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## **EUROPEAN SOCIAL CHARTER**

30th National Report on the implementation of  
the European Social Charter

submitted by

**THE GOVERNMENT OF THE UNITED KINGDOM**

(Articles 7, 8, 16, 17 and 19  
for the period 01/01/2003 – 31/12/2009)

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**CYCLE XIX-4 (2011)**

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## **ARTICLE 7**

### **Article 7, Paragraph 2**

#### **Question 1**

1. The UK has ratified ILO Convention No 138, Minimum Age for Employment, 1973 and ILO Convention No 182, Worst Forms of Child Labour, 1999. Copies of the UK's most recent Article 22 Reports to the ILO on the application of each of those Conventions are appended to this Report as separate files. **[Appendices 7(A) and (B)]**.

2. The UK strongly supports the ILO's work to fight child labour including the ILO's programme for worldwide ratification and implementation of both Conventions. The Government is also committed to helping developing countries to eliminate child labour. Through the Department for International Development (DFID) it supports a wide-ranging programme for poverty elimination and development. DFID also supports programmes specifically targeted at tackling child labour and trafficking people. The Government will continue to support programmes in developing countries aimed at breaking the cycle of poverty, which is essential for the elimination of child labour.

#### **Question 2**

3. The situation remains as previously described.

### Question 3

**Table 1** *Work related accidents to young workers under the age of 19 for all years as reported to all enforcing authorities under RIDDOR 95 regulations.*

| Severity     | 2004/05     | 2005/06     | 2006/07     | 2007/08     | 2008/09 p   | Total        |
|--------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Fatal        | 3           | 6           | 7           | 8           | 3           | 27           |
| Major        | 1637        | 1448        | 1310        | 1244        | 1104        | 6743         |
| Over day 3   | 4772        | 4293        | 3778        | 3625        | 3301        | 19769        |
| <b>Total</b> | <b>6412</b> | <b>5747</b> | <b>5095</b> | <b>4877</b> | <b>4408</b> | <b>26539</b> |

**Table 2** *Estimated prevalence and rates of self-reported musculoskeletal disorders caused or made worse by work, by age and gender, for people ever employed.*

(a) 2006/07 – Based on a sample of 30

| Gender      | Age group | Estimated prevalence (thousands) |          |       | Rate per 100 000 ever employed |          |       |
|-------------|-----------|----------------------------------|----------|-------|--------------------------------|----------|-------|
|             |           | central                          | 95% C.I. |       | central                        | 95% C.I. |       |
|             |           |                                  | lower    | upper |                                | lower    | upper |
| All persons | 16 - 24   | 40                               | 29       | 50    | 870                            | 650      | 1090  |

(b) 2005/06 – Based on a sample of 30

| Gender      | Age group | Estimated prevalence (thousands) |          |       | Rate per 100 000 ever employed |          |       |
|-------------|-----------|----------------------------------|----------|-------|--------------------------------|----------|-------|
|             |           | central                          | 95% C.I. |       | central                        | 95% C.I. |       |
|             |           |                                  | lower    | upper |                                | lower    | upper |
| All persons | 16 - 24   | 32                               | 23       | 41    | 690                            | 500      | 890   |

(c) 2004/2005 – Based on a sample of 30

| Gender      | Age group | Estimated prevalence (thousands) |          |       | Rate per 100 000 ever employed |          |       |
|-------------|-----------|----------------------------------|----------|-------|--------------------------------|----------|-------|
|             |           | central                          | 95% C.I. |       | central                        | 95% C.I. |       |
|             |           |                                  | lower    | upper |                                | lower    | upper |
| All persons | 16 - 24   | 33                               | 24       | 42    | 690                            | 510      | 880   |

***The Committee wished the next report to provide information on the rate of occupational accidents and diseases among workers under the age of 18 years for the period 2003-2006.***

**Table 3** Work related accidents to young workers under the age of 19 for all years as reported to all enforcing authorities under RIDDOR 95 regulations.

| Severity              | 2002/03     | 2003/04     | 2004/05     | 2005/06     | 2006/07     | Total        |
|-----------------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Fatal                 | 8           | 7           | 3           | 6           | 7           | 31           |
| Major                 | 1432        | 1559        | 1637        | 1448        | 1310        | 7386         |
| Over day <sup>3</sup> | 4986        | 5087        | 4772        | 4293        | 3778        | 22916        |
| <b>Total</b>          | <b>6426</b> | <b>6653</b> | <b>6412</b> | <b>5747</b> | <b>5095</b> | <b>30333</b> |

**Table 4** *Estimated prevalence and rates of self-reported musculoskeletal disorders caused or made worse by work, by age and gender, for people ever employed.*

(a) 2006/07 – Based on a sample of 30

| Gender      | Age group | Estimated prevalence (thousands) |          |       | Rate per 100 000 ever employed |          |       |
|-------------|-----------|----------------------------------|----------|-------|--------------------------------|----------|-------|
|             |           | central                          | 95% C.I. |       | central                        | 95% C.I. |       |
|             |           |                                  | lower    | upper |                                | lower    | upper |
| All persons | 16 - 24   | 40                               | 29       | 50    | 870                            | 650      | 1090  |

(b) 2005/06 – Based on a sample of 30

| Gender      | Age group | Estimated prevalence (thousands) |          |       | Rate per 100 000 ever employed |          |       |
|-------------|-----------|----------------------------------|----------|-------|--------------------------------|----------|-------|
|             |           | central                          | 95% C.I. |       | central                        | 95% C.I. |       |
|             |           |                                  | lower    | upper |                                | lower    | upper |
| All persons | 16 - 24   | 32                               | 23       | 41    | 690                            | 500      | 890   |

(c) 2004/2005 – Based on a sample of 30

| Gender      | Age group | Estimated prevalence (thousands) |          |       | Rate per 100 000 ever employed |          |       |
|-------------|-----------|----------------------------------|----------|-------|--------------------------------|----------|-------|
|             |           | central                          | 95% C.I. |       | central                        | 95% C.I. |       |
|             |           |                                  | lower    | upper |                                | lower    | upper |
| All persons | 16 - 24   | 33                               | 24       | 42    | 690                            | 510      | 880   |

(d) 2003/2004 – Based on a sample of 30

| Gender      | Age group | Estimated prevalence (thousands) |          |       | Rate per 100 000 ever employed |          |       |
|-------------|-----------|----------------------------------|----------|-------|--------------------------------|----------|-------|
|             |           | central                          | 95% C.I. |       | central                        | 95% C.I. |       |
|             |           |                                  | lower    | upper |                                | lower    | upper |
| All persons | 16 - 24   | 42                               | 32       | 52    | 900                            | 680      | 1110  |

### Article 7, Paragraph 3

#### Questions 1 to 3

4. The position remains largely as previously described. However, guidance on child employment was published in August 2009. The guidance document<sup>1</sup> seeks to explain the law on child employment for local authorities, employers, parents and other stakeholders. It includes some best practice advice to help those implementing it to deal with the various practical questions they face regularly. It is also intended to enable employers to operate as prudently as possible within the legal framework to their benefit and to the benefit of the young people themselves.

5. The guidance also makes it clear that a local authority has power to forbid the employment of a child under the school leaving age who is at a local authority maintained school or to impose restrictions on the child's employment. The authority can only use this power if it thinks that the child is being employed in a way that prejudices the child's health or makes the child unfit to obtain the full benefit of his or her education.

6. In addition, many local authorities have in place a system whereby they will issue an employment permit to the child if they are satisfied that the proposed employment is lawful, that the child's health, welfare or ability to take full advantage of his or her education would not be jeopardised and that the child is fit to undertake the work for which he or she is to be employed. The local authority may revoke the permit if it believes that the child's health, welfare or ability to take advantage of education is likely to suffer.

***The Committee concludes that the situation in the United Kingdom is not in conformity with Article 7§3 of the Charter on the ground that the mandatory rest period during the school holidays for children still subject to compulsory education is not sufficient to ensure that they may fully benefit from such education. The Committee also asked for more detailed information on the activities carried out by the local authorities in supervising compliance with child employment legislation.***

7. A child under the school leaving age must have a two-week break from any employment in each year. There are no plans to change this. However, the previous administration commissioned research to evaluate the current arrangements for regulating child employment and look at options for reform. Following the general election in May 2010 Ministers in the new administration agreed that this research should continue. Its outcome may inform decisions on whether and how to reform the regulation of child employment. The final report is due in early 2011 and details of the findings and any outcomes will be included in the Government's next report covering this article.

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<http://publications.education.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DCSF-00827-2009>



## **Article 7, Paragraph 5**

### **Question 1**

#### **Young workers and the National Minimum Wage<sup>1</sup>**

8. The previous administration introduced a separate National Minimum Wage (NMW) rate for workers aged 16 and 17 in October 2004, removing the exemption from NMW legislation that had previously existed. As a result, as at 1 October 2009 there were three NMW rates for: 16–17 year olds (£3.57 per hour); 18–21 year olds (£4.83 per hour); and adults [22 years and older] (£5.80 per hour).

9. In May 2009, the then Government announced that it had accepted the recommendation of the Low Pay Commission (LPC) that 21 year olds should be entitled to the adult rate of NMW.

### **Apprentices**

10. The rules on the entitlement of apprentices to the NMW have been amended. As at 1 October 2009, apprentices who are either aged under 19, or who are over 19 but in the first year of their apprenticeship are currently exempt from the NMW. Apprentices who are over 19 and in the second year, or beyond, of their apprenticeship are entitled to the NMW.

11. In June 2009, the previous Government announced that it had accepted the LPC's recommendation that there should be a minimum wage for apprentices under the NMW framework. The Government asked the LPC, as part of the work for its 2010 Report, to consider the detailed arrangements for an apprentice minimum wage under the NMW framework, and to recommend the rate and arrangements that should replace the existing exemptions, together with the timing for its introduction. The LPC Report can be viewed at:

<http://www.lowpay.gov.uk/lowpay/lowpay2010/recommendations.shtml>

12. In 2006 a requirement that all employed apprentices in England be paid a minimum of £80 per week was introduced. In September 2008 this minimum was increased to £95 per week, effective from 1 August 2009. It was estimated that around 10 per cent of all apprentices would immediately benefit from this increase, mainly in the hairdressing and care sectors. Research in 2007 showed that average net pay for apprentices was £170 per week.

### **Question 2**

13. The position remains that the Low Pay Commission (LPC) is independent of Government and comprises of nine Commissioners, three of

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<sup>1</sup> [http://www.direct.gov.uk/en/employment/employees/pay/dg\\_10027201](http://www.direct.gov.uk/en/employment/employees/pay/dg_10027201)

whom have a trade union background, three with an employer background and three academic labour relations specialists. The LPC's task is to make recommendations on the minimum wage to the Government. The LPC undertakes extensive consultation, which supplements their analysis of research and official data. They receive written submissions and take oral evidence for a wide range of representative organisations. And they make visits across the UK to enable them to have direct contact with businesses in low paying sectors and areas with unemployed and low-paid workers and their representatives.

14. HM Revenue & Customs (HMRC) acts as enforcement officers for the purposes of the NMW. HMRC's enforcement of employers' obligations to pay workers the NMW is focussed on the workers' right to receive what they are entitled to. Enforcement is initiated either by a complaint from workers or third parties, or as a result of risk assessment by HMRC. The purpose of an investigation is to determine whether or not an employer has complied with the requirement to pay workers the NMW. Where a compliance officer discovers that the NMW has not been paid to a worker or group of workers, the aim is to ensure that workers receive what they are entitled to as soon as practicable.

### Question 3

15. The following table sets out the current rates of the NMW rates and the rates at the time of their introduction. It gives the nominal increase in the NMW together with the increase compared to consumer prices and average earnings.

Table 1 – **National Minimum Wage rates and percentage changes**

|   | <b>Adult rate (22 and over)</b> | <b>18 – 21 year old rate</b> | <b>16-17 year old rate</b> |
|---|---------------------------------|------------------------------|----------------------------|
| Rate at 1 April 1999  | £3.60                           | £3.00                        | -                          |
| Rate at 1 October 2004  | £4.85                           | £4.10                        | £3.00                      |
| Rate at 1 October 2009  | £5.80                           | £4.83                        | £3.57                      |
| % increase from introduction to 1 October 2009                          | 61%                             | 61%                          | 19%                        |
| % increase compared to consumer prices (Consumer Price Index)           | 35.5%                           | 33.4%                        | 4.8%                       |
| % increase compared to average earnings growth (Average Earnings Index) | 9.5%                            | 9.4%                         | 1.4%                       |

16. The following table gives the latest figures of average gross weekly pay (including overtime) for young people in 2009 compared to the rates for all employees:

**Table 2 - Average gross weekly pay (including overtime) for selected age bands, 2009**

| £               | Median |        |       | Mean  |        |       |
|-----------------|--------|--------|-------|-------|--------|-------|
|                 | Male   | Female | All   | Male  | Female | All   |
| <b>16-17</b>    | 81.1   | 59.9   | 69.9  | 117.8 | 81.0   | 98.5  |
| <b>18-21</b>    | 225.0  | 171.2  | 200.3 | 228.6 | 181.9  | 204.7 |
| <b>All ages</b> | 491.0  | 308.9  | 397.3 | 589.3 | 370.2  | 480.9 |

Source: Annual Survey of Hours and Earnings 2009 - Includes full-time and part-time employees. Data refer to employees on adult rates whose pay for the survey pay-period was not affected by absence. Figures for 16 to 17 year olds include employees not on adult rates of pay.

**Article 7, Paragraph 6**

17. The situation remains as previously described.

### **Article 7, Paragraph 9**

18. In general, there is no legal requirement for young people who are over statutory school leaving age to undergo regular medical examinations whilst in employment. However, employers may have their own internal requirements regarding medical examinations, particularly those involved in health care occupations and food hygiene, or for superannuation purposes.

19. In the case of children below statutory school leaving age, employers are obliged, under local bye-laws, to provide the local authority with certain information within one week of employing a child. This information includes a statement, by a parent of the child, that the child is fit to work and that the parent agrees to the employment; confirms that the proposed employment will not be prejudicial to the child's health or physical development, and that it will not prevent them receiving education (including practical instruction and training) appropriate to his/her needs or render them unfit to obtain proper benefit from it. This is part of the information required by the Local Authority before it will issue a permit for the employment of that child.

20. Under the Management of Health and Safety at Work Regulations 1999, every employer shall, inter alia, be required to make a suitable and sufficient assessment of the risks to the health and safety of their employees (including those under 18 years of age) to which they are exposed whilst they are at work. The employer also has to ensure that employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety that are identified by that assessment.

21. The Control of Lead at Work Regulations 2002, as amended, do require that employees in any occupation where their exposure to lead is significant, (as defined by the Regulations), must be placed under medical surveillance. All employees must have their blood monitored regularly to detect any absorption of lead before clinical effects become evident. Where the employee is a young person (or a woman of reproductive capacity) the frequency of medical surveillance is greater than that imposed for other employees; being at periods not greater than 3 months as opposed to 6 months or 1 year.

### **Question 2**

22. In relation to the Control of Lead at Work Regulations, medical surveillance for exposure to lead is carried out either by a Medical Inspector employed by the Health and Safety Executive, or by an Appointed Doctor. A young person under 18 and under medical surveillance has the level of lead in their blood measured at least once every three months. If the level reaches or exceeds the suspension level, the measurement is repeated and if it is confirmed, the employer must remove the young person from work which exposes them to lead in accordance with a certificate issued by the examining doctor. This is to protect the employee from any adverse health effects that further exposure to lead might cause. The doctor responsible for medical

surveillance will only permit a young person to resume work involving exposure to lead when they consider it appropriate to do so.

23. In the case of the other health and safety legislation referred to above, the administrative arrangements are the same as those listed in the response to Question 2 in respect of Article 7, Paragraph 2 above.

24. Local bye-laws are enacted by local authorities and enforced by appropriately appointed enforcement officers.

### **Question 3**

25. The Health and Safety Executive completes health surveillance in line with the legal framework for industries where there is high hazard.

- During 2007/2008 (the latest statistics available) 8069 people were under medical surveillance because of work with lead, of these 7 were under the age of 18 years.
- During 2006/2007 8697 people were under medical surveillance because of work with lead, of these 8 were under the age of 18 years.
- During 2005/2006 8618 people were under medical surveillance because of work with lead, of these 22 were under the age of 18 years.

## **Article 7, Paragraph 10**

### **Question 1**

26. In relation to physical dangers associated with the workplace, the legislation referred to, and the systems in place for its enforcement, as described in the response to Article 7, Paragraph 2 (Question 1) would be equally applicable here.

### **Question 2**

27. Child and young person's protection has remained high on the agenda for the Health and Safety Executive. As reported previously, a continued long-term objective has been to reduce child fatalities in agriculture. HSE commissioned research in 2005 to identify the number of children actively working on farms, the hours they work and the nature of the tasks undertaken.

28. In order to achieve this objective HSE have continued with a number of initiatives including maximising the availability of information on preventing accidents to children in agriculture by making the 'Preventing accidents to children in agriculture' ACOP a free publication to download from the HSE website. The free leaflet AS10 'Preventing accidents to children on farms' was also revised in September 2008 and is regularly reprinted along with the farm educational book 'Play safe'. This book (20-30, 000 copies) is distributed through a variety of child safety events annually.

29. Throughout 2005-2006, HSE took part in a series of workshops and cascade events that targeted child and young person's safety with the co-operation of the Women's food and farming union.

30. Other initiatives on the wider young people's protection include:

- HSE worked closely with City & Guilds to develop a stand-alone modular qualification on preventing dermatitis, which has been available as part of the Level 2 vocational qualification for learners in the hair and beauty, catering and cleaning sectors since 2008.
- HSE also worked closely with Habia (the standards settings body for the hair & beauty industry) to develop a package of teaching-support information and student materials as part of the 'Bad Hand Day?' campaign, which was sent to hairdressing colleges and training providers in 2007. The package consisted of a dermatitis training module, posters and campaign packs to be given out to students.

31. In the period 2007 to 2009, HSE:

- delivered asbestos awareness raising presentations to 9 colleges throughout Great Britain;
- delivered presentations to raise awareness of occupational respiratory diseases, asbestos and dermatitis to representatives from 75% of Scottish Further Education Colleges; and

- worked with the Learning and Schools Council (LSC) to deliver 9 regional briefings to LSC local officers to raise awareness of occupational health issues.

32. In August 2009, HSE commissioned research that looks at how best to communicate long latency occupational health messages to learners in vocational education (primarily young learners). The results will be available in April 2010.

33. The British Safety Council (BSC) is paying for all 14-19 year olds in full-time education in the UK to gain a nationally recognised qualification in health and safety, the content of which was agreed in consultation with HSE. The BSC offers the Entry Level Award in Workplace Hazard Awareness and the Level 1 Certificate in Health and Safety at Work, both of which are accredited within the National Qualifications Framework.

34. In February 2009, HSE attended a working group of external stakeholders to look at the possibility of standardising the materials used to assess the health and safety of work experience placements. This work is ongoing.

### **Protection against the misuse of information technologies**

***The Committee observed that state parties should, in order to be in conformity with Article 7§10 of the Charter, adopt measures in law or practice to protect children from their misuse and asked whether legislation, Internet Service Provider Codes of Conduct, Internet Hotline or other measures are in place to protect children.***

### **Legislation**

35. The Sexual Offences Act 2003, created a specific set of offences to deal with sexual exploitation of children both online and offline, such as causing or inciting a child to engage in sexual activity (including via webcam) and meeting a child following sexual grooming. This has allowed police to apprehend offenders who contact children through the internet and other means in order to exploit and manipulate them, and ultimately to abuse them. In particular the provisions in this Act have allowed police to apprehend offenders before they have a chance to engage in sexual activity with a child. These offences apply to children under the age of sexual consent.

### **Reporting/Hotlines**

#### **Internet Watch foundation**

36. The Internet Watch Foundation (IWF), [www.iwf.org.uk](http://www.iwf.org.uk), was set up in 1996 by Internet Service Providers in the UK to enable members of the public, via a hotline, to report child abuse content in a newsgroup or website that is



hosted anywhere in the world. If the content is considered potentially illegal, the Foundation passes details to the UK police to start action against the originators and asks ISPs to deny access to the websites concerned. If the originators are abroad, the IWF passes the report to the relevant national hotline and, the Child Exploitation and Online Protection Centre (CEOP - see below) which opened in April 2006, which in turn liaises with the enforcement agencies of the countries concerned.

### **UK Council for Child Internet Safety (UKCCIS)**

37. The UK Council for Child Internet Safety (UKCCIS) was established in 2008 in response to Professor Tanya Byron's review, "Safer Children in a Digital World" to oversee the implementation of the recommendations Professor Byron made to help keep children safe online. UKCCIS brings together representatives of over 170 organisations including Government bodies, law enforcement, industry, academics and the third sector.

### **CEOP**

38. The Child Exploitation and Online Protection (CEOP) Centre<sup>1</sup> is the UK's national law enforcement agency committed to tackling the sexual abuse of children in both the online and offline environments - with the principal aim of identifying, locating and safeguarding children and young people from harm..

39. CEOP also operates the ClickCEOP button. This is a recognisable icon prominently located in online environments frequented by children. It functions as an online hotline for reporting incidents of online sexual abuse to CEOP. By clicking the ClickCEOP button, children can make a report concerning an abusive/threatening experience directly to CEOP's law enforcement and child protection specialists. The ClickCEOP button is therefore a direct link to UK law enforcement, facilitating an instantaneous response to reports indicating that a child is in immediate danger. The ClickCEOP button deters offenders, empowers children to report threatening experiences to law enforcement, and reassures parents that the online environments frequented by their children are safe. CEOP works closely with ISPs to embed the ClickCEOP button in online environments frequented by children. This is a 'safer by design' approach, where law enforcement and the private sector work together to improve the safety of online environments.

40. The Internet Watch Foundation (IWF) serves as the UK's hotline through which illegal content can be reported. The IWF is an independent, self-regulatory body that works to minimise the availability of illegal content including images of child sexual abuse hosted anywhere in the world and criminally obscene adult content, incitement to racial hatred or non-photographic child sexual abuse images hosted in the UK.

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<sup>1</sup> <http://www.ceop.police.uk/About-Us/>

41. The UK mobile phone network operators have developed a UK code of practice for the self-regulation of new forms of content on mobiles; the main provision of the code is to classify adult, commercially available content that could be accessed by mobile phones as suitable only for those users over 18 and to restrict access to such content for anyone unable to verify their age as being over 18.

42. The effectiveness of this code is reviewed by Ofcom who found that all mobile operators, in offering classification and internet filtering, as required by the code, were effective in restricting young people's access to material suitable only for adults. The review also made several recommendations to further improve restrictions on access to adult content by those under 18 which industry are taking forward.

43. Existing UK good practice guidance for industry in keeping children safe online in relation to Chat & Instant Messaging; Social Networking; Search; and Moderation services is being updated and revised for publication in October 2010.

44. Industry is working within UKCCIS to develop and implement a self-regulatory framework that is independently reviewed to help create a safer online environment for children and young people. Options for more formal regulation may be considered if progress to agree and implement such a framework is delayed or does not deliver adequate safeguards.

***The Committee took note of the provisions of the Sexual Offences Act 2003 and asked in particular whether the possession of child pornography is a criminal offence and whether criminal liability has been removed for children (under 18 years of age) involved in prostitution.***

### **Child Pornography**

45. Under the Protection of Children Act 1978 (as amended), in England and Wales it is an offence to take, permit to be taken, make, distribute or show indecent photographs or pseudo-photographs of a child (under 18 years of age). It is also an offence to have such indecent photographs or pseudo photographs in your possession with a view to them being distributed or shown, and to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so. It is a defence for a person who is charged with distributing or showing indecent photographs/pseudo-photographs or possessing such photographs with a view to them being distributed or shown by that person or others, to prove that the person had a legitimate reason for distributing or showing the photographs or to prove that the person had not seen the photographs and did not know, or have any cause to suspect, them to be indecent. There is also a limited exception for making an indecent photograph or pseudo photograph where it is necessary for criminal proceedings or investigations. These offences carry a maximum sentence of 10 years imprisonment.

46. Section 160 of the Criminal Justice Act 1988 also makes the simple possession of indecent photographs or pseudo photographs of children an offence and carries a maximum sentence of 5 years imprisonment. It is a defence for a person to prove: that they had a legitimate reason for having the photograph or pseudo-photograph; or that they had not seen the photograph or pseudo-photograph and did not know, nor have any cause to suspect it to be indecent; or that the photograph or pseudo-photograph was sent to them without any prior request made by them or on their behalf and that they did not keep it for an unreasonable time.

47. There are defences to the offences under the Protection of Children Act 1978 (save for the offence which relates to publishing advertisements) and the Criminal Justice Act 1988 for those who can prove that the photograph or pseudo-photograph was of a child aged 16 or over, and that at the time of the offence charged or at the time that the photograph was obtained, the child and the defendant were married, civil partners or lived together as partners in an enduring family relationship. These defences are lost if such images are distributed to anyone other than the child.

48. Under section 62 of the Coroners and Justice Act 2009 it is an offence for a person to be in possession of a prohibited image of a child. A prohibited image is a pornographic image which focuses solely or principally on a child's genitals or anal region, or portrays any of the sexual acts specified in section 62(7), and is grossly offensive, disgusting or otherwise of an obscene character. Images that are covered by this offence include a moving or still image (produced by any means), or data (stored by any means) which is capable of conversion into an image. This offence does not include indecent photographs or indecent photographs which are dealt with under the Criminal Justice Act 1988 and the Protection of Children Act 1978. It is a defence for a person who is charged with possession of a prohibited image of a child to prove that the person had a legitimate reason for possessing the image; that the person had not seen the image and did not know, nor have any cause to suspect, it to be a prohibited image of a child; or that the person was sent the image without any prior request having been made by or on behalf of the person, and did not keep it for an unreasonable time. This offence carries a maximum sentence of three years imprisonment.

49. The laws are kept under constant review and have been amended when changes in technology have placed new challenges on existing laws. For example - the Criminal Justice and Immigration Act 2008 (section 69) has extended the meaning of a photograph in the Protection of Children Act 1978 to include derivatives of photographs such as tracings (made by hand or electronically).

