and shall co-operate in making any associated amendments to the Articles.

126) In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.

- 127) **Subject to clause 128, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clause 12 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-59B of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.**
- 128) **The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Academy Trust, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.**
- 129) **The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall indemnify the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.**
- 130) **Subject to clause 131, on the termination of this Agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the date of termination:**
- (a) **promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of**

those assets, whether that contribution was made on the establishment of the Academy or later; or

(b) if the Secretary of State confirms that a transfer under clause 130(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

131) The Secretary of State may waive in whole or in part the repayment due under clause 130(b) if:

a) The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or

b) The Secretary of State directs all or part of the repayment to be paid to the LA.

132) If any land or premises of the Academy were acquired by the Academy Trust from an LA by a scheme under Schedule 35A of the Education Act 1996 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the Education Act 1996 , the Academy Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Academy Trust and the LA from which the land was transferred before giving or withholding that consent.

GENERAL

Information

- 133) **Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the Academy's:**
- a) curriculum;**
 - b) arrangements for the assessment of pupils;**
 - c) targets, including those set in accordance with the provisions of clause 20;**
 - d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;**
 - e) class sizes;**
 - f) outreach work with other schools and the local community;**
 - g) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;**
 - h) numbers of pupils excluded (including permanent and fixed term exclusions);**
 - i) levels of authorised and unauthorised absence;**
 - j) charging and remissions policies and the operation of those policies;**
 - k) organisation, operation and building management;**

l) financial controls; and

m) membership and proceedings of the Governing Body.

134) The Academy Trust shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Academy Trust with such information as it may reasonably require of him for the running of the Academy.

Access by the Secretary of State's Officers

135) The Academy Trust shall allow access to the premises of the Academy at any reasonable time to DCSF officials. All records, files and reports relating to the running of the Academy shall be available to them at any reasonable time. The Academy Trust shall provide the Secretary of State in advance with papers relating to the Academy prepared for meetings of the Governing Body and of the members of the Academy Trust. Two DCSF officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Academy Trust shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

136) The Academy Trust shall ensure that:

a) the agenda for every meeting of the Governing Body;

b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;

c) the signed minutes of every such meeting; and

d) any report, document or other paper considered at any such meeting, are made available for inspection by any interested party at the Academy and, as soon as is reasonably practicable, sent to the Secretary of State.

137) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 136, any material relating to:

a) a named teacher or other person employed, or proposed to be employed, at the Academy;

**b) a named pupil at, or candidate for admission to, the Academy;
and**

any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

Notices

138) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a notice or communication from the Academy Trust to the Secretary of State to Head of Academies Division, Department for Children, Schools and Families, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

139) The service by the Secretary of State of a notice of termination of

this Agreement shall not prejudice the ability of the Academy Trust (if it wishes to do so) during the notice period to admit pupils to the Academy in accordance with the provisions of this Agreement and to receive GAG and EAG in respect of them.

General

140) The Secretary of State and the Academy Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the Academy and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academy throughout the currency of this Agreement. This Agreement was executed as a Deed on 2008

EXECUTED on behalf of [INSERT]

by :

.....

Director

[either

.....

Director/Secretary

[Or]

Witness

Name.....

Address.....

Occupation.....

The Corporate Seal of the Secretary of State for Children, Schools and Families, hereunto affixed is authenticated by:

.....

