Section 1: Article 38 – Children and Armed Conflict

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

ii. Summary of Article
Article 38 recognises that children’s rights are particularly vulnerable to violation during armed conflict and lays down specific obligations on the State to protect children caught up in situations of war.

Article 38(1) emphasises the importance of States abiding by the relevant international and regional laws that exist outside the Convention on the Rights of the Child (CRC), in order to fully protect children during armed conflicts. The Convention was not designed to undermine or weaken any existing international standards regarding children, but was designed to set a minimum standard that all States must abide by. Therefore, Article 41 invites States Parties to always apply the norms contained either in applicable international law or in national legislation, that are the most conducive to the realization of the rights of the child.

Articles 38(2) and (3) set the age of 15 years for recruitment of children into the armed forces and their deployment to take a direct part of hostilities. Interestingly, all children under 18 years are guaranteed the rights and protection contained in all other Articles in the CRC. The age anomaly in Article 38(2)&(3) arose due to the insistence of a number of States, including the UK, who wanted to continue to recruit under-18s and deploy them in conflict situations.

Article 38(2) is limited to prohibiting the direct involvement of under-15s in hostilities. Taking a direct part in hostilities means being involved in the fighting and being expected to kill people if necessary. The State is obliged to prevent such involvement, regardless of whether the child is fighting for State or non-state forces. However, the Article fails to prohibit the indirect participation of children in hostilities e.g. where children act as support staff. This is an unfortunate omission because, although not directly participating in hostilities, the children are still considered military targets by virtue of being members of armed groups, and are therefore vulnerable to attack.

1 This paper would not have been possible without the assistance of the Task Force On Armed Conflict, and in particular William Hetherington, Peace Pledge Union.
4 “While humanitarian law instruments do not provide a definition, it is generally understood that the commission of acts which, by their nature or purpose are intended to cause actual harm to enemy personnel and matériel, amounts to a direct participation in hostilities.” “The Civilian Character of Asylum: Separating Armed Elements from Refugees”, ICRC Statement to the UNHCR Global Consultations on International Protection, first meeting 8-9 March 2001.
Article 38(3) prohibits States from recruiting children below the age of 15 years into their armed forces. For States that recruit below the age of 18, they must try to give priority to older children. Article 38(3) does not specifically prohibit conscription of 15, 16 and 17-year-olds by States into their armed forces. However, compelling children to join the armed forces would violate Article 35 (which prohibits abduction of children) and Article 32 (which prohibits forced labour) of the CRC, and therefore, should not be allowed under national law. Further, this Article does not refer to recruitment by non-state armed groups. The absence of a direct reference to non-state armed groups implies that such recruitment is not permitted for children of any age, rather than that there is no restriction on recruitment of children by such groups.

Although the Convention on the Rights of the Child specifies the age of 15 for recruitment and deployment, the Committee has made it clear that it believes that NO child under the age of 18 should be recruited, voluntarily or through conscription, or take part in hostilities either indirectly or directly. This is because children are all persons under 18 and are therefore entitled to the full protection of the CRC.

Article 38(4) requires States to do everything feasible to ensure protection and care of children who are affected by armed conflict. This obligation includes ratifying and implementing relevant international treaties that seek to promote the protection of children in armed conflict. It also requires States to ensure that their military and relevant professionals are trained in international humanitarian law and children’s rights, so that they uphold, rather than violate, the rights of children.

iii. Summary of Compliance/ Action Required
This living commentary does not consider the situation of children in the armed conflict in Northern Ireland. Please see LINK to the Living Commentary on Northern Ireland for analysis of the situation for children.

Article 38(1) – international standards:
- The UK should ratify and implement all relevant international children’s rights and humanitarian law treaties, which seek to protect children in armed conflicts. Specifically the UK should ratify the Optional Protocol on the Involvement of Children in Armed Conflicts and the Rome Statute of the International Criminal Court.

Article 38(2) – deployment:
- The UK should withdraw its declaration on Article 1 of the Optional Protocol on the Involvement of Children in Armed Conflict and change its deployment policies to fully comply with Article 1 i.e. non-deployment of under 18s in hostilities.
- The UK should abide by the standard set by the UN and by refraining from sending under-21s on peacekeeping / NATO missions. Where under-21s are deployed for this purpose, the appropriate training needs to be given.

Article 38(3) – recruitment:
- The UK is violating its obligation under Article 38(3) to give priority to the oldest when recruiting under 18-year-olds. The UK should not target children, especially disadvantaged and vulnerable children, in its advertising and recruitment campaigns.
- The terms of enlistment are complicated. The Government should take action amend current recruitment practices to ensure that all potential recruits under 18 and their parents, who need to give their consent, fully comprehend the commitment that they are making, that they understand the procedures for discharge and the fact that they waive the right to discharge if they undertake more than 2 weeks of a training or education course paid for by the Armed Forces. The Optional Protocol specifically places this obligation on the State to ensure that recruitment is truly voluntary.
- To further ensure that consent is informed, all recruitment literature should be examined and amended, so that it is accurate and clear.
- The ability to gain discharge as of right should be a widely known and easily accessible process.
- Under-18s who have gone AWOL should be sympathetically dealt with.
- The UK should take steps to prevent the recruitment of under-18s into non-state armed groups.

6 And international humanitarian law - Article 77 of the First Additional Protocol to the Geneva Conventions 1949, and Article 4(3)(c) relating to internal conflicts of the Second Additional Protocol to the Geneva Conventions 1949.
The Government should abolish the requirement for under-18 Army recruits to serve a longer minimum period than their adult counterparts (the ‘6-year trap’), and thereby bring the Army into line with the new terms for Royal Navy and RAF recruitment.

To ensure that recruitment is voluntary, in terms of Article 3 of the Optional Protocol, independent counsellors/individuals should be available at every recruiting office to ensure that under-18s and their parents or guardians are fully aware of the terms of service and the commitment being made. In addition, an Ombudsperson should be appointed to specifically deal with any queries and problems of under-18s.

**Article 38(4) – protection of children affected by armed conflict**

- The relevant principles and provisions of the Convention on the Rights of the Child and International Humanitarian Law should be taught to all personnel in the Armed Forces during training, to ensure that children’s rights are fully upheld in situations of armed conflict. Such training should extend to peacekeeping forces and military police.
- When making international financial or military assistance conditional on the non-use of child soldiers by government forces, the Government should require a minimum recruitment and deployment age of 18 years.

**Other relevant Articles:**

- Under-18s should be protected from training that risks their lives and physical integrity – e.g. endurance training, handling live ammunition
- The Armed Forces must take steps to eradicate the culture of bullying.
- The Government must ensure that there is an accessible, transparent and independent complaints procedure open to under-18s who have suffered bullying, ill treatment, abuse and violence in the Armed Forces.
- Action should be taken to ensure that the military justice system fully complies with the juvenile justice guarantees contained in the CRC.

**iv. Guidelines for periodic reports to the Committee on the Rights of the Child**

**VIII Special Protection Measures**

**A. Children in situation of emergency**

**2. Children in armed conflicts (art.38)**

123. Please provide information on the measures adopted pursuant to Article 38, including of a legislative, administrative and educational nature, to respect and ensure respect for the rules of international humanitarian law applicable to the State in armed conflicts, which are relevant to the child. In this regard, reports should identify the relevant international conventions instruments and other rules of humanitarian law applicable to the State and the measures adopted to enforce them, as well as to ensure their effective dissemination and appropriate training for professionals concerned.

124. Please indicate all the measures taken pursuant to Article 38, paragraph 2, including of a legislative, administrative or other nature, to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. In this regard, reports should also indicate the measures adopted to ensure and protect the rights of the child during hostilities. Information should also be provided on any mechanism established to monitor this situation. When relevant, indication should also be given of the proportion of children participating in hostilities, including by age, gender and social and ethnic origin.

125. Please indicate the measures adopted pursuant to Article 38, paragraph 3, including of a legislative and administrative nature, to ensure that no person who has not attained the age of 15 years is recruited into the armed forces, as well as to ensure that, in recruiting among those persons who have not attained the age of 18 years, priority is given to those who are oldest. In this regard, reports should also indicate any mechanisms established to monitor this situation, as well as the proportion of children being recruited or voluntarily enlisted into armed forces, including by age gender, and social and ethnic origin.

126. Please provide information on all the measures adopted pursuant to Article 38, paragraph 4, and in accordance with the State’s obligation under international humanitarian law to protect the civilian population in armed conflicts, including measures of legislative, administrative, budgetary and other nature, to ensure the protection and care of children who affected by an armed conflict.

127. In this regard, please indicate the relevant international humanitarian law applicable to the State, the criteria used to assess the feasibility of the measures adopted, the steps taken to identify and address the specific situation of children within the civilian population and to ensure respect for and protection
of their rights, the measures adopted to ensure that humanitarian assistance and relief programmes are promoted and put in place, including through the negotiation of special arrangements such as corridors of peace and days of tranquillity, as well as any relevant disaggregated data on the children concerned, including by age, gender, and national, social and ethnic origin. Where relevant, please also indicate the number of child casualties due to armed conflict, as well as the number of children displaced because of armed conflict.

128. When providing information on the implementation of the provisions of Article 38, please further indicate the respect ensured to the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, development and survival to the maximum extent.

v. Relevant concluding observations on the UK’s initial report\(^8\) of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland\(^9\)
37. Within the context of the law reform being considered with regard to matters relating to the employment of children, the Committee expresses the hope that the State Party will consider reviewing its reservation with a view to its withdrawal. Similarly, the Committee expresses the hope that the Government may consider the possibility of becoming a party to ILO Convention No. 138\(^10\).

The Committee did not make any specific concluding observations regarding children in the Armed Forces. However, in its examination of the UK’s report, the Committee raised issues under Article 38. The questions of the Committee and responses of the UK delegation are contained in the Summary Records.\(^11\)

vi. Relevant extracts from the Government’s second report to the Committee on the Rights of the Child\(^12\)
10.65.1 The United Kingdom’s policies on the recruitment and deployment of those under the age of 18 remain substantially unchanged from those set out in the First Report. However, personnel under 17 are no longer deployed by the Naval Service. Those policies are in accordance with the provisions of international humanitarian law, namely Article 77 of the First Additional Protocol to the Geneva Conventions 1949.

10.65.2 The Armed Forces policies on recruitment, deployment and terms of service for those under 18 were addressed by the Armed Forces Bill Select Committee in 1991. It recommended, among other things, that the Ministry of Defence should examine the terms of enlistment of those under 18. The Ministry considered those findings, and decided not to make any changes. In 1996 the Armed Forces Bill Select Committee concluded that, on balance, it believed that it would be impractical, and unpopular with all those concerned to place further restrictions on the ability of those under 18 to serve on active duty. It again recommended that careful consideration be given to requiring minors to commit themselves to a period no longer than that of adults.

10.65.3 As a result, a Working Group was set up to examine how this anomaly might be removed, and to see whether common terms of service might be introduced across the three services – the Royal Navy, the Army and the Royal Air Force. Work is now under way to draft revised terms for personnel under 18.

\(^8\) United Kingdom of Great Britain and Northern Ireland, Initial Report, 28/03/94, CRC/C/11/Add.1.
\(^9\) 15/02/95, CRC/C/15/Add.34.
Section 2: Specific issues for implementation

A. MEASURES TAKEN FOR IMPLEMENTATION

**Article 38(1) “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child”**

i. International Conventions

The first step in undertaking to respect and ensure the rules of international humanitarian law and relevant human rights law is for a State to ratify the relevant international conventions that seek to protect children (or civilians in general).

The Committee on the Rights of the Child stated that the relevant humanitarian laws and human rights law referred to in paras 1 and 4 of Article 38 are:

<table>
<thead>
<tr>
<th>International Conventions and Declarations</th>
<th>UK Ratified¹³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geneva Conventions 1-4 of 12 August 1949¹⁴</td>
<td>YES 23.09.1957</td>
</tr>
<tr>
<td>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (in particular Article 77)</td>
<td>YES 28.01.1998</td>
</tr>
<tr>
<td>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 (in particular Articles 4(3) &amp; 6)</td>
<td>YES 28.01.1998</td>
</tr>
<tr>
<td>International Convention on Civil and Political Rights 1967 (specifically Article 24(1) – “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State”). The Human Rights Committee has deemed that States’ obligations, under Article 24, include taking measures to ensure that children do not take a direct part in hostilities. (General Comment no. 17, para 3))</td>
<td>YES 20.05.1976</td>
</tr>
</tbody>
</table>

Other relevant Conventions:

<table>
<thead>
<tr>
<th>International Conventions and Declarations</th>
<th>UK Ratified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000</td>
<td>NO (but signed 07.09.2000*)</td>
</tr>
<tr>
<td>ILO¹⁵ Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999</td>
<td>YES 22.03.2000</td>
</tr>
<tr>
<td>ILO Convention No. 138 concerning Minimum Age for Admission to Employment 1973 (includes clauses on hazardous employment, and handling munitions and explosives)</td>
<td>YES 07.06.2000</td>
</tr>
<tr>
<td>Convention on the Prohibition of the Use, Stockpiling, Production and</td>
<td>YES</td>
</tr>
</tbody>
</table>

¹³ When a State ratifies an international convention, it is under an international obligation to uphold the provisions of the Treaty. When a State signs a treaty it is not bound under international law in the same way. The signature expresses a State’s general support for the treaty and indicates an intention to ratify, and be bound by the treaty at a later date. However, under international law, once a State has signed a treaty, it is bound not to go against its object and purpose (Article 18(a) Vienna Convention on the Law of Treaties 1969).

¹⁴ supra 2

¹⁵ International Labour Organisation
* On signing the Optional Protocol, the UK entered a declaration regarding Article 1. The declaration interprets ‘all feasible measures’ (to ensure those under 18 do not take a direct part in hostilities) very narrowly. The living commentary will analyse this declaration further below.

Other relevant, but non-binding, international standards identified by the Committee on the Rights of the Child are The Declaration on the Protection of Women and Children in Emergency and Armed Conflict\(^\text{16}\) and The Declaration on the Rights of the Child\(^\text{17}\).

\[^{16}\text{GA res. 3318 (XXIX), 14 December 1974.}\]

\[^{17}\text{GA res. 1386 (XIV), 20 November 1959, Principle 8: "The child shall in all circumstances be among the first to receive protection and relief".}\]
Article 38 – Living Commentary – © Rachel Harvey, Children and Armed Conflict Unit, Children’s Legal Centre June 2002

B. PARTICIPATION IN HOSTILITIES

A38(2) “States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities”

- Has the State taken appropriate steps to ensure that children under the age of 15 do not take a direct part in hostilities?
  Yes. Children under the age of 15 do not take a direct part in the hostilities, as the minimum age for recruitment into the Armed Forces is 16.

- Has the State taken appropriate steps to ensure that children under the age of 18 do not take a direct or indirect part in hostilities?
  No. The UK is the only European country that sends minors to take a direct part in hostilities as a matter of course. However, in anticipation of the Optional Protocol on the Involvement of Children in Armed Conflicts the Armed Forces being ratified, the MoD (in collaboration with the Foreign and Commonwealth Office) is in the process of writing an explanatory memorandum to be laid before Parliament, which will detail how the Armed Forces will change their deployment practices so that they conform with the relevant provisions of the Optional Protocol. The impact, in reality, that the introduction of this policy will have on deployment practices is unclear, due to the declaration that the UK entered on signing the Optional Protocol.

i. Current policies on the deployment of under 18s

When the Government submitted its second report to the Committee on the Rights of the Child, it had not signed the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, which obligates States to take all feasible measures to ensure that members of its armed forces, who have not attained the age of 18 years, do not take a direct part in hostilities. Therefore, the UK’s report does not reflect the implications that signing and imminent ratification of the Optional Protocol will have for Armed Forces’ policy.

In its second report the Government stated, “[t]he United Kingdom’s policies in ... deployment... of those under 18 remain substantially unchanged from those set out in the First Report. However, personnel under 17 are no longer deployed by the Naval Service. Those policies are in accordance with the provisions of international humanitarian law; namely Article 77 of the First Additional Protocol to the Geneva Conventions 1949”.