### **Child Prostitution**

50. The Sexual Offences Act 2003 makes it an offence to pay for the sexual services of a child; cause or incite child prostitution; control a child prostitute or arrange or facilitate such activity. For the purpose of these

offences a child is a person who is under 18 years of age. The child prostitution offences capture children who are under 13, and children who are under 18 where the Defendant does not reasonably believe that the person is 18 or over. Criminal liability for persons who use or profit from child prostitution is established under this Act. The Sexual Offences Act 2003 also makes it an offence for a person to cause, incite or control prostitution for gain; these offences are not limited to children. Section 1 of the Street Offences Act 1959 prohibits any person involved in prostitution from soliciting or loitering for these purposes irrespective of age. Child prostitutes can be subject to prosecution under this legislation however in accordance with Government guidance on safeguarding children involved in prostitution, it is rare that a child prostitute will be subject to criminal proceedings as a result of this legislation. The Government view is that the vast majority of children do not freely and willingly become involved in prostitution and so the entire emphasis when dealing with such children is on diversion, using a welfare based approach, which should be adopted in all cases.

### **Protection against other forms of exploitation**

***The Committee noted that the Asylum and Immigration Act 2004 introduced a new offence of trafficking of people for exploitation, such as labour exploitation and domestic slavery and asked for information in the next report on all measures taken to combat forms of exploitation (other than for sexual purposes) of children.***

51. The UK has a comprehensive approach to combating all forms of human trafficking. The UK Action Plan on human trafficking was launched in March 2007 and updated twice, once in July 2008 and for the second time in October 2009. The Action plan includes 15 child-specific actions on child victim support and law enforcement.

52. A key element of the UK's victim protection arrangement is the National Referral Mechanism (NRM) which is a formal process that enables statutory and voluntary organisations to collaborate in identifying and safeguarding victims of trafficking. At present Government is reviewing the NRM as part of its 12-month review.

53. A pilot scheme of the NRM for child victims of trafficking has been running in 13 English and Welsh local authorities. It is being monitored for the purpose of improving multi-agency collaboration in evidencing cases of child trafficking.

54. Responsibility for the care, protection and accommodation of child trafficking victims falls within the designated responsibilities of Local Authorities for safeguarding and promoting the welfare of all children under the provisions of the 1989 and 2004 Children Acts.

55. Separated and vulnerable children from abroad enjoy the same entitlements as all UK-born or resident children.

56. Local children's services work in close co-operation with the police and the UK Border Agency to offer potentially trafficked children the necessary protection.

57. Legislation has been introduced to criminalise human trafficking through the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants) Act 2004.

58. There have been 128 convictions for trafficking for sexual exploitation and 3 for conspiracy to traffic for sexual exploitation under the Sexual Offences Act 2003 (in effect since May 2004); and 7 convictions for labour trafficking under the Immigration and Asylum (Treatment of Claimants, etc) Act 2004 (in effect since Dec 2004). All conviction figures are to end of Dec 2009.

59. The Border Citizenship and Immigration Act (2009)<sup>1</sup> amends the offence of trafficking in section 4 of the Asylum and Immigration (Treatment of Claimants) Act (2004) to broaden the definition of "exploitation". The effect is to ensure that the offence captures those cases where the person being exploited is entirely passive (such as a baby) and being used for another to gain a benefit. It is no longer necessary for the Crown to prove that the person has been "requested or induced" to undertake the activity.

60. The Coroners and Justice Act 2009 Act<sup>2</sup> introduced a new stand-alone offence of holding someone in slavery or servitude, or requiring them to perform forced or compulsory labour.

61. The Association of Chief Police Officers (ACPO) has, issued the police position to this issue in March 2010 and the process that police forces should follow when encountering children in cannabis farms.

### **Question 3**

62. Please see the statistics provided under Paragraph 2 Question 3.

### **Safeguarding children**

63. The Safeguarding Vulnerable Groups Act 2006<sup>3</sup> provided for a Vetting and Barring Scheme (VBS). The VBS is designed to protect children and vulnerable adults by preventing those who pose a known risk from gaining access to them through their work. Since January 2009, independent barring decisions have been made by the Independent Safeguarding Authority (ISA). The ISA maintains two constantly updated lists, one for those barred from working with children, the other for those barred from working with vulnerable adults, replacing the three previous barring lists (List 99, PoCA and PoVA).

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<sup>1</sup> [http://www.opsi.gov.uk/acts/acts2009/ukpga\\_20090011\\_en\\_1](http://www.opsi.gov.uk/acts/acts2009/ukpga_20090011_en_1)

<sup>2</sup> [http://www.opsi.gov.uk/acts/acts2009/ukpga\\_20090025\\_en\\_1](http://www.opsi.gov.uk/acts/acts2009/ukpga_20090025_en_1)

<sup>3</sup> [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060047\\_en\\_1](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060047_en_1)

64. Since October 2009, it has been possible to make checks of these two lists as part of an Enhanced Criminal Records Bureau check. It is now a criminal offence for barred individuals to apply to work with children or vulnerable adults in a wider range of posts than previously. Employers also face criminal sanctions for knowingly employing a barred individual across a wider range of work with children or vulnerable adults.

65. The Children Act 2004 required every local authority to establish a Local Safeguarding Children Board (LSCB) by 1 April 2006, replacing Area Child Protection Committees. LSCBs are the key statutory mechanism for agreeing how the relevant organisations in each local area will cooperate to safeguard and promote the welfare of children in their locality and ensuring the effectiveness of what they do.

66. According to guidance published by the Government in June 2009, 'Safeguarding Children and Young People from Sexual Exploitation'<sup>1</sup>, LSCBs should ensure that specific local procedures are in place covering the sexual exploitation of children and young people. The guidance should be read in conjunction with Chapter 5 of 'Working Together to Safeguard Children' (2010)<sup>2</sup>, which details the processes to be followed when there are concerns about a child's welfare.

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<sup>1</sup> [www.dcsf.gov.uk/.../safeguardingandsocialcare/safeguardingchildren/](http://www.dcsf.gov.uk/.../safeguardingandsocialcare/safeguardingchildren/) -

<sup>2</sup>

<http://publications.education.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DCSF-00305-2010&>

## SCOTLAND

### Article 7

#### Overview of work on Children's Rights

67. The Scottish Government is committed to supporting and promoting children's rights. This is a key strand underpinning our activity to improve outcomes for all Scotland's children and young people. The framework for this work is the UN Convention on the Rights of the Child.

68. The Scottish Government published its response to the 2008 Concluding Observations from the UN Committee on the Rights of the Child, *Do the Right Thing*,<sup>1</sup> on 1 September 2009. This document will inform future activity on children's rights and will be used to monitor progress over the next reporting period (to 2014). The following are priority areas for action which cover a wide range of issues of importance for children and young people themselves and for everyone who works with them or on their behalf:

- Ongoing monitoring of UNCRC in Scotland
- Promoting children's rights in Scottish Government
- Promotion and awareness raising of UNCRC, including training on UNCRC for professionals who work with children
- Tackling negative perceptions of children and young people
- Gypsy/traveller children and young people
- Advocacy services for children and young people
- Participation of children and young people in school
- Mosquito devices
- Promoting positive forms of parenting
- Young carers
- Improve outcomes for looked after children
- Children of prisoners
- Private fostering
- Children with disabilities
- Improve outcomes for teen parents
- Support delivery of the Curriculum for Excellence health and wellbeing experiences and outcomes
- Child Poverty
- Play
- Better support for unaccompanied asylum seeker children
- Child trafficking and sexual exploitation
- 16 and 17 years olds in the youth justice system

69. The Scottish Government has already taken decisive action in a number of areas that will further improve the rights of children and improve outcomes for children and young people in Scotland: and has announced the intention to raise the minimum age of prosecution from 8 to 12; children and

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2009/08/27111754/25>

young people seeking asylum now have equal access to higher and further education in Scotland; and it has also introduced legislation to end the remanding of under 16s in prison in Scotland.

## **Article 7, Paragraph 2**

### **Question 1**

70. The UK legislation (Management of Health and Safety Regulations) which covers work likely to harm the health and safety of children below the age of 18 also covers Scotland. There are age restrictions in the 1937 Act (see below) for children taking part in performances endangering life or limb (from age 16) or training to take part in performances of a dangerous nature (from age 12 only).

## **Article 7, Paragraph 3**

### **Question 1**

71. While most employment legislation is reserved, general law on child employment in Scotland is covered separately through the Children and Young Persons (Scotland) Act 1937 ("the 1937 Act"). The provisions on employment (Part III) have been amended a number of times, most recently following consultation in 2006 through the Children (Protection at Work) (Scotland) Regulations 2006 ("the 2006 regulations"). This amendment brought the number of hours children can work into line with EC Directive 94/33/EC by placing a 12 hour per week limit on the number of hours that any child below the minimum school leaving age (usually 16) can work during term time. The legislation is supported by local byelaws made by local authorities who are responsible for the implementation and monitoring of this legislation.

72. The 2006 regulations created a 12 hour per week limit. Daily limits during term-time – 2 hours per school day, 2 hours on a Sunday and 8 hours (over 15 years of age) or 5 hours (under 15) for any other day (i.e. Saturday) – were retained and limits on children's working hours out of term time were not affected.

73. The purpose of the legislation is to ensure that any work undertaken by children does not put their health, development or education at risk.

### **Question 2**

74. A letter was sent out to all local authority Chief Executives, copied to local authority Directors of Education, on 13 September 2006. This letter outlined the regulations that brought Scottish legislation into line with Directive 94/33/EC. It outlined the reasons for this change; the concerns expressed during the consultation, provided a model byelaw for local authorities to consider if their current byelaws required updating and provided a fact sheet with general information on the law regarding the employment of children



under school leaving age.

### **Question 3**

75. No data is held at a central level as responsibility for this lies with the local authority.

### **Article 7, Paragraph 9**

76. The 1937 Act does not contain a requirement for medical control.

### **Article 7, Paragraph 10**

#### **Question 1**

77. The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 introduced new offences criminalising any person who pays for the sexual services of a child, or who causes, incites, arranges, facilitates or controls the provision of sexual services by a child or child pornography. A child is defined as a person under the age of 18 years.

78. More generally, a number of offences exist both in statute and at common law, criminalising sexual activity with a child under the age of consent. The law in this area has been reformed and modernised by the Sexual Offences (Scotland) Act 2009, equalising at 16 the age of consent for boys and girls, and ensuring that the law is gender and sexuality neutral. Sections 52 and 52A of the Civic Government (Scotland) Act 1982 provide that it is an offence to possess, take, make, publish or distribute an indecent image of a child. The Protection of Children and Prevention of Sexual Offences (Scotland) Act raised from 16 to 18 the age of a child in respect of which this section applies.

79. Section 22 of the Criminal Justice (Scotland) Act 2003 provides that it is an offence to traffick a person (whether or not a child) for the purpose of sexual exploitation. Section 4 of the Asylum and Immigration (Treatment of Claimants) Act 2004 provides that it is an offence to traffick a person for the purpose of exploitation (e.g. labour exploitation). These offences apply equally in respect of child and adult victims of trafficking.

80. The Children (Scotland) Act 1995 is centred on the needs of children and young people and their families and defines both parental responsibilities and rights in relation to children and young people. It sets out the duties and powers available to public authorities to support children and young people and their families, and to intervene when the child or young person's welfare requires it. These duties and powers include provisions to protect children and young people from abuse and neglect through a range of measures including the provision of accommodation, services for the child and young person and wider family. The essential principles behind the act are:

- each child or young person has the right to be treated as an individual;
- each child or young person can form his or her own views if he or she wishes;
- parents should normally be responsible for the upbringing of children and young people and should share that responsibility;
- each child or young person has the right to protection from all forms of abuse, neglect or exploitation;
- so far as is consistent with safeguarding and promoting the child or young person's welfare, the public authority should promote the upbringing of children and young people by their families; and
- any intervention by a public authority should be properly justified, and should be supported by services from all relevant agencies working in collaboration.

81. The Protection of Children (Scotland) Act 2003 aims to improve the safeguards for children by preventing unsuitable people from working with them. The Act introduced new duties and offences which apply equally to the statutory, private and voluntary sectors and cover work in both paid employment and unpaid voluntary service. Under the Act, it is an offence for an organisation to knowingly employ a person in a child care position, if that person is disqualified from working in such a position.

82. The Protection of Vulnerable Groups (PVG) (Scotland) Act 2007 creates the legislative framework for a strengthened, robust and streamlined vetting and barring scheme for those working with children and protected adults in Scotland.

## Question 2

83. The Children (Scotland) Act 1995 places a clear responsibility on local authorities to provide support and protection to at-risk children and young people in their area. However, an effective child protection system can only be achieved through multi-agency working which brings together the relevant services - social work, police, health, education, voluntary sector etc. In 1998 the then Scottish Executive published '*Protecting Children: A Shared Responsibility*<sup>1</sup>'. This is national multi-agency guidance which shows how services should work together to meet the needs of children. It sets out systems and processes for this work, including sharing information, the use of interagency Case Conferences, and child protection registration.

84. The Scottish Government is currently revising this national guidance, and expects to publish new draft guidance in April 2010 for consultation.

85. Scotland's unique **Children's Hearings system** plays a key role in implementing the Children (Scotland) Act 1995 (although it was already in place at the time the Act was passed). The guiding principle of the system is that children who offend and children who are offended against may be equally in need of help. Children referred to hearings are first referred to the

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<sup>1</sup> [www.scotland.gov.uk/Publications/2003/03/16909/21130](http://www.scotland.gov.uk/Publications/2003/03/16909/21130) -

Scottish Children's Reporters Administration. Referrals may be made on offence grounds and/or care and protection grounds. The Children's Reporter investigates the case decides whether or not compulsory measures of supervision may be required. If, in the Reporter's opinion, such measures are required, a Hearing will be arranged.

86. The Protection of Children (Scotland) Act 2003 has been implemented through the '**Disqualified from Working with Children List**' which came into operation on 10 January 2005. This is a list of persons considered unsuitable to work in a child care position, in either paid employment or as unpaid volunteers. Organisations have a duty to make a referral to Scottish Ministers if a person working in a child care position harms a child or puts a child at risk of harm and is dismissed or moved away from access to children as a consequence.

87. '**Disclosure Scotland**' is a body that supports the implementation of the Protection of Vulnerable Groups (PVG) (Scotland) Act 2007 by issuing certificates – known as 'Disclosures' – which give details of an individual's criminal convictions, or state that they have none. Enhanced Disclosures, where appropriate, will also contain information held by police forces and other Government bodies. Disclosure Scotland provides employers, voluntary sector organisations and those in their care, with disclosure information, to assist in the recruitment decision, helping protect the vulnerable. Some employers will be under an obligation to seek disclosures on potential employees. Typically, these will be positions which involve working with children.

88. In order to further implement the PVG (Scotland) Act 2007, the Scottish Government will be introducing the Protecting Vulnerable Groups Scheme (PVG Scheme) towards the end of 2010. This will replace and improve upon the current disclosure arrangements for people who work with vulnerable groups. The scheme will:

- help to ensure that those who have regular contact with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour,
- be quick and easy to use, reducing the need for PVG Scheme members to complete a detailed application form every time a disclosure check is required, and
- strike a balance between proportionate protection and robust regulation and make it easier for employers to determine who they should check to protect their client group.

### Question 3

89. The Scottish Government publishes annual child protection statistics which show the number of referrals and registrations throughout the country. These can be found on the Scottish Government website at:  
<http://www.scotland.gov.uk/Resource/Doc/286274/0087182.pdf>

90. The main findings are:

- In 2008-09, there were 12,713 child protection referrals, an increase of 3 per cent compared with the previous year. Forty-seven per cent of these referrals were for boys, 49 per cent were for girls, and 4 per cent were for children whose gender was not known (largely due to being unborn).
- Thirty-seven per cent of child protection referrals resulted in an inter-agency case conference in 2008-09. This compares to 35 per cent in 2007-08 and 39 per cent in 2006-07.
- For 85 per cent of children who were subject to a case conference, the primary known/suspected abuser was the child's natural parents (where this was known), one percentage point lower than in the previous year.
- Of the 4,720 case conferences, 77 per cent resulted in the child being placed on the local child protection register. This compares to 65 per cent in 2007-08 and 68 per cent in 2006-07.
- The total number of registrations on to child protection registers between April 1 2008 and March 31 2009 was 3,628, a rise of 29 per cent compared with the previous year. The number of registrations on to child protection registers as a result of emotional abuse were up by 43 per cent, for physical neglect were up by 29 per cent, for physical injury were up by 23 per cent, and for sexual abuse were up by 21 per cent.

## **NORTHERN IRELAND**

91. The situation as described for Great Britain applies with the exception of the following.

### **Paragraph 2**

92. The equivalent legislative instruments to those in Great Britain are the
- the Health and Safety at Work (Northern Ireland) Order 1978 as amended;
  - the Health and Safety (Young Persons) Regulations (Northern Ireland) 1997 (S.R.1997 No. 387);
  - the Management of Health and Safety at Work Regulations (Northern Ireland) 1992 (S.R.1992 No. 459);
  - the Management of Health and Safety at Work Regulations (Northern Ireland) 2000 as amended (S.R. 2000 No. 388);
  - the Working Time Regulations (Northern Ireland) 1998 as amended (S.R. 1998 No. 386);
  - the Ionising Radiations Regulations (Northern Ireland) 2000 (S.R. 2000 No.375);
  - the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999, as amended (S.R. 1999 No. 305);
  - the Lifting Operations and Lifting Equipment Regulations (Northern Ireland) 1999, as amended (S.R. 1999 No. 304)

### **Paragraph 3**

93. In Northern Ireland, the arrangements are that the Education Welfare Service within each Education and Library Board deals with applications for employment cards and performance licences. The use of employment cards is the method used to monitor the employment of children. The Employment of Children Regulations (Northern Ireland) 1996 require employers to notify the relevant Education and Library Board at least 7 days prior to employing the child. The employment card system enables checks to be made on working children. The Education Welfare Service has a responsibility to ensure that working children are registered.

## Paragraph 5

### QUESTION B

**Statistics:** All persons (aged 16 - 18) on adult rates, whose pay was unaffected by absence.

#### Northern Ireland New Earnings Survey.

All persons (aged 16 - 18) **on** adult rates, whose pay was unaffected by absence.

|                    | <b>2009</b>  |             | <b>2008</b>  |             | <b>2007</b>  |             | <b>2006</b>  |             |
|--------------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|
|                    | <b>Count</b> | <b>Mean</b> | <b>Count</b> | <b>Mean</b> | <b>Count</b> | <b>Mean</b> | <b>Count</b> | <b>Mean</b> |
| <b>Male</b>        | 4            | £5.48       | 6            | £5.78       | 8            | £5.51       | 8            | £5.89       |
| <b>Female</b>      | 6            | £5.50       | 9            | £5.75       | 8            | £5.18       | 11           | £5.42       |
| <b>Group total</b> | 9            | £5.49       | 15           | £5.76       | 16           | £5.34       | 19           | £5.62       |

All persons (aged 16 - 18) **not on** adult rates, whose pay was unaffected by absence.

|                    | <b>2009</b>  |             | <b>2008</b>  |             | <b>2007</b>  |             | <b>2006</b>  |             |
|--------------------|--------------|-------------|--------------|-------------|--------------|-------------|--------------|-------------|
|                    | <b>Count</b> | <b>Mean</b> | <b>Count</b> | <b>Mean</b> | <b>Count</b> | <b>Mean</b> | <b>Count</b> | <b>Mean</b> |
| <b>Male</b>        | 2            | £4.85       | 2            | £4.18       | 3            | £4.12       | 3            | £3.86       |
| <b>Female</b>      | 1            | £5.40       | 2            | £4.48       | 2            | £4.12       | 3            | £4.16       |
| <b>Group total</b> | 3            | £5.04       | 4            | £4.30       | 5            | £4.12       | 6            | £4.02       |
|                    |              |             |              |             |              |             |              |             |

Hourly earnings excluding overtime.

The survey provides information on earnings and hours worked in April of the particular year.

### **Paragraph 9**

94. The corresponding Northern Ireland Regulations are the Control of Lead at Work Regulations (Northern Ireland) 2003, as amended (S.R. 2003 No. 35).

95. In relation to the response to Question 2, in Northern Ireland, the Employment Medical Adviser has the same role as that of a Medical Inspector.

### **Paragraph 10**

96. The Department of Health, Social Services and Public Safety (DHSSPS) issued revised guidance on how all agencies and practitioners with child protection responsibilities should co-operate to safeguard children and promote their welfare. "Co-operating to Safeguard Children", which was published in May 2003, and can be viewed at [www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk), sets out the roles and responsibilities of different agencies and practitioners involved in child protection work. These include social services staff, police, probation, doctors and nurses with child protection roles and those involved in primary care settings. The guidance sets out the processes which should be followed when there are concerns about a child and the action which should be taken to safeguard and promote the welfare of children who are suffering, or at risk of suffering, significant harm. It also provides guidance for dealing with allegations of abuse in specific circumstances, including stranger abuse, abuse of children with disabilities, children who sexually abuse others, domestic violence and the commercial sexual exploitation of children.

97. Work is underway to establish an independently-chaired, statutory Safeguarding Board for Northern Ireland later this year. Membership of the Board will comprise senior representatives from the key safeguarding agencies such as police; probation; social services etc. The Board will replace the current Area Child Protection Committees. Five Safeguarding Panels will also be established to support the Board and these will replace the current Child Protection Panels. The objectives of the Board will be to secure effective coordination of what is done by each person or agency represented on the Board for the purpose of safeguarding and promoting the welfare of children.

### **Health Education**

98. The Board of Governors of every grant-aided school in Northern Ireland has a duty to provide a balanced curriculum, which promotes the spiritual, moral, cultural, intellectual and physical development of pupils and prepares them for the opportunities, responsibilities and experiences of adult life. Relationships and sexuality education (RSE) and education about drugs, alcohol, and smoking are taught mainly through the science programme of study and the Health Education cross-curricular theme, both of which are compulsory aspects of the curriculum.

### **Relationships and Sexuality Education**

99. The Department of Education issued a circular in August 2001 on Relationships and Sexuality Education (RSE). The accompanying teacher guidance material produced by the Council for the Curriculum, Examinations and Assessment (CCEA), helps schools develop their own policy on RSE and provide a programme of RSE appropriate to the needs and maturity of their pupils.

### **Drugs, Alcohol and Tobacco Education**

100. The revised curriculum includes the area of Personal Development (PD) & Mutual Understanding/Learning for Life and Work, which provides opportunities for young people to develop the knowledge, understanding and skills to deal with issues such as drugs alcohol and tobacco. Schools must also have a drugs education policy and publish details of this in their prospectus.

101. In May 2004, the Department of Education issued a circular, along with comprehensive guidance produced by a CCEA-led working group, to all schools on drawing up a drugs and alcohol policy and drug and alcohol education programme and on managing suspected drug and/or alcohol related incidents. The Education and Training Inspectorate continues to monitor drugs education provision in schools, youth clubs and FE colleges.

102. Education and Library Boards receive funding as part of their overall block grant to enable them to employ drugs and alcohol education officers to provide training and support to teachers in delivering drugs and alcohol education as part of the Personal Development strand of the revised curriculum in schools. Funding is also provided to each of the five Education and Library Boards and the Youth Council to support youth provision which includes addressing drugs and alcohol awareness sessions for young people.



## ISLE OF MAN

### Article 7, Paragraph 2

#### Question 1

1. Section 54 of the Education Act 2001 (of Tynwald) provides that the Department of Education may make regulations prohibiting, restricting or regulating the employment of children. For the purposes of this section a child means any person under the age of 18 years. The Employment of Children Regulations 2005 came into operation on 1 September 2005.

2. The Regulations provide that no child may any work if he or she is under the age of 13 years and no child under the age of 15 years may be employed in work other than light work. Light work is defined in the Regulations as meaning work which does not involve:

- (a) standing for any considerable time;
- (b) walking for any considerable distance;
- (c) the operation of heavy machinery;
- (d) moving, lifting or carrying heavy objects; or
- (e) any other heavy labour of any description.

3. Also, no child may be employed in any of the following occupations:

- (a) street trading;
- (b) selling or delivering alcoholic liquor;
- (c) collecting or sorting controlled waste;
- (d) any work involving indecent activities or exposure to indecent material or activities;
- (e) work in a betting shop;
- (f) work in a slaughterhouse;
- (g) work in premises used for the killing of livestock, butchery or the reparation of carcasses or meat for sale (other than a part of the premises solely used as a retail shop);
- (h) work in a casino, discotheque, dance hall or night club; or
- (i) any other work which is likely to jeopardise his or her moral welfare.

4. Section 3(1) of the Employment of Women, Young Persons, and Children Act 1930 continues to provide that no child under the age of fourteen shall be employed in any industrial undertaking, where "industrial undertaking" has the same meaning as in article 1 of the ILO's Minimum Age (Industry) Convention 1919 (No. 5).

5. Section 42(1) of the Merchant Shipping (Masters and Seamen) Act 1979 also continues to provide that: *"A person under 18 years shall not be*

*employed in any ship registered in the Island unless he would be permitted to be employed in that ship if he had entered into an agreement in England to be employed in that ship if it were a ship registered in the United Kingdom."*

6. Under the Management of Health and Safety at Work Regulations 2003 no one under the age of 18 years is allowed to be employed by an employer unless or until an appropriate risk assessment has been undertaken. The employer must ensure that children and young persons employed by him are protected at work from any risks to their health or safety that are a consequence of their lack of experience, or absence of awareness of existing or potential risks or the fact that young persons have not yet fully matured.

7. Under the 2003 Regulations no employer shall employ child or a young person for work:

*"(a) which is beyond his physical or psychological capacity;*

*(b) involving harmful exposure to agents which are toxic or carcinogenic, cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health;*

*(c) involving harmful exposure to radiation;*

*(d) involving the risk of accidents which it may reasonably be assumed cannot be recognised or avoided by children or young persons, as the case may be, owing to their insufficient attention to safety or lack of experience or training; or*

*(e) in which there is a risk to health from:*

*(i) extreme cold or heat;*

*(ii) noise; or*

*(iii) vibration,*

*and in determining whether work will involve harm or risks for the purposes of this paragraph, regard shall be had to the results of the assessment."*

8. However, the above restrictions do not apply to the employment of a young person where:

(a) it is necessary for his training;

(b) he will be supervised by a competent person; and

(c) any risk will be reduced to the lowest level that is reasonably practicable.