Duly Authorised

GLOSSARY

ACA	Adoption and Children Act 2002
ACR	Adopted Children Register
ASA	Advertising Standards Authority
ASBO	Anti-Social Behaviour Order
ASCL	Apprenticeship, Skills, Children and Learning Act 2009
BNA	British Nationality Act 1981
BPP	British Protected Person
BDRA	Births and Deaths Registration Act 1953
CA	Children Act, i.e. CA 89, CA 2004 [NB. Childcare Act 2006 – see below]
CCA	Childcare Act 2006
CAFCASS	Children and Family Court Advisory and Support Service
CEHR	Commission for Equality and Human Rights
CHRs	Children’s Home Regulations 2001
Chief Inspector Skills	Chief Inspector for Education Children’s Services and Skills
CJA 2003	Criminal Justice Act 2003
CJS	Criminal Justice System
CMR	Armed Forces (Court Martial) Rules
CPR	Civil Procedure Rules
CPS	Crown Prosecution Service
CRD	Children’s Rights Director
CQC	Care Quality Commission
CYPA 1933/1963	The Children and Young Person’s Act
CYPP	Children and Young People’s Plan
DCSF	Department for Children Schools and Families
DCMS	Department for Culture Media and Sport
DDA	Disability Discrimination Act 1995
DTO	Detention and Training Order
ECHR	European Convention on Human Rights
ECT	Electro-Convulsive Therapy

EA	Education Act
EMA	Educational Maintenance Allowance
ERA	Employment Rights Act 1996
ESA	Education and Skills Act 2008
FCO	British Foreign & Commonwealth Office
FE	Further Education
FERs	Adoptions with a Foreign Element Regulations
FIP	Family Intervention Project
FIS	Families Information Service
FLA 1996	Family Law Act 1996
FMU	Forced Marriage Unit
FOI	Freedom of Information
FPR	Family Procedure (Adoption) Rules
GMS	General Medical Services
GRT	Gypsy, Roma, Traveller
HA96	Housing Act 1996
HSA	Home School Agreement
HDC	Home Detention Curfew
HE	Higher Education
HFEA	Human Fertilisation and Embryology Authority
HLF	Heritage Lottery Fund
HRA	Human Rights Act 1998
HSE	Health & Safety Executive
IMHA	Independent Mental Health Advocates
IPCC	Independent Police Complaints Commission
IRO	Independent Reviewing Officer
JCHR	Joint Committee on Human Rights
LA	Local Authority
LASSA	Local Authority Social Services Act 1970
LEA	Local Education Authority
LGO	Local Government Ombudsman
LPC	Low Pay Commission
LSC	Legal Services Commission
LSCB	Local Safeguarding Children's Board

MDA 1971	Misuse of Drugs Act 1971
MDG	Millennium Development Goals
MFA	Model Funding Agreement
MHA	Mental Health Act 1983
MOD	Ministry of Defence
NAFIS	National Association of Family Information Services
NCRS	National Crime Recording Standard
NGO	Non-governmental organisation
NMWA 1998	National Minimum Wage Act 1998
NMW	National Minimum Wage
NSF	National Service Framework for Children
OPTIONAL PROTOCOL	Optional Protocol on the Involvement of Children in Armed Conflict
PCCSA	Powers of Criminal Courts (Sentencing) Act 2000
PCT	Primary Care Trust
PLS	Prisoner Location Service
PPO	Prisons and Probation Ombudsman
PSA	Parent Support Advisor
PSHE	Personal, Social, Health and Economic Education
PTBP	Person To Be Protected
QOF	Quality and Outcomes Framework
RE	Religious Education
RG	Registrar General
RRA1975	Race Relations Act 1975
SAP	Statutory Adoption Pay
SEN	Special educational needs
SSCBA	Social Security Contributions and Benefits Act 1992
SHA	Strategic Health Authority
SMP	Statutory Maternity Pay
SOA 2003	Sexual Offences Act 2003
SOAD	A doctor appointed by the Secretary of State
SOCA	Serious Organised Crime Agency
SSFA	School Standards and Framework Act 1998

STC	Secure Training Centre
SVGA 2006	Safeguarding Vulnerable Groups Act 2006
UKBA	UK Border Agency
UNCRC	United Nation Convention on the Rights of the Child
VPS	Victim Personal Statement
VRA	Video Recording Act 1984
YCAP	Youth Crime Action Plan
YJCEA	Youth Justice and Criminal Evidence Act 1999
YOIs	Young Offender Institutions
YPLA	Young People's Learning Agency for England
YRD	Youth Restorative Disposal
YRO	Youth Rehabilitation Order
YW	You're Welcome quality criteria (led by the Department of Health)