In its 1995 Initial Report to the Committee on the Rights of the Child, the UK said “[f]or under-18s the age of the recruit is taken into account in determining the type of duties they are employed on. Under-18s are less likely to take part in hostilities than over-18s”. The report also gave ages for deployment, which ranged from 16-18 for emergency service overseas. The UK delegation, at the examination of the UK’s initial report, stated that military authorities ensured that the recruits did not engage directly in combat.

Since the UK’s initial report in 1995 to the Committee on the Rights of the Child, the Select Committee on the Armed Forces Bill has examined the policies on recruitment and deployment of under-18s. In

19 See media reports – “Youngest tank driver is ready for battle at just 17”, The Sunday Telegraph, 11 July 1999 (serving in Macedonia).
20 The UK deploys a large proportion of its Armed Forces in overseas operations or on duty in Northern Ireland. In 2000, deployment included: Northern Ireland: 12,800; Germany: 20,610; Gibraltar: 330; Bosnia: 2,700; Cyprus: 3,512; Belize: 180; Brunei: 1,050; Yugoslavia: 3,500 (Global Report on Child Soldiers, Coalition to Stop the Use of Child Soldiers, June 2001, pg. 378). In 1999 it was estimated that over 47% of armed forces’ personnel were on mission overseas or in Northern Ireland, (United Kingdom, U-18s: Report on Recruitment and Deployment of Child Soldiers, Amnesty International, November 2000, AI Index: EUR 45/57/00 (henceforth Amnesty International Report), pg. 7).
21 The UK signed the Optional Protocol on 7th September 2000.
22 para 10.65.1.
24 ibid, para. 543.
25 Summary records CRC/C/SR.206 , para 49.
26 The disciplinary systems of the three Armed Services are underpinned by the three Service Discipline Acts: the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. These Acts only last for a year at a time but may be renewed each year, by Order in Council after affirmative resolution of both Houses of Parliament, for a maximum of five years. Before the end of the fifth year, they must be renewed by primary legislation – the quinquennial Armed Forces Bill. A Select Committee is set up once every 5 years to examine the quinquennial Bill and recommend any amendments that they think are appropriate.

7
1996 (as stated in the UK’s report), the Select Committee on the Armed Forces Bill concluded that it would be impractical and unpopular with all concerned to place any further restrictions on the ability of under-18s to serve on active duty. The Select Committee on the Armed Forces Bill 2001 did not make any comment or recommendations on the matter of deploying under-18s or the significance of the UK signing the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

There are no statutes governing deployment of under-18s in the Armed Forces. However, guidelines specify the following minimum ages for deployment:

- 17 years for the Navy and Royal Marines (absolute bar on under 17s in submarines)¹⁷
- 17 years 3 months Army²⁰
- 17 years 6 months Air Force (absolute bar on under 18s in aircrews in all sections of the Armed Forces)²⁶
- 18 years in Northern Ireland (except for Army personnel restricted to barracks - 17 years 6 months)²¹

These guidelines lay down minimum ages, which constitute the lowest deployment ages in Europe.

If the non-deployment of personnel under these minimum ages would destabilise the unit that they are part of, then the Ministry of Defence reserves the right to deploy younger recruits. Arguing against non-deployment of under-18s, the MoD claims that once children are trained in the Armed Forces, they are considered to be professionals and are treated as such. They play an important role in their unit, and their removal would undermine the effectiveness and cohesiveness of the unit, be demoralising and unpopular and add to the training burden.³³ The Ministry also reserves the right to deploy recruits of any age if there is a major international conflict.³³

The MoD does not talk about personnel taking a direct part in hostilities, rather it distinguishes between deployment on active service (this can mean to take a direct or indirect part in hostilities), and non-deployment, so it is difficult to determine how many under-18s are directly and indirectly taking part in hostilities in terms of the Convention on the Rights of the Child. However, general figures are available. Over 200 under-18s participated in the Gulf War.³⁴ “Some 50 under-18s served among the British contingent serving in the KFOR peacekeeping force in Kosovo, despite the ban on under-18s in UN peacekeeping forces”³⁵. Under-18s were deployed in Macedonia³⁶ and recently, a 17-year-old was included in the British Army contingent to the NATO force sent to collect Albanian rebel weapons in Macedonia, and 10 Royal Navy personnel under 18 served on ships in support of operations in East Timor³⁷. In March 2002, the BBC reported that it was thought that some under-18s had been withdrawn from the contingent being sent to battle al-Qaeda and Taleban forces in Afghanistan.³⁸ Recently a spokesman for the MoD stated that there are 5000 under-18s in the three Armed Forces, around 40 of whom are currently deployed in operations³⁹.

ii. Deployment of women

²⁷ Before 1998, under-17s could be deployed in Royal Navy surface vessels or as members of Royal Marine Units but this policy was reviewed and the age for deployment was raised to 17 years. Doug Henderson, HC Col 1161W October 22 1998.
²⁹ United Kingdom of Great Britain and Northern Ireland, Initial Report. 28/03/94, CRC/C/11/Add.1, para 543. The MoD claims that all personnel undergo general and trade-specific training before being placed in their first duty unit and that this period of training ensures that personnel under 17 years 3 months are not normally employed on operational duties. The word ‘normally’ is qualified by the further statement that exceptions may have to be made to the policy in the event of a major international conflict, when all personnel would need to be available for use (letter from Doug Henderson, Minister of State for Armed Forces, to Paul Goggins MP, 9 November 1998).
³⁰ The ‘Notice Paper - Regular Army - Full Time’ states that ‘all applicants’ may be called upon when all personnel would need to be available for use (letter from Doug Henderson, Minister of State for Armed Forces, to Paul Goggins MP, 9 November 1998).
³¹ United Kingdom of Great Britain and Northern Ireland, Initial Report, 28/03/94, CRC/C/11/Add.1, para 543. The MoD claims that all personnel undergo general and trade-specific training before being placed in their first duty unit and that this period of training ensures that personnel under 17 years 3 months are not normally employed on operational duties. The word ‘normally’ is qualified by the further statement that exceptions may have to be made to the policy in the event of a major international conflict, when all personnel would need to be available for use (letter from Doug Henderson, Minister of State for Armed Forces, to Paul Goggins MP, 9 November 1998). The ‘Notice Paper - Regular Army - Full Time’ states that ‘all applicants’ may be called upon when all personnel would need to be available for use (letter from Doug Henderson, Minister of State for Armed Forces, to Paul Goggins MP, 9 November 1998).
³² HC Col 14W, 28 January 2002, Mr Ingram. See section Biv for further information on Northern Ireland.
³⁴ Letter from Douglas Henderson, Minister for the Armed Forces, to Paul Goggins MP, 9 November 1998.
³⁶ For further information on UN peacekeeping forces see Article 38 – Living Commentary – © Rachel Harvey, Children and Armed Conflict Unit, Children’s Legal Centre June 2002.
³⁸ MoD letter to Amnesty International of 1 December 1999 in Amnesty International Report, op. cit., pg. 3.
³⁹ Amnesty International Report, op. cit., pg. 7.
⁴¹ “Britain to formally end use of ‘boy soldiers’ in warfare”, Child Labour News Service Release, 1 April 2002.
Women number about 17,000 in the Armed Forces, representing about 12.5% of the Armed Forces. They can apply for approximately 75% of the posts, but are not permitted to apply for posts where the job involves killing the enemy in direct fire e.g. Army Infantry and Household Cavalry/ Royal Armoured Corps.

The MoD maintains the position that mixed teams could adversely affect the combat effectiveness of an armed force. However, in May 2000, the Army carried out a trial to test whether women had the ability to serve in the front line in combat roles alongside men and what method of training (i.e. mixed or single sex units) worked best to enable women to serve in these roles. This trial was carried out to determine whether an increase in the number of positions women can serve in was feasible and appropriate.

In September 2001, it was reported that one 17-year-old female sailor (a communications rating) was on board a British naval ship on exercise near Oman, which had been put on red alert following the terrorist attacks in USA. The Royal Navy offered to fly her home, asserting that they disliked sending under-18s into combat. However, this offer was declined.

iii. Deaths and injuries of under-18s in armed conflict, either in combat or as the result of hostile action, since 1 January 1971

- Northern Ireland – three deaths
- Gulf War – two deaths
- Falklands – two deaths (and one young man killed on his 18th birthday)
- Between January 1980 and 1 March 2000, 10 under-18 Armed Forces personnel were injured as a result of hostile action during conflict.

A further 88 Service personnel aged 16 and 17 have died outside conflict situations since 1 January 1982. While nearly half these deaths occurred off duty, mainly in traffic accidents, five under-18s died in accidents on duty and a further 12 died during training.

iv. Special case of Northern Ireland

In 2000, there were 12,800 troops deployed in Northern Ireland. However, under-18s are not deployed to take part in street patrols in Northern Ireland. According to the MoD, this is because once the additional specialist training, needed for troops to go on street patrols in Northern Ireland, is carried out the young recruits are over 18. Although under-18s are not deployed by any branch of the Armed Forces to take a direct part in hostilities i.e. on operational patrols, they can still be deployed to undertake barrack duties (indirect participation). However, only the residential units, which solely recruit locally within Northern Ireland and whose operational duties are confined to Northern Ireland, i.e. the Home Battalions of the Royal Irish Regiment, can deploy under-18s for barrack duties. The minimum age for barrack duties is 17 years and 6 months. As part of the military, even those not on street patrols are seen as legitimate targets and are therefore liable to attack by paramilitary groups, who oppose the presence of the British Forces/ Government in Northern Ireland.

The non-deployment of under-18s in Northern Ireland for direct participation seems less to do with the additional specialist training deemed to be needed and more pertinent to the Government taking action to prevent further deaths of under-18s in Northern Ireland, following the killings that occurred in the early 1970s in connection with the Troubles. (One under-18 recruit was killed in Belfast in 1971 and two others were killed by the IRA in Britain in 1974). The policy regarding different ages for deployment for direct participation in hostilities for Northern Ireland and for the rest of the world was
not debated by the 1996 Select Committee on the Armed Forces Bill, but merely stated without comment.

v. Deployment in Peacekeeping Forces
The UN Secretary General recommended in 1998 that all UN peacekeepers be at least 18 but preferably 21, due to the nature of the missions and the special maturity needed to successfully carry out peacekeeping missions. This policy was supposed to serve as an example for police and military forces worldwide and to “ensure that the UN benefit from experienced and mature uniformed personnel able to perform their duties according to the highest standards of the organisation”.54

The UK claims it has recognised this UN guideline on the deployment of peacekeeping troops and accordingly implements the minimum age of 18 for UN ‘blue beret’ missions e.g. Cyprus. Although it must be noted, that in 1999, the Secretary of State for Defence said that with regards to the UN policy “we have made it clear that should a Royal Navy ship, for example be sent to support a UN peacekeeping operation at short notice it may have a small number of 17-year-olds on board whom it is impractical to withdraw”.55

NATO has no such policy on the minimum age for deployment of personnel, and Britain has not extended the spirit of the UN guideline to NATO led missions. When British troops have participated in peacekeeping missions for NATO (which are under UN resolutions but are not ‘led’ by the UN, i.e. Balkans), under-18s have been deployed to directly (and indirectly) participate in the missions.56

Much of the work of NATO (but not all) involves peacekeeping. The UN has said that troops involved in peacekeeping need special training and skills. While the Ministry of Defence claims to have recognised the need for troops to have special training to undertake the delicate missions in Northern Ireland, it does not seem to feel that the same level of training is needed for equally delicate peacekeeping missions in countries around the world, where there are far greater cultural and linguistic differences than those that exist between Britain and Northern Ireland.

Further, Amnesty International, in its report on the UK Armed Forces, highlighted the lack of specific training given to enable them to effectively and safely carry out peacekeeping missions.57 The skills needed for armed forces deployed on peacekeeping missions are different from traditional skills needed for conflict. Armed forces are trained to fight rather than to police communities and prevent and diffuse conflict. Taking on the latter roles needs a certain attitude and level of maturity. As noted by experts, this confusion of role causes an identity crisis among the armed forces which young men might have problems dealing with,58 and this in turn may put themselves and their unit, as well as civilians, in danger.

vi. Compliance with the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
Article 38 of the Convention on the Rights of the Child does not prohibit the deployment of troops under the age of 18 despite the fact that the CRC defines children as all persons under 18 years, in Article 1. All children under 18 are afforded the protection of the Convention, with the exception of Article 38 - recruitment into the armed forces and participation in hostilities. Over the past 5 years there has been a shift in international thinking regarding the participation of under-18s in armed conflict and a huge push by the international NGO community to raise the age for recruitment and deployment to 18 for both government and non-state armed forces. This push resulted in the drafting and the adoption, by the General Assembly, of the Optional Protocol to the Convention on the Rights

53 Kofi Annan, the UN Secretary General, established this new policy in his capacity as Commander-in Chief of the UN peacekeeping operations.
54 Bernard Miyet, UN Under-Secretary General for Peacekeeping, address to the Fourth Committee of UNGA, 29 October 1998.
55 Letter from George Robertson, Secretary of State for Defence, to Ann Clwyd MP, 22 July 1999.
56 North Atlantic Treaty Organisation
58 Amnesty International Report, pg. 10, cited the Article, “Training of soldiers for UN duty ‘insufficient’”, The Irish Times, 13 May 2000. According to the MoD, formations and units conduct about 4-6 weeks of their own designated non-military training for Peace Support Operations, before deploying on such operations. They are also required to complete a mandatory five-day training programme provided by the UN Training Advisory team covering the following non-military topics: stress management, legal aspects of the use of force; law of armed conflict; health training; health and safety training; substance abuse; driving and driver safety; hygiene and environmental health; working with non-governmental organisations; language training; negotiation techniques; media training”.
60 General Assembly resolution A/RES/54/263 of 25 May 2000.
61 Unless majority is attained earlier. In the UK the age of majority is 18.
of the Involvement of Children in Armed Conflict. The Optional Protocol came into force on 12 February 2002\textsuperscript{62}.

Article 1 deals with participation in hostilities. It provides that States Parties shall take “all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”.

This is an important breakthrough. However, the wording of the Article is not as strong as it might be. In particular, it requires only that “all feasible measures” be taken to ensure that under-18s are not deployed to take a direct part in hostilities. The question of what is and is not “feasible” in a particular context is likely to be controversial, and stands in need of further clarification. Further, the Optional Protocol does not prohibit the deployment of under-18s to indirectly participate in hostilities.

The UK signed the Optional Protocol on 7th September 2000. The UK entered a declaration\textsuperscript{63} regarding Article 1 upon signing.

**Declaration\textsuperscript{64}**:

“The United Kingdom of Great Britain and Northern Ireland will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities. The United Kingdom understands that Article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where:

a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and

b) by reason of the nature and urgency of the situation:

i) it is not practicable to withdraw such persons before deployment; or

ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and-or the safety of other personnel.”

This declaration greatly weakens the protection provided by Article 1 of the Optional Protocol, as it allows the UK to deploy under-18s if it feels it needs to. This declaration reflected the unwillingness of the UK Government, despite international pressure, to change its stance in deployment of minors. In fact, the UK openly objected to the consensus reached among a large number of States in the negotiations regarding the Optional Protocol to raise the age of deployment to a straight 18 – one of the reasons that Article 1 is not as strongly worded as it could have been\textsuperscript{65} (i.e. “all feasible measures” instead of “all measures”).

It is expected that the UK Government will ratify the Optional Protocol later this year.\textsuperscript{66} In anticipation of this ratification, the MoD and the Foreign and Commonwealth Office are currently drafting an explanatory memorandum, to be laid before Parliament prior to ratification, “which will give concrete form to the commitment, and accompanying declaration, ... made on signing the optional protocol to ensure that all feasible measures are taken to avoid the direct participation in hostilities by any ...serving personnel who are under the age of 18”\textsuperscript{67}.