9. Under the 2003 Regulations "child" means a person who is not over compulsory school age and "young person" means any person (other than a child) who has not attained the age of 18.

## **Question 2**

10. Under the 2005 Regulations every employer where a child of school age is or has in the previous 6 months been employed must keep, and make available for inspection by an authorised officer of the Department a register containing particulars in respect of each such child employed. The information contained the register must include the nature of the work undertaken and the days and hours normally worked by the child.

11. An authorised officer of the Department, or any constable, may enter and inspect any premises where he has reasonable cause to believe that a child is being employed, and make enquiries there with respect to the employment.

12. The 2005 Regulations, a guidance note for employers and parents and a form for employers to register the employment of a child of school age are available on the Department of Education website.

## **Article 7, Paragraph 3**

### **Question 1**

13. Under section 23 of the Education Act 2001 in the Isle of Man "compulsory school age" means any age between 5 years and 16 years, and a person shall be treated as being of compulsory school age if they have attained the age of 5 years and has not attained the age of 16 years. Where a person who:

- (a) is a registered pupil at a school, or
- (b) has been a registered pupil at a school within the previous 12 months,
- (c) attains the age of 16 years during any year beginning on 1 September,

they are deemed to attain the upper age limit for compulsory schooling on the Friday before the last Monday in May in that year.

14. The Employment of Children Regulations 2005 provide that no child of school age may be employed in work which is:

- (a) likely to be harmful to his health or development, or
- (b) such as to prejudice his attendance at school, his participation in work experience as part of his education or his capacity to benefit from the instruction received or experience gained, as the case may be.

15. Under the 2005 Regulations:

No child of school age may in any week be employed in any work for more than:

- (a) 28 hours, if he is under the age of 15 years, or

(b) 35 hours, if he is aged 15 years or over.

No child of school age may be employed in any work on a school day:

(a) before 7.00 am or after 9.00 pm, or

(b) for more than one hour before the commencement of school.

No child of school age may be employed in any work:

(a) on a school day which is followed by a day which is a school day, for more than 2 hours in all;

(b) on a school day which is followed by a day which is not a school day, for more than 4 hours in all.

No child of school age may be employed in any work on a day which is not a school day:

(a) before 7.00 am or after 10.00 pm, or

(b) for more than 7 hours in all.

No child of school age may be employed in any work on more than 6 days in any week.

No child of school age may be employed in any work:

(a) for a continuous period of more than 2 hours in any day without a rest period of at least 15 minutes; or

(b) for a continuous period of more than 4 hours in any day (counting any rest period of less than one hour as part of that period) without a rest period of at least one hour.

No child of school age may be employed at any time in a year unless at that time he has had or could still have, during that year, at least 2 consecutive weeks without being either employed or required to attend school.

## **Article 7, Paragraph 5**

### **Question 1**

16. The Minimum Wage Act 2001, the Minimum Wage Regulations 2001 and the Minimum Wage (Young Workers, Etc) Regulations 2007 provide the current legislative framework in the Isle of Man.

17. As previously reported, the National Minimum Wage does not apply to persons below the minimum school leaving age but does apply to persons above the minimum school leaving age.

18. The accredited training rate applies for no longer than a period of six months during which a worker aged 18 years or over is undergoing accredited training in a new job with a new employer. The rate can only be paid when the worker and the employer have a written agreement. The agreement must specify that the worker will take part in a course of accredited training on at

least 26 days during the first six months of employment. Participation in the course may be either at or away from the workplace but must be during normal working hours.

19. Persons to whom the National Minimum Wage does not need to be paid include:

- apprentices under the age of 19 years. An apprentice being a trainee under a formal training agreement with both their employer and the Department of Trade and Industry. (Apprentices aged under 25 years of age who are in the first 12 months of their apprenticeships need not be paid the National Minimum Wage); and
- students on higher education courses at universities or colleges who are doing work experience with an employer as part of their course need not be paid the National Minimum Wage.

20. As at 31 December 2009 for a person who had reached the minimum school leaving age but was under 17 years old, the minimum rate was £4.67 per hour. A minimum rate of £5.24 per hour applied to workers aged 17 and the minimum rate for workers aged 18 and over was £6.00 per hour, unless they were workers undergoing training when the rate of £5.24 per hour also applied.

21. Certain Vocational training courses, approved by the Department of Trade and Industry attract the payment of a Training Allowance. This is currently £90 per week.

22. Under section 26 of the Minimum Wage Act 2001 if the employer of a worker who qualifies for the minimum wage refuses or wilfully neglects to remunerate the worker for any pay reference period at a rate which is at least equal to the minimum wage, that employer is guilty of an offence. It is also an offence for an employer to fail to keep the required records under the Act or to maintain records which contain false information.

## **Question 2**

23. Information for employers and employees concerning the minimum wage, including copies of the legislation and a guide to the legislation is available on the website of the Department of Trade and Industry.

24. Since the previous report the Department of Trade and Industry Inspectorate has been strengthened from 2 to 3 officers. These officers have a range of employment law and work permit compliance responsibilities. The Inspectorate has a rolling programme of visits to employers to check compliance with the Minimum wage Act 2001 and other legislation.

## **Question 3**

25. Although an annual Earnings Survey is undertaken (a sample of employees is drawn at random from income tax records and a questionnaire

is sent to the last known employer of each of the selected employees) this survey does not include employees on junior or trainee rates of pay. The numbers of persons in the age range from 16 to 18 years who are on adult rates of pay is considered to be too small to be used for statistical purposes.

26. The 2006 Census found that the numbers of economically active persons aged 16 -19 in employment 1376 (728 male and 648 female). In addition, 178 such persons were unemployed (121 male, 57 female).

## **Article 7, Paragraph 6**

### **Question 1**

27. The Department of Trade and Industry Skills Development Scheme was introduced in 2007, replacing a number of older schemes relating to supporting apprentice employment. The new scheme continues to provide a general framework for the management of apprentice based training and makes provision for payments to employers to offset the costs of employing apprentices.

28. The new scheme provides assistance at established rates, set each year which allows for easier management of budget. Previous schemes were based on a percentage of salaries, which became unworkable as the rates paid to apprentices increased.

### **Question 2**

29. The Department of Trade and Industry works closely with employer representatives. The Skills Development Scheme in particular was produced as a result of dialogue with the construction sector via the forum of a Government / industry sector skills group.

## **Article 7, Paragraph 9**

### **Question 1**

30. There is no general legal requirement for young people who are over the statutory school leaving age to undergo regular medical examinations whilst in employment. However, under the Management of Health and Safety at Work Regulations 2003, all employers must ensure that employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the risk assessment that is a requirement of the Regulations. The 2003 Regulations include specific protection measures for employed children and young persons, where "child" means a person who is not over compulsory school age and "young person" means any person (other than a child) who has not attained the age of 18.

31. Under the Employment of Children Regulations 2005 no child of school age may be employed in work that is likely to be harmful to his or her health or

development.

## **Article 7, Paragraph 10**

### **Question 1**

32. The ECSR in its interpretation of the scope of article 7(10) states that it is akin to the right to life and dignity, similar to the rights guaranteed by the European Convention on Human Rights. The Human Rights Act 2001 (of Tynwald), which came into operation on 1 November 2006, incorporates the rights under the European Convention as part of the law of the Isle of Man.

33. Provisions specifically relating to trafficking of persons and migrant smuggling are currently being progressed in the Organised and International Crime Bill. The purpose of the Bill is, inter alia, to allow the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Sea and Air to be extended to the Isle of Man. It is hoped that the Bill will complete its parliamentary procedures and come into force by the end of 2010.

34. The Employment of Children Regulations 2005 provide that no person under the age of 18 may be employed in any work which is likely to jeopardise his or her moral welfare, and no child of school age may be employed in work which is likely to be harmful to his or her health or development.

35. The Sexual Offences (Amendment) Act 2006 which equalised the age of consent for homosexual persons with that for heterosexual persons also introduced the new offences of abuse of a position of trust and meeting a person under the age of 16 following sexual grooming (for example, via the internet).

36. A Children Bill to provide for the establishment of Children's Commissioner and place the Children's Committee and the Safeguarding Children Board on a statutory basis is included in the Isle of Man Government's legislative programme. It is intended that a draft Bill will be issued for consultation during 2010.

### **Question 2**

37. The Isle of Man Government is continuing its work towards integrating children's services. The goal is a more joined-up, community based approach to supporting all children and young people, with a particular focus on the most vulnerable.

38. A Children's Plan was produced in May 2009 which features the views of children, their families and carers, officials in the Departments of Education, Health and Social Security and Home Affairs, the voluntary sector and the community. It provides, for the first time, a single, over-arching plan for all services affecting children and young people in the Island. It is tailored around

the Government's five priority outcomes for children as set out in its 2005-2010 Strategy for Children and Young People:

- Staying safe,
- Being healthy,
- Enjoying and achieving, and
- Making a positive contribution and prospering.

39. The move towards integrating children's services (ICS) followed the 2006 report of the Commission of Inquiry into the Care of Young People which included the recommendation that the Government improves the co-ordination of services it provides for children. In May 2007, a Council of Ministers' report on the progress made on implementing the Commission of Inquiry's 132 recommendations agreed that the role of the Minister for Education would be extended to that of Minister for Education and Children.

40. The report received Tynwald's support. In December 2007, the Council of Ministers agreed a draft implementation plan for the integration of children's services, which tasked the Departments of Education, Home Affairs and Health and Social Security with working together to bring about change.

41. Further information about services for children and safeguarding children, including a copy of the Children's Plan, can be found on the Isle of Man Government website at:

<http://www.gov.im/youth/>

***The Committee asked for information on the draft legislation mentioned in the previous Report in respect of young people who have attained statutory school leaving age but who are under 18 years of age working in hazardous occupations***

42. The Employment of Children Regulations 2005 came into operation on 1 September 2005. The Regulations provide that no child under the age of 15 years may be employed in work other than light work. Light work is defined in the Regulations as meaning work which does not involve:

- (a) standing for any considerable time;
- (b) walking for any considerable distance;
- (c) the operation of heavy machinery;
- (d) moving, lifting or carrying heavy objects; or
- (e) any other heavy labour of any description.

43. Also, no child (meaning any person under the age of 18) may be employed in any of the following occupations:

- (a) street trading;
- (b) selling or delivering alcoholic liquor;
- (c) collecting or sorting controlled waste;



- (d) any work involving indecent activities or exposure to indecent material or activities;
- (e) work in a betting shop;
- (f) work in a slaughterhouse;
- (g) work in premises used for the killing of livestock, butchery or the reparation of carcasses or meat for sale (other than a part of the premises solely used as a retail shop);
- (h) work in a casino, discotheque, dance hall or night club; or
- (i) any other work which is likely to jeopardise his or her moral welfare.

44. The Employment of Children Regulations 2005 also provide that no child of school age may be employed in work which is likely to be harmful to his or her health or development.

45. The Department of Education decided not to pursue the use of a "special licence" granting permissions to allow dangerous or hazardous employment for exemption from the regulations.

46. The Management of Health and Safety at Work Regulations 2003, which came into operation on 1 October 2004, also contain provisions to prevent children of school age from being employed in certain hazardous work and to minimise any risks to young people (i.e. persons over school age but under the age of 18) who may need to undertake such work for the purposes of training.

## **Article 8 – The right of employed women to protection**

### **UNITED KINGDOM**

#### **Paragraph 1**

#### **Questions 1- 2**

1. The position continues to be that the UK complies fully with the EC Pregnant Workers Directive. The EC Directive has application throughout the UK and the rights to protection of employed women in Northern Ireland effectively reflect those described below for employed women in Great Britain.

2. Women may qualify for one of two maternity benefits; Statutory Maternity Pay (SMP) from their employer, or Maternity Allowance (MA) from the state. Sections 164 to 171 (for SMP) and sections 35 to 35A of the Social Security Contributions and Benefits Act 1992 provide the general legal framework for these payments. The detail is contained mainly in the Statutory Maternity Pay (General) Regulations 1986; the Social Security (Maternity Allowance) Regulations 1986 and the Social Security (Maternity Allowance)(Earnings) regulations 2003.

3. During the period of the Report changes have been made to both SMP and MA. As noted in the previous report the Employment Act 2002 and related regulations – the Social Security Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 extended the SMP and MA payment period from 18 to 26 weeks and increased the standard rate payable by 60% in comparison to the rate paid in 2001. These changes applied to women expecting babies on or after 6 April 2003.

4. Further changes were introduced for women expecting babies on or after 1 April 2007. The Work and families Act 2006 and related regulations – The Statutory Maternity Pay, Social Security (Maternity allowance) and Social Security (Overlapping Benefits)(Amendment) Regulations 2006 – extended the payment period of SMP and MA from 26 weeks to 39 weeks. The Act also introduced improvement to ease the administration of SMP and MA by enabling women to start their payment period on any day of the week and enabling them to work for up to 10 days during their 39 week payment period with no loss of benefit. This will help them keep in touch with their workplace or their own business whilst on maternity leave.

5. To qualify for SMP the woman must:

- be employed in the same employment for at least 26 weeks up to and including the 15<sup>th</sup> week before the week her baby is due (referred to as the qualifying week); and

- have average earnings in the 8 week period leading into the qualifying week equal to or above the Lower Earnings Limit (LEL) applying to national insurance contributions.

6. SMP is paid by the employer for up to a maximum of 39 weeks. However, the Government reimburses employers 92% of the SMP they pay out. Small employers are reimbursed for 100 % plus 4.5% compensation. The Government therefore meets most of the costs.

7. Rates of SMP payable, during the reporting period:

(a) For the first 6 weeks SMP is paid at 90% of the woman's average weekly earnings (no upper limit).

b) The following weeks (20 weeks for women expecting babies on or after 6 April 2003; 33 weeks for women expecting babies on or after 1 April 2007) the lower of either the standard rate or 90% of average gross weekly earnings

*The standard rates for SMP were:*

April 2003 - £100; April 2004 - £102 .80; April 2005 £106.00;  
April 2006 £108.85; April 2007 £112.75; April 2008 £117.18; and  
April 2009 £123.06.

8. Women who do not qualify for SMP may qualify for MA. This is funded by the Government.

9. To qualify for MA the woman must:

a) have been employed and or self-employed for at least 26 weeks in the 66 weeks up to and including the week before the baby is due. This is known as the "test period"; and

b) have average weekly earnings of at least £30 (MAT) over any 13 weeks in the test period.

10. MA is paid at 90% of the woman's average weekly earnings subject to a maximum weekly rate equal to the standard weekly rate of SMP (see above). If a woman does not qualify for MA, her claim is automatically considered for sickness benefit: previously Short-term Incapacity Benefit (STIB), as detailed in previous reports, and from October 2008 the new Employment and Support Allowance.

***The Committee considers that the standard rates of both SMP and MA are inadequate. It asks for evidence that the level of maternity benefit is adequate and asks how the rates compare to average and minimum wages.***

11. Significant and beneficial changes to maternity payments have been made over the last few years with expenditure now around £2 billion a year on maternity payments to support pregnant women and new mothers. The UK has opted to provide maternity pay and leave well above the minimum level of statutory sick pay set by the EU Directive 92/85/EEC on the protection of pregnant workers and workers who have recently given birth or are breastfeeding. The standard rates of Statutory Maternity Pay and Maternity Allowance are 55% above the minimum level set by the Directive.

12. The hourly rate of the minimum wage for workers aged 22 years or more in the UK is £5.80. Women in receipt of the minimum wage would receive SMP worth 63% of their wages over the 39 week payment period for SMP. If the same worker received MA, her MA would be worth 59% of her wages over the 39 week period. Average female wages in the UK were £309.8 a week in 2009<sup>11</sup>. Spending on maternity benefits has also been increased by extending the period and raising the standard rate payable. This is considered the best way to help low paid pregnant working women. Increased spending on earnings related benefit alone would simply mean that most of the money in available resources would go to higher earners

### **Maternity leave**

15. The UK provides one of the longest periods of paid leave in the European Union, up from 18 weeks in 2002 to 39 weeks now. Evidence<sup>12</sup> shows that the UK's approach works. 92% of mothers take more than 20 weeks off work on maternity leave with 84% of women taking all of their paid maternity leave; 76% of mothers have returned to work within 12 to 18 months of having their child and, after maternity leave, the vast majority of women (86%) return to work with the same employer. Only 8% of women take less than 20 weeks off work on maternity leave.

16. Significant change to maternity protections has been introduced since the last report in 2002. Provision in the UK is compliant with, and in many respects exceeds, the European Directive on the protection of pregnant workers and workers who have recently given birth or are breastfeeding (92/85/EEC)<sup>13</sup>.

17. The Maternity and Parental Leave (Amendment) Regulations 2002<sup>14</sup> (MPLR 2002), which came into effect on 24 November 2002, provided all employed women with 26 weeks' ordinary maternity leave. Women with 26 weeks' qualifying service with their employer were able to take a further 26 weeks' additional maternity leave. Alongside this change, payment of statutory maternity pay and maternity allowance was extended from 18 to 26 weeks.

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<sup>11</sup> Source: 2009 Annual Survey of Hours and Earnings, Office for National Statistics. Figure for median all female earnings.

<sup>12</sup> Maternity Rights and Mothers Employment Decisions – La Valle et al (DWP Research 496) <http://campaigns.dwp.gov.uk/asd/asd5/rports2007-2008/rrep496.pdf>

<sup>13</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0085:EN:HTML>

<sup>14</sup> [www.hms0.gov.uk/si/si2002/20022789.htm](http://www.hms0.gov.uk/si/si2002/20022789.htm)

18. The Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006<sup>15</sup> removed the qualifying period for additional maternity leave for women whose expected date of childbirth was on or after 1 April 2007. The effect is that all employed women in the UK are entitled to take up to 52 weeks' maternity leave in total. A woman is able to choose to return to work before the end of her year's maternity leave entitlement if she chooses. Alongside this extension of a full year's maternity leave to all employed mothers, the period of payment of statutory maternity pay and maternity allowance was extended from 26 weeks to 39 weeks.

19. Research is currently being undertaken to evaluate the impact of the 2006 extension of maternity leave and pay. The 2003 changes had been evaluated in the 2008 report, *Maternity Rights and Mothers' Employment Decisions*<sup>16</sup>. This report shows a high take up of maternity leave and pay in the UK. 84% of mothers took all their paid maternity leave, up from some 66% in 2002. Longer paid maternity leave, combined with the right to request flexible working, has meant that the proportion of mothers changing employers when returning to work after maternity leave has dropped from 41 per cent in 2002 to 14 per cent in 2007. This protects women from the risk of a move to lower pay and lower quality work after maternity leave.

***The Committee concludes that in the absence of a compulsory period of 6 weeks post natal leave the situation is not in conformity with the Charter.***

20. The Government believes that it is generally for women themselves to decide both how to use their maternity leave and when they are ready to return to work. As set out above, all employed women are entitled to up to 52 weeks' maternity leave. They may begin leave up to 11 weeks before the week their baby is due. This gives them a large amount of freedom to choose the maternity leave arrangement which suits them. However, women must take two weeks' compulsory maternity leave immediately after the birth of their child, four weeks if they work in a factory. A higher rate of statutory maternity pay is paid during the first six weeks' maternity leave to reflect this. It is the employer's responsibility to ensure that a woman does not return to work within this period, which is in line with the requirements of European Directive 92/85/EEC and has been the case since 1994 when the Directive was implemented. Evidence<sup>17</sup> shows that 99% of women take at least six weeks' maternity leave.

21. Women returning to work following maternity leave are protected under health and safety law. Employers have a duty to protect the health and safety of pregnant women, new mothers (up to 6 months), and nursing mothers and their infants. They are required under law to take steps to remove any health

<sup>15</sup> [www.opsi.gov.uk/si/si2006/uksi\\_20062014\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20062014_en.pdf)

<sup>16</sup> <http://research.dwp.gov.uk/asd/asd5/rports2007-2008/rrep496.pdf>

<sup>17</sup> <http://research.dwp.gov.uk/asd/asd5/rports2007-2008/rrep496.pdf>

risks, or to suspend a woman from work until such time as the risk can be removed.

## **ISLE of MAN**

### **Question 1**

1. The Department of Trade and Industry (DTI) is responsible for employment rights including the right to take maternity leave. The Department of Health and Social Security (DHSS) is responsible for arrangements for workers to receive social security benefits while on maternity leave.
2. Since the previous report the DTI has modernised rights in respect of maternity leave by way of the Employment Act 2006 and a series of subsidiary Regulations which include the Maternity Leave Regulations 2007.
3. A woman who is an employee is now entitled to:
  - at least 26 weeks' unpaid Ordinary Maternity Leave;
  - if she has 26 weeks' continuous employment with the employer, up to 26 weeks' unpaid Additional Maternity Leave.
4. During ordinary maternity leave, the employee's contract of employment continues, and all contractual benefits, apart from pay (such as, for example mobile phones, membership of any health club or use of a company car) are maintained during ordinary maternity leave.
5. The employee's contract of employment continues during additional maternity leave, but only certain contractual benefits remain in force, namely the employer's obligation of trust and confidence; the employer's requirement to give notice of termination; redundancy payment provisions; disciplinary and grievance procedures. The employee is bound by the implied obligation of good faith; requirements for notice of termination; confidentiality; rules as to acceptance of gifts and benefits; and rules as to participation in another business.
6. Whereas there is no requirement for an employer to pay an employee who is on maternity leave a woman may nevertheless be entitled under her contract of employment to be paid during maternity leave.
7. Adoption leave rights are analogous to those in respect of maternity have the same qualifying periods.
8. The right to maternity leave is enforceable at the Isle of Man Employment Tribunal.
9. Maternity Allowance (MA), a social insurance benefit paid by the Department of Health and Social Security, is currently paid at the lesser of the standard weekly rate of £172.75 or 90% of the woman's average weekly earnings. In the case of a self-employed earner the standard weekly rate is £123.06.

10. A woman is entitled to MA if she has been employed or self-employed and earned, on average, at least £30 per week for at least 13 weeks in the MA test period. The test period is the period of 66 weeks up to and including the week before the baby is due.

11. The maximum period for which MA is payable increased from 26 weeks to 39 weeks, for women whose expected week of confinement began on or after 24 June 2007. The period of the maternity allowance award can begin from as early as the eleventh week before the expected date of confinement right up to the date of the baby's birth.

12. A lump sum Maternity Payment of £500 may also be available if the expectant mother (or her partner) is in receipt of a social assistance benefit.

## **Question 2**

13. The DTI gave a series of presentations to employers prior to the introduction of the Maternity Leave Regulations 2007 and has published a range of guidance material for employers and workers. Both the DTI and the Manx Industrial Relations Service continue to provide advice and assistance to employers and workers in respect of maternity and adoption rights.

14. Detailed information concerning Maternity Allowance is contained within various media published by the Department of Health and Social Security and on its website at [www.gov.im/dhss/security](http://www.gov.im/dhss/security).

## **Question 3**

15. The number of women receiving MA at 31 December 2008 was 503.

16. The number of women receiving MA at 31 December 2009 was 555.

17. The weekly rates of MA are as follows:-

|                                  | <b>April 2007</b> | <b>April 2008</b> | <b>April 2009</b> |
|----------------------------------|-------------------|-------------------|-------------------|
| Employed earners (maximum)       | £156.10           | £162.20           | £172.75           |
| Self-employed earners (standard) | £112.75           | £117.18           | £123.06           |



## Article 16

### a. Social Protection

#### Questions 1- 3

#### Supporting children and their families

1. During the reference period of the report, following machinery of government changes under the previous administration, the Department for Children, Schools and Families (DCSF) was formed in summer 2007, replacing the Department for Education and Skills. The '*Children's Plan*' was published in December 2007 and put the needs of children and their families at the centre. Substantial reforms to health services, childcare and early years provision, employment rights and family support services have also been put in place

2. *Support for All: The Families and Relationships Green Paper*<sup>1</sup> was published in January 2010 and sets out a wide range of measures to support all families as they bring up their children and to help families cope with times of stress and difficulty. It also describes the measures taken in recent years to improve this support - the following is a summary.

#### Information and advice for families

3. Significant additional investment has been made to enable families to access support and information about the issues that matter most to them, and to find out about local services so they are better able to take advantage of the support that is available to them nearby.

4. The Family Information Direct programme<sup>2</sup> is a £60 million programme that funds 18 services which offers mothers, fathers, grandparents and other adults with parental responsibility independent, expert information and advice when and where they want it, and in the form that suits them best: via a telephone helpline; online; through joining a social network; by watching online videos; or through reading articles in newspapers and magazines. This multi-service approach enables the programme to expand the range of support available to those parents and families who want help but may otherwise not find it. The programme also works to complement and supplement local services by enabling parents and families to access information and support early before problems escalate to crisis point. Between April 2008 (when the programme was launched) and the end of December 2009, Family Information Direct has supported over 2.5 million parents and families through the telephone helpline and on-line services. 73% of parents who have used the Family Information Direct services were seeking support for the first time. Over 20 million adults have had access to parenting support through our print and video work.

5. Each English local authority now also has a Families Information Service

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<sup>1</sup> <http://www.dcsf.gov.uk/supportforall>.

<sup>2</sup> The Family Information Direct programme was known as Parent Know How until January 2010.

providing comprehensive information about locally available childcare, health and other services. The Government also provides local areas with materials to help them to communicate their offer for child and adolescent mental health services to families more effectively. The development of the Family Information Directory (part of the Family Information Direct programme) means parents can access this information in the places they already go to for parenting information, including outlets such as Parentline Plus, DadTalk and Netmums as well as local information sources.

6. In addition, English local authorities now each have two parenting experts able to deliver evidence-based, structured parenting programmes, supported by the National Academy for Parenting Practitioners. The Academy helps those working with children and families to get the training they need to work well with parents and, where appropriate, to help mothers and fathers strengthen their parenting skills.

7. Sure Start Children's Centres provide a range of integrated services for children aged 0-5 and their families. This includes advice and information, family and parenting support, and access to health services and childcare. They also provide outreach so that the most disadvantaged are aware of and can benefit from what is on offer either in their home or at a location that is convenient for them. More than 3,300 are now up and running and the Government is now on track to meet the 2010 target of 3,500 centres. This means there will soon be one for every community. Evidence from the national evaluation of Sure Start shows improvements in outcomes for children and families, including in children's behaviour and parents' support for their children's learning at home.

8. Around 4,000 Parent Support Advisers (PSAs) work with parents, as part of the extended service<sup>1</sup> core offer in schools, to help improve behaviour and attendance; overcome barriers to learning; and increase the numbers of parents actively involved in their child's education — both at school and at home. Following a pilot, the Department funded the expansion of PSAs, committing £102.5 million to all English local authorities over 2008–11.

9. The '*Staying Safe Action Plan*,' which was informed by consultation with parents and young people, set out measures to help families protect their children. In 2009, the Government launched Safe at Home, a national home safety equipment scheme, which will provide free home safety equipment to 100,000 of the most disadvantaged families in areas with the highest accident rates.

10. Bullying can have a devastating effect on children and families, preventing them from succeeding in education, and living happy and fulfilled lives. To help parents who are concerned about bullying in their child's life, the Government funds 'ParentLine Plus' and the 'Be Someone to Tell' programme that provide information and a professional advisory service.

11. Additional support is also provided for those families who need it the

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<sup>1</sup> Affordable school-based childcare between 8 am and 6 pm Monday to Friday for children aged 5–11 and a varied menu of activities to young people from 8 am to 6 pm weekdays and (with greater flexibility) during the holiday period where there is demand at secondary schools.

most, for example providing additional help for families on low incomes, teenage parents, families with children with special educational needs or disabled children and armed forces families.

12. As part of the *Teenage Pregnancy Strategy*, a range of information booklets for parents, is available through pharmacies and Families Information Services. The Family Planning Association Speakeasy programme was also successfully rolled out. This is accredited with the Open College Network and offers parents the opportunity to develop the knowledge and skills to talk more openly with their children about sex and relationships.

13. In 2006 the guidance was issued for local authorities on commissioning parenting support and followed this in 2007 with the publication of 'Every Parent Matters'. During 2008-9 work with 18 local authorities was undertaken in the 'Parenting Implementation Project' to address common issues and barriers to effective commissioning. This resulted in a kit of 35 resources (such as case studies, self assessment tools and guidance notes) for local areas to help them to improve planning and delivery

14. The Parenting Fund has been managed by the Family and Parenting Institute since its inception in 2004. The principle aims of the Fund are to:

- increase specialist and generic parenting provision, particularly in areas of high need, and for those groups currently less well served;
- encourage ownership and increase voluntary sector capacity regarding parenting support provision; and
- develop the sector strategically through promoting infrastructure development and networking.

15. Since it began, the Parenting Fund has disbursed over £30 million in grants to 265 organisations; it has enabled projects to reach over 170,000 parents with direct parenting assistance. The Fund has also helped provide information on many challenging subjects such as coping with bereavement and managing children's behaviour to over a million parents. In addition projects have been able to offer advice or information to over 60,000 practitioners.

16. Parenting Fund Round 3 began in April 2009 and will run until March 2011. It will fund 90 projects in 23 priority areas with funding worth £16m - £8m for grants and £6m for administration and delivery of an integrated support package for the Parenting Fund projects to support sustainability through local commissioning.

17. The National Academy for Parenting Practitioners (NAPP) has trained over 4000 parenting practitioners in evidence based programmes and approaches. The Academy's training offer has supported the practitioners that parents turn to for advice, training and information around parenting skills, and is based on research evidence of what really works. More parents who need it can therefore access quality support from trained practitioners capable of helping them to raise their children to be happy, healthy, safe, ready to learn and able to make a positive contribution a contribution and achieve economic

wellbeing.

### **Supporting couple relationships**

18. Much is being done to support couple relationships and stable, positive family relationships. Grant-funding is helping to build the capacity and infrastructure of a range of voluntary organisations. Over the two years, 2009-2011, some £7 million of Government funding is going to a number of third sector organisations, such as Relate, working directly with families experiencing relationship conflict.

19. Additionally, just over £3 million has been provided to a range of third sector organisations to support families being affected by the recession, to be spent mostly in 2009/11. This includes £1m to Relate to directly fund more face-to-face and telephone counselling; £300K to a number of Families Information Direct providers to enhance their online support for families; and £1m to a range of other front-line services focusing on those being hardest hit by the recession.

20. *Support For All: The Families and Relationships Green Paper*, also proposed additional funding for specialist relationship counselling for families with disabled children and for helpline support for them

21. For children, in some areas schools and local authorities are working with organisations such as Relate to provide counselling services to individual pupils affected by family breakdown. Counselling in schools though is primarily being delivered through the targeted mental health in schools programme, the second wave of which involved 55 English local authorities and began in April 2009. It supports Personal, Social and Health Education which aims to equip young people to deal with their parents' relationship distress and to build relationship skills for the future.

### **Targeted help for families with complex needs**

22. In April 2009, every English local authority received funding to employ parenting practitioners and experts to provide advice to parents and run parenting courses. These include Parenting Early Intervention Programmes which help mothers and fathers tackle behaviour problems in 8–13 year old children before they become entrenched. Evaluations found the number of parents who classified their children as having significant behavioural difficulties dropped by a half after attending the programme.<sup>1</sup>

23. Family Intervention Projects were developed in every English local authority. Family Intervention Projects have been shown to be highly successful in helping families with complex needs, whose behaviour or the behaviour of their children is causing serious distress to themselves and nuisance to others around them. Plans are in place to expand the programme so that 50,000–60,000 families can be helped by 2015.

24. The Family Nurse Partnership programme is a proven model of intensive nurse-led home visiting for vulnerable, first time young mothers and fathers. It

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<sup>1</sup> Lindsay, G. et al, 2008. *Parenting Early Intervention Pathfinder evaluation*. Centre for Educational Development, Appraisal and Research, University Of Warwick.

begins in early pregnancy, helping young parents to form positive relationships with their babies and provide the care that children need to flourish and become more confident in bringing up their children. It is being tested in 50 local areas with over 3,000 families already benefiting. The intention is to give 70 areas the opportunity to test the programme locally, reaching around 7,000 families by 2011.

### **Ensuring that national policy is informed by parents and families**

25. Parents' and families' views have informed and guided many of these reforms through consultation and research. This approach was further strengthened through the new Annual Parental Opinion Survey and the mechanism of a Parents' Panel. The Panel advises the Government, commenting on its policies at an early stage of their development as well as giving their views about how policies are being implemented. Children are also consulted through the Children and Youth Board which regularly feeds into policy debates and the Children's Commissioner provides an independent voice for children and young people.

26. The '**Parents' Panel**', comprising 40 parents from a broad mix of backgrounds, has met six times since January 2009. This builds on the commitment in the Children's Plan to provide a voice for parents at the heart of Government.

27. Ministers took part in each of the events engaging parents in a broad range of topics. Those discussions helped shape the policy development. For example, in the areas of: family stability during the recession; access to quality information; advice and support through joined up services; extended services in schools; and parental engagement in their children's learning. Parents' views have been invaluable in helping to shape the content and language of the Families and Relationships Green Paper.

28. The then DCSF commissioned an annual **Parental Opinion Survey** to seek the views of a sample of 2,300 parents over a three year period. The survey is designed to measure parents' confidence in their parenting skills and in the services available to support them in their parenting role.

29. Among the key findings were:

- The vast majority of parents (94%) were confident when caring for their children. Confidence was highest for parents of older children and amongst parents who left the education system at a later age (aged 22 or over).
- Nearly all parents (99%) found parenting rewarding. Non-resident parents expressed the lowest levels of satisfaction (73%).
- The research exposed a lower level of confidence and higher frustration levels amongst particular groups e.g. parents of children with disabilities and SEN, parents whose first language is not English and non resident parents.
- Over two thirds of parents found parenting frustrating some of the time, with 10 % finding it frustrating most of the time.

30. The findings from this survey are helping to better direct information and support services to help those families with low parental confidence and those

less likely to be engaged. The survey is informing the development of policies and delivery of services including Family Information Direct, extended services through schools, a range of initiatives aimed at increasing fathers' engagement with their children's learning and a raft of proposals emerging out of the Families and Relationships Green Paper.

### **Family housing**

31. Planning Policy Statement for Housing - PPS3<sup>1</sup>, published in November 2006 made it a planning requirement that the housing needs of children be considered, with an emphasis on family friendly developments including access to gardens, play areas, green spaces and parks. It gave local authorities the ability to promote mixed communities and to ensure larger homes are developed alongside flats and smaller homes.

32. PPS3 also promoted an evidence based approach: local authorities are required to assess current and future levels of need and demand for housing through carrying out Strategic Housing Market Assessments. These assessments should identify the accommodation requirements of different types of households that are likely to require housing, such as families with children, single person households, older people and students.

33. In addition to PPS3, the Housing Green Paper "Homes for the future: more affordable, more sustainable"<sup>2</sup> was published in July 2007 as a national drive to deliver homes that reflect the diverse needs of all our communities. The document sets out the Government's ambition to deliver 240,000 additional homes per year by 2016.

34. The Housing Green Paper also includes action to: provide more homes where they are needed, whilst enhancing the environment; offer new and improved options to thousands of social tenants, first time buyers and key workers who want to own their home; provide better conditions and more choice for those who rent, with decent homes for all social tenants; revitalise communities suffering from low demand and abandoned housing; create more mixed communities; and to reduce homelessness.

### **Delivery of family housing**

***The Committee asked whether the measures adopted are effective in order to guarantee families with housing, which is affordable and adapted to their needs, and whether the housing supply meets the demand of housing for families. It also asked information about housing policy for families in Wales, Scotland and Northern Ireland.***

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<sup>1</sup> <http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement3.pdf>

<sup>2</sup> <http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/housebuilding/livables/>

Investment in new affordable housing is over £7.5billion and will deliver over 112,000 affordable homes over the 2009-11 period. This includes the funding announced in the Housing Pledge on 29 June 2009 that over this year and next a further £1.5bn would be invested to build an extra 20,000 new affordable homes for rent and low cost sale, of which over 13,000 will be for social rent.

35. In 2008-09 the Homes and Communities Agency (HCA – formerly the Housing Corporation) successfully spent its affordable housing budget of £2.6bn and achieved its targets. A total of 55,770 new affordable homes were provided nationally in 2008/09 of which 31,090 were for social rent.

36. The Homes and Communities Agency was set a target to provide 33% of new social rented homes in 2010/11 of family size of three or more bedrooms.

### **Increasing housing supply**

37. For decades there has been a mismatch between supply and demand for new homes, with housing supply failing to keep up with our aspiring and ageing population. This has led to significant problems of affordability, particularly for those seeking to buy their first home.

38. That is why in the Housing green paper *“Homes for the future: more affordable, more sustainable”*, published in July 2007, the Government set out its ambition to deliver 240,000 additional homes per year by 2016.

39. In recent years, local authorities and the housebuilding industry have responded well to the challenge of increasing housing supply, with delivery in 2007/8 reaching 207,500 additional homes – an increase of 59% compared with 130,000 in 2001/02. This is the highest rate of housing supply since 1977.

40. In the short-term, there are undoubtedly challenges to overcome, with global financial and economic conditions impacting significantly upon the delivery of housing. But the fundamental need for a long-term increase in housing supply remains. Our population continues to grow and age and people are increasingly choosing to live alone. The latest projections indicate that the number of households in England is projected to grow to 27.8 million by 2031. This means that, between now and 2031, an average of 252,000 new households are expected to form each year.

### **Permanent dwellings completed by tenure – United Kingdom**

41. Full details of the numbers of new permanent dwellings built between 1996/97 and 2006/07 by private enterprise, registered social landlords and local authorities throughout the UK can be viewed at CLG website<sup>1</sup>

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<sup>1</sup> <http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/housebuilding/livetable/>

***The Committee asked for detailed, up-to-date information the action taken to concerning the accommodation of gypsies and travellers and on the results achieved.***

### **Meeting the accommodation needs of Gypsies and Travellers**

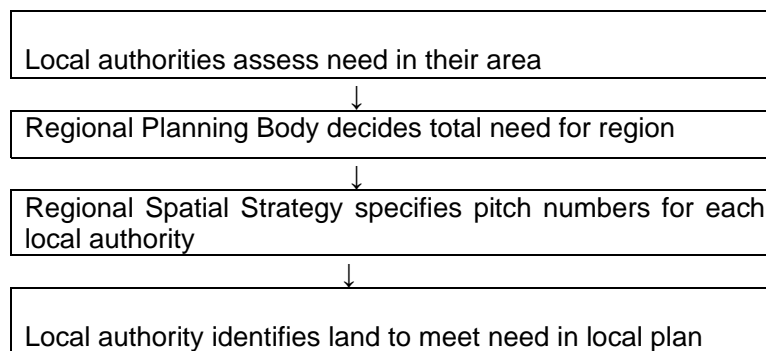
42. Following the Government comprehensive review of Gypsy and Traveller accommodation and planning policy in 2004-5 a new framework has been in place, ensuring that an informed and strategic approach is taken to identifying accommodation needs, and an effective planning system is in place which identifies land to meet those needs.

43. Under measures introduced in the Housing Act 2004, local authorities are required to identify and review the accommodation needs of Gypsies and Travellers and to supply a strategy in respect of meeting the needs of Gypsies and Travellers residing in, or resorting to, their district. All local authorities have now undertaken an assessment and these provide, for the first time, a crucial evidence base to enable local authorities to plan for the accommodation, and other, needs of the Gypsy and Traveller communities in their areas. A review of how accommodation assessments were undertaken is planned to help inform guidance on conducting these again in future.

44. Additional pitch numbers are identified in this process and fed into the regional planning process to help inform the preparation of the Regional Spatial Strategy (RSS). The RSS allocates the number of pitches that each authority must find land for. Planning Circular 1/06 stated that local authorities must identify land within their areas and 'allocate' it for the use of a Gypsy and Traveller site. They must allocate enough land to accommodate the number of pitches identified in the RSS.

45. This system ensures a systematic and comprehensive approach is taken to the assessment of Gypsy and Traveller accommodation needs. Where a need for sites is identified, it will require that land for such sites is identified in local development plan documents.

46. The process for identifying and allocating sites for Gypsy and Travellers:





47. Applications for planning permission to develop Gypsy and Traveller sites under the new arrangements are closely monitored and it is becoming clear that the approval rate is improving. Recent analysis of applications for sites shows that they are as likely to be granted permission by local authorities as those for comparably-sized housing developments. Similarly, when proposals go to appeal, roughly the same proportion of Gypsy and Traveller proposals are granted permission compared to housing developments. This is a significant improvement on the scenario prior to the introduction of Circular 1/06.

48. Government grant is provided for the development of new sites and refurbishment of existing sites – The Gypsy and Traveller Site grant. In December 2007, the previous administration announced a £97million programme of funding over the period 2008 to 2011, available for local authorities and registered social landlords (RSLs) to bid at varying levels depending upon whether schemes comprise new build, refurbishment or both. This followed grant provision of £56 million in the preceding two years. Since 2006/7 the grant will have provided funding for over 500 new pitches and refurbishment work on over 130 sites across England.

49. With effect from 2009/10, responsibility for the management of this funding has been transferred from central government to the Homes and Communities Agency, the key housing and regeneration delivery vehicle in England. Provision of Gypsy and Traveller accommodation will become an integral part of the Agency's 'single conversation' model for delivering housing and regeneration partnerships in local areas. The close relationship that it has with local delivery partners, including Local Authorities and RSLs should help to quicken the pace of delivery.

### **Task group on Site provision and Enforcement**

50. A Task Group on Site Provision and Enforcement, chaired by Sir Brian Briscoe (a former Chief Executive of the Local Government Association) and including members from the then Commission for Race Equality, Environment Agency, Association of Chief Police Officers, Royal Town Planning Institute and representatives of the Gypsy and Traveller community published its final report in December 2007. It concluded that the new Gypsy and Traveller site delivery arrangements and planning frameworks were sound but that the pace of delivery on the ground needed to quicken. Where there is a clear and immediate need for new sites, local authorities are being urged to bring forward preparation of development plan documents.

***The Committee asks for details in the next report of legal and practical measures to guarantee Roma/traveller/gypsy families effective protection***

### **Improvement to security of tenure on local authority sites**

51. In compliance with the judgement of the European Court of Human

Rights in *Connors v. UK*, section 318 of the Housing and Regeneration Act 2008 will remove the exclusion for local authority Gypsy and Traveller sites from the Mobile Homes Act 1983. This will improve security of tenure for residents of local authority Gypsy and Traveller sites, and give them rights and responsibilities already enjoyed by residents on other mobile home sites.

52. In 2008 the previous Government undertook a programme of engagement with Gypsies and Travellers and local authorities where concerns were raised about how certain parts of the Mobile Homes Act would work on local authority Gypsy and Traveller sites. These concerns were addressed in a consultation published in late 2008, proposing amendments to the Mobile Homes Act and other transitional provisions for existing residents.

53. Following that consultation it is proposed that Section 318 of the *Housing and Regeneration Act 2008* will apply the *Mobile Homes Act 1983* to local authority gypsy and traveller sites

### **Good site design and site management**

54. To ensure site provision is sustainable and fit for purpose we need to ensure that they are designed and managed properly. We have consulted widely with stakeholders, including local authorities and representatives of the Gypsy and Traveller communities, to produce guidance, primarily for prospective local authority and RSL developers, to ensure that sites are sustainable and fit for purpose and help ensure that applications for Gypsy and Traveller site grant are a sound investment and offer good value for money.

55. Good practice guidance has been published on Gypsy and Traveller site design and on site management in May 2008 and July 2009 respectively. Both sets of guidance emphasise the importance of consultation and co-operation between the site owner and its Gypsy and Traveller residents, for example on the layout and facilities on a new site, and repairs and maintenance programmes in respect of sites already operating.

**b. Legal Protection**

**Question 1**

**Domestic violence - Legal and practical protection**

56. Domestic violence is unacceptable in our society and tackling domestic violence is a key Government priority. The first National Delivery Plan was published in 2005 and there has been a Delivery Plan each year since then. The Delivery Plan sets out the framework to manage perpetrators and support victims. The aims of the Delivery Plan are to:

- reduce the number of domestic violence-related homicides;
- reduce the prevalence of domestic violence, particularly in high-incidence areas and/or communities;
- increase the rate of reporting for domestic violence, particularly in high incidence areas and/or communities;
- increase the rate of reported domestic violence offences that are brought to justice, particularly in high-incidence areas and/or communities, as well as in areas with high attrition rates; and
- ensure that victims of domestic violence are adequately protected and supported nationwide.

57. The Strategy "Together We Can End Violence against Women and Girls"<sup>1</sup> was published in November 2009. The aim of the strategy being to provide a coordinated approach to combating violence against women and girls rather than focusing on specific offences. The strategy represents the integrated approach to the three key aspects: prevention; provision; and protection

**Definition of 'domestic violence'**

58. In 2004 an agreed definition of domestic violence was introduced to replace the various definitions used by government departments and other agencies. A common definition was considered necessary to improve joint working and monitoring. The definition since used across Government is:

*<sup>2</sup>any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless*

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<sup>1</sup> <http://www.homeoffice.gov.uk/documents/vawg-strategy-2009/index.html>

<sup>2</sup> This includes issues of concern to black and minority ethnic (BME) communities such as so called 'honour based violence', female genital mutilation (FGM) and forced marriage. An adult is defined as any person aged 18 years or over. Family members are defined as mother, father, son, daughter, brother, sister, and grandparents, whether directly related, in laws or stepfamily.

*or gender or sexuality”.*

59. It remains the case that there is no specific statutory offence of domestic violence but a number of pieces of legislation provide the tools for the prosecution. The most commonly used are the: Offences Against the Person Act 1861; Criminal Damage Act 1971; Criminal Justice Act 1988; Protection from Harassment Act 1997; and the Sexual Offences Act 2003.

60. The Domestic Violence, Crime and Victims Act 2004, represents the biggest overhaul of domestic violence legislation for 30 years and brings strong powers for the police and the courts to tackle offenders, while ensuring that victims get the support and protection they need. The majority of sections were implemented in 2007 and 2009. The Act contains a provision whereby a breach of a civil non-molestation order becomes a criminal offence and a provision which allows the court to impose a restraining order, where appropriate, following conviction or acquittal for any offence. This latter power is particularly important as it enables the criminal court to address the issue of safety, even where a criminal case may have ended in an acquittal.

### **The Forced Marriage (Civil Protection) Act 2007**

61. The Government listened carefully to stakeholders and decided in June 2006 not to make forced marriage a criminal offence for fear that this would deter victims who would not wish to criminalise members of their family from seeking police assistance.

62. The Forced Marriage (Civil Protection) Act 2007 came into force in November 2008. The Act enables the family courts to make Forced Marriage Protection Orders (FMPOs) to prevent or pre-empt a forced marriage from occurring as well orders to protect the victim and help remove them from a situation after a forced marriage has taken place.

63. Initially, 15 courts have been designated to deal with applications.<sup>1</sup> The location of courts is being kept under review.

64. The Ministry of Justice is monitoring applications for FMPOs to assess how many are being made, at which courts, the type of applicant and the outcomes. As at the end of January 2010, 117 orders had been made, well over the 50 orders per annum forecast, which we believe demonstrates that the civil remedy approach is effective. These orders have offered protection to male as well as female victims of forced marriage.

65. From 01 November 2009, local authorities were formally designated as the 'Relevant Third Party' under the Act meaning they no longer need to apply for leave to make an application on behalf of a victim. Guidance for Local

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<sup>1</sup> Principle Registry of the Family Division; High Court (London); Birmingham Family Courts; Blackburn County Court; Bradford County Court; Bristol County Court; Cardiff Civil Justice Centre; Derby County Court; Leeds Combined Court; Leicester County Court; Luton County Court; Manchester County Court; Middlesbrough County Court at Teesside; Romford County Court; and Willesden County Court.

Authorities was published the same day and is available on line at <http://www.justice.gov.uk/guidance/forced-marriage.htm>.

66. Over the summer of 2009 Ministry of Justice officials met with a number of stakeholders who are using the Act to find out how its provisions have been implemented and to identify any problems with the process as well as good practice that can be shared nationally. A paper setting out the findings from this work was published to coincide with the first anniversary of implementation on 25 November 2009 and is also available on line at <http://www.justice.gov.uk/publications/10508.htm>.

67. A number of voluntary sector services in 11 of the 15 areas signed up to the FMPO-IDVA Support Pilot. The services will be in a key position to assist applicants in liaison with statutory agents or solicitors or support them in any way they can outside of the court process. A pilot scheme ran from September 2009 to 28 February 2010 and the findings<sup>1</sup> were published earlier this year. Services were asked to provide monthly feedback on the cases they are engaged with and this will provide information on what support is required by victims and also help to inform the case as to whether or not the voluntary sector should be made a Relevant Third Party.

## **Question 2**

68. Improving the criminal justice response to domestic violence can have a significant impact on achieving protection for victims and on bringing more perpetrators to justice.

### **Police**

69. The Police through the Association of Chief Police Officers (ACPO) have developed specific advice for those dealing with cases involving domestic abuse. Their 'Guidance on investigating domestic abuse' was launched 2008. They have developed and adopted a Domestic Abuse, Stalking and Harassment and Honour-Based Violence risk assessment model.

### **Prosecution**

70. The Crown Prosecution Service (CPS) is the principal public prosecuting authority for England and Wales and is headed by the Director of Public Prosecutions. Although the CPS works closely with the police, it is independent of them. The CPS is responsible for authorising charge in all but the most minor of cases and provides guidance and advice to investigators throughout the criminal process. A specific policy for domestic violence was revised in March 2009. This was accompanied by legal guidance for prosecutors and a leaflet to answer victims' frequently asked questions.

71. The CPS presents cases to the court on behalf of the Crown. The victim has no

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<sup>1</sup> <http://www.justice.gov.uk/forced-marriage-pilot-a.pdf>

special status in the case. However, in order to ensure that all witnesses give their best evidence in court, it is possible to apply for special measures to assist them. These special measures include: the use of screens to prevent the victim from seeing the defendant; the victim using a video link to give their evidence, so that they are not in the same room as the defendant; and the victim giving evidence from a remote location, so that they are not in the same court house as the defendant. In addition, defendants are not permitted to cross-examine victims without a lawyer in domestic violence cases, if it would affect the quality of evidence given.

72. Although CPS prosecutors present cases to the court and provide assistance to the court on sentencing issues, they have no influence over the actual sentence which is imposed. However, CPS prosecutors have an obligation to remind the court of their powers including the possibility of ancillary orders including, where appropriate, compensation and restraining orders.

73. Domestic violence and other violence against women crimes are a priority for the CPS. There is a network of 43 domestic violence and violence against women co-ordinators who deliver training and support the implementation of the national Policy and Guidance on prosecuting cases of domestic violence. Additionally, all CPS prosecutors received domestic violence training between 2005 and 2008. The training was a national programme, which ensured consistency of approach, across the CPS. The training was developed in conjunction with the police and mirrored the guidance and training being provided police officers.

74. The training was revised in 2008 and 2009 and now consists of an e-learning package as well as a one day face-to-face training day and includes information from non-governmental agencies that support victims of domestic violence.