It is anticipated, therefore, that the explanatory memorandum will lay out new deployment practices, whereby personnel will only remain with their unit in circumstances where removing them will undermine the effectiveness of their unit\textsuperscript{68}. While such a change in practice would be welcome and would seem to be a development from the UK’s general resistance to curtail their ability to deploy

\textsuperscript{62} Three months after the requisite 10th ratification was deposited (Article 10 OP). As of 10th April 2002, there were 14 State Parties and a further 77 signatories.

\textsuperscript{63} On signing or ratifying an international agreement, a State, if it wishes, can make a declaration or a reservation on Articles within the document. In both cases, a State agrees to implement the Articles in the treaty but either reserves the right not to apply certain provisions (reservation), or declares that specified provisions will be applied in line with its own interpretation (declaration).

\textsuperscript{64} The United Kingdom's declaration upon signing the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (UN Doc CRC/C/16 Annex IV).

\textsuperscript{65} Amnesty International Report, pg. 13.

\textsuperscript{66} In British practice, treaties do not have to be approved by Parliament before ratification, as the Crown has the prerogative to ratify any treaty without the consent of Parliament. However, a practice has developed whereby the text of every treaty due for ratification is laid before Parliament for a period of 21 days before ratification – the ‘Ponsonby rule’.

\textsuperscript{67} Mr Ingram, HC Col 314W, 30 January 2002

\textsuperscript{68} Despite reports in the press on 29 March 2002 ("Britain bans boy soldiers going to war", Michael Smith, Daily Telegraph, 29 March 2002, p1, picked up on by the BBC, “Boy soldiers banned from conflict”; BBC Online, 29 March 2002 and NGOs, “Britain to formally end use of ‘boy soldiers’ in warfare” Child Labour News Service Release, 1 April 2000) that the MoD had made an announcement that the UK intended to cease the deployment of under-18s in actual hostilities, no such announcement was ever actually made. (Telephone conversation with Commander Tim Hasker, MoD, 10 May 2002)
under-18s, it would be open to a number of criticisms. Such a policy would follow the declaration of
the UK Government, which, as stated, greatly waters down the obligation under Article 1. To comply
with the Optional Protocol obligations, in the light of this declaration, the Armed Forces would need to
do little to change their current practices. The MoD emphasised that it already avoids sending under-
18s into conflict “where feasible”, while admitting that in practice under-18s were on occasion
deployed. “A young radio operator or technician on a ship that urgently went into a battle zone could
remain on board to fulfil a particular role”69. For a new policy to have a real impact on deployment,
training methods would need to be revised to ensure that under-18s are not made an integral or
important part of Armed Forces’ units.

The Coalition to Stop the Use of Child Soldiers also criticised the decision to continue to send under-
18s on humanitarian missions. This policy would go against UN peacekeeping guidelines (outlined
above) that no one under 18, and preferably 21, should be sent on peacekeeping operations.

Interestingly, it was reported that the MoD stated: "The protocol is really aimed at countries that
forcibly use child soldiers - not countries like Britain where deciding to join the armed forces is one’s
choice".70

vii. Comment
For deployment policies to change so as to ensure exclusion of under-18s, two major changes need to
take place. Firstly, training methods must be changed so that under-18s do not become essential
persons in units that may be deployed, making it impractical, unpopular and unfeasible, as the MoD
sees it, to leave them behind or pull them out. Secondly and preferably, the age for deployment should
be enshrined in enforceable legislation at 18 years.

70 “Britain to formally end use of ‘boy soldiers’ in warfare”, Child Labour News Service Release, 1 April 2002.
C. RECRUITMENT

Article 38(3) “States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.”

- Has the State ensured that no child under the age of 18 is conscripted into the armed forces?
  Yes. There is no conscription for any person regardless of age in the UK.

- Has the State adopted legislation and other appropriate measures:
  - to prevent the recruitment of children who have not attained the age of 15 into the armed forces?
    Yes. While there is no statutory minimum age for Armed Forces recruitment in the UK, the Armed Forces do not recruit those under the age of 16.
  - to prevent the recruitment of any child under 18?
    No. The Armed Forces can recruit children from the age of 16 years. The age of 16 was set for both males and females by the MoD and the changes were implemented for the Navy in August 1991, for the Army in September 1991, and for the Air Force in December 1993.

Further, children cannot leave school until they are 16, as the period of "compulsory school age" lasts from 5 years to 16 years, so there is also a negative prohibition on the recruitment of under-16s into the Armed Forces.

Although the Convention on the Rights of the Child specifies a minimum age of 15 for recruitment, the Committee expressed its concerned about the enlistment of under-18s into the Armed Forces. In its examination of the UK’s initial report it asked whether the UK would consider raising the age for recruitment to 18 or when recruiting under-18s, give priority to the oldest. The Committee also questioned why so many young men enrolled at a very early age into the Armed Forces and whether the Government offered them any alternative prospects.

In response to these questions, the UK delegation said that young people aged between 16 and 18, who enlisted, could not be considered children within the meaning of the Convention because they were taking charge of their own future. They made that choice of their own free will, with the consent of their parents, believing it to be a positive experience.

Further, the Select Committee on the Armed Forces Bill 2001 said: “We believe it continues to be important to recruit young people straight from school, including at the age of 16; if they are not

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The standard in the CRC reflects international humanitarian standards for recruitment prior to the Optional Protocol: Article 7(2), Additional Protocol 1 (international conflicts) to the Geneva Convention 1949 (1977), specifies that States shall refrain from recruiting under-15s into their armed forces; Article 4(3) Additional Protocol 2 (internal conflicts) states that children shall not be recruited into the armed forces or groups. In addition, more recently, The Rome Statute of the International Criminal Court (The ‘Rome Statute’, adopted July 1998 by the UN diplomatic conference) establishing the International Criminal Court, made the recruitment (conscription or voluntary enlistment) of under-15s a war crime in both international (Article 8(2)(e)(xxvi)) and non-international conflicts (Article 8(2)(e)(vii)).

The minimum age of recruitment for men into the Armed Forces is only enshrined in secondary legislation with regards some terms of service in the Air Force. (Royal Air Force Terms of Service (Amendment) Regulations 1990, Regulation 2(2))

A child may not legally leave school until the last Friday in June of the school year during which they reach the age 16, or if his or her birthday falls after that date, but before the start of the next school year. Education (School Leaving Date) Order 1997, made under the Education Act 1996, section 8(4), Isle of Man Education Act 1949, sect. 65.

The reduction in the minimum age for recruitment of females into the Armed Forces, albeit presented as in the interests of gender equality, appears contrary to Article 38(3), which stipulates that priority should be given to the oldest in recruiting under-18s.
caught at this point, they are likely to take up other careers and be permanently lost to the Armed Forces.  

Therefore, since the Committee’s examination of the UK’s initial report in 1995, the policy on recruiting under-18s has not changed and in fact there has been a drive to recruit ever-increasing numbers of 16-18-year-olds. Indeed, approximately 40 % of the current military personnel in the UK joined when they were 16 or 17.

Has the State adopted legislation and other appropriate measures to give priority to the oldest in recruiting any child under 18?  
No. In fact there is an open campaign to recruit youngsters as close to 16 as possible.

i. Recruitment of under-18s  
There are currently between 6,000 and 7,000 under-18s (male and female) in the Armed Forces. The UK recruits more under-18s to serve in its Armed Forces than any other European State.

The minimum age of recruitment has remained largely unchanged since the initial report of the UK:

- British Army - 16 years, 17 year and 9 months for Officers
- Royal Navy - 16 years, 17 years for Officers
- Royal Marines - 16 years, 17 years for Officers
- Royal Air Force - 16 years for the support trades section, 17 years and 6 months for Officers, NCO Aircrew, police and fireman.

- Volunteer reserves (part-time Armed Forces) - Army (Territorial Army) - 17 years, recently reduced from 17 years 6 months, Navy (Royal Naval Reserve)/ Marines (Royal Marines Reserve) - 16 years 9 months, Air Force (Royal Auxiliary Air Force) - 18 years.

In joining the Armed Forces, under-18s are given the same responsibilities and roles as their adult colleagues. However, in other spheres of life, under-18s are prevented from taking on adult roles. The UK Coalition to Stop the Use of Child Soldiers noted that “under-18s may not vote, drink alcohol or join the police force” but can join the Armed Forces. Amnesty International also noted that most police forces have a minimum age of recruitment set at 18 years and 6 months (21 years in Greater Manchester) and that firearms training (an integral part of basic training for the Armed Forces) does not begin until the police officer has not only completed general training, but also has some experience of policing. In the Metropolitan police the applicant must be 25, with a minimum of 6 years experience in policing, before training in firearms is given.

ii. Recruitment of overseas under 18s  
Gurkhas are recruited from Nepal from the age of 16, and serve exclusively in the Brigade of Gurkhas.

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80 para. 63.  
81 Amnesty International Report, pg. 16.  
82 In the Global Report on Child Soldiers it was estimated that there are 6,000-7,000 under-18s into the Armed Forces.  
83 “Britain recruits more minors to serve in its forces than any other European State”, The Independent, 19 October 1999.  
84 www.army.mod.uk/careers/enquiry/sol_entry_require.htm and www.army.mod.uk/careers/enquiry/o_entry_require.htm  
85 Army recruits below the age of 18 have five routes into the Army, dependent on their precise age, acceptability by the Army (including educational qualifications) and personal choice – a) School Leavers Scheme: between 16th birthday and 17 years for entry to most combat regiments and certain corps, b) Army Foundation College: between 16th birthday and 17 years one month for entry to most combat regiments, c) Army Technical Foundation College: between 16th birthday and 18 years six months for entry to technical corps, d) Single Entry from 16 years six months for direct ‘adult’ entry to support corps, e) Single Entry from 16 years nine months entry to combat regiments.

86 www.royal-navy.mod.uk/static/content/329.html. Navy recruits have two routes open to them - the Open Engagement for recruits aged 16 years and above and the Short Engagement (Seaman) for recruits aged 16 years 8 months and above.

87 www.royal-navy.mod.uk/static/content/329.html. The minimum age requirement for entry to the Royal Navy and Royal Marines Reserve is the same as for the regular service.

88 The minimum age for recruitment in one category of recruitment to the Royal Air Force was lowered from 17 years 6 months by the Royal Air Force Terms of Service (Amendment) Regulations 1990, Regulation 2(2).

89 www.raf-careers.com  


94 Amnesty International Report, pg. 20.
iii. Recruitment process

Although 16 is the lowest age for recruitment, the recruitment process for the British Army, Royal Navy, Royal Marines and Royal Air Force can begin at 15 years and 9 months. In this way, the paper work can be completed before they are 16, enabling the new recruits to enter on their 16th birthday. Recruits to the Royal Navy, Royal Marines and Royal Air Force attest (enrol) within 24 hours of their arrival at the training unit. Army recruits attest at their local Armed Forces Careers Office and are then sent on unpaid leave until they are called to begin training.\(^9\)

All potential recruits under the age of 18 must obtain the written consent of their parents or guardians,\(^96\) witnessed by a person of standing in the community. The parents or legal guardians receive a consent form that they must fill in to enable the under-18-year-old to enlist – ‘Consent of parent(s) or guardians to enlistment under the age of 18’\(^97\). Although the MoD insists that great care is taken to ensure that young people understand precisely the nature of the commitment they are making and that it takes every measure to ensure transparency,\(^98\) there are concerns that the new recruits and their parents/guardians do not fully understand the commitment that they are making. The issue of informed consent is discussed in full in section Cvi, in terms of the UK’s obligations under the Optional Protocol on the Involvement of Children in Armed Conflict.

iv. Targeting under 18s

As well as violating Article 38(3) of the Convention on the Rights of the Child, the UK Armed Forces’ practice of recruiting persons as close to 16 years also violates Additional Protocol 1 to the Geneva Conventions (Article 77(2)), which requires States to endeavour to give priority to the oldest, if recruiting under the age of 18. Targeting under-18s so that they are not lured away by other careers and so lost to the Armed Forces\(^99\) also goes against Article 3 of the CRC, which specifies that ‘the best interests of the child shall be the primary consideration’. In targeting children, the primary consideration is recruitment numbers.

Between 1994 and July 1999, the Armed Forces spent £6 million on advertising campaigns to attract 16-24 year olds\(^100\) (and younger as the recruitment process can start at 15 years and 9 months). This investment worked. In 1997, after 6 years of decline in the number of under-18 recruits, there was a sudden jump in the numbers of children being recruited, and a steady increase in the intake of under-18s in the following years.\(^101\) The yearly recruitment of under-18s now represents 1/3 of the annual intake into the Armed Forces.

“In 1998, asked to justify the UK policy concerning the operational employment of personnel under 18, the Minister of State for the Armed Forces referred, preliminarily, to the armed services’ need to recruit about 25,000 volunteers each year, in order to support the UK’s commitments at home and abroad. He then referred to existing strong evidence, which suggested that those recruited under 18 years of age responded better to training and tended to stay longer in the services. Third, the Minister mentioned the increasing competition from other employers for suitable recruits and admitted that competition increased once potential applicants gained qualifications from further education”\(^102\)

The Select Committee on the Armed Forces Bill 2001 agreed “... that publicising the education and training opportunities available in the Armed Forces is a key recruitment tool which the Service must exploit if they are to continue to attract sufficient numbers of young people from a shrinking pool in a competitive employment market.”\(^103\)

However, “[w]hat the MoD claims to be the offer of a career opportunity looks like the exploitation of the limited contractual power of children with very few, if any choices. This concern is strengthened by

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\(^{93}\) Amnesty International Report, pg. 21.

\(^{96}\) Part 1 section 2(3), Army Act 1955, as amended by the Armed Forces Act 1971, section 63(1). If neither a parent nor guardian exists, who can give the requisite consent, that consent can be provided by any person, under whose care (whether in law or fact) the person is (s2(3)(c)). The Armed Forces Act 1966, contains the same recruitment requirements for the Royal Air Force (s2(1), as amended by the Armed Forces Act 1971 section 63(1)) and for the Royal Navy (s9(1), as amended by the Armed Forces Act 1971, section 63(2)).

\(^{97}\) MoD form 486. A soldier found to have irregularly enlisted without parental consent is to be discharged if still under 18 when the matter comes to light, Queen’s Regulations Army, 9.382. A person having irregularly enlisted in the Royal Navy without parental consent is to be discharged if the recruit or parent complains within three months of enlistment (section 10, Armed Forces Act).

\(^{98}\) Amnesty International Report, pg. 21.


\(^{101}\) Defence Analytical Services Agency, Amnesty International Report, pg. 16.

\(^{102}\) John Reid’s, Minister for the Armed Forces, letter of 15 July 1998 to Phil Willis MP, and Douglas Henderson’s, Minister for the Armed Forces, letter of 9 November 1998 to Paul Goggins MP, Amnesty International Report, pg. 16.

\(^{103}\) Report of Select Committee on the Armed Forces Bill 2001, para 63.
the fact that only three percent of soldiers who joined as children have become officers.”

One MP, commenting on the MoD’s claim that they need to recruit at 16 rather than 18 because young people are likely to take up other educational and other opportunities that lead them into other careers, said that such a policy could be interpreted as, “Let’s get them early—before they know any better.”

While the international community are moving away from recruiting under-18s, endeavouring to end this practice through international legal instruments, the UK not only continues to recruit under-18-year-olds, but also has actually launched a targeted campaign to recruit 16-18 year olds.

**British Army**

Of the branches of the Armed Forces, the British Army has the most active campaign to target under-18s.

Since 1998, the campaign by the British Army has included launching merchandise intended to appeal to young people, distributing CD-ROMs, called ‘Wargames’ and ‘First Contact’, to schools, at public events and free with newspaper advertisements. The Armed Forces Minister, John Reid, denied that children were being targeted for recruitment by these means and claimed that the CDs were merely a way of informing young people about the activities of the Army and its work. Most recently, the Army launched a TV advertising campaign, using images and story lines that particularly appeal to, and seem aimed at, young people.