75. Since April 2005 the Crown Prosecution Service has reported on the prosecution of domestic violence crimes as part of the performance review process. Domestic violence was included in CPS reports on hate crime up until March 2008, but from April 2008 was reported as part of the Violence against Women (VAW) strategy, measuring performance against a new VAW Indicator. The Crown Prosecution Service continued to improve its performance in prosecuting cases of domestic violence between 2005 and 2009. The Table below shows the improvement in the CPS' performance in terms of both the volume of cases dealt with and the improvement in successful outcomes.

| <b>Timeframe</b> | <b>DV numbers</b> | <b>% successful</b> | <b>% unsuccessful</b> | <b>% discontinuance</b> | <b>Bindovers<sup>1</sup></b> |
|------------------|-------------------|---------------------|-----------------------|-------------------------|------------------------------|
| 2008-09          | 67, 094           | 72.2%               | 27.8%                 | 21.5%                   | 4.7%                         |
| 2007-08          | 63, 819           | 68.9%               | 31.1%                 | 24.7%                   | 6.6%                         |
| 2006-07          | 57, 361           | 65.2%               | 34.8%                 | 27.9%                   | 9.6%                         |
| 2005-06          | 49, 782           | 59.7%               | 40.3%                 | 33.0%                   | 14.9%                        |
| 2004-05          | 34, 839           | 55.0%               | 45.0%                 | 37%                     | 18.2%                        |

76. The CPS' national domestic violence project ended in June 2005 and implementation of the findings began immediately. In 2007 the CPS began to develop an overarching Violence Against Women (VAW) strategy to provide a rationalised and co-ordinated approach to gendered crimes<sup>2</sup>. The VAW strategy and accompanying action plans were published in April 2008. Reports detailing the CPS' performance in relation to VAW crimes were published in December 2008 and 2009 and can be accessed at: <http://www.cps.gov.uk/publications/equality/vaw/index.html>

#### **Specialist Domestic Violence Courts (SDVCs)**

77. The SDVC programme promotes a combined approach to tackling domestic violence by the police, Crown Prosecution Service, Courts Service, Probation Service and specialist support services for victims. This approach situates the Criminal Justice Service (CJS) as part of a co-ordinated community-wide response to domestic violence. The SDVC Programme has been the centrepiece of the National Domestic Violence Delivery Plan since 2005-06. The programme has developed from the first 25 SDVC systems accredited in 2005/06, to a total of 127 accredited SDVCs, operational by the end of December 2009.

#### **Managing perpetrators**

78. There are currently two domestic violence perpetrator programmes accredited by the Correctional Services Accreditation Panel (CSAP) in use in the community within England and Wales: the Community Domestic Violence Programme (CDVP) and the Integrated Domestic Abuse Programme (IDAP). Both programmes are targeted at male offenders who are or were in heterosexual relationships who are of medium to high risk of causing harm.

79. IDAP or CDVP have been fully implemented in all 36 Probation Trusts since 2006.

80. In 2009/10 the national completions target for the community programmes was 2794 and Probation Trusts are on course to meet this.

<sup>1</sup> A 'bindover' is a non criminal disposal, which requires a defendant to promise to be of good behaviour for a specified period of time. Any misbehaviour within the specified fine leads to a financial penalty.

<sup>2</sup> 'Gendered crimes' in this context refers to those crimes predominantly committed by men against women.

81. The Healthy Relationships Programme (HRP), also accredited by CSAP, in use in prisons is currently available in twelve prison sites. There are two versions of HRP – the moderate intensity programme for men assessed as having a moderate risk/moderate need profile and the high intensity programme designed for high risk/high need offenders.

82. The number of prison sites offering HRP has grown in the current year and it is anticipated that growth will continue.

83. All of the programmes promote inter-agency co-operation and prioritise the safety of victims and their current female partners.

84. All of the programmes have Women's Safety Workers (WSWs) attached to them. The WSWs work in the community with the victims and ex-partners of men attending the programmes. Their role includes: safety planning to alleviate immediate and longer term risk; contribution to risk assessment and management; signposting to resources available in the community; and providing information about the programme and the man's attendance on the programme. In support of their role the National Offender Management Service (NOMS) has continued to make additional funds available to Probation Trusts.

85. NOMS has recently completed a review of all three programmes as part of a wider review of interventions. Recommendations from this review were accepted by CSAP and include developing a new programme as well as a maintenance programme to support and consolidate treatment gain.

86. Not all domestic abuse offenders will be suitable for or benefit from the accredited domestic abuse programmes. Domestic abuse offenders have diverse needs, some of which can be met by other interventions. There are a number of requirements which can be attached to community sentences or post-release licences which may be effective for domestic abuse perpetrators. Domestic abuse issues can also be addressed on a structured individual basis as well as within a domestic abuse programme. Any intervention with a domestic abuse perpetrator should be undertaken within a framework of inter-agency collaboration to aid the protection of known victims.

### **Legal Aid**

87. The Government is aware of the general concern regarding access to public funding (legal aid) for domestic violence cases. The usual income and capital restrictions are now waived in cases of domestic violence and the same waiver applies to application for forced marriage protection orders. This should mean that more people are now eligible. In most cases, solicitors will use their devolved power to grant funding themselves in domestic violence cases. The numbers of applications refused in this category remains very low.

### **Support to victims**



88. The Government continued to fund a matrix of national helplines which remain vital in providing a direct access to people experiencing domestic violence. These include the National Domestic Violence Helpline as well as helplines dedicated to support male victims and lesbian, gay, bi-sexual and transgender victims of domestic violence.

89. Providing specialist support to victims and enabling them access to a range of services can have a profound effect on their feelings of safety and engagement with the criminal justice system. Independent Domestic Violence Advisers (IDVAs) are trained specialists whose goal is the safety of victims. Their focus is to provide a service to victims who are at high risk of harm; addressing their safety needs and helping them to manage the risks that they face. IDVA involvement with victims of domestic violence has been shown to decrease victimisation, increase notification of children at risk and reduce the number of victims unwilling to support a prosecution.

90. A Multi-Agency Risk Assessment Conference (MARACs) is a multi-agency meeting which has the safety of high-risk victims of domestic violence as its focus. Usually led by the police, MARACs are made up of statutory and voluntary representatives, including social services, IDVAs, victim support services, health representatives, housing services, probation services and education services.

91. By sharing information, agencies get a better picture of victim's situations and so develop responses that are tailored to the needs and goals of individual victims and their children. Safe information-sharing also allows agencies to manage the perpetrator in ways that reduce risk. Members of the MARAC jointly construct and implement a risk management plan that provides professional support to all those at risk and that reduces harm.

92. A key strength of the MARAC is that multiple agencies refer cases to the process.

## **WALES – Domestic Violence**

93. Whilst the Home Office has lead responsibility for the criminal justice aspects of domestic violence in both England and Wales, the National Assembly for Wales has responsibility for many social policy issues connected with domestic violence and for the health and well being of the citizens of Wales. The Welsh Assembly Government wants to create a safe environment for the people of Wales, free of crime and disorder. They are therefore committed to supporting local partnerships in their efforts to tackle domestic abuse and full information on the policy on domestic abuse related issues can be viewed at the Welsh Assembly's website<sup>1</sup>.

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<sup>1</sup> <http://www.wales.gov.uk/subicsu/content/domestic/policy-e.htm>

94. An Integrated Violence against Women and Domestic Abuse Strategy, which will be cross-departmental and take account of all our international obligations, will be published shortly. This will build on and link to the existing Domestic Abuse Strategy that was published in 2004.

95. The new Strategy will build on the significant progress that has already been made in Wales on this agenda over recent times. Examples of this include the establishment of six sexual assault referral centres which exceeds the UK target of one per police force area. In addition in 2009 we provided funding for a mobile sexual assault unit that will provide additional support for victims in rural areas of Dyfed Powys. We are currently consulting on a draft service specification for adults who have been sexually assaulted or abused. In 2009 we published guidance on forced marriage for health, social services and education professionals. Working with key stakeholders, such as the Black Association of Women Step Out, we will be supporting the guidance by making generic training available. We have been steadily building up the number of one stop shops in Wales. We have already rolled out care pathways in ante natal and accident and emergency settings. In the education field we are currently having an independent review carried out of the programmes we deliver in schools. This will assist us in ensuring we are getting consistent messages out to children and young people across Wales.

96. The Welsh Assembly Government's final budget includes an extra £1million which will be added to the domestic abuse and violence against women budget for 2010/11 to help us to deliver the new Strategy. This will take the total budget for revenue and capital to £4.7m.

97. The Minister has already made additional funds available to extend the current New Year publicity campaign to ensure it challenges the wider issue of violence against women. This campaign will make use of a number of media formats and will include television advertising. In addition to this the Minister has also approved additional funding of £250k in the current financial year to support Welsh Women's Aid to put in place an IT system that links all their refuges. This will keep women and their children safer. The funding for these two initiatives are on top of the extra £1m that is being added to domestic abuse and violence against women budget from April 2010.

### **Scotland - Domestic Abuse**

98. The specialist domestic abuse court which was established at Glasgow Sheriff Court in October 2004 has been rolled out to cover the whole of Glasgow City. The specialist court provides a more supportive and sensitive service for those who suffer domestic abuse.

99. Alongside the specialist court are dedicated support services (ASSIST) available to support people before, during and after cases go to court. To ensure consistency dedicated sheriffs and procurators fiscal deal with all cases of domestic abuse.

100. In June 2008 the Scottish Government launched a toolkit "Handling

Domestic Abuse Cases", to provide information to support improvements to the handling of domestic abuse cases in the justice system. This was circulated to all Sheriffs Principal and a wide range of agencies and organisations dealing with domestic abuse, its victims and their families. The link to the toolkit on the Scottish Government website is as follows:

<http://www.scotland.gov.uk/Publications/2008/10/01132550/0> .

## Statistics

- Domestic Violence accounts for 14% of all violent incidents.
- On average more than one woman is killed every week by a current or former male partner<sup>1</sup> in England and Wales.
- In 2008/09, women were the victim of nearly 8 out of 10 (77%) incidents of domestic violence. In 3 out of 4 (74%) cases of domestic violence, the offender was male (2008/09)<sup>2</sup>.
- Latest published figures show that 132 of the homicides recorded by police in 2008/09 were committed by partners/ex-partners. 101 of the 132 victims were female/31 of the 132 victims were male.<sup>3</sup>
- Domestic violence is a volume crime accounting for one in seven (14%) violent incidents in 2008/09<sup>4</sup>. This represents a 9 percentage point decrease from 1997.
- Three in ten women (28%) have experienced domestic violence since the age of 16<sup>5</sup>
- The total cost of domestic violence to services amounts to £3.1 billion and the cost to the economy is £2.7 billion. An additional element is the human and emotional cost. Domestic violence leads to pain and suffering that is not counted in the cost of services. This amounts to over £17 billion a year.

## Adoption

101. The principal legal framework for settling disputes between parents and concerning children remains the Children Act 1989, but there have been some important updates to this legislation in the Children and Adoption Act 2006 and the Welfare Reform Act 2009.

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<sup>1</sup> Source: Home Office's Homicide Index.

<sup>2</sup> Walker, A., Flatley, J., Kershaw, C., Moon D. (2009) *Crime in England and Wales 2008/09*. Home Office Statistical Bulletin 11/09. London: Home Office. Based on the face-to-face interviews.

<sup>3</sup> Smith, K. et al. (2010) *Homicides, Firearm Offences and Intimate Violence 2008/09*. Home Office Statistical Bulletin 01/10. London: Home Office.

<sup>4</sup> Walker, A., Flatley, J., Kershaw, C., Moon D. (2009) *Crime in England and Wales 2008/09*. Home Office Statistical Bulletin 11/09. London: Home Office. Based on the face-to-face interviews, which underestimate the extent of domestic violence

<sup>5</sup> Walker, A., Flatley, J., Kershaw, C., Moon D. (2009) *Crime in England and Wales 2008/09*. Home Office Statistical Bulletin 11/09. London: Home Office. Based on the self-completion module.

### Children and Adoption Act 2006

102. The Children and Adoption Act 2006 gave courts additional powers when dealing with cases involving contact with children. During the proceedings a court may direct a party to take part in an activity that would promote contact with a child, whether or not it also makes a contact order. It may make similar provision by means of a condition in a contact order. These activities include support for separating parents, information on mediation and domestic violence perpetrator programmes.

103. The courts' powers in cases involving breach of a contact order were increased, adding:

- a power to make an enforcement order imposing an unpaid work requirement; and
- a power to order one person to pay compensation to another for a financial loss caused by a breach.

104. These powers are in addition to the court's powers as to contempt and their ability to alter residence and contact arrangements.

### Welfare Reform Act 2009

105. The Joint Birth Registration provisions in the Welfare Reform Act 2009 altered how parental responsibility is acquired by unmarried fathers. Whereas a man who is married to a child's mother has an automatic right to be recorded as the father of the child on the birth register (since he is presumed in law to be the father), this is not the case for unmarried fathers. Under the previous legislation, a father who is not married to the mother of his child at the time of the child's birth may have his details entered on the birth register only with the co-operation of the child's mother or where there is a court finding of his paternity.

106. The 2009 Act increased the ways in which an unmarried father may register jointly with the child's mother. It provides for a new form of declaration which the father may complete, and which may be countersigned by a broader range of witnesses than the current statutory declaration, making the process less costly and bureaucratic than the current system. In addition, it makes provision for the registrar to include a man's details on the birth register where a paternity test carried out by an accredited body shows him to be the father.

107. As well as widening the routes through which unmarried couples may jointly register, both unmarried mothers and fathers received additional rights and duties in order to ensure that unmarried fathers' details are entered on the birth register in as many cases as possible.

108. These provisions are due to come into force in January 2011.

**c. Economic protection**

**Family Benefits**

**Child Benefit and Guardian's Allowance**

109. There is no change to the information already provided in the Twenty-Fifth Report about family benefits available as part of the social security system except that the weekly rates of Child Benefit (ChB) and Guardian's Allowance (GA) were increased as follows:

**Table 1: Child benefit and Guardian's Allowance Rates**

| From  | Child Benefit  | Guardian's Allowance |
|---|--|----------------------|
| April 2005  | £16.05 eldest child  | £11.55               |
|   | £10.75 each other child                                    |                      |
|   | £17.55 eldest child of lone parents with protected rights* |                      |
| April 2006  | £16.50 eldest child  | £11.85*              |
|   | £11.05 each other child                                    |                      |
|   | £17.55 eldest child of lone parents with protected rights* |                      |
| April 2007  | £18.10 eldest child  | £12.95               |
|   | £12.10 each other child                                    |                      |
| April 2008  | £18.80 eldest child  | £13.45               |
|   | £12.55 each other child                                    |                      |
| January 2009  | £20.00 eldest child  |                      |
|   | £13.20 each other child                                    |                      |
| April 2009  |  | £14.10               |
| * From 6 July 1998, Child Benefit (Lone Parent) was abolished for new claimants - with existing recipients retaining entitlement for as long as they satisfied the entitlement conditions in certain specified circumstances. From April 2008 the rate Child Benefit payable for the eldest child became higher than the rate of Child Benefit (Lone Parent). As a result Child Benefit (Lone Parent) is no longer payable. |  |                      |

**Working Tax Credit and Child Tax Credit.**

110. There is no change to the information provided in the Twenty-Fifth Report with the exception of the following updated tax credit rates.

**Table 2: Working and Child Tax Credit Rates.**

| <b>£ per year unless stated</b>                    | <b>April<br/>2008</b> | <b>April<br/>2009</b> |
|--|-----------------------|-----------------------|
| <b>Working Tax Credit</b>                          |                       |                       |
| Basic element                                      | 1,890                 | 1,920                 |
| Couple and lone parent element                     | 1,860                 | 1,890                 |
| 30 hour element                                    | 775                   | 790                   |
| Disabled worker element                            | 2,530                 | 2,570                 |
| Severely disabled adult element                    | 1,075                 | 1,095                 |
| <b>Childcare element of the Working Tax Credit</b> |                       |                       |
| Maximum eligible cost for one child                | 175 per week          | 175 per week          |
| Maximum eligible cost for two or more children     | 300 per week          | 300 per week          |
| Percentage of eligible costs covered               | 80                    | 80                    |
| 50+ Return to work payment (16-29 hours)           | 1,300                 | 1,320                 |
| 50+ Return to work payment (30+ hours)             | 1,935                 | 1,965                 |
| <b>Child Tax Credit (CTC)</b>                      |                       |                       |
| Family element                                     | 545                   | 545                   |
| Family element, baby addition                      | 545                   | 545                   |
| Child element                                      | 2,235                 | 2,300                 |
| Disabled child element                             | 2,670                 | 2,715                 |
| Severely disabled child element                    | 1,075                 | 1,095                 |
| <b>Income thresholds and withdrawal rates</b>      |                       |                       |
| First income threshold                             | 6,420                 | 6,420                 |
| First withdrawal rate (per cent)                   | 39                    | 39                    |
| Second income threshold                            | 50,000                | 50,000                |
| Second withdrawal rate (per cent)                  | 6.67                  | 6.67                  |
| First threshold for those entitled to CTC only     | 16,040                | 16,190                |
| Income disregard                                   | 25,000                | 25,000                |

***The Committee asked for confirmation of the effectiveness of Working Tax Credits, particularly in terms of the strategy of tackling child poverty and helping low income families.***

111. Tax credits have played a key role in achieving progress in reducing child poverty. Supporting parents by helping them to move into, and to remain in and progress in work is at the heart of the strategy to tackle poverty. The introduction of the National Minimum Wage (NMW) and the Working Tax Credit (WTC) ensured that the minimum weekly income for a family with one child and one full-time worker (35 hours) would be £309 per week from April 2010, compared to £182 in 1999, when the NMW was first introduced. This represented an increase of around 29 per cent in real terms.

**Child Poverty Act 2010**

112. The Child Poverty Act<sup>1</sup> puts into legislation commitments to eradicate child poverty by 2020 and to establish an accountability framework. The Act:

- Establishes four income targets to be met by 2020, which together define the eradication of child poverty:
  - Relative poverty: that less than 10 per cent of children live in relative low income poverty (defined as below 60 per cent of median household income).
  - Low income and material deprivation: that less than 5 per cent of children live in combined material deprivation and low income (defined here as less than 70 per cent of median income).
  - Absolute low income: that less than 5 per cent of children live in absolute low income (for the 2020 target this is defined as below 60 per cent of median income for 2010/11 adjusted for price indices).
  - Persistent poverty: reducing the percentage of children living in relative poverty for three out of four years (the target level will be set by the end of 2015 as data are currently unavailable).
- Requires the publication of a UK child poverty strategy (the first by March 2011) which must be revised every three years;
- Establishes a Child Poverty Commission to provide advice on the development of the child poverty strategies; and
- Places duties on local authorities and other delivery partners to work together to tackle child poverty, conduct local needs assessments, produce child poverty strategies, and take child poverty into account in the production of their Sustainable Communities Strategies.

**Spending Review 2010 Announcements**

113. The new coalition Government's 2010 Spending Review includes the following measures to address child poverty:

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<sup>1</sup> [http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100009\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100009_en_1)

The United Kingdom's 30<sup>th</sup> Report on the European Social Charter; Article 16:  
Economic Protection

- The above-indexation increase of child element of tax credits will ensure that the Spending Review settlement is child poverty neutral for the next 2 years
- The most disadvantaged 2 year olds will be helped, by giving them 15 hours a week of pre-school education.
- Also as part of the Fairness Premium, the poorest children will be assisted by the Pupil Premium, which gives schools extra money to spend where it benefits those children the most.
- The Fairness Premium altogether is worth more than £7bn over the Spending Review period.
- Community Budgets will provide opportunities for Local People to target resources where they are most needed, and those areas involved with phase 1 of this process will be able to use that money as they see fit, which will help them eradicate child poverty in Local Areas.



## Statistics

### Levels of child poverty in the reporting period

114. There were 2.8 million children living in poverty in 2008/09 under the relative income measure; this was down from 3.4 million in 1998/99.

|             | <b>Relative low-income:</b><br>Children below 60% of contemporary median equivalised household income (before housing costs) |    | <b>Absolute low income:</b><br>Children below 60% of 1998/99 median equivalised household income held constant in real terms (before housing costs) |    |
|-------------|--|----|---|----|
| UK families | Number (million)   | %  | Number (million)  | %  |
| 1998/99     | 3.4  | 26 | 3.4   | 26 |
| 1999/00     | 3.4  | 26 | 3.1   | 23 |
| 2000/01     | 3.1  | 23 | 2.5   | 19 |
| 2001/02     | 3.0  | 23 | 2.0   | 15 |
| 2002/03     | 2.9  | 23 | 1.8   | 14 |
| 2003/04     | 2.9  | 22 | 1.8   | 14 |
| 2004/05     | 2.7  | 21 | 1.7   | 13 |
| 2005/06     | 2.8  | 22 | 1.6   | 13 |
| 2006/07     | 2.9  | 22 | 1.7   | 13 |
| 2007/08     | 2.9  | 23 | 1.7   | 13 |
| 2008/09     | 2.8  | 22 | 1.6   | 12 |

### 115. Demographic breakdown of children living in poverty

- Just over a third of children living in poverty are in households headed by a lone parent, and almost half are in workless households.
- Over three quarters are in families with more than one child.
- A third of children in poverty are in households with disabled members, and
- Three quarters of children in poverty are in white households,
- But, households with disabled members and ethnic minority households have a much higher proportion of children in poverty than the average.

| Characteristic                                       | Percentage of children in poverty |
|--|-----------------------------------|
|  |                                   |
| <b>Economic status and family type</b>               |                                   |
| Lone parent  | 38%                               |
| Couple with children                                 | 62%                               |
| <b>Economic status of household</b>                  |                                   |
| All adults in work                                   | 20%                               |
| At least one adult in work, but not all              | 39%                               |
| Workless households                                  | 41%                               |
| <b>Number of children in family</b>                  |                                   |
| One child  | 24%                               |
| Two children   | 38%                               |
| Three or more children                               | 38%                               |
| <b>Disability and receipt of disability benefits</b> |                                   |
| No disabled adult, no disabled child                 | 70%                               |
| No disabled adult, 1 or more disabled child          | 8%                                |
| 1 or more disabled adult, no disabled child          | 16%                               |
| 1 or more disabled adult, 1 or more disabled child   | 6%                                |
| <b>Ethnic group (3-year average)</b>                 |                                   |

The United Kingdom's 30<sup>th</sup> Report on the European Social Charter; Article 16:  
Economic Protection

|  |             |
|--|-------------|
| White  | 76%         |
| Mixed  | 1%          |
| Asian or Asian British                                   | 14%         |
| Black or Black British                                   | 6%          |
| Chinese or other ethnic group                            | 2%          |
| <b>Total number of children living in poverty (100%)</b> | 2.8 million |

Source: Households Below Average Income (Family and Resources Survey) 2008/09 Income Threshold: 60 per cent median equivalised income before housing costs. Figures may not sum to 100 per cent due to rounding

## **Scotland**

### **Question 1**

#### **Early Years**

116. The early years framework was jointly published by the Scottish Government and the Convention of Scottish Local Authorities (COSLA) in December 2008. It sits alongside Equally Well (the health inequalities framework) and Achieving our Potential (the anti-poverty framework) as a concerted attack on the inequalities that blight Scottish society. Although the framework has no legal status it has been highlighted by the Scottish Government as a priority which they expect to see reflected in the Single Outcome Agreement for each Community Planning Partnership.

#### **Gypsies/Travellers**

117. In Scotland, the provision of sites for Gypsies/Travellers is the responsibility of local authorities, who are best placed to understand the needs of the community in their areas. In 2008, the Scottish Government introduced far reaching reforms to the way in which local authorities plan for new housing provision. These reforms have strengthened the requirements in relation to provision for Gypsies/Travellers and now include requirements for local authorities to:

- assess the housing needs of Gypsies/Travellers and ensure that the needs of equality groups, including Gypsies/Travellers, are addressed in their local housing strategies;
- identify suitable locations for sites for Gypsies/Travellers in their development plans and involve Gypsies/Travellers in decisions about sites for their use.

118. The way in which local authorities address each of these requirements is subject to scrutiny by the Scottish Government and mechanisms are in place to ensure that the needs of Gypsies/Travellers are properly addressed.

### **Question 2**

#### **Early Years**

119. It is during our very earliest years and even pre-birth that a large part of the pattern for our future adult life is set. The early years are therefore a key opportunity to shape a positive future for Scotland and this framework will maximise the opportunities for all our children to get the best start in life, no matter what their background or circumstances. It is built on the principles of early intervention – a shift from intervening only when a crisis happens to prevention and early intervention.

120. The early years framework sets out the case for action with regard to

the early years and the importance of getting it right for every child in the early years. It sets out the vision that government in Scotland has for giving children the best start in life and the transformational change that needs to happen to deliver that vision.

121. The elements of transformational change identified are:

- A coherent approach
- Helping children, families and communities to secure outcomes for themselves
- Breaking cycles of poverty, inequality and poor outcomes in and through early years
- A focus on engagement and empowerment of children, families and communities
- Using the strength of universal services to deliver prevention and early intervention
- Putting quality at the heart of service delivery
- Services that meet the needs of children and families
- Improving outcomes and children's quality of life through play
- Simplifying and streamlining delivery
- More effective partnerships.

122. The framework contains a number of national actions, including a campaign to reinforce the importance of parents and parenting and highlighting the importance of play. However, the real meat of implementation has to be embedded at local level. The measure of success will be based on improved outcomes for children, rather than implementation of specific actions or measuring narrow inputs.

#### Early Education & Childcare

123. A variety of public, private and voluntary services relating to early education and childcare are available in Scotland. These include the following:

#### Nursery provision including pre-school education for 3 and 4 year olds

124. Private/voluntary day nurseries and nursery schools provide daycare services, play and educational opportunities for children under school age. They are usually open all year round and can care for children on a full or part day basis. Some may provide out of school care in addition to the normal nursery service. These establishments may be managed by individual owners, companies or voluntary bodies.

125. Nursery centres are usually managed by the local authority and provide daycare and education from birth until school entry. They are generally open for between 48 and 52 weeks of the year between the hours of 8.00 a.m. and 6.00 p.m.

126. Community nurseries are similar to nursery centres but provide a

greater variety of support services to meet local needs. This may include home visiting, out of school care, parents' 'drop in' and information/advice services. Sometimes this type of facility is jointly managed.

127. Local authority nursery classes are attached to local authority primary schools while nursery schools are usually separate from primary schools and have their own head teacher. Both types of centre provide term-time pre-school education.

128. Child and family centres provide services similar to those available in community nurseries and nursery centres. Daycare/education is provided along with a range of support services for families which can be adapted to meet local needs. They are usually managed by voluntary organisations or by the local authority's social work or education department. Family support centres also provide services to support families to suit local requirements but generally do not provide daycare or education.

### Crèches

129. A crèche provides 'drop in' care for children in order to enable adults to engage in activities such as further education, shopping or attending a meeting.

### Childminders looking after children in the childminder's home

130. Childcare agencies provide childcare in the child's home, via mainly nanny or sitter services. These can be public, private or voluntary services – sitter services tend to fill a gap in provision for parents on low incomes who work unusual hours, or who are returning to education or training. Childcare agencies are regulated by the Care Commission.

### Out of school care provision

131. Out of school care clubs offer care for school age children in the absence of parents or carers from the end of the school day until parents can collect their children, and also before school starts. They can be before or after school, or during school holidays and can also include breakfast clubs.

132. The role of a breakfast club (as opposed to breakfast provision alone) is to offer a holistic service with a person-centred ethos in a safe environment. The most successful clubs are those offering additional health and social activities, such as health promotion or childcare. A breakfast club should involve young people, parents, carers and the wider community, and aim to improve their health and health behaviours so underpinning the goals of the "health promoting school".

133. Holiday playschemes cater mainly for school age children and provide opportunities for children to participate in a broad range of supervised leisure and educational activities during school holidays.

### Playgroups

134. These provide sessional care for children aged between 3 and 5 although some groups will also cater for younger children and some will provide full daycare. Most are run by groups of parents with parent led committees, although some may be owned by individuals or organised by other voluntary bodies or by the local authority. They rely heavily on parents/carers who volunteer their services although many employ a paid playleader or assistant. Some playgroups will provide pre-school education in partnership with the local authority. Includes Mother & Toddler groups where there is at least one member of staff providing care/support.

135. All childcare services are regulated (if provided for more than 2 hours per day) by the Care Commission. National care standards<sup>1</sup> apply to all provision regulated, and these include input ratios depending on the children's ages as follows.

136. In non-domestic premises:

- Age under 2, ratio 1 adult to 3 children;
- Age 2 to under 3, ratio 1 adult to 5 children;
- Age 3 and over, ratio 1 adult to 8 children; and,
- All children aged 8 or over, ratio 1 adult to 10 children.

In addition, 2 adults must be in attendance at any one time.

137. In domestic premises:

- Age under 12, ratio 1 adult to 6 children, of whom no more than 3 are not yet attending primary school and of whom no more than 1 is aged under 1.

This ratio includes the childminder's own children.

138. All staff working in early years services, including early years education, will be required either to possess a relevant qualification or be working towards one once registration with the Scottish Social Services Council (SSSC) becomes mandatory from November 2010. The SSSC published its qualification criteria for registration in March 2004.

### **Gypsies/Travellers**

139. In relation to planning for Gypsy/Traveller sites, the guidance document ***Scottish Planning Policy 3: Planning for Homes*** (revised 2008) – which can be found at:

<http://www.scotland.gov.uk/Resource/Doc/233260/0063937.pdf>) – also states that planning authorities should:

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<sup>1</sup> <http://www.scotland.gov.uk/Topics/Health/care/17652>

- set out policies for dealing with planning applications for small privately-owned sites; and,
- make provision for such communities as are in their area already, as well as those who may arrive at a later date.

140. The Scottish Housing Regulator, who has responsibility for inspecting local authority housing services, has a series of Performance Standards which are used for self-assessment by local authorities and assessment by the inspectors. The description of the "Sites for Gypsies/Travellers" Performance Standard is:

*"We plan and provide or arrange good-quality, serviced stopping places for Gypsies/Travellers. We let pitches in a way that ensures fair and open access for all. We take Gypsies/Travellers' views into account in delivering our services, and we are responsive to their needs."*

141. The Scottish Government has directly supported local authorities by providing them with additional funding to increase and improve their Gypsy/Traveller site provision. £5 million has been made available through the Gypsy/Traveller Site Grant from 2005/06 to 2009/10 to support improvements to existing local authority sites and for new residential or transit sites. This funding will be rolled up into the local government settlements in 2010/11, as local authorities are best placed to assess and respond to the accommodation needs of Gypsies/Travellers in their area.

142. As part of supporting local authorities to meet the accommodation needs of Gypsies/Travellers, the Scottish Government will be reviewing the Guidance on Site Management, developed by the former Advisory Committee on Scotland's Travelling People. This guidance covers various topics in relation to the management of sites including; applying for pitches, allocation of pitches, management issues, a model tenancy agreement and liaison with relevant authorities.



## **Northern Ireland**

### **Legal protection of the family**

143. The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005 was duly made on 7 June 2005 and Part IV of the Order came into operation 1 month from the date on which it was made.

144. That Part (copy attached at Annex A) deals with what had been described as the "three anomalies of matrimonial property law", namely the presumption of advancement, the husband's common law duty of maintenance and the common law rule in relation to housekeeping money.

145. The presumption of advancement operated in relation to transfers of property by a husband or father to his wife or child and created an equitable presumption that the transfer was intended as a gift. Whereas, if a similar transfer was made by a wife or a mother the court would assume that she retained an interest in the property by way of a resulting trust. The rule was regarded as outdated and discriminatory and was abolished by Article 16 of the 2005 Order.

146. The common law duty of maintenance was similarly outdated and had more or less been superseded by reciprocal statutory duties of maintenance by both spouses. Nevertheless, Article 17 of the 2005 Order provides for the abolition of the common law duty.

147. Previously, any savings from a housekeeping allowance paid by a husband to a wife, and any proceeds thereof, were regarded as belonging to the husband. However, that rule did not apply where an allowance was paid by a wife to her husband and was thus discriminatory and outdated. Article 18 of the 2005 Order provides for the abolition of the rule.

### **Mediation services**

148. Following on from a general study of mediation in Northern Ireland, DHSSPS provided funding for a pre-court mediation service and associated publicity campaign. It has also provided funding for court welfare officers who provide mediation services at the magistrates' court level. The Northern Ireland Court Service/Legal Services Commission provides funding for mediation services in the context of court proceedings.

### **Forced marriage**

149. As in England & Wales, the Forced Marriage (Civil Protection) Act 2007 came into force in Northern Ireland in November 2008. Section 2 and Schedule 1 to the Act enables the High Court in Northern Ireland to make Forced Marriage Protection Orders (FMPOs) to prevent or pre-empt a forced marriage from occurring, as well orders to protect the victim and help remove them from a situation after a forced marriage has taken place. An application for a FMPO may be made during other family proceedings or on a stand alone

basis.

## ISLE of MAN

### Question 1

1. With following exceptions there is no substantial change to information previously provided:

- Human Rights Act 2001 – the Act, which enshrined rights under the European Convention on Human Rights as part of Manx, was brought fully into operation on 1 November 2006.
- Income Tax (Amendment) Act 2006 – provided complete equality and freedom of choice in their tax affairs for both parties to a marriage.
- Town and Country Planning (Isle of Man Strategic Plan) Order 2007 – includes provision in relation to affordable housing in new development (see below).

### Question 2

2. Public sector housing in the Isle of Man is provided by a variety of Housing Authorities, which manage different areas of the Island. These areas consist of Braddan, Castletown, Douglas, Onchan, Peel, Port Erin, Port St Mary and Ramsey. The Department of Local Government and the Environment (DLGE) provides public sector housing in areas where there is no functioning Housing Authority. The right to public sector housing is subject to a qualifying period of residence in the Island.

3. The Isle of Man Strategic Plan which was approved by Tynwald in July 2007 is relevant in relation to the provision of affordable housing in private sector developments. Housing Policy 5 states:

*"In granting planning permission on land zoned for residential development or in predominately residential areas the Department will normally require that 25% of provision should be made up of affordable housing. This policy will apply to developments of 8 dwellings or more."*

4. The term "affordable housing" in the above policy is defined by the Department of Local Government and the Environment as housing with is either:

- directly provided by the Department; or
- directly provided by Local Authorities; or
- meets the criteria for the Department's House Purchase Assistance Scheme.

5. The Family Planning Clinic in Douglas provides contraceptive services to individuals of reproductive age. The service is free and confidential within child protection boundaries. The clinic provides pregnancy tests, advice on unexpected pregnancies, pre-conceptual advice and cervical screening

smears. Specialist guidance is provided to assist individuals to make an informed decision on their contraception, taking into account their social, family and medical history, lifestyle and preferences.

6. The Department of Education recognises that all children benefit from suitable early years education from the age of three. Pre-school units are continually being established in identified priority areas, as part of the Foundation Stage of Island primary schools, as and when funding becomes available. A child who has attained the age of three years on or before 31 August will be eligible for admission to a part-time or a nursery class from the start of the following school year, space permitting.

7. The Department-run units are staffed on a ratio of one teacher and one nursery nurse for every 20 places. Parents of the Island's four-year-old children are eligible to apply for their child to attend one of the pre-school (sometimes referred to as nursery) classes but priority is given to those with special educational needs, those living within the school catchment area and then those outside the school catchment area prioritised by geographical proximity to the school.

8. There are currently 11 pre-school units operated by the Department of Education. The majority of pre-school provision on the Island is, however, through private agencies and individuals. The Department of Education does not seek to take over such provision, but it seeks to work with private providers to produce quality pre-school experience that leads on to school. To this end, the Department works in partnership with the Department of Health and Social Security to provide training and support for all registered early years settings. The Early Years Foundation Stage Framework has been made available to all practitioners from January 2007 and forms the basis for the foundation stage curriculum in the Island's nurseries.

9. Domestic assault is treated as a priority by the Constabulary and significant changes have been made to the overall approach of the Force. The change with most impact being that where grounds exist to arrest, this option must be taken as opposed to exercising discretion. This has the overall intention of increasing confidence in the police by vulnerable people.

10. The Constabulary is heavily involved in the Integrated Children's Services Partnership and is focused upon improving its information base especially as regards children and young persons who may be vulnerable. The number of allegations of child sexual abuse and physical abuse has decreased. Focus has been placed on the vulnerability of children in homes where domestic abuse is reported and for the first time in 2008/2009 figures of children present in domestic abuse settings has been reported upon. The figure was 320 (this figure reflects children present as opposed to previous figures which reflected upon involved). Children can be affected by domestic abuse even when they are not the target and measures are being put in place by the Constabulary to reduce instances of this nature.

### Question 3

#### Domestic Violence

11. The figures for domestic assaults recorded by the Isle of Man Constabulary are as follows:

| Year   | 2005/06 | 2006/07 | 2007/08 | 2008/09 |
|--------|---------|---------|---------|---------|
| Number | 171     | 168     | 111     | 124     |

The detection rate in 2008/09 stood at 80.2%.

#### Economic Protection

##### Child benefit

12. There have been no substantial changes to the information previously provided.

13. Child Benefit is available to all families, irrespective of their means, bringing up at least one child or young person who is-

- Under the age of 16; or
- Aged 16 or over, but under the age of 20, and still in full-time non-advanced education or approved training of more than 12 hours a week.

Benefit is paid in respect of each child meeting one of the above criteria.

14. Weekly rates of Child Benefit are as follows:-

|                           | April 2007 | April 2008 | April 2009 |
|---------------------------|------------|------------|------------|
| Pre-school child          | £19.90     | £19.90     | £20.40     |
| School age up to 16 years | £19.90     | £19.90     | £20.40     |
| School child 16 to 19     | £29.25     | £29.25     | £30.00     |

##### Caseload:-

|                    | At 31/12/2008 | At 31/12/2009 |
|--------------------|---------------|---------------|
| Number of families | 9,737         | 9,872         |
| Number of children | 16,622        | 16,866        |

15. In addition to Child Benefit, some families are, in prescribed circumstances, entitled to social assistance benefits in the form of Family Income Supplement and Income Support.

16. Information has previously been provided in relation to both Family Income Supplement and Income Support and there have been no substantial changes to the information, save that the levels of support provided by Family Income Supplement have been increased significantly above prices inflation over the past 5 years or so.

Family Income Supplement caseload

|                 | At 31/12/2008 | At 31/12/2009 |
|-----------------|---------------|---------------|
| Number of cases | 787           | 835           |

17. Approximately 28% of the caseload are couples, whilst approximately 72% are lone parents (including widows and widowers). The parents of approximately 1,450 children (8.6% of the Island's total child population) currently receive FIS.

Income Support caseload

|                   | At 31/12/2008 | At 31/12/2009 |
|-------------------|---------------|---------------|
| Number of cases   |               |               |
| - aged 60 or over | 1,577         | 1,586         |
| - others          | 1,554         | 1,754         |

18. The total number of children included in income support claims at 31/12/2009 was 1,042.

## **Article 17**

### **ENGLAND and WALES**

#### **Parentage and Adoption**

1. The Adoption and Children Act 2002, which came fully into force on 30 December 2005, represents the most radical overhaul of adoption law for 26 years, replacing the outdated Adoption Act 1976 and modernising the entire legal framework for domestic and inter-country adoption. The 2002 Act provides the framework for a whole new approach to adoption.

2. The Act:

- aligns adoption law with the relevant provisions of the Children Act 1989 to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption;
- places a duty on local authorities to maintain an adoption service, including arrangements for the provision of adoption support services;
- provides a new right to an assessment of needs for adoption support services for adoptive families and others;
- sets out a new regulatory structure for adoption support agencies;
- provides for an independent review mechanism in relation to 'qualifying determinations' made of prospective adopters by an adoption agency;
- makes provision for the process of adoption including new measures for placement for adoption with consent and placement orders;
- provides for adoption orders to be made in favour of single people, married couples and, for the first time, unmarried couples;
- provides for a new framework designed to ensure a more consistent approach by adoption agencies in respect of access to information held about adoptions which take place after the Act came into force;
- provides for a new regulatory framework within which intermediary agencies (registered adoption support agencies or adoption agencies) are able to assist adopted adults to obtain information about their adoption and facilitate contact between them and their adult birth relatives, where the person was adopted before the Act came into force;
- provides additional restrictions on bringing a child into the UK in connection with adoption;
- provides for restrictions on arranging adoptions and advertising children for adoption other than through adoption agencies;

- makes provisions for a statutory Adoption Register to identify matches between children waiting to be adopted and approved prospective adopters; and
- introduced a new special guardianship order, intended to provide permanence for children for whom adoption is not appropriate.

3. Measures to implement the Adoption and Children Act 2002 included:

- a new regulatory regime for adoption, consisting of a set of core and other regulations, orders and court rules;
- statutory guidance for practitioners explaining the new system;
- good practice guidance for practitioners on certain aspects of the Act;
- a public information pack about the changes to the adoption system; and
- comprehensive training for local 'implementation champions' and training materials for practitioners.

4. The Government is monitoring and evaluating implementation of the Act, and its impact on outcomes for children, through the £1.5 million Adoption Research Initiative which will report on an incremental basis throughout 2010 and early 2011.

**Children in public care**

5. It is the Government's view that children in care need to be placed in the setting which best meets their needs and a key priority is to ensure that children are placed in the most appropriate accommodation. Most children will benefit from being in a family setting. They have often missed out on having a secure attachment with a main carer. However, for a few children, residential care might be the most appropriate setting.

6. Through the radical Care Matters programme of reform, our ambition is to enhance the range and choice of placements for looked after children, while ensuring that all placements are of a high quality.

7. The capacity of children's homes varies typically from a single bed to six beds; in some case the capacity can rise to ten.



### Looked after Children by placement

| Placement at 31 March                      | 2005   | 2006   | 2007   | 2008   | 2009   |
|--|--------|--------|--------|--------|--------|
| All children looked after at 31 March      | 61,000 | 60,300 | 60,000 | 59,400 | 60,900 |
| Foster placements                          | 41,400 | 41,700 | 42,100 | 42,000 | 44,200 |
| Placed for adoption                        | 3,400  | 3,000  | 2,700  | 2,800  | 2,500  |
| Placement with parents                     | 5,800  | 5,400  | 5,100  | 4,600  | 4,100  |
| Other placement in the community           | 1,500  | 1,700  | 1,700  | 1,900  | 1,900  |
| Secure units, children's homes and hostels | 7,000  | 6,600  | 6,500  | 6,200  | 6,200  |
| Other residential settings                 | 560    | 570    | 590    | 570    | 720    |
| Residential schools                        | 1,100  | 1,100  | 1,100  | 1,100  | 1,000  |
| Other placement                            | 110    | 120    | 90     | 80     | 120    |

### Youth justice

#### Young offenders and detention

#### Question I

#### Special courts – institutions

8. The position remains as previously described in the last report

#### Age of criminal responsibility

***The Committee considers the age of criminal responsibility to be manifestly too low to be in conformity with Article 17 of the Charter.***

9. The age of criminal responsibility in England and Wales is 10. The age was raised from 8 to 10 by the Children & Young Persons Act 1963.

10. Whilst it is recognised that, many European countries have a higher minimum age, each country must make a judgement based on its own circumstances. In the UK we believe that children are old enough to differentiate between bad behaviour and serious wrong doing at age 10.

11. However we are keen to ensure that children and young people are not prosecuted whenever an alternative can be found. Local multi-agency Youth

Offending Teams include social services and health professionals who can refer the child on to other statutory services for further investigation and support if appropriate. For example, this can include child welfare departments or Child and Adolescent Mental Health Services. Reprimands and Warnings are the most likely response to offending by this age group, both of which may include interventions to tackle offending behaviour and underlying problems. Criminal responsibility allows us to intervene early to prevent further offending and to help young people develop a sense of personal responsibility for their misbehaviour.

12. Ways to divert young people away from the criminal justice system are being expanded where this is appropriate. These include liaison and diversion schemes in police custody suites such as the "triage" scheme and also restorative justice interventions like the Youth Restorative Disposal. Initiatives such as these are possible because the criminal offence is recognised and acted upon but they do not result in a criminal record for the young person and are shown to have a high rate of satisfaction for the victim. The Restorative Justice approach, embedded and being expanded in the youth justice system, can both give a voice to victims and educate the young person about the impact of their offending. This allows the victim, where they wish to be involved, and the young person to move on with their lives without further disturbance

13. The success of initiatives such as this and other prevention schemes is supported by a decrease of 21% in the rate of young people receiving their first reprimand, warning or conviction from 2007-08 to 2008-09.

***The Committee asks how many 15 and 16 year olds are remanded to prison (Young Offenders Institution); how many young people under 18 are remanded to prison; and the maximum length of the remand.***

14. At the end of December 2009, there were 137 fifteen and sixteen year olds remanded in custody and held in young offender institutions, out of a total of 374 young people under 18.

***The Committee requested information on the maximum duration of remand in local authority secure accommodation***

15. The period for which a defendant awaiting trial may be remanded in custody is restricted by *custody time limits*, which apply to every defendant regardless of age. These are set in Regulations made by the Secretary of State under section 22 of the Prosecution of Offences Act 1985. They limit the time spent in custody between first appearance and start of trial to 56 (or in certain cases 70) days for cases being tried summarily; and to a total of 182 days for cases tried on indictment. Custody time limits may be extended by the court on application, provided that there is a good and sufficient cause for so doing, and that the prosecution has shown all due diligence and expedition. When the custody time limit expires, the defendant must be released on bail.

16. Within these limits, any time spent by a defendant remanded in custody is also subject to regular reviews. The Magistrates' Courts Act 1980 sections 128 and 128A provide that the first review of a court decision to remand in custody must be made within 8 days. After this the decision to detain on remand must be reviewed no later than every 28 days. In addition to this the court is required to have regard to the remand status of the defendant at every court appearance and to hear any application for release on bail which includes new information that had not been presented to the court previously."

17. The committee asked about the maximum duration of remand in local authority secure accommodation, and may wish to note that the time limits for remand would apply in the same way as in other secure establishments.

***The Committee recalls that in order to comply with Article 17 of the Charter, the criminal procedure relating to young offenders must be adapted to their age. (It therefore asks whether the Government intends to review the system in which young offenders of 17 years of age are treated as adults for the purpose of remand.)***

18. This is a complex area which the Government recognises is anomalous. However, it has proved to be an extremely complicated issue as it is not possible simply to replicate the bail and remand system that applies to under 17s. This is because the remand system that is in place for under 17s is interwoven with the placement of these young people into local authority care, which is not suitable as a placement option for most 17 year olds. This situation remains under review, with further potential solutions being considered. However the Government is committed to keeping 17 year olds in secure remand away from adult offenders.

### **Police Bail**

19. Police powers to grant/refuse bail can be summarised as follows:

***Before charge*** when there is sufficient evidence to charge where Section 37(7)(a)(i), Police and Criminal Evidence Act, 1984 (PACE) provides for release on bail for the CPS to make a charging decision (i.e. Statutory Charging as introduced by the CJA 2003) where the alternative to release is to detain for the decision to be made and if the decision is to charge, to refuse bail after charge (Section 38 PACE).

***After charge*** (s.38 PACE) where s.38 PACE requires release on bail to appear at court unless one of more specified grounds for refusing bail apply.

***Before charge for investigation*** when there is insufficient evidence to charge. The only statutory criterion for refusing bail in these circumstances is that detention to obtain evidence is

necessary, and this applies equally to people of all ages. If detention without charge ceases to be necessary, without the evidence there is no option to delay release

**Bail after charge and section 38 PACE:**

20. For the refusal of Bail after charge under s.38 PACE, the requirement in s.38(6) PACE, for under 17s to be moved to local authority accommodation pending appearance at youth court, does not apply, and the option to refuse bail to under 17s in s.38(1)(b)(ii) (detention in own interests) does not apply.

Reviewing the procedures/systems relating to the remand of 17 year olds

21. The requirement in the PACE Code of Practice C 1.5/1.7<sup>1</sup> for an appropriate adult to attend for under 17s features in the PACE review. However, this has no direct bearing on the "power" to refuse bail and the police and court "remand" powers which will not to be covered by the review.

***The Committee asks the next report to indicate whether the programme to build new, self-contained units for 17 year old girls in custody enabling their separate accommodation from 18-20 year olds, has been completed.***

22. The Committee will be pleased to note that the Government's aim of providing separate accommodation for 17 year old girls has been achieved. Five new units were built, the first opening in December 2004 and the fifth in January 2006. (One of the new units has subsequently been given a new role in the male estate.) As a result of this programme, all 17 year old girls in custody are now accommodated separately from over-18s.

***The Committee asks to be informed about the implementation of various community sanctions***

**Penalties available**

23. For young people convicted of an offence committed after the 30 November 2009, the primary community sentence available is the Youth Rehabilitation Order (YRO). The legislation underpinning the YRO is contained in the Criminal Justice and Immigration Act 2008.

24. The majority of the community sentences referred to in the previous report (see below) remain as the community sentencing options for young people whose offences were committed before the 30 November 2009. However the Referral Order, Reparation Order, and Absolute or Conditional Discharge, and fine also mentioned in the previous report, will continue to be available for offences committed after this date.

Absolute or Conditional Discharge; Fine; Supervision Order

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<sup>1</sup> <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c?>

25. These sanctions are available for all offences. In certain circumstances, the court may order that a fine should be paid by the young person's parent or guardian. Supervision orders consist of a programme of activity undertaken under the supervision of a social worker for a specified period of time. A variety of positive and negative requirements may be imposed. Breach of requirements results in a fine or an attendance centre order or, where the supervision order was imposed in place of a custodial sentence, the court may (exceptionally) re-sentence the young person for the original offence.

#### Action Plan Order

26. The Action Plan Order is a short, intensive community-based programme, which may include reparation, attendance at an Attendance Centre and offending behaviour work. The maximum term is three months.

#### Attendance Centre Order

27. A young person may be ordered to attend a centre for an offence, which is imprisonable in the case of a person aged over 21. At attendance centres, young people receive instruction in such matters as physical fitness, citizenship and first aid. Centres normally operate for the weekend for two hours each fortnight. The maximum number of hours a person may be ordered to attend is 24. The normal minimum is 12 hours but a court may order less for a young person aged 10 or 11. The aim of the order is to encourage young people to make more constructive use of their leisure time; the punishment is loss of free leisure time for the hours ordered.

28. There are over 100 attendance centres in the UK, run in the majority of cases by police officers and civilian instructors. If an offender fails to attend they may be brought back before the court and dealt with as for the original offence

#### Community Rehabilitation Order

29. This is the equivalent of supervision and is overseen by the probation service and only available for more mature 16 and 17 year olds. It can have conditions attached (e.g. residence at probation hostel). The sentence length is between six months and three years (normally one year).

#### Community Punishment Order

30. This order (formerly known as the Community Service Order), is available only for offenders who have reached the age of 16. It involves undertaking a period of unpaid work in the community – e.g. carpentry workshops, conservation, decorating or caring tasks for the elderly/vulnerable. The minimum sentence is 40 hours and the maximum 240 hours

### Combination Order

31. This is also confined to those 16 or over. It requires the offender to be under supervision and to perform unpaid work for not less than 40 and not more than 100 hours. The minimum term of the order is one year and the maximum three years.

### Curfew Order

32. A young offender may be ordered to remain in a specified place, for parts of a day or days. For an offender aged at least 10 but less than 16, the maximum term of the order is three months; for an older offender it is six months.

### Intensive Supervision and Surveillance Programme (ISSP)

33. ISSP is the most rigorous non-custodial intervention available for young offenders. It combines high levels of community-based surveillance with a focus on tackling factors that lead to offending. It is not a sentence in itself, but can be made a requirement of a supervision order, a community rehabilitation order or a post-release Detention and Training Order supervision notice. ISSP is also available for those on bail. The programme lasts for 6 months

34. As previously stated the Youth Rehabilitation Order is the new generic community sentence for young people and came into effect on 30 November 2009. It replaces nine previous sentences, building on their best elements and making the framework clearer and more coherent. Courts are able to choose from a 'menu' of 18 different requirements with which the offender must comply.

35. Crucially, these requirements will be tailored to the needs of the individual and the seriousness of the offence. This means that each young person will have a sentence that meets their own personal needs.

36. The order will also provide intensive supervision and surveillance (ISS) and intensive fostering as specified alternatives to custody. The menu of interventions, if tailored effectively, can offer a real community alternative that has rehabilitation at its heart.

37. This package of measures is designed to increase the options available to deal with young offenders in the community with effective and tailored interventions and therefore minimise and, hopefully, reduce the use of custody.