To target young people in schools, the Army has established an Army Schools Presentation Team, which regularly visits schools and youth organisations to talk to 14-18 year-olds about opportunities in the Army. Further, children are encouraged to attend military events and open days, play with unloaded weaponry and on the tanks and take part in training exercises - target practice, abseiling and camouflaging.

The Army also has the Pathfinder scheme for young people who are under 16. This scheme allows under-16s either to visit (for one to five-days) to find out what soldiering is all about or undertake a work placement for one or two weeks with the Army. The Army brochure says that such a placement will allow the young person to learn about the 10 plus trades that are on offer.

On the British Army web site there is a section dedicated to young people aged 12-17 - ‘My Camouflage’. To gain direct access to the main section of this part of the site you are required to be over 14 and under-17-years-old, or have parental consent if you are under-14. Without parental consent, those under the age of 14 are only allowed access to certain sections of the site where they can find information about the Army, play games, get survival tips and follow the adventures of the Army. However, it is quite simple to give false information to gain access to the whole site. This site contains basic computer games (e.g. ‘Target’), competitions and detailed information about weaponry and Army vehicles. Further, ‘My Camouflage’, provides detailed information about careers in the Army and a facility, which enables on line chats with Army career advisers. Generally, this site glamorises the Army lifestyle, portraying it as an ’oversized adventure game’ for young people and glosses over the difficulty in leaving the Army once enlisted. “Army: Make a Difference” is a free magazine for all young people signed up to the ‘My Camouflage’ page. The magazine provides information about careers and “the real story about life in the Army”. As with the website, the magazine makes life in the Army sound exciting and attractive.

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106 Optional Protocol – although the final document does not raise the age of recruitment for States to 18, the international community were pushing for a straight 18 in negotiations. The opposition of the USA and the UK to this move led to a weaker provision whereby it was left up to States to raise their own national ages for military recruitment, if they so wished.
107 However, in its Armed Forces Overarching Personnel Strategy, the MoD did identify the need for all the Services to remain attractive to young people and to this end the need to “achieve maximum awareness of the Armed Forces amongst all elements of the nation’s youth and their gatekeepers”, MoD, Armed Forces Overarching Personnel Strategy, February 2000, pg 32.
110 To view the advertisements see www.army.mod.uk.
112 Brochure ‘Army Soldier’ CP(A)95, May 2000.
113 www.army.mod.uk and then click on the ‘My Camouflage’ page.
114 12-14-year-olds can only see the introductory pages.
115 e.g. the Hood River Diaries, which record the experiences of the personnel on the Joint Services Hood River Expedition to a remote and hostile environment.
116 Amnesty International Report, pg. 22.
117 Flyer for Camouflage, which also displays the slogan: “The adventure starts here.”
The RAF and Royal Navy/Marines also have websites. Both provide information on recruitment for under-18s but do not target this age group. However, there is a sea cadet website specifically aimed at young people.118

- Targeting vulnerable youth
  The Armed Forces further target their campaign by focussing on under-18s from areas of social and economic deprivation, where there is high unemployment119 and low education levels120 e.g. Swansea, west Wales, Newcastle, Gateshead and South Tyneside for the Navy, Tayside, Sheffield and Rotherham for the Army, and Wirral and East Midlands for the RAF. A good salary, training and the chance of a secure career will be particularly attractive to a number of young people in these areas.

"The appeal of the salary was plainly admitted by Peter Elliot, 18, a recruit interviewed during the BBC programme “Soldiers to be”: “I’m only 18, the lads I used to knock around with are on the dole or on drugs or in dead-end jobs. I am getting paid for having fun, I got paid for chucking that grenade. That’s one buzz in my life, the next buzz in my life is when I finish here and go to Northern Ireland.”121

Young people in Youth Offenders Institutions (YOIs) have also been targeted in a controversial pilot scheme launched by the Ministry of Defence in 2000, who argued that the Army could give these young people the opportunity to serve their country and make something out of themselves. However, the MoD also admitted that recruiting from the YOIs was a way of addressing the shortfall in Army numbers. In January 2000, an Army-training scheme began at Wetherby Young Offenders’ Institution. In addition, former Marines set up a camp for young offenders, which opened its doors in June 2000 (Centre for Adolescent Rehabilitation).122

- Sponsored Education, Cadets, Military Training and Military Schools

  - Has the State ensured that military schools do not recruit students below the age of 18?
    No. The Armed Forces run schools open to young people aged 16 years and above.

  - Has the State ensured that military schools, which do recruit students below the age of 18, are supervised by the Ministry of Education rather than the Ministry of Defence?
    No. The Ministry of Defence is responsible for all recruits under 18 and for the ‘military schools’. However, Welbeck College is a 6th-form college offering A-levels, and as such, is subject to inspection and regulation by the Department for Education.

  - Has the State ensured that military schools respect the aims for education set out in Article 29 of the Convention?
    No. The purpose of the military schools is to teach skills that can be used by the recruits when they join their units in the Armed Forces. Article 29 CRC states that education should be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential (Article 29(1)(a)). Further, Article 29(1)(d) provides that education should be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples. It seems a contradiction to be educated in peace when being trained for war.

Education:

ARMY
The Army provides three educational institutions - the Army Foundation College, the Army Technical Foundation College and Welbeck College.

The Army Foundation College (AFC) was set up in 1998 as a way of addressing the shortage in recruits.124 16-year-old school leavers are eligible to enrol on the course. Those that are selected are formally Army recruits, who can participate in hostilities at the end of the 42 weeks’ basic training.125 The students are also offered vocational and leadership training at the college, however this training...
only makes up one third and 10%, respectively, of the 42-week course. The college also offers incentives that include a wage during training, a guaranteed four-year job and fast-track promotion throughout their Army career.\textsuperscript{126} The college has proved very successful, more than doubling its capacity from 650, between opening and September 2000.\textsuperscript{127}

"The aim of the AFC is identified by the college’s second-in-command: "We will take kids as soon as possible after their 16\textsuperscript{th} birthday, so by 17 or 18 we will have built them up to the point where they can enter the Army as really useful soldiers. Our mistake in the past was not grabbing them early enough. We’ve got to get them before they get into drink and drugs, drift into other jobs or get stuck in relationships." \textsuperscript{128}

School leavers (16-18½-year-olds) can attend the Army Technical Foundation College (ATFC), which is specifically orientated toward trade training but also involves military training as well as training in their chosen trade\textsuperscript{129}. Under-18s are formally enlisted into the Army before starting at the college and join one of the four technical corps of the Army on completion of the 28-week course.

The Army Foundation College and Army Technical Foundation College essentially have the same legal status and purpose as the other Army training establishments for young people (e.g. Purbeck Training Camp), and in reality, are no different. The Colleges follow the same syllabus - the Common Military Syllabus - as other Army training establishments and the recruits receive training, which on completion\textsuperscript{130}, allows them to take part in hostilities. The ‘colleges’ are military establishments and, as such, the trainees are subject to exactly the same military law and discipline as in any other UK military barracks, camp, base or other kind of establishment.

The Army also provides the School Leavers Scheme (SLS): “The SLS offers selected school leavers between 16-17 years and 5 months, specialist training in the Army, through character development, military skills and adventurous training, including the Duke of Edinburgh Award. The SLS prepares young people for the Household Cavalry, Royal Armoured Corps, Royal Artillery, Royal Logistics, Royal Electrical Mechanical Engineers or the Adjutants General Corps.”\textsuperscript{131}

Welbeck College is a 6\textsuperscript{th} form college, open to boys and girls, which offers a general/technical education leading to A-levels. Welbeck is different from the other two Army colleges, as in essence it is a civilian college, despite being sponsored by the MoD. While at the college, students are not part of the Army and are not subject to military law and discipline, although they are required to join the Combined Cadet Force and, by that means, undergo military training and take part in realistic military exercises. Students are admitted to the College on the basis of having already been formally selected, at the age of 16, for future officer training. In return for all tuition and boarding costs being met by the Army, the students sign an undertaking that, if successful in their studies, they will proceed, either via university or directly, to officer training (i.e. the Royal Military Academy, Sandhurst, for the 44-week Army officer training course leading to a commission in one of the technical corps\textsuperscript{132}). This undertaking is backed by an agreement signed by the parents/ guardians that if a pupil reneges on his/ her undertaking without good cause (e.g. ill health), the parent will be liable to refund all or part of the financial expenses incurred.

SPONSORED EDUCATION
The Armed Forces also recruit through sponsored education. All three Armed Forces have a system of Sixth Form Scholarships, whereby a student can apply to have his/ her maintenance, whilst living at home and attending his/ her school, paid by the relevant branch of the Armed Forces (Royal Air Force scholarships cover only the second sixth form year).

"The Ministry of Defence, in conjunction with the Prince’s Trust, sponsors three-month full-time courses in Further Education colleges aimed at school leavers, with visits to Armed Forces establishments, a general orientation towards a military career, and a certificate for successful completion."\textsuperscript{133}

\textsuperscript{126} See the Army Foundation College’s web page - \url{www.army.mod.uk}
\textsuperscript{127} "‘At the double’ for Army Foundation College”, press release, Ministry of Defence 243/99, 16 June 1999.
\textsuperscript{128} Amnesty International Report, pg. 17.
\textsuperscript{129} \url{http://www.army.mod.uk/careers/furthereducation/armytechfoundcollege.htm}
\textsuperscript{130} Following the course at the Army Foundation College, recruits will move onto specialist training in their chosen area
\textsuperscript{131} "A practical guide for parents and guardians", Army brochure, April 2001. According to the brochure ‘Army Soldier – A Job with a Future’ (CP(A) 95, May 2000), “This is a 26-week course with a strong practical emphasis”. It necessarily involves enlistment on a full Army engagement.
\textsuperscript{132} \url{http://www.army.mod.uk/welbeck/intro.html}
\textsuperscript{133} Global Report on Child Soldiers, pg. 378.
As in the case of Welbeck College, the scholarships are paid on the basis of students having already been formally selected for future officer training, and parents/guardians are required to sign an undertaking to refund the amount of the scholarship if a student fails, without good cause, to proceed to such training.

**Cadet Forces:**

“The Cadets are voluntary youth organisations, sponsored and funded by the Ministry of Defence, as part of the MOD’s more general contribution to society and the community.”

There are four Cadet Forces. Units of the Cadet Forces attract a large number of young people (130,000 young people aged 12-22 years according to the MoD web site) and act as a channel of recruitment for the Armed Forces. Both boys and girls can join the Sea Cadet Corps, Army Cadet Force, Air Training Corps and Combined Cadet Force. The first three Cadet Forces are linked to the relevant unit of the Armed Forces and funded by them. The Combined Cadet Force units are mainly based in independent schools (192 units), but some Units are based in State or grant maintained schools (42 units). The Cadets are not subject to military law as the Cadet Forces are NOT part of the Armed Forces.

For all Cadets Forces other than the Sea Cadet Corps, boys and girls can join from age 13. The minimum entry age for the Sea Cadet Corps is 12 years, although some units also have Junior Sea Cadets sections for 10-12-year-olds.

“The total number of cadets has increased steadily in recent years. The idea of boosting the profile of the Cadet Force in order to help solve recruitment problems was initially put forward in 1997 (with the main purported intent of promoting patriotism, self discipline, leadership qualities and of tackling youth crime by giving positive role models to delinquent teenage boys). At the beginning of 1999, there were 128,300 cadets (19,000 Sea Cadets; 65,700 Army Cadets; and 42,700 Air Cadets). While there is no obligation on the Cadets to join the Armed Forces, they are encouraged to do so. In July 1999, it was reported that for the financial year 1998-1999, 5,076 former Cadets had joined the Armed Forces (3,324 – Army, 1,059 – Royal Navy; and 693 - Royal Air Force). The Ministry of Defence has a large budget for the Cadet Forces (£58 million for the Army, Sea and Air Cadets and 6 million for the Combined Cadet Force, for the financial year 1998-99 with a promised increase of £3 million over the next 4 years). In February 2000, the Government stated, "the extra money that we have put in is bearing fruit". The MoD does not set annual recruiting targets for schools; however, an average of 35% of serving officers and over 25% of serving soldiers have had cadet force service. While the figures and percentages of Armed Forces personnel, who have had experience of the Cadet Forces are inconsistent, it is clear that the Cadet Forces provide rich pickings for Armed Forces recruitment.

All cadets receive firearms training, which includes being taught how to fire live ammunition with cadet targeting rifles (1 shot). There have been fatalities within the Cadets, including 15-year-old Clare S. who was crushed by a Land Rover during a night exercise at Langmoor training camp in July 1999. The inquest verdict was accidental death. A Board of Inquiry was held by the Secretary of State for Defence to prevent similar incidents from occurring in the future.”

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134 Ministry of Defence web site [http://www.mod.uk](http://www.mod.uk)
135 [http://www.mod.uk/aboutus/factfiles/cadets.htm](http://www.mod.uk/aboutus/factfiles/cadets.htm)
137 [http://www.armycadets.com](http://www.armycadets.com)
139 For further information see [http://www.tavra.org/tavra_rmc.htm](http://www.tavra.org/tavra_rmc.htm)
140 [http://www.mod.uk/aboutus/factfiles/cadets.htm](http://www.mod.uk/aboutus/factfiles/cadets.htm)
142 DATA Tri-Service. The figure for each service covers the appropriate single service and an element of the Combined Cadet Force.
143 HC Col. 50W 26 July 1999. Naval figures based on 85 per cent of entrants in the year.
144 25% of the Army has had experience of the Cadets, [http://www.mod.uk/aboutus/factfiles/cadets.htm](http://www.mod.uk/aboutus/factfiles/cadets.htm).
145 In the Second Report of Commons Defence Committee, 2000-2001, it was reported that ex-cadets make up 45% of the new recruits in the Royal Air Force.
146 Dr. Moonie, Parliamentary Under-Secretary for Defence, HC Col 1228 21 February 2000.
147 Dr. Moonie, HC Col 1228 21 February 2000. “Between March and September 1999, the number of Army Cadets rose to 42,114, the highest for 10 years, in the wake of the "Attitude" campaign. Numbers in other cadet forces are also at satisfactory levels.”
v. Terms of enlistment for the Armed Forces

- **British Army**

All new Army recruits enter into a 22-year ‘open engagement’\(^\text{151}\). This means that the recruit will serve in the Armed Forces for 22 years. However, the recruit can leave once the minimum period of four years service has been served, having given 12-months notice\(^\text{152}\). The minimum period was extended from three years to four years by the Army Terms of Service (Amendment) (No.2) Regulations 1999 (Regulation 2(2)).

However, an unfair disparity exists between the terms of enlistment into the Army for under-18s and those of their adult colleagues. Where a recruit joins before his 18\(^\text{th}\) birthday, the time served before he turns 18 does NOT count towards the minimum period of service – it is non-reckonable.\(^\text{153}\) Thus a recruit joining at just 16 must serve until his/her 22\(^\text{nd}\) birthday (unless exercising an absolute right to leave between the fourth week and the sixth month of service\(^\text{154}\)). He does not sign up again or have the opportunity to leave at 18. This has been coined ‘the 6 year trap’.

Two years after the Army worsened that situation for Army recruits by extending the minimum period of service, the Royal Air Force and the Royal Navy actually abolished disparities in the terms of service that had existed for under-18 recruits.

- **Royal Navy**

Under the Royal Navy Terms of Service (Ratings) Regulations 1982, all recruits had to serve 2 years 6 months following the period of initial training, which usually lasts for 6 months\(^\text{155}\). At any time after this minimum period was served, personnel had the right to give 12 months notice to leave. In effect, therefore the recruit had to serve 4 years as a minimum. However, for under-18s\(^\text{156}\) this minimum period did not start to run until their 18\(^\text{th}\) birthday. The Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2001 removed this disparity\(^\text{157}\). Therefore, all recruits, regardless of age, are obliged to serve three years six months (2 years 6 months plus 12 months notice) from the end of basic training\(^\text{158}\), thereby abolishing the 6-year trap for 16-year-olds.