38. The following sentences are included as the 18 requirements within the YRO:

- Activity requirement

- Supervision requirement
- Attendance Centre requirement
- Programme requirement
- Curfew requirement
- Education requirement
- Residence requirement (16/17 year olds only)
- Local Authority Residence requirement
- Drug Treatment requirement
- Drug Testing requirement (14 years old or older)
- Mental health treatment requirement
- Intoxicating substance treatment requirement
- Exclusion requirement
- Prohibited activity requirement
- Electronic monitoring requirement
- Unpaid work requirement (16/17 year olds only)
- Intensive supervision and surveillance requirement
- Intensive fostering requirement

### Intensive Fostering

39. Intensive Fostering is another high intensity alternative to custody, (not mentioned in the previous report). It is currently being piloted by the Youth Justice Board (YJB) in three areas (Wessex, Staffordshire and London) with a fourth (Trafford) in the start up phase. Intensive Fostering is targeted at children and young people whose home life is felt to have contributed significantly to their offending behaviour. Like other community penalties, Intensive Fostering aims to hold a young person to account for their crimes while ensuring they get the support they need within their community to address factors which may have contributed to their offending behaviour.

40. The programme provides highly intensive care for up to 12 months for each individual, as well as a comprehensive programme of support for their family. The scheme is based on the Multi-dimensional Treatment Foster Care (MTFC) model which has been used successfully with offenders in Oregon since the 1980s. This model is based on a system of points and levels which reward appropriate behaviour. Foster carers are carefully selected and trained to work with young people in a nurturing environment, acting as an advocate and helping to establish and strengthen family relationships. The programme also includes support for the family of the young person, for example to increase effective parenting skills, family therapy and counselling. Each programme is tailored to meet the needs of the individual offender and

their family.

#### Referral Order

41. The Referral Order (lasting from 3 to 12 months) is still the primary sentence for those young people without previous convictions who come before the court (and who plead guilty and do not warrant an absolute discharge, hospital order or a custodial sentence). A youth offender panel will agree a programme with the young person to tackle the underlying causes of their offending behaviour, including an element of reparation. New legislation in the Criminal Justice and Immigration Act 2008 introduced on 27 April 2009 builds on the success of the referral order adding more flexibility and allowing wider use as part of the drive to reduce youth offending.

42. The circumstances in which a court may make a Referral Order have been extended so as to allow them on a later court appearance where the offender has:

- previously been bound over to keep the peace;
- previously received a conditional discharge: or
- has one previous conviction for which he was not given a referral order.

The new legislation also allows a second referral order to be made, exceptionally, on the recommendation of the Youth Offending team.

#### Reparation Order

43. A court can order an offender to make reparation to the victim of the offence or to the community: for example, by writing a letter of apology, repairing damage or by meeting the victim. The term of the order is up to 24 hours reparation activity over the course of three months.



***The Committee takes notes of the various community sanctions available and asks more details as to where the young offenders are held when given a community rehabilitation order and a curfew order.***

#### Curfew Order

44. A young offender may be ordered to remain in a specified place, for parts of a day or days. Courts have the power to make curfew orders backed with electronic monitoring for young offenders. The tagged curfews can help to break patterns of offending by keeping young offenders off the streets and out of trouble at the times they are most likely to offend. A Curfew Order requires a young offender to remain for set periods of time at a specified place, and can be given along side other community orders. The time period can be between 2-12 hours a day and the sentence can last no more than:

- six months for those 16 years of age and above
- three months for those under 16 years if age

The young offender will most likely be required to reside at their place of residence during the curfew period which maybe at selected times of the day when the risk of offending is at its highest. Custodial detention is not part of the order.

#### Community Rehabilitation Order

45. This sentence has only been available to courts for young offenders aged 16 and 17 .It is carried out in the community and can include activities such as repairing the harm caused by their offence and programmes to address the offending behaviour. In some circumstances, where it is felt that the living arrangements of the young offender is contributing to the offending behaviour, then a condition can be attached to the CRO whereby they must reside at alternative accommodation. However this is in very rare circumstances and does not constitute a custodial element to the sentence. The CRO is very much about rehabilitation in the community where expert services can be called upon to work with the young offender to address their offending behaviour.

***The Committee asked for information on the various forms of custodial measures available for young offenders.***

#### **Penalties involving restrictions on liberty**

46. No young person under the age of 21 can be sentenced to imprisonment. There is a statutory requirement that young people under 18 may not be sentenced to custody except as a last resort and then only for the shortest appropriate period (s152(2) and 153(2) Criminal Justice Act 2003). In addition, 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 and states that “under both domestic law and international convention, a custodial sentence must be imposed only as a ‘measure of last resort’”. The Committee questioned

whether that was being given full effect. Sentencing in individual cases is a matter for the courts. However, it is worth noting that over the last 18 months, the number of young people under 18 in custody has fallen by over 25 per cent (from 3029 in June 2008 to 2203 in December 2009. Even allowing for the usual seasonal decline in the late autumn, that is a very significant reduction.

47. The following sanctions are the custodial measures available in respect of young offenders under 18:

Detention in a place approved by the Secretary of State ages 10-17 years

48. For the most serious offences, the Crown Court has the power to sentence children and young people aged 10 to 17 to detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, if convicted on indictment of the following serious offences:

- an offence punishable in the case of an adult with imprisonment for 14 years or more;
- various sexual offences; and
- certain firearms offences.

***The Committee asks how many young offenders are detained in a place approved by the Secretary of State and where they are held.***

49. The number of young people under 18 detained for serious crimes under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 at the end of December 2009 was 364; comprising 25 in Local Authority Secure Children's Homes (LASCHs); 310 in Young Offender Institutions (YOIs) and 29 in Secure Training Centres (STCs).

50. Young people who receive a section 91 sentence can be detained in a place approved by the Secretary of State for a period up to the maximum sentence available for that offence in the case of an adult. Early release (up to a maximum of 135 days) under an electronically-monitored curfew (known as Home Detention Curfew) is available for some young offenders sentenced to section 91 detention. The young person may be released on licence during the term of the sentence; licences run till the end of the term.

Detention during Her Majesty's Pleasure – ages 10-17 years

51. Persons charged with murder who were under 18 at the time the offence was alleged to have taken place must be committed to the Crown Court for trial and, if convicted, are sentenced to detention during Her Majesty's Pleasure (section 90 of the Powers of Criminal Courts (Sentencing) Act 2000). The court must specify a minimum term to be spent in custody before release on licence can be considered. Once this period is completed, the sentence is kept under review and the date of release is decided by the Parole Board.

***The Committee asked where persons detained during Her Majesty's Pleasure are held.***

52. Young people convicted of murder, who are sentenced to detention during Her Majesty's pleasure (under section 90 of the Powers of Criminal Courts (Sentencing) Act 2000) are liable, under section 92, to be "detained in such place and under such conditions as the Secretary of State may direct or arrange with any person." In practice they are held in Young Offender Institutions (YOI), Secure Training Centres (STC) or Local Authority Secure Children's Homes (LASCH) as follows:

- Girls under 17 and boys under 15 are detained in either a LASCH or a STC; and
- Boys aged 15-17 are usually placed in a YOI, though the most vulnerable in this group may go to a LASCH or STC. 17 year old girls are accommodated in the new special units (see paragraph 14, above), which are also technically YOIs.

**Detention for public protection and the extended sentence**

53. Two new sentences were introduced under sections 226 and 228 of the Criminal Justice Act 2003. These are Detention for Public Protection (an indeterminate sentence) and the extended sentence. Detention for Public Protection (DPP) is available where the court finds that a young person who has committed a serious offence poses a significant risk of causing serious harm to the public through further offending. The extended sentence is available where a young person has committed certain violent or sexual offences and poses a significant risk of causing serious harm to the public through further offending. It involves a period in custody, followed by a period on licence in the community (both periods specified by the court). Young people receiving these sentences would serve them in a YOI, a STC or a LASCH.

***The Committee asked to be informed about the Detention and Training Order and the number of juveniles sentenced to it.***

54. The Detention and Training Order (DTO) was introduced in April 2000. It replaced two earlier sentences for young people: Detention in a Young Offender Institution and the Secure Training Order. (Detention in a Young Offender Institution is still available for 18-20 year-olds.)

55. The DTO is the standard sentence for 12-17 year olds whom the courts decide should be sent to custody. It is only available where the offence is punishable with imprisonment in the case of a person aged 21 or over; and the court is satisfied that the offence is so serious that neither a fine alone nor a community sentence could be justified (s152(2) Criminal Justice Act 2003). In the case of 12 to 14 year olds, there is an additional requirement: that the offender is a persistent offender.

56. The DTO is a two-part sentence, served partly in custody and partly under supervision in the community. The minimum DTO order is four months and the maximum two years (of which half is served in custody). Offenders can be placed in a young offender institution, secure training centre or a local authority secure children's home.

57. Placement of a child or young person in a secure establishment depends on age, sex, an assessment by the court of vulnerability, and closeness to home. All young people aged under 15 years will go to a secure training centre or local authority secure children's home. They cannot be placed in a Young Offender Institution.

58. Release one or two months early from the custodial part of the sentence, with electronic monitoring, is available. This provides a useful and properly managed transition back to the community, helping reintegration of young offenders into law-abiding society.

59. During 2009, some 4,200 young people were given a Detention and Training Order.

60. At the end of December 2009, 1,260 young people serving DTOs were held in the under-18 secure estate as a whole (YOIs; STCs; and LASCHs).

61. Commenting on the figures provided in the previous report, the Committee understood the number of young people serving DTOs at the end of December 2002 to be 163,127. The figure was in fact 1688. The misunderstanding appears to have arisen in relation to the information we provided on the number of young people in secure training centres (there were 163, of whom 127 were serving DTOs). We apologise for any lack of clarity in the way the figures were set out.

### **Conditions under which penalties carried out**

62. The great majority of penalties imposed on young offenders do not involve deprivation of liberty. The ISSP scheme aims to ensure that even persistent offenders and those who have committed quite serious offences are given an effective non-custodial penalty. In a small minority of cases (about three per cent of those who admit or are found guilty of an offence), courts decide that only a custodial penalty is sufficient to meet the circumstances of the case. These young people are detained in one of three types of custodial facility.

***The Committee asked how many offenders are detained in Young Offender Institutions. The Committee also expressed concern about conditions in YOIs.***

#### Young Offender Institutions (for 15-17 year olds)

63. With effect from April 2000, when the Detention and Training Order was introduced, a separate secure estate for under-18 year olds was

established. From that date, most boys aged 15-17, except those who are particularly vulnerable, have been held in the Young Offender Institutions catering exclusively for that age group (there are currently 10 of these). There are also four special units for 17 year old girls, which are also classified as YOIs. At the end of 2009, 1817 under-18 year olds were detained in YOIs.

64. The progressive improvement noted in our response to the previous review has continued. Notable features include the opening of the new units for 17 year old girls, which completed the provision of an under-18 female estate entirely separate from over-18s; and the establishment in 2008 of a new unit for more-vulnerable 15 and 16 year old boys at the Wetherby YOI. Staff in this unit were specially recruited and trained for the work and the unit is generally acknowledged to be a great success.

#### Secure Training Centre (for 12 -17 year olds)

65. Secure Training Centres provide a positive regime with training programmes tailored to individual needs. They provide a high standard of education and training, as well as programmes designed to encourage the young people to address their offending behaviour and to face up to the consequences of their crimes. The first secure training centre opened in 1998; two more opened in 1999 and a fourth in 2004.

#### ***The Committee asked how many juveniles are detained in Secure Training Centres***

66. At the end of December 2009 there were 235 young people under 18 in secure training centres, of whom 154 were serving Detention and Training Orders, 30 section 90 or 91 sentences, one a sentence of DPP and two extended sentences; 48 were on remand.

#### Local Authority Secure Children's Home (for 10 to 17 year olds)

67. The Youth Justice Board places young people serving under-18 sentences in 10 LASCHs in England and Wales. Courts can also remand young people under 17 to the care of a local authority, with a requirement that the young person be placed in secure conditions (i.e. in a secure children's home). LASCHs normally consist of secure buildings within a "campus" area. The establishments are small, holding between 10 and 40 young people, and subdivided into units typically holding 7 to 10 each. They have a high staff ratio and there is considerable individual and small group work. Some units include children placed there for non-criminal, welfare reasons and the atmosphere reflects this. The regime consists of education, health and social activities. Trainees' education is geared to meet level of achievement and ability, and most study for secondary level qualifications. There are also programmes to address violent and offending behaviour and related problems such as drug or alcohol abuse. Psychological help is also provided for those young people who require it.

At the end of December 2009, there were 152 young people detained in LASCHs either under sentence or on remand.

### **Measures of education, protection and treatment**

68. The Detention and Training Order (DTO) is structured to enable the young offender to receive education and training during the custodial period and for this to be built on this during the community part of the sentence.

69. The Government recognises that young people leaving custody are some of the most vulnerable young people in our society. Many have complex and wide ranging problems which require intensive support and access to services which can directly address their offending behaviour and help break the cycle of offending. The provision of effective resettlement services requires the co-operation of a range of local agencies who can provide ongoing access to services. On release, most young offenders will receive some resettlement support from the Youth Offending Team (YOT) but this is dependent on access to mainstream services (e.g. accommodation, education, health) and many continue to need wider services' support once the period of YOT supervision has finished.

70. To support this an additional £8.4 m has been provided through the cross-government Youth Crime Action Plan to assist and develop integrated resettlement support in local areas with the highest custody rates, providing enhanced packages of support addressing the range of individual needs. Part of the funding is also being used to set up two regional resettlement consortia in the North West and South West of England, promoting closer working between custodial establishments, Youth Offending Teams and across local authority boundaries, enabling enhanced information sharing about individual young offenders who cross local authority boundaries and providing the opportunity for joint planning and commissioning of resettlement services.

71. In addition, the role of local authorities and wider services in ensuring adequate resettlement support is provided is emphasised in revised statutory guidance, currently being finalised, which stresses the responsibilities of local Children's Trusts to prevent offending and reoffending in particular through ensuring effective services to support young people leaving custody.

72. In addition, the role of local authorities and wider services in ensuring adequate resettlement support is provided is emphasised in revised statutory guidance, currently being finalised, which stresses the responsibilities of local Children's Trusts to prevent offending and reoffending in particular through ensuring effective services to support young people leaving custody. Revised statutory guidance on the role of Lead Members and Directors of Children's Services also emphasises the role of local authorities in providing effective resettlement services for young people leaving custody and specifically make reference to the leadership role the DCS must play in ensuring that adequate services are provided in a timely manner.

73. The Apprenticeships, Skills, Children and Learning Act 2009 aims to improve education and training for children and young people detained in juvenile custody, and will be implemented in a phased roll-out from this year. The reforms make local authorities responsible for securing the provision of education and training for those subject to youth detention, which will help foster joined-up arrangements between custody and the community. The Act also amends the Education Act 1996 to bring children and young people detained in juvenile custody under education legislation for the first time

74. All three sectors of the under-18 estate have procedures to enable young people to pursue complaints about any aspect of their detention. To assist young people to do this, all custodial establishments are required to provide an independent advocacy service. The advocates also provide general support to the young people and represent their interests.

### **Care provided as a means of prevention or as an alternative to detention**

75. Local authorities have a general responsibility to safeguard and promote the welfare of children in their areas. In circumstances where local authorities assess that an individual child may be at risk of likely significant harm then the authority would need to apply to a Court for a Care Order to seek to share parental responsibility.

76. Application for a Care Order is a welfare intervention and is therefore legally distinct from a sentence resulting from a child being found guilty of an offence. There may be some circumstances where with the agreement of the local authority and a child's parents a child may be accommodated in a foster or children's home as part of a Youth Rehabilitation Order imposed by the youth court in response to a child's offending behaviour to minimise the likelihood of their reoffending and to provide them with wider welfare support. (this replaces the text below.

### **Measures to minimise the risk for vulnerable young people.**

77. The Youth Justice Board has developed a specialised assessment tool, known as ASSET, to enable all relevant information about a young person being dealt with by the criminal justice system to be made available to those making decisions and having duties of care. ASSET seeks to ensure that vulnerable young people are identified from the outset so that, where a custodial sentence is given, appropriate placements (usually to a secure training centre or local authority secure children's home) are made.

78. The Youth Justice Board has given priority to developing a range of measures to safeguard young people in the under-18 secure estate. Building on the Prison Service's three-year programme of work to address self-harm (2001-04), in 2003-04 the YJB undertook a review of safeguarding in YOIs. This identified a range of areas for improvement, including the introduction of safeguard managers and local authority social workers, provision of advocacy services in all YOIs, use of young people-specific policy and operational documents, child protection and safeguarding training and consideration of

building design. A three-year programme to implement these changes was completed in 2008.

79. An important part of the 2005-08 programme was the completion of a follow-up review, undertaken in collaboration with the National Children's Bureau, a voluntary-sector organisation, which looked at safeguarding across all sectors of the under-18 estate. The review noted the progress that had been made and also recommended further measures of improvement, which the YJB is currently implementing.

80. One area of safeguarding that has caused particular concern is the use of physical restraint. In 2007, the previous Government commissioned an independent review of restraint in juvenile secure settings. The review reported the following year and the Government then accepted the overwhelming majority of its recommendations. These called for a more young person-focused approach in YOIs and a greater emphasis on dealing effectively with potential conflict so as to minimise the need for physical restraint. A major programme to implement the recommendations is currently under way.

***The Committee asks the next report to provide more detailed information on the theoretical possibility that children could be detained without charge for up to 7 days under the Terrorism Act 2005.<sup>1</sup>***

81. There is no power to detain without charge for 7 days under the Prevention of Terrorism Act 2005.

82. A person under 18 can be detained under the Terrorism Act 2000. Counter-terrorism powers are aimed at terrorists, whatever their age or background. Suspects arrested under section 41 of the Terrorism Act 2000 can be detained for a maximum of 28 days before they must either be released or charged. However, the detention of all suspects after 48 hours must be approved by a judge (and the judge can then approve further detention for up to 7 days at a time) if the judge is satisfied that a) there are reasonable grounds for believing further detention is necessary to obtain or preserve evidence, and b) that the investigation is being conducted diligently and expeditiously. It is the right of the detained person to have a friend or relative informed of his detention and to consult a solicitor.

83. The Police and Criminal Evidence Act (PACE Code H) provides a dedicated code of practice on the detention, treatment and questioning by police officers of persons under section 41 of, and schedule 8 to the Terrorism Act 2000 and specifically deals with the treatment of juveniles.

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<sup>1</sup> <http://www.legislation.hms0.gov.uk/acts/acts2000/20000011.htm>



***The Committee notes from another source that children in custody in England continue to be excluded from the statutory right to education and that no juvenile establishment has succeeded in meeting the target set by the youth justice board of 30 hours per week of education and training.***

84. The Youth Justice Board (YJB) sets a performance indicator for Young Offender Institutions (YOIs) that 90 per cent of young people receive 25 hours or more education, training and personal development activity per week. For Secure Training Centres (STCs) and Secure Children's Homes (SCHs), the performance indicator is 30 hours or more. In 2006/07, the average number of hours received per person, per week in YOIs was 26.20. In STCs, in the period Oct 08 to Aug 09 an average of 98.9 per cent of young people received 30 hours or more of education, training and personal development activity per week. In SCHs, this figure was 79.5 per cent. We continue to work with the YJB to increase the number of hours of education that young people receive.

***The Committee asks whether the Government intends to ensure that all children in custody have the same educational rights as every other child (EC)***

85. The Apprenticeships, Skills, Children and Learning (ASCL) Act 2009<sup>1</sup> amended the Education Act 1996 to bring children and young people detained in youth custody under education legislation.

86. The ASCL Act makes local authorities responsible for securing the provision of education and training for those subject to youth detention, which will help foster joined-up arrangements between custody and the community. We believe that local authorities, as the 'mainstream' strategic commissioners of children's services, are in the best position to fulfil this role and ensure that education in custody aligns, where practicable, with that available in the mainstream. Local authorities are well placed to use their expertise to further improve the quality and consistency of the education and training that is delivered across the juvenile secure estate for children and young people. These changes create clear accountability and will mean that for the first time, children and young people detained in juvenile custody will be brought under education legislation.

87. Local Authorities will also have a duty to promote the fulfilment of a detained person's learning potential whilst they are detained in youth custody and upon their release – and we expect they will fulfil their duty through working closely with the relevant Youth Offending Team supervising officer – who already works with the custodial establishment to develop sentence plans, which include education and training plans. We are developing a programme of communications and support to build capacity of LAs to prepare for the changes.

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<sup>1</sup> [www.legislation.gov.uk/ukpga/2009/22/contents](http://www.legislation.gov.uk/ukpga/2009/22/contents) -

## Other Initiatives

88. The Youth Crime Action Plan was launched in 2008 and sets out the strategy to prevent youth crime and to intervene early when problems arise.

89. The Plan ensures:

- tough enforcement where behaviour is unacceptable or illegal;
- more support to address the underlying causes of poor behaviour, including for young victims and parents; and
- better prevention to tackle problems before they become serious or entrenched.

90. Commitments and interventions set out in the Plan address different aspects of youth crime. Seven of these measures are being delivered as part of an intensive package in 69 priority areas, together with support for young victims:

- *Operation Staysafe*: partnerships between the police and Local Authorities to take at-risk young people off the streets on Friday and Saturday nights, return them to their parents/carers and identify wider support where needed.
- *Street-based teams*: partnerships between police and youth workers keeping young people away from crime or anti-social behaviour.
- *Increased reparation activity*: making up for harm or damage done to victims or local communities in leisure time, including on Friday and Saturday nights.
- *YOT workers in custody suites (Triage model)*: Youth Offending Team (YOT) staff liaising with the Police and the Crown Prosecution Service (CPS) to make rapid assessments of young offenders and inform decisions on next steps and the support required.
- *After School Police Patrols*: recognising that there are peaks of criminal or anti-social behaviour by some young people in the period following the end of the school day, around the school vicinity and nearby transport routes and interchanges.
- *Supporting Young Victims*: recognising that young people are not just perpetrators of crime but are also affected by it and require support.
- *Family Intervention Projects*: providing support for the most vulnerable and problematic families with children at risk of offending.

- *Think Family reforms*: changes influenced by the Social Exclusion Taskforce Families report on the impact that family circumstances have on the life chances of children.

### **Current action on parenting**

91. We are making sure the parents take responsibility for their children. This includes legislating for mandatory parenting needs assessments on 10 to 15 year olds who are considered for an Anti Social Behaviour Order (ASBO) and mandatory Parenting Orders for parents of 10 to 15 year olds who breach their ASBO. We are also expanding the provision of Family Intervention Projects.

### **Family Intervention Projects (FIPs)**

92. Family Intervention Projects (FIPs) work with the most challenging families and tackle issues such as antisocial behaviour, youth crime, school absenteeism, drug and alcohol addiction, domestic violence, poor mental health and inter-generational disadvantage. Families are supported by a dedicated 'key worker' who coordinates a multi-agency package of support and works directly with family members to help them overcome their problems. The different FIP models are aimed at reducing antisocial behaviour, preventing youth crime and tackling child poverty.

93. In February 2007, the National Centre for Social Research (NatCen) created a web-based Information System to collect comprehensive data on all families referred to FIPs. Information is collected by FIP staff at the initial referral, when a support plan is put in place, at regular formal reviews, at the point the family exits from the intervention and 9 to 14 months after families exit from the FIP.

94. This report<sup>1</sup> provides an evaluation of the FIPs and is the first report to include information on families who have been followed up 9 to 14 months after they exited from a FIP intervention. Research found that the lives of over 1000 families and their communities significantly improved after involvement in a Family Intervention Project (FIP) between February 2007 and October 2009.

95. Key findings from the research found that families at the end of a FIP showed:

- 64 per cent reduction in anti-social behaviour;
- 58 per cent reduction in truancy, exclusion and bad behaviour among children and young people;
- 70 per cent reduction in drug and substance misuse; and
- a 53 per cent reduction in alcoholism.

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<http://publications.education.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DCSF-RR215&>

***The Committee also asks information on the aims and achievements of the Youth Inclusion and Support Panels in their prevention of anti-social behaviour***

96. Youth Inclusion Support Panels (YISPS) aim to prevent anti-social behaviour and offending by those 8 to 13-year-olds (up to 17 in some areas) who are considered to be at high risk of offending and anti-social behaviour. They are multi-agency planning groups that offer early intervention based on assessed risk and need. Parenting support in the form of contracts and programmes is offered as part of a range of tailored interventions.

97. The YISP evaluation found that, when implemented well with all partners fully engaged, YISPs can help prevent young people getting involved in anti-social behaviour and crime, improve their mental health and well-being, benefit their school work and better their home life. It also endorsed the importance of focussing on the highest risk children as early as possible to have the greatest effect.

98. YISPs are a core element of prevention work. Funding comes from a variety of sources, including the YJB prevention grant and other area-based grants allocated for early intervention and prevention. YISP panels have become an integrated part of systems to deal with anti-social behaviour in particular. Parenting support - in the form of contracts and programmes - is also offered as part of a range of tailored interventions. There are now more than 200 panels in England and Wales. YISPs have been influential in helping to achieve significant reductions in first-time entrants to the criminal justice system, including the 21.6% reduction in 2008/09.

**Prohibition of violence against children**

**Response to the Conclusions of the Committee on the prohibition of corporal punishment in the United Kingdom**

The United Kingdom's response to the Committee's Conclusions will be communicated separately as Appendix 17.

## **SCOTLAND**

### **Parentage and adoption**

The Family Law (Scotland) Act 2006 amended The Law Reform (Parent and Child) (Scotland) Act 1986 to abolish the status of illegitimacy. The 2006 Act provides that no person whose status is governed by Scots law shall be illegitimate; and accordingly the fact that a person's parents are not or have not been married to each other shall be left out of account in; determining the person's legal status; or establishing the legal relationship between the person and any other person.

The Adoption and Children (Scotland) Act 2007 came into effect on 28 September 2009. The 2007 Act restates, improves and modernises the previous legal framework for adoption in Scotland, including the Adoption (Scotland) Act 1978, the Children (Scotland) Act 1995 and the Adoption (Inter-country Aspects) Act 1999.