Terms of service for under-18s were also amended in this way for the Royal Marines.\(^\text{159}\)

- **Royal Air Force**

The requirement to serve until the recruit is 21\(^\text{160}\) (therefore for five years, if a recruit joined aged 16) before exercising his right to be transferred to the reserves\(^\text{161}\) has been removed by Regulation 2(2) of the Royal Air Force Terms of Service (Amendment) Regulations 2001. Air Force recruits of any age are now enlisted under a ‘notice engagement’, comprising 9 years reckoned from the end of basic training (approximately six months after enlisting). At any time from 18 months after beginning ‘notice engagement’ service they have the right to give 18 months’ notice to leave. Thus the minimum period required to be served, including initial training, is three and a half years (approximately), regardless of the recruit’s age at enlistment.\(^\text{162}\)

- **Leaving the Armed Forces**

Recruits can leave the Armed Forces by exercising their Discharge As Of Right (during the five-month window in the first months of service), by giving notice to leave after the minimum period has been served and through being discharged in certain other circumstances. Recruits exercising discharge as of right (and members of the Armed Forces discharged in certain circumstances), will have no further

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\(^{152}\) Army Terms of Service Regulations 1992, Regulation 5(5).

\(^{153}\) Army Terms of Service Regulations 1992, Regulation 5(4). For recruits who join when they are aged 17 years 6 months and over, the minimum period does not begin to run until they reach 18 or 3 months after the date of attestation, whichever is the later.

\(^{154}\) Army Terms of Service (Amendment) Regulations 1999, Regulation 7.

\(^{155}\) The period of notice was reduced from 18 months to 12 months by the Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2000, Regulations 2(2) and (3).

\(^{156}\) Royal Navy recruits under 16 years 8 months are enlisted under an ‘open engagement’, which comprises of 22 years service. Royal Navy recruits over 16 years 8 months may choose between the ‘open engagement’ and a ‘short engagement’, comprising 2 years from the date of enlistment.

\(^{157}\) Regulation 4(2).

\(^{158}\) Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2001, Regulation 2.

\(^{159}\) Royal Marines Terms of Service (Amendment) Regulations 2001, Regulation 2. Royal Marines enter for a 22-year term. Regulation 3, Royal Marines Terms of Service Regulations 1988.

\(^{160}\) Or three years after attestation, whichever is the latter.


\(^{162}\) Royal Air Force Terms of Service (Amendment) Regulations 2001.
obligation to the Armed Forces, once they have left. Other Armed Forces personnel, including those leaving by notice after serving the minimum period or longer, will be transferred to the reserve force of their particular branch of the Armed Forces and are subject to be recalled in a national emergency.

**Discharge as of right**

**Army** – under-18s can give 14 days notice at any time after the expiration of 28 days and before the expiration of 6 months from when they reported for duty following enlistment. (Over-18s have to give notice before the expiration of 3 months).

**Royal Navy/Marines and Royal Air Force** – all recruits regardless of age can give 14 days notice at any time after the expiration of 28 days and before the expiration of 6 months.

**Ability to transfer to the reserves, having served the minimum period**

**Army** – 12 months notice can be given at any time from 3 years after first reporting for duty, or the recruit’s 18th birthday, whichever is the later.

**Royal Navy/Marines** – 12 months notice may be given at any time from 2 years 6 months after completion of basic training.

**Royal Air Force** – 18 months notice may be given at any time from 18 months after completion of basic training.

**LEAVING THE ARMY: IN DETAIL**

Both recruits under and over 18 can exercise their Discharge As Of Right (DAOR). Recruits OVER the age of 18 can give notice to leave at any time after the expiration of 28 days and before the expiration of 3 months from when they reported for duty following enlistment. Once that time period has passed the recruit must wait until he has served his minimum period of service (4 years) to leave.

A recruit, who attests UNDER the age of 18, has the right to leave at any time after the expiration of 28 days and before the expiration of 6 months from the date he first reported for duty following enlistment. Therefore, younger recruits are given an extra three months to change their mind about a career in the Army.

14 days written notice must be given to exercise this right. The Notice Paper states that discharge procedures will be carried out with all convenient speed, however, the recruit may be required to

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163 Regulation 2(3), Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2000, Regulation 2, Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2001.


165 This section focuses on the Army rather than the other branches of the Armed Forces, as the Army recruits the majority of under-18s and the terms of discharge are the most detrimental to under-18s.

**Royal Air Force:**

Royal Air Force Terms of Service Regulations 1985

Regulation 8(1): “A recruit shall have the right to determine his service by giving 14 days notice in writing to his commanding officer subject to the following provisions of this Regulation” (as amended by Royal Air Force Terms of Service (Amendment) Regulations 2001, Regulation 2(4))

Regulation 8(2): “Such notice shall not have effect unless it is given after the person concerned has completed 28 days service excluding leave and before the expiration of 6 months from the date of his attestation”

**Royal Navy:**

Royal Navy Terms of Service (Ratings) Regulations 1982

Regulation 4(1): “Subject to regulations 3A(2) and 5, a person who has entered the Royal Navy for a term of service may give 12 months’ notice in writing to his commanding officer of his desire to be transferred to the reserve and he shall, upon expiration of such notice, be so transferred” (as amended by Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2000)

Regulation 4(2): “No such notice may be given until the expiration of 2 years and 6 months from the date he completed his period of initial training” (as amended by Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2001)

**Royal Marines:**

The Royal Marines Terms of Service Regulations 1988 (as amended by the Royal Terms of Service (Amendment) Regulations 2000 and the Royal Marines Terms of Service (Amendment) Regulations 2001) lays down the same terms of service, as for recruits in the Navy, in relation to right to be transferred to the reserves (Regulations 7).

166 Regulation 7A(3), Army Terms of Service (Amendment) Regulations 1999

167 Under the Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2000, Regulation 2, Royal Marines Terms of Service (Amendment) Regulations 2000, Regulation 2(3), and Royal Air Force Terms of Service (Amendment) Regulations 2001, Regulations 2(4), all recruits regardless of age have the right to determine service by giving 14 days notice following 28 days of service and before the expiration of 6 months of service. There are no longer any circumstances in which a recruit is required to purchase his discharge. Discharge will not be granted in times of imminent national danger.

168 Regulations 7A(1), Army Terms of Service (Amendments) Regulations 1999. However the Commanding Officer can use his discretion to release a recruit earlier than 14 days if there is no national emergency.
continue service despite giving the appropriate notice, in times of imminent national danger or great emergency in accordance with the Army Act 1955 section 10.\(^{171}\)

Any member of the Armed Forces may be granted a compassionate leave, if there are compelling circumstances, which make it essential for the recruit to be released\(^{172}\). Personnel may also be discharged on medical grounds, by reason of unfitness, misconduct, or ‘for the benefit of the public service’\(^{173}\).

If the recruit is discharged in accordance with his DAOR then he has no further connection with the Army. However, if a recruit exercises his right to give notice, having served the minimum terms of service, then he will be transferred to the Army Reserve\(^{174}\) for the balance of the 22 years or for a period of 6 years, whichever is the lesser.\(^{175}\) Therefore, although for all practical purposes the recruit is no longer employed by the Army, he can still be recalled for service.

In addition, the right to give 12 months notice outside the four-year minimum period of service is waived if the recruit undertakes any education or training course lasting longer than two weeks that the Armed Forces pay for.\(^{176}\) Only the Ministry of Defence has discretion to override the waiver.

Certain recruits may be discharged as ‘not required for further Army service’. A younger recruit, who on attaining the age of 17 years 6 months (17 in the Brigade of Gurkhas) is found to be below the physical standards required for the corps in which he/she is serving, may be discharged.\(^{177}\) AFC and ATFC trainees under 17 years 6 months and all soldiers under the age of 18\(^{178}\), who in the opinion of their Commanding Officer are failing to reach the standard normally expected for various reasons including “genuine or persistent unhappiness or discontent indicating that [the recruit] is unlikely to achieve the motivation required to become a good soldier”\(^{179}\) can be discharged. There is also power to discharge a “failed soldier” under the age of 17 years 6 months, who refuses a transfer to a more suitable category.\(^{180}\)

Female Army personnel have the right to claim discharge on grounds of pregnancy.\(^{181}\) A woman who has initially elected to take maternity leave may also claim discharge, as long as she applies at any time up to the end of her leave. RAF regulations allow discharge of a pregnant woman, but specifically exclude cases of miscarriage or termination.

Any person, who simply walks out (‘absent without leave’ - AWOL) outside these special regulations or without discretionary discharge (on compassionate, health or conscientious grounds) is liable to arrest by civil police and trial by court-martial on the charge of failure to be in a certain place at a certain time.\(^{182}\) Persons who assist recruits to take absence without leave may also be prosecuted.\(^{183}\)

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\(^{171}\) para 15. See s11(1), Army Act 1955. The Notice Paper (Army Form B 271W PPQ) is provided to the potential recruit to explain the terms of enlistment and accompanies the Attestation Paper (Army Form B 271A PPQ) (which is the ‘contract’ that the recruit signs).

\(^{172}\) Regulation 7(4), Army Terms of Service Regulations 1992.

\(^{173}\) para 16, Notice Paper (Army Form B 271W PPQ

\(^{174}\) para 22, ibid.

\(^{175}\) Regulation 5, Army Terms of Service Regulations 1992.

\(^{176}\) Regulation 12, Army Terms of Service Regulations 1992.

\(^{177}\) Any member of the Armed Forces enlisted at any age on an open engagement who has curtailed the 22 years of service, is required to serve in the relevant Armed Force reserve for the balance of the 22 years or for six years, whichever is the lesser. Members of the reserve may be recalled for training for up to 16 days in any year. Also, whilst in the reserve and for a period of 18 years since discharge from regular service, all personnel are liable to recall in times of ‘national danger’, ‘great emergency’ or ‘in the event of an actual or apprehend attack on the UK’. (Notice papers of the relevant sections of the Armed Forces Personnel in the Royal Air Force will be required to serve in the Reserve-Aircrrew for a period of 6 years or for the balance of the 22 year term of service (from the date of attestation or from the recruit turned 18), whichever is the shorter period, unless the Air Force Authority approves a shorter period. (Regulation 13, Royal Air Force Terms of Service Regulations 1985 as amended by the Royal Air Force Terms of Service (Amendment) Regulations 2001)

\(^{178}\) Ratings in the Royal Navy will be transferred to the reserve until the expiration of his term of engagement or for a shorter period if the naval authority so decides. (Regulation 6, Royal Navy Terms of Service (Ratings) Regulations 1982).

\(^{179}\) Royal Marines transferred to the Royal Fleet Reserve for 3 years, or for remainder of the term of service, whichever is sooner. (Regulation 10, Royal Marines Terms of Service Regulations 1988).

\(^{180}\) Regulation 11, Army Terms of Service Regulations 1992. The right to give notice so as to serve a minimum period is subject to being waived by an individual “in return for specialist employment training or other benefit or advantage” (Queen’s Regulations Army, 9.086b). This curtailment by the Army, of the right to determine service, is permitted under section 2(1)(d), The Armed Forces Act 1966.

\(^{181}\) Queen’s Regulations Army, 9.412.

\(^{182}\) Queen’s Regulations Army, 9.414.

\(^{183}\) Queen’s Regulations Army, 9.411.

\(^{184}\) Queen’s Regulations Army, 9.237.

\(^{185}\) Queen’s Regulations Army, 9.395, authorises discharge by the Commanding Officer at any time prior to confinement, and additionally permits a woman, who has claimed maternity leave, to claim discharge at any time up to the end of that leave. Queen’s Regulations RAF, 629, authorises discharge on pregnancy, but specifically excludes cases of miscarriage or termination.

\(^{186}\) Armed Forces Act 1971, s 12(1), Manual of Military Law, 304, s38.
BRIGADE OF GURKHAS

The situation for the personnel in the Gurkha Brigade (those recruited from Nepal) varies slightly. A recruit enlisted before his 17th birthday has the right to leave on the payment of a sum equivalent to 7 days’ gross pay, at any time before the expiration of 3 months following the first day he reported for duty following his enlistment. A recruit aged over 17 at the time of enlistment has the right to leave at any time after 8 weeks and before the end of 3 months following the first day he reported for duty following his enlistment, on the payment of a sum equivalent to 7 days’ gross pay. Therefore, Gurkhas under the age of 18 only have an opportunity to leave in the first 3 months rather than the 6 months given to all other under-18 recruits in the Army and suffer a financial sanction, which was specifically abolished for older non-Gurkha recruits in 1999 and never applied to non-Gurkha recruits enlisted under 17 years and 6 months.

Comment on the terms of enlistment

General:
The UK stated in its second report to the Committee to the Rights of the Child that:

"The Armed Forces policies on term of service for those under 18 were addressed by the Armed Forces Bill Select Committee in 1991. It recommended, among other things, that the Ministry of Defence should examine the terms of enlistment of those under 18. The Ministry considered those findings, and decided not to make any changes. In 1996 the Armed Forces Bill Select Committee ... again recommended that careful consideration be given to requiring minors to commit themselves to a period no longer than that of adults." 10.65.2

"As a result, a Working Group was set to examine how this anomaly might be removed, and to see whether common terms of service might be introduced across the three services – the Royal Navy, the Army and the Royal Air Force. Work is now under way to draft revised terms for personnel under 18.” 10.65.3

In 1996, the Select Committee on the Armed Forces Bill stated that it saw no reason why those that sign up before they are 18 should be required to serve automatically until the age of 21. The Committee said that the same three-year minimum period of service that applied to adults at that time (prior to the 1999 Regulations which extended the minimum period from three years to four years) could equally apply to under-18 year olds. As a result of the recommendations of the Working Group, the terms of service for personnel were revised, partly reflecting the Select Committee’s comments:

i) Abolition of the anomalies in the terms of service for recruits enlisted in the Royal Navy, the Royal Air Force and the Royal Marines below the age of 18;186;

ii) The raising of the naval/marines guideline age for deployment from 16 to 17 - a marginal improvement in that the great majority of those under 17 are still undergoing basic or secondary training187;

iii) A minor tidying up of Discharge As Of Right - which very marginally improved the position of personnel recruited between the ages of 17 years six months and 18 (it brought them into line with the younger age group from a slightly more complicated right)188; and

iv) Extension of the minimum Army term of adult service from three years to four years, thereby extending the five-year trap to a six-year trap for 16-year-olds.189

Overall, the improvements are far outweighed by the worsened situation for under-18s in the Army, not least because the numbers of under-18s adversely affected far exceed the numbers benefited by the improvements (because there are more under-18s in the Army than the other branches of the Armed Forces).

Ability to leave the Armed Forces:

GENERAL

A particularly worrying aspect of the terms of service is the difficulty for under-18s in exercising the right to leave the Armed Forces if they so wish. The limitations on exercising this right are detailed in the Notice Paper, which is given to all potential recruits before they attest. However, it is of concern that young people are not generally fully aware of this opportunity, and how to exercise it. In particular, there seems to be a tendency that, when young people approach senior officers to discuss the

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183 Armed Forces Act 1971, s 13(1).
185 Regulations 9(1) and (2) respectively, The Army Terms of Service Regulations 1992.
186 Implemented by the Royal Navy Terms of Service (Ratings) (Amendments) Regulations 2001; Royal Marines Terms of Service (Amendments) Regulations 2001; Royal Air Force Terms of Service (Amendments) Regulations 2001.
188 Implemented by the Army Terms of Service (Amendment) Regulations 1999.
189 Implemented by the Army Terms of Service (Amendment) (No 2) Regulations 1999.
matter, they are advised to 'soldier on', so that the only window of opportunity to leave - between 28 days and six months after first joining - closes.

"The MoD claims that special sensitivity is shown to under 18s who are clearly unhappy with or unsuited to military life. Under-18s who show genuine or persistent unhappiness and/or discontent may be discharged, and for the Navy this applies until the recruit is 18 years and three months. Specific provisions exist within the naval service for 'unhappy junior' under the age of 18 to be discharged, notwithstanding the fact that their six-month statutory period of discharge has passed. A similar provision exists in the Army for unhappy under-18s under (Queen’s Regulation 9.414). Stipulation within the Royal Air Force, where personnel of any age may be discharged on compassionate or temperamental unsuitability grounds, has a similar effect.\(^{190}\) If a child is going to be discharged, a commanding officer must contact his/her parents or guardians to request that they accept the child back into their care and to explain reasons for the discharge."\(^{191}\)

In an oral submission to the Select Committee on the Armed Forces Bill 2001, the representative from At Ease (Gwyn Gwyntophyer, voluntary advisory organisation for Service Personnel and their families) said that she considered that the 'vicious contracts' that new recruits have to sign amount to 'bonded servitude' because of their severity and the inability to escape them.\(^{192}\)

The Select Committee on the Armed Forces Bill 2001 responded:

"We cannot accept this. In addition to the ability to give notice within the six-month period, there is also a facility for 'unhappy juniors' to be discharged up to the age of 18 (or 18 and three months in the Army)\(^{193}\) if their service in the forces is clearly the cause of their unhappiness. Nor is this simply left to the discretion of the commanding officer (CO): the Army's Director of Personal Services told us that, under Queen's Regulations, there was a 'specific requirement' on COs closely to supervise young people who were clearly unhappy and not to prevent them leaving if they wished. The Director General of Service Personnel Policy said that he had 'never known of cases in which a commanding officer was difficult about a youngster wanting to leave' and that it was not in the interests of the Services, or young people themselves, to keep them if they wished to leave."\(^{194}\)

However, the number of personnel going AWOL (absent without leave) has increased significantly recently and in June 2000 was reported to be higher than at any other time since the end of national service\(^{195}\). "At Ease maintains that in Britain there are constantly around 500 under-18s trying to avoid the military police".\(^{196}\) Amnesty International\(^{197}\), At Ease and Peace Pledge Union, a UK NGO, believe that many young recruits want to leave the Armed Forces because of ill-treatment, bullying and personal problems and when the Armed Forces fail to give them the necessary discharges they feel that the only way out is to go AWOL.

The problems for young people do not end when they go AWOL. A number of young people face unemployment and homelessness, as they try to evade both the military police and the civilian police, who are asked to search last known addresses and hand over absconders to the Naval, Military or Air Force police\(^{198}\). Consequently, a number of these young people turn to criminal activity as a means of surviving. The MoD informed Amnesty International that no special procedures exist to deal with under-18 deserters and absentees if they were caught. If arrested, they are subject to trial by court-martial and liable to a custodial term.\(^{199}\) Further, as absenteeism exacerbates the shortage of recruits, soldiers are often retained in the Army after lengthy periods of absence because their units cannot afford to lose more manpower.\(^{200}\)

191 Note is taken of the discrepancy between the Select Committee’s account that the facility for ‘unhappy juniors’ applies for recruits up to the age of 18, except in the Army where this facility is extended until the recruit is 18 years 3 months, and Amnesty International’s account that the ‘unhappy junior’ facility applies to recruits in all the Armed Forces up to the age of 18 except for the Royal Navy, which extends this facility until the recruits are 18 years 3 months. Under the Queen’s Regulations Army 9.414, the age limit for the unhappy junior in the Army is 18 years.
193 In 1999, the Army reported 1,998 cases of desertion and being AWOL (absence without leave) – one for every 48 soldiers, Global Report on Child Soldiers, Coalition to Stop the Use of Child Soldiers, page 376.
196 Armed Forces Police have no powers of arrest on private property.
197 Deserters are liable to an unspecified sentence. Armed Forces Act 1971, s11(1). Personnel going absent without leave can be sentenced to a term of imprisonment not exceeding two years (Armed Forces Act 1971, s12(1)). For both offences lesser punishments are available to the court-martial.
In 1986, the MoD argued that "[s]ervicemen are... not alone in finding themselves disadvantaged in society if they have broken the law and are still at large, and it would be in their own interests to put an end to this situation by an early return to their units." However "[i]n At Ease’s opinion, the majority of these young people would never have gone absent, if there had been a legal way out."

CONSCIENTIOUS OBJECTION
The MoD recognises a right of all personnel in the Armed Forces, regardless of rank or age, to seek a release on the ground of having developed a conscientious objection to military service since voluntary enlistment. The application is in the first instance to the local commanding officer, who refers it to a higher authority. If the application is refused, the applicant has an absolute right of appeal to the Advisory Committee on Conscientious Objectors (ACCO), an independent lay body, which is appointed by the Lord Chancellor and chaired by a senior lawyer (currently a county court judge). This Committee holds a public hearing away from MoD premises. ACCO’s finding is formally made by way of a recommendation to the Defence Secretary. However, under established protocol, the Defence Secretary invariably accepts ACCO’s recommendation. About one-third of appeals are successful. Unfortunately, this procedure (of seeking a release on the grounds of having developed a conscientious objection) is not widely advertised, and it is clear that a number of senior personnel are not aware of it.

The MoD has formally recognised that Peace Pledge Union is entitled to be informed of applicants that are exercising a right of appeal against initial refusal. The NGO is further entitled to offer assistance and support to applicants. The regulations governing this process are confidential and not available to the NGO.

RIGHT TO LEAVE WAIVER
One of the main thrusts of the advertising campaign of the Armed Forces targeted at under-18s, especially for the Army, focuses on the training and qualifications that can be gained, opportunities young people may be particularly attracted to. It is concerning, therefore, that the right to claim discharge after serving the mandatory minimum period can be adversely affected if the recruit has undertaken more than 2 weeks of an education or a training course. Instead of being able to give 12 months notice after the minimum period in the Armed Forces has been served, recruits find that this right has turned into a discretionary power to grant permission to be transferred to the Reserves. Individuals wishing to leave may have to wait until it is considered that the cost of their training has been paid off. The Head of the Army’s Recruitment and Marketing Department, interviewed by German Radio (ARD) in April 1999 said: “That’s economics, no one invests in projects and then

201 Report of Select Committee on the Armed Forces Bill 1986, Written Evidence No. 8 [MoD], Annex B.
203 Queen’s Regulations Army 9.402, TA Regulations 5.188 (equivalent regulations for other sections of the Armed Forces).
205 A person who in consideration of (a) being permitted to undergo a course of instruction of a duration of not less than 2 weeks; ... (c) being permitted to receive any other benefit or advantage, consents in writing to be restricted of any right conferred by regulation 5(1), regulation 10(1), regulation 10A(1) or regulation 15(6), shall not have the right to be transferred to the reserve of to determine his service pursuant to those regulations before the expiration of the appropriate period which shall be specified in such consent and shall begin with the date on which he completes such course or instruction or such transfer takes effect or such other date as is specified in such consent", (Regulation 11, Army Terms of Service Regulations 1992). The Notice Paper for the Regular Army states, “Your date of leaving may be deferred if you agree to waive your right to give notice in return for specialist employment training or other benefit or advantage” (Para. 9).

Royal Air Force
Royal Terms of Service Regulations 1985
Regulation 12(1): “A person who, in consideration of: (a) being permitted to undergo a course of instruction of a duration of not less than 2 weeks, or (b) receiving any other benefit or advantage, consents in writing to be restricted of any right conferred by regulations [5,7,7A and 15(2)] shall not exercise such rights before the expiration of the appropriate period which shall be specified in such consent and shall begin with the date on which he completes such course of instruction or such other date as is mentioned in such consent” (as amended by The Royal Air Force Terms of Service (Amendment) Regulations 2001, Regulation 2(7))

Royal Navy
Royal Terms of Service (Ratings) Regulations 1982
Regulation 5(1): “A person, who in consideration or (a) being permitted to undergo a course of instruction of a duration of not less than 8 weeks, or (b) receiving any other benefit or advantage, consents in writing to be restricted in the exercise of the right to give 12 months’ notice conferred by Regulation 4 shall not exercise such right before the expiration of the appropriate period which shall be specified in such consent and shall begin with the date on which he completes such course of instruction or such other date as is mentioned in such consent” (as amended by Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2000)

Royal Marines:
The Royal Marines Terms of Service Regulations 1988 (as amended by the Royal Terms of Service (Amendment) Regulations 2000 and the Royal Marines Terms of Service (Amendment) Regulations 2001) lays down the same terms of service, as for recruits in the Navy, in relation to the curtailing of the right in relation to any courses taken (Regulations 8).
throws them away.”

Although, in the same interview it was stressed that every individual case is considered on its own merits – there is no general rule or procedure.

However, guidelines do exist limiting the additional periods that personnel have to serve on the basis of the duration of their course. It must be noted that under the Army Terms Of Service Regulations 1992, if a person has consented to waiving their right to leave in order to take a course before aged 17 years 6 months, this person may revoke this waiver by giving notice in writing to his commanding officer not more than 28 days after he attains the ‘age of 18’. It is unclear how well publicised this option is and how often those who joined when they were under-18 exercise this right.

However, the assertion of the MoD, quoted by Select Committee on the Armed Forces Bill 2001, that with the exception of university cadetships “... there is no possibility that a soldier, sailor or airman, under the age of 18, would be required to extend his service as a result of a training course which he could have undertaken at that stage” is blatantly misleading.

Indeed, the Army Technical Foundation College prospectus reflects the curtailment of a recruits right to leave so far as Army ‘apprentices’ are concerned: in the case of trade training lasting more than 3 months but not more than 6 months, the soldier is committed to 2 years beyond the minimum 4 years post-18 service, and in the case of more than 6 months trade training the additional commitment is 3 years.

All recruits enrolling in this college will learn a trade, so that they can enter a specific Army Corps. Therefore, it seems that by learning the trade necessary for the Army Corps they will be joining, they waive their right to leave once they have served the minimum period of service.

However, the Select Committee accepted the MoD’s submission, despite evidence from At Ease that service men and women were required to sign a waiver to forfeit their right to give 12 months’ notice to leave the Services if they undertook these training opportunities, even if the training was directly related to their job in the Armed Forces. For example, a man was told he could not exercise his right of discharge because he had completed a course as a Spanish Interpreter, a skill he used directly in his job, and a bandsman in a Highland Regiment, who completed a six-month course in bagpiping, was told that he had forfeited his right to leave. “They are doing it all the time for little courses in catering, electricians courses, plumbers courses, bricklaying courses.”

The Select Committee concluded “[w]e welcome the clarification of the position of under-18s in the Armed Forces which the MoD has provided and we are satisfied that the provisions in place are

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206 Amnesty International Report, pg. 22.
207 The appropriate period is no more than 1 year for a course of three months (Regulation 11(2)(a)), no more than 6 years for a course longer than three months (Regulation 11(2)(b)), a period of no more than 6 years for any other benefit or advantage (Regulation 11(2)(d)). “Any consent given... by a person at a time when he had not attained the age of 17 years 6 months may be revoked by notice in writing given by that person to his commanding officer not more than 28 days after he attains the ‘age of 18’. (Regulation 11(3)). Consent can also be revoked with written consent from the competent authority. (Regulation 11(4) The right to give notice having served the minimum period is subject to being waived by an individual “in return for specialist employment training or other benefit or advantage”. (Queen’s Regulations Army, 9.086b). The curtailment of the right to determine service by the Army is permitted under section 2(1)(d) The Armed Forces Act 1966.

Royal Air Force

Royal Terms of Service Regulations 1985

Regulation 12 (2): “The appropriate period” shall be: (a) in relation to permission to undergo a course or instruction, the duration of which is not more than 3 months, a period of not more than 3 years; (b) in relation to permission to undergo a course of instruction of longer duration, a period of not more than 5 years, (c) in relation to the receipt of any other benefit or advantage, a period of not more than 6 years” (as amended by The Royal Air Force Terms of Service (Amendment) Regulations 2001, Regulation 2(7))

Regulation 12 (3): “The rights conferred by regulations 5, 7, 7A and 15 (2) (as amended by The Royal Air Force Terms of Service (Amendment) Regulations 2001) shall not be exercisable by a person in air force service enlisted on or after the 1st day of January 1962 for 22 years who has given an undertaking pursuant to any Regulations made under Part 1 of the Act not to determine his air force service, before the expiration of the period specified in such an undertaking” (as amended by The Royal Air Force Terms of Service (Amendment) Regulations 2001, Regulation 2(7))

Royal Navy

Royal Terms of Service (Ratings) Regulations 1982

Regulation 5(2): “In this Regulation “appropriate period” means – (a) in relation to permission to undergo a course of instruction, a period of not more than 18 months, and (b) in relation to the receipt of any other benefit or advantage, a period of not more than 4 years 6 months”.

Regulation 11(3) and Regulation 12 (4), Royal Air Force Terms of Service Regulations 1985: “A person who has given his consent under this Regulation may, if the competent air force authority approve, revoke that consent”; The Royal Navy Terms of Service (Ratings) 1982 does not allow for such a revocation of consent by the recruit.


209 The extended periods of service, laid down in the prospectus, are actually less than that allowed under Regulation 11, Army Terms of Service Regulations 1992.

Per Mrs Gwynophier at Para 905 – Minutes of Evidence at the Select Committee on the Armed Forces Bill 2001.
adequate to allow those who are genuinely unhappy to leave. We agree with the Defence Committee, that publicising the education and training opportunities available in the Armed Forces is a key recruitment tool which the Services must exploit if they are to continue to attract sufficient numbers of young people from a shrinking pool in a competitive employment market.”

vi. UK recruitment and compliance with the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts

Recruitment

The Optional Protocol obliges States to ensure that under-18s are not ‘compulsorily’ recruited into their armed forces (Article 2). The UK does not have conscription and therefore abides by this principle.

The Optional Protocol also obliges States to raise their minimum age for voluntary recruitment into their national armed forces, from the standard set in Article 38(c) - 15 years. Therefore, the UK does not need to raise their age for voluntary recruitment, which at the present time stands at 16.

Legislation

Article 6(1) of the Optional Protocol obliges States to “take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction”.

The minimum age for recruitment into the Armed Forces is not, and has never been, enshrined in primary legislation. The age limit is stated in guidelines that the MoD issues and varies from time to time without Parliamentary sanction. It can be argued that to fulfil its obligations under this Article, when the UK ratifies the Optional Protocol, legislation needs to be passed that enshrines the minimum age for recruitment.

Informed consent

Article 3 of the Optional Protocol states:

“States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:
(a) Such recruitment is genuinely voluntary;
(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
(c) Such persons are fully informed of the duties involved in such military service;
(d) Such persons provide reliable proof of age prior to acceptance into national military service.”

Informed consent and voluntary recruitment:

The terms of service and discharge are complex and difficult to fully comprehend. For potential recruits this confusion is compounded by the fact that the recruitment materials available do not clearly explain the terms of service. Further, during the recruitment process little effort is made to ensure that the recruit and his parents or guardians fully understand the commitment that they are signing up to. This is particularly concerning with regards new Army recruits, who are subject to the ‘6-year trap’.

RECRUITMENT LITERATURE

In only one of the multiplicity of glossy brochures 'produced for the MoD by the Army Recruiting Group' is there any mention of either the 'open engagement' (22 years) or the 6-year trap. The brochure, which promotes the Army Foundation College (AFC) and Army Technical Foundation College (ATFC), contains the misleading statement, "[a]t the end of the college [meaning either college] programme you will be guaranteed a job with the army for a minimum of four years. That's four years doing a secure worthwhile job with good pay and access to the best training in the country". One has to go on to the next page to find out that the 'guarantee' actually means an inescapable commitment by the recruit, and that the period up to the 18th birthday does not count towards those four years. Further, it is not explained anywhere in the brochure that 'access to the best training' comes at the price of extending the period of committed service still further.