Key legislative changes instituted by the Act include:

- replacing existing court orders with a single permanence order which will be flexible enough to cater for the changing needs of individual children;
- allowing joint adoption by unmarried couples (including same-sex couples);
- removing the absolute ban on natural parents applying for contact after adoption, whilst putting in place safeguards to ensure this only happens if it is in the child's best interests;
- better adoption support services for people affected by adoption;
- clear rights to information about adoption for those involved;
- additional safeguards for inter-country adoption and the power for Scottish Ministers to charge for processing overseas adoption applications.

The changes in legislation are the result of a major review (The first phase of the Adoption Policy Review was launched in April 2001, the second phase was launched in March 2003) of the way in which long term plans are made for children who cannot safely live at home. This review found that adoption can provide a positive outcome for many children probably more than are currently placed. Another finding of the review was that children and young people thrive when they have a sense of stability and belonging. Changes of placement, reviews, failed rehabilitation plans, having to ask permission from social work departments or unpredictable parents before undertaking school trips or holidays reinforces feelings of instability.

The legislation continues the provisions for adopted children to be considered and treated in law as if they were the birth children of the adopters.

### **Children in Public Care**

***In its Conclusions to the UK's previous report on Article 17, the Committee notes that "in Scotland, almost 11,200 children were "looked***

***after” at 31 March 2002, representing 1% per cent of all children under 18. Almost half of looked after children were with their parents. An additional 12% were living with friends/relatives: significantly higher than in previous years. Less than 1 in 7 looked after children lived in residential accommodation”.***

In Scotland, a child becomes looked after by a local authority as a result of either being provided with accommodation by a local authority under section 25 of the Children (Scotland) Act 1995 (where either no one has parental responsibility for them, they are lost or abandoned, or the person who has been caring for them is prevented from providing suitable care), through a children's hearing leading to a supervision requirement, or where the child is subject to an order, authorisation or warrant. Children who are looked after will either be looked after at home (where the child or young person continues to live in their normal place of residence), or looked after away from home (away from their normal place of residence). At 31 March 2009 there were 15,288 children looked after by local authorities, an increase of 3 per cent since 2008. The number of children looked after has increased every year since 2001, and is at its highest since 1983. At 31 March 2009, 39 per cent of children looked after were placed at home with parents, and 20 per cent were looked after by friends or relatives. Twenty nine per cent were looked after by foster carers. Ten per cent were in residential accommodation.<sup>1</sup>

***The Committee asked about the role of the guardian or other care taker in a child care institution.***

In Scotland, the Children (Scotland) Act 1995 sets out a local authority's duties, powers and responsibilities in relation to looked after children and young people and care leavers.

***The Committee asked for further information on the operation of the complaints system and also about the supervision and regulation of foster carers.***

The Care Commission is responsible under the Regulation of Care (Scotland) Act 2001 for regulating all adult, child and independent healthcare services in Scotland. This includes care homes for children and young people and fostering placements.

***The Committee asked about how the problem recruiting and retaining key skilled and experienced staff was being addressed.***

The Scottish Social Services Council is responsible for raising standards in the Scottish social service workforce. It is responsible for regulating and registering the social service workforce. Further information can be found at <http://www.sssc.uk.com>

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<sup>1</sup> These figures are from the *Children Looked After Statistics 2008-09*. This publication contains statistics on children who were looked after by or eligible for aftercare services from local authorities between 1 April 2008 and 31 March 2009.

## Youth justice

***The Committee notes that the age of criminal responsibility in England, Wales, Northern Ireland and the Isle of Man is set at 10 years, and, as it notes from another source, in Scotland at 8 years, which it considers to be manifestly too low to be in conformity with Article 17 of the Charter.***

The Criminal Justice and Licensing (Scotland) Bill was introduced into Parliament in March 2009. The Bill includes measures to raise the age at which a child can be prosecuted in adult criminal courts from eight to 12. The Bill is expected to finish its parliamentary passage later in 2010.

***The Committee noted with concern that in Scotland in certain specified circumstances a child or young person may be detained by warrant pending a decision of a Hearing for a period not exceeding 22 days in the first instance.***

In Scotland, the children's hearings system has responsibility for dealing with most children and young people under 16 who commit offences or who are in need of care and protection. For children who commit very grave crimes (the circumstances are set out in the relevant Lord Advocate's guidelines), the option remains for them to be jointly reported to the children's reporter and the procurator fiscal and together, they will decide whether prosecution through the court is appropriate. The court may then sentence, or return the young person to the hearing to be dealt with. A young person who appears in court accused of an offence, where bail is not considered appropriate, can be remanded to the care of the local authority responsible for them under section 51 of the Criminal Procedures (Scotland) Act 1995. Local authorities are then responsible for placing that young person in secure care.

A young person convicted of an offence in court can be sentenced to detention in secure accommodation under section 205 or 208 of the Criminal Procedures (Scotland) Act 1995. In these cases, it is the responsibility of Scottish ministers to place the sentenced young person in suitable accommodation.

Before a child or young person can be placed in secure accommodation through the children's hearings system, the children's panel must consider that the young person meets the legal criteria set out in section 70(10) of the Children (Scotland) Act 1995. That is:

- (a) having previously absconded, is likely to abscond unless kept in secure accommodation, and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk; or
- (b) is likely to injure himself or some other person unless he is kept in such accommodation.

## **NORTHERN IRELAND**

### **Children in public care**

The total number of children in public care in Northern Ireland was 2,433 in 2008 representing 0.56% of the general population under 18. Approximately 82% have been placed with foster carers(including family carers), 13% placed in residential care and the remaining 5% in other accommodation such as supported living accommodation, hostels, independent living etc.

The range and quality of children's homes is kept under continuous review to ensure a diverse, high quality range of provision which is fit for purpose. The majority of children's homes in Northern Ireland provide a maximum of 8 beds.

### **The role of a guardian or other care taker in a child care institution.**

Legal responsibility for the majority of children in residential care in Northern Ireland rests with local Health and Social Care Trusts who may be given parental responsibility for a child by the family courts. Parental responsibility is, however, shared with the child's parent. The Trust must discharge a number of statutory duties toward the child. These are prescribed in regulations which are aimed at protecting the child and ensuring his/her welfare.

### **New regulatory bodies.**

In NI, the Children (NI) Order 1995 (the Order) requires Health and Social Care Trusts to establish a procedure for considering representations and complaints concerning any aspect of care or service provided to a child and/or his family. Complaints by or on behalf of children in foster care or other forms of care are investigated under this procedure. If a Foster carer wishes to complain about the actions or decisions of a Trust in respect of his/her own role, the carer may access the Health and Social Care Complaints Procedure.

In addition the Regulation Quality and Improvement Authority (RQIA), has been established as an independent body responsible for monitoring and inspecting the availability and quality of health and social care services in Northern Ireland.

The recruitment and assessment of foster carers and the supervision of children in foster placements are subject to legislative and regulatory requirements. Fostering agencies are also required to adhere to regional good practice guidance in the monitoring and support of foster carers.

***The Committee asks for information on the conditions under which children in care receive education and any measures to reduce the number of children leaving care without qualifications.***

The Children (Leaving Care) Act (Northern Ireland) 2002 came into operation



on 1 September 2005 and provides a legal framework for leaving and after care services in Northern Ireland. Its purpose is to improve the life chances of young people who are looked after by Health and Social Care Trusts as they make the transition to independent living. To do this, the Act amends The Children (Northern Ireland) Order 1995 to place new and enhanced duties on HSCTrusts to support young people leaving care.

The main aims are to prevent premature discharges from care, improve preparation, planning and consistency of support for young people, and to strengthen arrangements for financial assistance. At its heart, are new duties to assess and meet young people's individual needs, provide personal advisers and develop pathway planning for young people up to the age of 21 (or beyond if continuing in education).

Statistics on the educational attainment and economic activity of young people aged 16-18 who left the care of Health and Social Care Trusts in Northern Ireland during the year ending 31 March 2009 can be accessed at [www.dhsspsni.gov.uk/index/stats](http://www.dhsspsni.gov.uk/index/stats) research/stats-cib/stats-cib pubs.

## **ISLE of MAN**

### **Question 1**

As described in the previous report, the Children and Young Persons Act 2001 is the main statutory basis for a range of services and provision which has a benefit to children and mothers.

The legal framework is generally unchanged, except:

Sexual Offences (Amendment) Act 2006 – equalised the age of consent for homosexual relationships with that for heterosexual relationships at 16 year. This Act also introduced the new sexual offences of abuse of a position of trust and meeting a person under 16 years following sexual grooming.

Education (Miscellaneous Provisions) Act 2009 – amended the Education Act 2001 so that corporal punishment of any minor in any place where education is provided is prohibited, it previously only having been prohibited in schools provided or maintained by the Department of Education. (As stated in the previous report, corporal punishment is also prohibited in care establishments and for young offenders.)

### **Question 2**

Measures generally continue to be as described previously.

#### **Child Protection**

In January 2007 the Island's Child Protection Committee published a new document setting out Agency Procedures.

The Social Services Division has adopted the "Framework for Assessment" as best practice and implemented the Integrated Children's System as the underpinning process.

The Island has established a Safeguarding Children Board (SCB) and is broadly following Best Practice from England and Wales as defined in the "Working together" document.

The SCB has established a number of sub-groups dealing with Serious Case Reviews, Safer Communications, Policies and Procedures, Training and Development, Quality Assurance and has a Justice and Status Task Group all meeting regularly.

This works within a wider framework which includes a Children's Plan for all children on the Island which is overseen by a Children's Committee that has Ministerial and Senior Officers membership.

The Island has introduced the Common Assessment Framework (CAF) to all

agencies on the Island and appropriate training has been provided.

The role of Lead Professional has also been established to co-ordinate Services identified through common assessment framework.

Alongside this Multi-Agency Teams have been established on a pilot basis to help deliver early interventions at a preventative stage.

### **Adoption and parentage**

A full review of the Island's adoption legislation is included in the Isle of Man Government's legislative programme.

### **Question 3**

In 2009 the Department of Education was able to provide free pre-school places to 470 children.

There are two children's Resource Centres in the Island providing respite care, day care and outreach care to children with disabilities and their families.

The Department of Health and Social Security registers and inspects all child day care facilities for children under eight years of age apart from those provided by the Department of Education. The latest figures for day care facilities are as follows:

| <u>Type of Facility</u>     | <u>Providers</u> | <u>Places</u> |
|-----------------------------|------------------|---------------|
| Full day care facility      | 24               | 898           |
| Sessional day care facility | 15               | 302           |
| Registered Childminders     | 109              | 468           |
| Out of school facility      | 10               | 398           |
| Total                       | 158              | 2066          |

These facilities are provided by private or voluntary organisations.

### **Children in public care**

The Department had 119 children Looked After as at 1st March 2010. They were placed in the following:

|                       |     |
|-----------------------|-----|
| Fostering             | 51  |
| Residential care      | 45  |
| UK Placements         | 7   |
| Living with Relatives | 16  |
| Total                 | 119 |

## ARTICLE 19

### Article 19, Paragraph 1

#### UNITED

#### KINGDOM

1. The UK has ratified ILO Convention No. 97 - Migration for Employment (Revised). A copy of the last submitted compliance report on that convention, covering the period from 1 June 2000 to 31 May 2007, is attached [**Appendix 19A**].

***The Committee asked that the next report provide more information on the new training strategy for the police force on race relations.***

2. The previous Government's strategy for improving performance in race and diversity (2004-2009)<sup>1</sup> sets out the five-year strategy for the Police Race and Diversity Learning and Development Programme. The key aim of the strategy being to improve police performance in race and diversity through learning and development. The strategy was formally launched in November 2004.

3. The first published progress report on implementation of the strategy can be viewed via the link:

<http://www.npia.police.uk/en/docs/PRDLDP - Implementation Progress Report.pdf>

4. Overall responsibility for the administration and management of the strategy transferred to the National Policing Improvement Agency (NPIA) in 2007. Since that time positive developments to support and improve performance have resulted in the development of a joint equality, diversity and human rights strategy for the police service. Further information about this can be accessed in the following link.

<http://www.npia.police.uk/en/14333.htm>

#### NORTHERN IRELAND

5. The Department for Employment and Learning has developed a communications strategy with the Social Security Agency to meet the needs of those customers whose first language is not English. The joint strategy provides for interpretation (by telephone or face to face) and translation services to ensure that communication barriers are minimised, thus allowing access to the services offered by both organisations. The Department works closely with a wide range of employers to identify and service their recruitment needs. Job vacancies are displayed locally through the network of Jobs and Benefits Offices/Jobcentres and throughout Northern Ireland, Europe and World-wide via the website<sup>2</sup>. Using this method, potential migrant workers can begin their jobsearch activity before arriving in Northern Ireland. Where necessary the Department is working with those employers who may be experiencing recruitment difficulties, to help identify cost-effective solutions.

6. The Northern Ireland Housing Executive also makes information available in a number of languages and uses translation services where appropriate.

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<sup>1</sup> [http://www.npia.police.uk/en/docs/PRDLDP\\_Strategy\\_final.pdf](http://www.npia.police.uk/en/docs/PRDLDP_Strategy_final.pdf)

<sup>2</sup> [www.JobCentreOnline.com](http://www.JobCentreOnline.com)

## **Article 19, Paragraph 2**

### **UNITED KINGDOM**

7. The position remains as previously described with the following update on developments in Scotland.

### **SCOTLAND**

8. The Scottish Government's Relocation Advisory Service (RAS) offers a unique service that aims to assist and advise those who wish to live and work in Scotland. It seeks to create a seamless service that streamlines UK, Scotland and local public services to make things easier for people to move to this country to live and work. RAS will provide in-migrants and foreign students wishing to remain in Scotland with a "one stop shop" facility with all the necessary information and advice they require to achieve employment and residency in Scotland. RAS is staffed by trained civil servants and secondees who will signpost those using the service to the appropriate contact in employment services, local authorities, voluntary sector and private sector. The welcoming package includes information on living and working in Scotland, cultural networks, information on diversity and equality issues, where to seek employment, accommodation and healthcare, and provides information on immigration issues such as work permits and visas. People are able to contact RAS via the website at [www.scotlandistheplace.com](http://www.scotlandistheplace.com), by telephone or, if they are in Glasgow, through a face-to-face meeting.

9. In addition to the work of RAS, the adult English for Speakers of Other Languages (ESOL) strategy for Scotland, launched in 2007, aims to increase the quantity and improve the quality of ESOL provision across the country to the benefit of all those in Scotland for whom English is not a first language. Provision of high quality, accessible and affordable English language teaching supports the Scottish Government's overall purpose of sustainable economic growth and its aim to encourage active citizenship in a diverse Scotland.

10. The Scottish Government is also providing over £9m funding over 2008-11 to organisations aimed at tackling racist attitudes and improving the lives of minority ethnic communities in Scotland, including migrant workers. A new phase of the One Scotland anti-racism campaign has been launched, as of 23 November 2009. The theme of this year's campaign is that Scotland must pull together and be united, particularly in times of economic uncertainty and that this will make us stronger. A number of A8/A2 migrants have been included in case studies used to promote the campaign in the media.

## **Article 19, Paragraph 3**

***The Committee noted that the Advisory Board on Naturalisation and Integration (ABNI), has been created to provide independent advice to the Government on its citizenship and integration programme.***

11. The ABNI's remit was to provide independent advice on the UK Government's citizenship and integration policies for migrants seeking naturalisation and to encourage them to do so. The ABNI has now completed its work for which it was set up and its

work has been amalgamated with several other units in different departments and agencies, all concerned with community cohesion in general, participation and citizenship in its widest sense.

***The Committee repeats its request for information on the existence of private social services related to migration.***

12. The Home Office works closely with corporate partners who have an interest in the field of migration. This commonly includes a number of non-Government organisations, agencies, other Government Departments, Parliamentary Committees and international organisations such as the International Organisation for Migration (IOM). In addition, the Home Office has taken a number of steps to ensure that people understand the facts about migration, life in the UK and the terms on which they can come to the UK. For example, the Home Office has supported information campaigns in other migration sending countries and contributed to the production of bi-lingual leaflets and guidance information for those wishing to migrate to the UK. This material serves to inform migrants about the support available to them in the UK and their legal rights to assistance and various other forms of protection. Working closely with corporate partners, the Home Office has also supported seminars and events held overseas designed to promote messages about migrants' rights and responsibilities in the UK.

#### **Article 19, Paragraph 4**

#### **GREAT BRITAIN**

13. Apart from the response set out below to the Committee's previous Conclusions covering this Article, the position remains generally as previously described.

***The Committee asked for information on the number of foreign nationals who have been refused any form of social assistance on the ground that they do not satisfy the habitual residence condition.***

14. The information is in the following Table:

**Habitual Residence Test Passed and Failed<sup>1</sup>**

| <b>Nationality</b>             | <b>2009-2010<sup>2</sup></b> |
|--------------------------------|------------------------------|
| UK Passed                      | 32,813                       |
| UK Failed                      | 3,461                        |
| <b>UK Total<sup>3</sup></b>    | <b>36,274</b>                |
| EEA Passed                     | 8,725                        |
| EEA Failed                     | 3,075                        |
| <b>EEA Total</b>               | <b>11,800</b>                |
| A8 Passed <sup>4</sup>         | 7,279                        |
| A8 Failed                      | 17,336                       |
| <b>A8 Total<sup>5</sup></b>    | <b>24,615</b>                |
| A2 <sup>6</sup> Passed         | 1,082                        |
| A2 Failed                      | 360                          |
| <b>A2 Total<sup>7</sup></b>    | <b>1,442</b>                 |
| Other Passed                   | 7,518                        |
| Other Failed                   | 1,582                        |
| <b>Other Total<sup>8</sup></b> | <b>9,100</b>                 |
| TOTAL Passed                   | 57,417                       |
| TOTAL Failed                   | 25,814                       |
| <b>TOTAL</b>                   | <b>83,231</b>                |

<sup>1</sup> This information shows the number of claims that are subject to the Habitual Residence Test and therefore they also include decisions on repeat claims.

The benefits reported are claims to Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and Pension Credit.

<sup>2</sup> The report year is 1 April 2009 to 31 March 2010.

<sup>3</sup> Data for UK nationals, EEA nationals and Other nationals are based on clerical inputs and are therefore subject to input error.

<sup>4</sup> Refers to Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia

<sup>5</sup> A8 figures are published in the Home Office's Control of Immigration Statistics.

<sup>6</sup> Refers to Romania and Bulgaria

<sup>7</sup> A2 data come from the same source as the A8 figures, but are not published.

<sup>8</sup> 'Other nationals' are non-EEA / UK nationals.

## **NORTHERN IRELAND**

15. Where a migrant worker is eligible for social housing in Northern Ireland, the Northern Ireland Housing Executive will ensure that any housing accommodation allocated to him is appropriate for his needs, including the need to accommodate other members of his household. It should be noted that, because the Northern Ireland Housing Executive is required to disregard "ineligible persons" when assessing applications under the homelessness legislation, an applicant cannot claim priority need for re-housing on the basis of his responsibilities to another member of his household if that household member is an "ineligible person" (the same would apply in England). However, the presence in a household of an ineligible person upon whom the homelessness application does not depend is immaterial. Guidance issued by the Department for Social Development on 14 July 2004 remind the Northern Ireland Housing Executive that, where there is a duty to secure that accommodation becomes available, it must be suitable for all members of the household, including any ineligible persons.

### **Article 19, Paragraph 5**

16. The position remains as previously described.

### **Article 19, Paragraph 6**

***The Committee seeks clarification on whether applications for family reunion are systematically refused on the grounds that such reunion could entail an increase on social benefits.***

17. The Home Office confirms that applications for family reunion are not systematically refused on the grounds that such reunion could entail an increase on social benefits financed for public funds paid to the migrant worker. A number of considerations are applied when the Home Office considers applications for family reunion and a particularly relevant factor that is incorporated in our policy, is the maintenance of family unity.

***The Committee concludes that the situation in the United Kingdom is not in conformity with Article 19§6 of the Charter on the ground that neither legislation nor practice provide for family reunion in respect of migrant workers' children aged between 18 and 21 years.***

18. There is no change to the position as described in the previous report covering this Article. The Government has explained that the age of majority in the UK is 18. Persons under that age are thus classified as children and those over 18 as adults. Children under the age of 18 are considered as dependants and as such would be permitted to join a parent on whom they are dependant in the UK. Children over the age of 18 are not considered to be dependent and they are treated in law as independent adults. Furthermore, the last report made clear that all applications for entry in cases of family reunion would be considered on their merits, irrespective of the age of the child in question. If a child over the age of 18 were to apply to join a parent in the UK and were to demonstrate that they are dependent on their parent, the application would be considered favourably



**.Article 19, Paragraph 7**

19. The position remains as previously described.

**Article 19, Paragraph 8**

***The Committee asks that the next report clarify whether section 10 of the Immigration and Asylum Act 1999 only applies to persons unlawfully in the United Kingdom.***

20. The Home Office confirms that section 10 of the Immigration and Asylum Act 1999 only applies to persons unlawfully in the UK. This group will commonly includes those who have overstayed their leave to enter or remain in the UK, those who have entered the UK illegally and other people who have no right to be in the UK.

***The Committee notes that Regulation 21(3)(a) of the Immigration (EEA) Regulations 2003 allows for removal of nationals of members states of the European Economic Area who cease to exercise Treaty rights and are therefore no longer a "qualified person", as defined by the Regulations. The Committee asked for further information on what criteria are applied when concluding that a person is no longer considered a "qualified person".***

21. The Home Office ensures that the criteria applied when considering whether a person is no longer to be considered as a "qualified person", are in accordance and compliance with the principles and provisions of the EU Treaty and associated directives.

***The Committee concludes that the situation in the United Kingdom is not in conformity with Article 19§8 of the Charter on the ground that family members of a migrant worker who are nationals of non EU or EEA Contracting Parties as well as children of a migrant worker who are nationals of the EU or EEA but are aged under 17 years of age, are liable to expulsion following a migrant worker's deportation.***

22. The position remains as previously described. The Government confirms that there is nothing in particular to prevent a family member making their own application for leave to remain in the UK in their own right.

**Article 19, Paragraph 9**

23. The position remains as previously described

**Article 19, Paragraph 10**

24. The position remains as previously described.

## **ISLE of MAN**

### **Article 19 - General Comments**

1. The legal framework concerning immigration in the Isle of Man continues to be United Kingdom immigration legislation extended to the Island by Order in Council. However, in 2008 the existing Orders in Council from 1991 and 1997 were replaced with a new Order in Council which updated the Island's legal framework for immigration, extending relevant provisions of the following Acts of the UK Parliament to the Isle of Man:

- Immigration Act 1971;
- British Nationality Act 1981;
- Immigration Act 1988(c);
- Asylum and Immigration Act 1996;
- Immigration and Asylum Act 1999;
- Nationality, Immigration and Asylum Act 2002;
- Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;
- Immigration, Asylum and Nationality Act 2006.

2. A copy of the Immigration (Isle of Man) Order 2008, together with the subordinate legislation (including the Immigration Rules, which are also derived from those in effect in the UK) can be on the Isle of Man Government website at:

<http://www.gov.im/cso/immigration/rules.xml>

3. As previously explained, nationals of European Economic Area countries and Switzerland are not subject to immigration control but any person who is not an "Isle of Man worker" as defined in the Control of Employment Act 1975 requires a work permit before he or she can take up employment in the Island (including being self-employed). The only recent change to the Island's control of employment legislation is the Control of Employment (Exemptions) Order 2009 (made under the 1975 Act). This Order exempts certain employments from the provisions of the 1975 Act and thus from the requirement for a work permit.

4. As previously described, workers from outside the European Economic Area are governed by the Overseas Labour Scheme. However, in line with position in the United Kingdom it is planned that this will be replaced with Tier 2 of the Points Based System, under the UK immigration legislation extended to the Isle of Man during 2010.

### **Article 19, Paragraphs (1), (2) & (3)**

5. The position remains as previously described.

### **Article 19, Paragraph 4**

6. There is no substantial change to the information previously provided. However, since the previous report the Employment Act 2006 has been enacted. This Act consolidated the Employment Act 1991 and the Employment (Amendment) Act 1996. The 2006 Act strengthened individual employment rights in a number of respects. In addition, the coverage of the previous legislation was broadened so that a number of

core employment rights apply not only to employees, that is, persons who work under a contract of employment, but to wider groups of working people such as casual, intermittent and some freelance workers. Provisions providing protection against dismissal on racial and religious grounds, previously contained in the Employment Act 1991 were consolidated in the 2006 Act and the previous 1 year qualifying period that applied has been abolished.

7. Discrimination in employment on racial and other grounds will be covered much more comprehensively by the Employment (Equality) Bill. This Bill was referred to as the Employment (Discrimination) Bill in the previous report and its progress has unfortunately been somewhat slower than had been expected. The Department of Trade and Industry has now completed a consultation process on the Bill and it is in the process of being drafted.

#### **Article 19, Paragraph 5**

8. There is no change to the information previously provided. Migrant workers are treated in the same way as Isle of Man workers in respect of employment taxes, dues and contributions.

#### **Article 19, Paragraph 6**

9. Although the legal framework of United Kingdom immigration legislation applying the Isle of Man has been updated as described above, there is no substantial change to the change to the situation as previously described, which is in line with that in the UK.

#### **Article 19, Paragraph 7**

10. There is no change to information previously provided.

#### **Article 19, Paragraph 8**

11. Although the legal framework of United Kingdom immigration legislation applying the Isle of Man has been updated as described above, there is no substantial change to the change to the situation as previously described.

#### **Article 19, Paragraph 9**

12. There is no change to the information previously provided. Migrant workers are free to transfer to their country of origin such parts of their earnings and savings as they may desire.

#### **Article 19, Paragraph 10**

13. There is no substantial change to the information previously provided. However, as indicated above, The Employment Act 2006 broadened the coverage of the legislation so that a number of core employment rights apply not only to employees, that is, persons who work under a contract of employment, but also to wider groups of working people such as casual, intermittent and some freelance workers.