214 However, this obligation does not extend to military schools, which do not exist in the UK in the usual sense of schools run by the military offering a general education as well as military training for children of compulsory school age.
215 From time to time secondary legislation has specified minimum ages for certain categories of recruitment e.g. the Royal Air Force, supra 87.
216 Cautious responses from the MoD and Foreign and Commonwealth Office appear to indicate that the Optional Protocol is likely to be ratified by the end of 2002. Although an explanatory memorandum is to be laid before Parliament in the context of ratification, it will not even have the force of secondary legislation.
217 CP(A)98-1, November 2000.
The same brochure\textsuperscript{18} mentions DAOR (Discharge As Of Right), under the heading: “What happens if I decide I don’t like it and want to leave?” However, the information provided is open to misinterpretation: "On joining the AFC or the ATFC you are committed to a minimum of four weeks...After this period...you will be able to leave at short notice. If you are under 18 you have six months to make a firm decision - after that point you are committed to finishing the programme.” This ambiguous wording could be interpreted as meaning that there is a period of six full months, beginning on the 29th day after joining the college in which to make a firm decision, whereas the window of opportunity is actually only five months plus a day or two, expiring at the end of the sixth month after the day of joining.

The Army Technical Foundation College's own self-produced Prospectus\textsuperscript{219} more clearly sets out the terms for DAOR, but it is seriously misleading about the 6-year trap. Under the heading 'Conditions of Service' it states, "[a]ll soldiers are enlisted into the Army on an open engagement with a requirement to complete a minimum period of 4 years”. This statement does not specify that this four-year period begins at the age of 18.

In the Army’s “Practical Guide for Parents and Guardians” options for, what the Army calls, further education are set out for those recruits who are “too young to go straight into the Army”. This statement is misleading those training at the colleges or in the School Leavers Scheme are part of the Army\textsuperscript{220} and so being, are subject to military law and the requirement to complete the minimum period of service once they reach the age of 18.

WEB SITES
While the web sites of the RAF, Army and Royal Navy are presented in an accessible manner, the information provided on terms and conditions of service are not always consistent or clearly explained.\textsuperscript{221} On the Army website, questions can be put to an Army careers advisor, by way of a live web chat. However, users are usually referred to the relevant web site pages rather than given direct answers. In an on-line conversation with a careers advisor, more complicated questions asked about deployment to conflict zones and on peacekeeping missions were met with confusing replies.\textsuperscript{222}

RECRUITMENT PROCESS - ARMY
Under the Army Act 1955, it is stated that “[a] person offering to enlist in the regular forces shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him; and a recruiting officer shall not enlist any person in the regular forces unless satisfied by that person that he has been given such a notice, understands it and wishes to be enlisted.”\textsuperscript{223} To fulfil this obligation, accompanying the attestation paper\textsuperscript{224} (“contract”), the potential recruits receive a copy of the ‘Notice Paper’\textsuperscript{225}, which sets out the terms of service for the Army. In addition, this document includes the questions the recruit-to-be will be asked by the officer after reading the ‘Notice Paper’, before he attests (enlists). The Army Notice Paper States in the General Instructions section, “Please make sure you understand the conditions and do not be afraid to ask questions. The staff at any Army Careers Information Office will be pleased to explain any points to you without any obligation on your part.” The parental consent form\textsuperscript{226} also states that the office dealing with the application will be pleased to address any questions.

However, At Ease\textsuperscript{227} raised their concerns to the 2001 Select Committee on the Armed Forces Bill that the requirement to serve a minimum period of service was not made sufficiently clear to recruits or their parents during the recruitment process and that many believe they will 'sign on again for adult contracts at the age of 18'. The Notice Paper itself is not clear or easily understandable, for either

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{218}ibid.
\item \textsuperscript{219}15 August 2001.
\item \textsuperscript{220}Recruits at the Army Technical Foundation College join one of the four technical corps of the Army. Those in the Army Foundation College must serve in the Royal Armoured Corps, the Royal Artillery or the Infantry. Those in the School Leavers Scheme join one of a wide variety of corps or regiments.
\item \textsuperscript{221}The Armed Forces web sites lay out the terms for enlistment but the information is not presented as clearly as it should be. On the Army website it says: “As a general rule, all recruits enlist on an Open Engagement. This allows a recruit to serve for 22 years from their 18th birthday or date of attestation, which ever is the later, and so qualify for a pension. A soldier enlisted on this engagement has a statutory right to leave after four years reckoned from the 18th birthday or from three months after attestation, whichever is the later, subject to giving 12 months notice of intention to leave and providing the soldier is not restricted from leaving in any way. Certain employment, particularly those involving a lengthy training, carry a time bar which requires a longer period before soldiers have the statutory right to leave.”
\item \textsuperscript{222}ibid.
\item \textsuperscript{223}On-line conversation, 17 July 2001, www.army.mod.uk.
\item \textsuperscript{224}Part 1, s2(1), Army Act 1955. The same provision is contained in the Armed Forces Act 1966, s2(1) in relation to the Royal Air Force.
\item \textsuperscript{225}Army Form B271A PPQ100.
\item \textsuperscript{226}Army Form B 271W PPQ100.
\item \textsuperscript{227}MoD Form 486.
\item \textsuperscript{228}A voluntary advisory organisation, which provides advice and assistance to Service Personnel and their families.
\end{itemize}
\end{footnotesize}
parents or children. While applicants are encouraged to ask questions about anything they do not understand, it is debatable whether all under-18-year-olds (or indeed parents) would have the confidence to do so. Further, although parents/ guardians are allowed to attend the initial interview at the Armed Forces Career Office, they are not required or invited to do so.

There is also a concern that the information given at local careers offices is not always clear or accurate. There is anecdotal evidence that staff at recruiting offices do not themselves always understand all the details regarding the terms of service and discharge. The MoD stated to Amnesty International that it is not aware of any misinformation being given to parents or recruits. Yet, in January 1999 the media reported that Sheila, the mother of the 17-year-old, claimed that she had been told on three separate occasions her local army careers office that no 17-year-olds were being deployed to participate in hostilities against Iraq. In its reply, the MoD apologized that she had been provided with what proved to be false information.

It is concerning, that 16-year-olds, albeit with parental consent, can bind themselves to six year ‘contracts’ in the Army, especially considering that the young person and the parents/guardians may not fully comprehend the terms of service. Amnesty International stated that because of the serious and long-term consequences enlistment has on the child, the onus should be on the Armed Forces to explain the commitment fully in person, in an accessible and clear way, rather than simply being ready to respond to questions if asked. Furthermore, Amnesty International is of the opinion that the MoD’s claim that great care is taken to ensure that children understand precisely the nature of the commitment, may conflict with the drive to recruit under-18s to make up the shortfall in the Armed Forces ranks.

The MoD, however have asserted that the commitment recruits were making was "... spelled out very clearly to them during the recruiting process ... the procedures are there and it is laid out. The extent to which an individual comprehends what is being meant by the term for which he is signing is something which is impossible to judge." However, the Select Committee referred to the Defence Select Committee who had stated in its report that it was necessary to ensure that “appropriate safeguards are in place to guard against poor recruitment practices”. The Select Committee further said “We believe it is poor practice to recruit any young person, but particularly those under 18, without ensuring that they and their families fully understand the commitment they are entering into. We recommend that the information provided to potential recruits under 18 is examined and if necessary revised to ensure that it is clear and unequivocal about the length of time they will be required to serve. Recruitment officers have a responsibility to ensure that this information is understood by recruits, before they are asked to sign any documents.”

Comment:
The process of recruitment, as it stands, does not fully comply with the standards laid out in Article 3 of the Optional Protocol. Where under-18s enlist and are unclear about the terms of their service, discharge and the consequences of taking up training and education opportunities in the Armed Forces then Articles 3(a) & (c), which provide that recruitment must be voluntary and fully informed, are not being fully upheld. Further, under Article 3(b) the State is under a duty to ensure that the parents or legal guardians give informed consent. At present, there is no mechanism to ensure that parents or legal guardians are informed and fully comprehend the terms of service.

Bearing in mind the serious consequences of joining the Armed Forces not least because of the length of time the young person is required to serve, Article 3 is incredibly important in protecting young people during the recruitment process. With the UK’s ratification of the Optional Protocol, the Government will be under an obligation to fully implement Article 3. One possible means of addressing the gaps in protection in the recruitment process, so as to comply more fully with Article 3 of the Optional Protocol, is to appoint independent counsellors/persons in order to advise potential recruits and their families as to the commitment that they are making and ensure that the terms and conditions are fully understood, by both the recruit and the parent/legal guardian.

vii. Other relevant conventions on recruitment

Under the Convention children are all persons under 18 (Article 2). ILO Convention 182 states in Article 3:

“For the purposes of this Convention, the term "the worst forms of child labour" comprises:
(a) forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.

The UK does not have conscription - recruitment of under-18s is on a voluntary basis. Interestingly, the UK (among other countries), as well as obstructing the push to have a straight 18 for all recruitment for the Optional Protocol, also insisted that while ILO Convention 182 should ban compulsory or forced recruitment under 18, it should not prohibit voluntary military service of under-18s.

➢ ILO Convention 138 on the minimum ages for admission into employment 1973 (ratified by the UK 7/6/2000)

On ratification of ILO Convention 138, Article 1 obliges States to specify a minimum age for admission to employment or work within its territory. Subject to qualifications made in the Convention, no one under this specified age shall be admitted into employment or work in any occupation. The UK specified 16 as the minimum age for admission into employment.

Article 3(1) states:

“The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.”

While this Convention does not specify the work that this Article refers to, work in the armed forces is such that it does jeopardise the safety of under-18s. However Article 3(2) allows for States to determine which types of employment are to be deemed hazardous to young people through their own national laws and competent authorities. The UK has not deemed employment in the UK Armed Forces to be in contravention of Article 3(1).

➢ Rome Statute of the International Criminal Court 1998

The recruitment (conscripting or enlisting voluntarily) of children under 15 into national armed forces and non-state armed groups and using them to participate actively in hostilities is prohibited under the Rome Statute of the International Criminal Court (1998)

viii. Non-state recruitment

- Has the State taken measures to prohibit and prevent recruitment of any child under the age of 18 by non-governmental forces?

The Terrorism Act 2000 deals with recruitment by non-governmental forces. Although the Act can apply to under-18s, it does not specifically mention under-18s or any specific measures to prevent their recruitment by paramilitaries in Northern Ireland or by forces fighting abroad (e.g. the Taliban).

The Terrorism Act 2000 prohibits training of all persons in the making of or use of weapons by all non-governmental organisations. Those receiving such training also commit an offence under section 54(2). It is also an offence to invite another to receive instruction or training in the making and use of weapons for purposes both within and outside the UK. The invitation is an offence whether directed at specific persons or made generally. Therefore, it would be an offence to recruit or try to recruit under-18s for the purposes of weapons training. In addition, under-18s would be liable for prosecution for receiving weapons training.

236 International conflicts, (A8(b)xxvi) and in conflicts of a non-international character (A8.e.vii). “The words "using" and "participate" ... cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer’s married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology” (UN Document A/CONF.183/2/Add.1).
237 section 54.
238 section 54(3).
239 section 54(4).
Recruitment for purposes other than weapons training is also an offence if the recruiting organisation is proscribed. The Terrorism Act makes it an offence to belong to a proscribed organisation (for whatever reason), to invite support for a proscribed organisation, arrange or assist in arranging a meeting and address the meeting with the purpose of encouraging support for the organisation.

The present episode of the long-standing conflict in Northern Ireland began in 1968. While it has never reached the stage of a full civil war, violence and internal strife have been constant despite numerous cease-fires and the current peace process, over-spilling at times to Britain, the Republic of Ireland and the European continent and has involved well over 3000 deaths. Children have often been victims of violence from both the security forces and the paramilitaries; half of those killed by Army or police baton rounds (rubber or plastic bullets) have been under the age of 16; two children were the only fatal victims of the IRA's bombing of Warrington in 1993; and nine children were killed by the 'Real IRA' in the 1998 bombing of Omagh. Young people have frequently taken part in sporadic violence, including riots, but it was not thought that under-18s are systematically recruited by paramilitaries or allowed to participate directly on a regular basis. Recently, however, there seems to be a possibility that this trend is changing. The Global Report on Child Soldiers noted that in October 1999, two teenage boys from Dublin aged 14 and 16 were arrested during a police raid on a 'Real IRA' training camp. It was unclear how far they were actually involved in armed activities.

"Observers speculated that the 'Real IRA' might seek to recruit 'clean skins', who are not known to the police and intelligence, for their operations".

The Global Report on Child Soldiers also pointed to an Article in The Guardian newspaper, in April 2001, which reported that loyalist paramilitaries were signing up hundreds of new teenage recruits. "The leader of the Ulster Defence Association (UDA) south Belfast brigade argued the recruitment drive was to keep young people away from dissident groups and drugs: 'In the past, it was the done thing in many loyalist areas to join the paramilitaries and a lot of kids still want to get involved. Now they are growing up in a void and we’ve got to keep control and give them a sense of identity...The Ulster Young Militants (UDA Youth Wing) used not to take them until they were 17 or 18, but now it’s 14 or 15 because they are at an age where they are bowing to peer pressure. We’ve taken on hundreds in South Belfast alone and around the country... We’re not teaching them to shoot or bomb, but we’re trying to educate them about history, computers and job skills...'. A senior Ulster Volunteer Force (UVF) spokesman admitted that his group was recruiting young members from 17 upwards and that recruits received a level of weapons training "to maintain their interest". In April 2001, The Guardian reported that a source close to the smaller Orange Volunteers said, "there was a steady stream, of people of all ages interested in joining".

Comment:
The Optional Protocol on the Involvement of Children in Armed Conflict, Article 4, prohibits the compulsory and voluntary recruitment and use of all children under 18 by non-state armed groups and obligates the State to take all feasible measures to prevent such recruitment and use. When the UK ratifies the Optional Protocol, a review of current practice would be necessary to ensure that all feasible measures are indeed being taken. Legislation without effective implementation would not suffice to fulfil UK’s obligation under the Optional Protocol.

D. PROTECTION OF CHILDREN AFFECTED BY ARMED CONFLICT

Article 38(4) "In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict"

i. Landmines

- In relation to Article 38(4) of the Convention, has the State taken national, bilateral and international action to protect children from anti-personnel mines?
Landmines or anti-personnel mines are used in conflicts all over the world. Their effect during war can be indiscriminate, affecting civilians and combatants alike. After a conflict has ended, landmines continue to wreak their destruction on the civilian population. Children are the unwitting victims of landmines. Often children venture into mined land, unaware of the dangers, their size and proximity to the ground (in terms of vital organs) making them more vulnerable to death and serious injury than adults as a result of stepping on a mine. The Ottawa Treaty recognises the devastating and indiscriminate effect that anti-personnel landmines have and the deadly legacy that they leave for decades after a conflict has ended. The treaty was drafted to endeavour to address the problem of the proliferation of landmines, which were often (and still are) sold by First World countries to those countries ravaged by war. However, the Ottawa Treaty only applies to anti-personnel mines and not to anti-tank mines or anti-vehicles mines, which are activated by the weight of a vehicle driving over them.

The study on the Impact of Armed Conflict on Children (the Graca Machel Report) supported a total ban on anti-personnel mines and the Committee on the Rights of the Child has frequently questioned States on what action they have taken to prevent the production, export and use of landmines. In the 1995 examination by the Committee of the UK’s initial report, the Committee asked whether it was true that, as UNICEF claimed, the United Kingdom was manufacturing and exporting anti-personnel landmines. The Committee asked, “If that were the case, did the Government consider such a policy to be compatible with the Fourth Geneva Convention and the Convention on the Rights of the Child”?

The UK delegation replied, “With regard to anti-personnel land-mines, he wished to emphasize that the British Government ensured that all arms exports were in conformity with its international obligations.” However, the Committee expressed its dissatisfaction with this response.

Parliament has since passed the Landmines Act 1998, which implements the Ottawa Treaty. One concern is that the Landmines Act does not prohibit military co-operation between UK military personnel and military personnel from a State that has not ratified the Ottawa Treaty and hence may be using anti-personnel mines (e.g. USA).

On 10 May 2002, the BBC reported that MPs have demanded an inquiry into claims that a British company broke the law by producing and offering anti-personnel mines for sale. Such sales are illegal under the Landmines Act. It is alleged that PW Pains was advertising E190 “fragmentation grenades”, which constitute anti-personnel mines within definition of Article 1 of the Landmines Act, at a Ministry of Defence sponsored arms fair. On 23 May 2002 the BBC reported that police were making enquiries.

**ii. Child Soldiers**

“Britain has promoted a ban on the use of children as soldiers in other parts of the world. In March 1999 the International Development [Secretary] explained that a proportion of the British international aid budget would be used for the first time to back military reform in the developing world, and that reducing the number of child soldiers would be among the main aims of this initiative. The UK also made financial/military assistance to Sierra Leone conditional on the non-use of child soldiers by government forces, however the minimum recruitment age was set only at 16, in line with Britain’s domestic position”, although the African Standards - Maputo Declaration and the African Charter on the Rights and Welfare of the Child (Article 22) - specify 18.

In reply to a parliamentary question regarding action taken to combat the use of child soldiers around the world, the International Development Secretary, Clare Short, stated: “My Department has been working with UNICEF to strengthen its capacity to protect and assist children in crisis situations. UNICEF is engaged on these issues with governments, NGOs, ECOWAS States, Ethiopia and Eritrea, Cambodia, the Philippines, East Timor, Indonesia, Paraguay, South Sudan ad Democratic Republic of Congo. My Department has also been supporting work on child soldiers in Sri Lanka with UNICEF’s Children and Women in Armed Conflict programme, the Quaker UN office, the International Committee of the Red Cross and the Save the Children Fund.”

248 Entered into force for the international community on 1 March 1999.
249 CRC/C/SR/206, Para 40.
250 CRC/C/SR/206, Para 48.
251 CRC/C/SR/206, Para 55.
iii. Training in international human rights and humanitarian law

Armed Forces deployed to fight or take part in peacekeeping missions are the most liable to violate international humanitarian law and the rights of the child\textsuperscript{254}. Although not specifically contained in the provisions of the Convention on the Rights of the Child, the Committee has considered that to enable children’s rights to be ensured during situations of armed conflict, the military, including peacekeeping forces, need to be trained in humanitarian law and children’s rights.\textsuperscript{255}

It is unclear how far the Armed Forces are trained in international humanitarian law and the CRC (which applies in times of emergency and war as well as peace). Training is essential as the UK Armed Forces are actively involved in peacekeeping missions, NATO missions and have to deal with the volatile situation in Northern Ireland.

Section 3: Other relevant Articles and issues

A. OTHER RELEVANT ARTICLES OF THE CRC

Although, recruiting and deploying children above 15 but under 18 does not directly violate Article 38 of the CRC, their recruitment and deployment does give rise to the violation of other Convention rights.

i. Article 3 – “In all actions concerning children… the best interests of the child shall be a primary consideration”

Whether the recruitment of children into the Armed Forces is in the best interests of the child is debatable. The MoD has admitted that they need to recruit under-18s in order to fill their ranks. As a side issue they believe that the Armed Forces provide under-18s with a career and stability. However, this is not the primary consideration in recruiting them. Regarding deployment of under-18s, the MoD has said that under-18s will be deployed with their unit if it would destabilise their unit to withdraw them. Again, the best interests of the child are not the primary consideration.

ii. Articles 6, 19 and 24

In this section several Articles of the Convention are considered together:

Article 6:
(1) – “States recognize that every child has the inherent right to life”
(2) – “States Parties shall ensure to the maximum extent possible the survival and development of the child”

Article 19:
(1) – “State Parties shall… protect the child from all forms of physical or mental violence, injury or abuse… while in the care of… any other person who has the care of the child”

Article 24:
(1) – “State Parties recognize the right of the child to the enjoyment of the highest standard of health and to facilities for the treatment of illness and rehabilitation of health”

- Death, physical and mental violence and harm

Deployment:

Deployment by the Armed Forces of under-18s to conflict zones, especially to take a direct part in hostilities puts the life and physical and mental integrity of children in danger\textsuperscript{256}. However, even when not taking a direct part in hostilities, it must be noted that under-18s (as with all personnel in the Armed Forces) are deemed to be combatants under international law applicable to armed conflicts (international humanitarian law), and consequently can be killed as well as kill. The buildings, in which they carry out their duties are also considered military objectives and can be targeted in times of conflict.

The problems for under-18s who receive serious injuries are long lasting. Under-18s may find that their injuries (e.g. loss of sight, hearing and limbs) do not permit them to reintegrate fully into civilian life and obtain employment outside the forces.

Training\textsuperscript{257}:

Training, both basic and advanced, often involves handling live ammunition\textsuperscript{258} and explosives, which exposes under-18s to the risk of death and injury. Amnesty International records that in March 2000, a

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\textsuperscript{254} For example see “Note for Implementing and Operational Partners on Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone based on Initial Findings and Recommendations from Assessment Mission 22 October – 30 November 2001”, UNHCR and Save the Children-UK, February 2002.

\textsuperscript{255} The Committee frequently mentions this in its concluding observations e.g. Italy IRCO, CRC/C/Add.41, Para 15.

\textsuperscript{256} See section Biii for statistics on deaths of under-18s.

\textsuperscript{257} For example, under-18s in the Royal Engineers and the Royal Logistic Corps learn to handle explosives in basic training.
17-year-old Royal Marine was shot and killed, allegedly, because of a mix up of live and blank ammunition on exercise at Lympstone, Devon.259

All recruits must pass fitness tests before they are accepted into the Armed Forces because of the strenuous nature of the training260. The training exercises themselves can cause health problems and in severe cases death e.g. during survival training, endurance training or while crossing treacherous terrain.261. “Despite the fact that under-19s are entitled to longer rest and recuperation periods, training has proved on several occasions to be lethally dangerous, including to children: from 1982 to 1 December 1999 the MoD recorded the deaths of 12 under-18s during training schemes, exercises, and other forms of training.”262 Royal Marine Commando training is particularly demanding (one of the toughest courses in the world) and two 18-year-olds have died since 1998 in what were referred to as tragic accidents. No action was taken against the officers in charge. Amnesty International noted that the course had been criticised for the barbaric treatment of the recruits and some particularly hazardous and strenuous training exercises.263

The MoD argues that tough training is necessary to enable recruits to cope with warfare. However, endurance marches, which are part of training for many recruits, are seldom a part of modern warfare. Further, the MoD cannot justify training of such a strenuous nature that under-18s are vulnerable to death from heat exhaustion.

Women have been particularly vulnerable to injury during training when in mixed groups (because of the height gap with male recruits) and the frequency of injury has dropped by 50% since the establishment of all women units.

Allowing under-18s to undergo training where there is a risk of death and injury cannot be seen to be in the best interests of the child, and further does not protect their right to life or their physical and mental integrity. The Government does not seem to have properly evaluated the Armed Forces’ training exercises to ensure that they are necessary for modern warfare and are carried out in a way that protects the lives and physical integrity of under-18s.

Although all deaths must be reported to the Coroner’s office, which leads to a public inquest, the conduct of the internal board of inquiries, which are held within the Armed Forces and often involve senior members of the regiment of the deceased, has been criticised.264

Mental and Physical Health Problems
In addition to death and injury, the UK put their Armed Forces personnel at risk of developing health problems by allowing them to be exposed to the effects of modern weaponry during service:

‘Gulf war syndrome’:
“There are reasons to believe that, for example, the combination of vaccines and Nerve Agent Pre-treatment given to troops during the Gulf War had not been sufficiently tested.”265 The alleged illness resulting from this was coined the ‘Gulf War Syndrome’. There is speculation that the Gulf War Syndrome was actually caused by depleted uranium.266

Depleted Uranium:

259 During training (Army Training Regiment) new recruits learn how to use and fire the SA80 rifle at distances of up to 300 metres. (Army web site http://www.army.mod.uk/careers/soldier_careers/sold_training.htm)
260 Amnesty International Report, pg. 3.
261 The brochure ‘Army Soldier’ (CPA95, May 2000) states, under the heading ‘Fitness and Sport’, “Soldiers have to be fit and able to move fast. Your Army training will gradually develop your strength and stamina, giving you the capacity to keep going and do your job even when you are tired. You will become fitter and stronger than you have ever been and you learn to dig deep and get the best out of yourself and the people around you”.
262 In October 1998 at Lympstone, a 16-year-old Royal Marine drowned during a river-crossing exercise on Dartmoor, wearing full kit, while on a 30-week commando training course. Amnesty International Report, pg. 3.
263 Amnesty International Report, pg. 27.
264 Amnesty International Report, pg. 29.
266 The Gulf Veterans’ Medical Assessment Programme – Frequently Asked Questions – Ministry of Defence website http://www.mod.uk, Members of the National Gulf Veterans and Families Association are appealing directly to the Prime Minister to initiate a public inquiry into the health effect of serving in the Gulf War. Many veterans who served in the Gulf conflict claim that they have suffered a range of disorders and in some cases that their children have suffered birth defects. They are demanding an investigation into the role of depleted uranium, the use of multiple vaccinations for a range of deadly diseases and possible exposure to pesticides and organophosphates. Those affected further complain that they have not received adequate compensation or treatment for their condition. However, the Prime Minister concluded that a public inquiry would not add to the debate as a large amount of research is currently being carried out both within and outside the MoD. Gulf war veterans demand inquiry, BBC Online, 14 April 2002.
There have been concerns recently over depleted uranium being used in conflicts such as Kosovo.267 “Both the US and the UK acknowledge that the dust can be dangerous if it is inhaled, though they say the danger is short-lived, localised, and much more likely to lead to chemical poisoning than to irradiation...Many veterans from the Gulf and Kosovan wars, though, believe that DU has made them seriously ill.”268 In May 2001, the BBC produced a focus on their online news pages about the dangers and controversy regarding depleted uranium.269 The Ministry of Defence has also been conducting a consultative study on the introduction of a voluntary screening programme for depleted uranium.270 However, on its website, the MoD lays out the facts and misconceptions about Depleted Uranium recognising only that there is a small risk to service personnel from DU dust if they work unprotected close to a vehicle hit by DU ammunition. It is asserted that this risk has been minimised by issuing personnel with guidance on protective measures that they should take. The MoD denies that DU has caused particular health problems among service personnel.271

As yet, there is no conclusive proof that depleted uranium causes health risks but no proof that it does not. While the UK has initiated consultations on the topic of depleted uranium, its use has not been suspended while awaiting the results of tests and inquiries.

**Post Traumatic Stress Disorder (PTSD) and other psychiatric problems:**

War is a stressful situation for any person of any age and according to the World Health Organisation, the repeated direct exposure of child soldiers to violence may affect their long-term mental health leading to “persisting patterns of problematic behaviour and functioning. Many children may be withdrawn, depressed and display difficulties in social relationships.”272

“According to At Ease, ... children deployed in the Gulf and in Bosnia had to undergo very traumatic experiences such as removing the bodies of dead Iraqi soldiers they had just shot at, some of whom were not older than 12 years, or dealing with women who were rape victims.”273 Undergoing such experiences at a young age can take their toll. Amnesty International states that the MoD has failed in the past to reduce the risk of PTSD, which are large number of soldiers deployed in the Falklands, in the Former Republic of Yugoslavia, in the Gulf and in Kosovo are allegedly suffering from, and to effectively treat those who are suffering from it, including under-18-year-olds.274

However, the MoD has started to address the problem of PTSD within the MoD Stress Management Policy, despite asserting that there are less than 100 cases a year out of 210,000 personnel.

“Psychological support to service personnel on operational tours starts prior to deployment. The deploying headquarters will carry out a full risk assessment including a stress risk assessment for the operation. Service personnel are given lectures that explain the situation they are likely to find themselves in, their likely reactions, methods of coping and how to access psychological support...Commanders are trained to understand the affects of stress, to look after their people and can arrange psychiatric support for them if required. During operational deployment the deployed force will, in addition to unit medical staff, have psychiatric staff attached, The level of support provided will vary depending on the perceived risk and size of force deployed and length of deployment. As a minimum, individuals will have access to their unit’s Doctor and a Psychiatric Nurse. If the unit’s Doctor and Psychiatric nurse are unable to resolve a psychological problem, individuals can be returned to the UK where there is a Defence Psychiatric facility at The Duchess of Kent Psychiatric Hospital, which is the Centre of Defence Psychiatry. On return from operational deployment all personnel are given a further psychiatric briefing intended to help them cope with the return to the UK and to highlight under what circumstances they should seek further help; it also tells them where to find professional help. In the UK individuals can access psychiatric support through unit medical officers or by making a direct approach to their local Military Community Psychiatry Department. This applies to all of [personnel] regardless of the underlying cause of their illness.”275

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268 BBC Online - focus page, Q&A on depleted uranium.
272 [http://www.mod.uk/issues/depleted_uranium/facts.htm](http://www.mod.uk/issues/depleted_uranium/facts.htm) and [http://www.mod.uk/issues/depleted_uranium/misconceptions/htm](http://www.mod.uk/issues/depleted_uranium/misconceptions/htm)
274 Interview to German Radio (ARD), April 1999, Amnesty International Report, pg 11.
275 MoD letter to the Children and Armed Conflict Unit, 13 June 2002.
No special provision is made for under-18s. However, in carrying out a risk assessment for an operation account will be taken of the age and experience of the individuals involved.\(^7\)

Other psychological problems include depression, which is not uncommon among the new recruits and can be put down to a variety of reasons, including bullying. Self-harming (which is symptomatic of depression) among under-18s was recorded at 60 between 1996 and 1999 by the MoD.\(^7\)

iv. Article 32 (1) – Protection from hazardous work

“State Parties recognize the right of the child to be protected … from performing any work that is likely to be hazardous … or to be harmful to the child’s health or physical, mental…development.”

Article 32(2)(a) provides that States set minimum ages for employment. Although 16 is the age set in internal documents (House Rules for the MoD) for recruitment, this is not enshrined in legislation. As discussed above, being a recruit in the Armed Forces exposes under-18s to hazardous work that might be harmful to the child’s health or physical and mental development.

v. Article 37(a) – Bullying and ill treatment in the Armed Forces\(^7\)

“State Parties shall ensure that no child shall be subjected to … cruel, inhuman or degrading treatment or punishment.”

Young people in the Armed Forces are vulnerable to bullying, harassment and abuse, and in severe cases young people have suffered violence, sexual assault and rape.

Examples of ill treatment were documented in the Global Report on Child Soldiers –

“Serious offences have included, for example, the rape of a 17-year-old recruit by her Sergeant (jailed for seven years in November 1998), the mistreatment of three recent teenage recruits who were beaten, shaven, stripped, ‘touched up’ and forced to dance before their unit by two senior riflemen (discharged and sentenced to 140 days’ detention for disgraceful conduct of an indecent kind in February 1999), the bullying and humiliation of 10 recruits aged 18 and under (including a mock execution, forced simulation of sexual acts and forced ingestion of mud) by a sergeant and four corporals who denied 17 charges of ill-treatment to soldiers and were subjected to only minor discipline charges in July 1999. Other offences handled by solicitors over the last three years have included women soldiers paraded in t-shirts soaked in water by male superiors; a recruit allegedly tied to a cannon, stripped and then whipped with belts by NCOs; recruits being tied to beds or trees and urinated on; recruits being forced to undergo the ‘regimental bath’ – dunking in a tub filled with urine, vomit and sometimes faeces; recruits being beaten so badly they need hospital treatment; a recruit beaten and threatened with being drowned in the sea”.\(^7\) Initiation practices and bullying seem to be an integral part of training in the Armed Forces as a means of ‘hardening up’ the recruits. However, such conduct would be unimaginable and certainly not tolerated in any other workplace.

The prevalence\(^7\) of bullying and ill treatment in the Armed Forces is largely due to the power relationships in the military.\(^8\) When recruits suffer ill treatment at the hands of their peers or their superiors, they find it difficult to report incidents or file complaints. Many of those who stay quiet, do so because they fear that their complaints will not be taken seriously. Recruits are also discouraged from filing joint complaints against the senior officers because of the fear of being charged with mutiny.\(^8\)

“The MoD claims that a policy of ‘zero tolerance’ towards all forms of harassment and bullying is applied. It also maintains that all allegations are investigated as a matter of urgency, and where they are substantiated and proved, disciplinary action is taken against the offender. The MoD has not replied to the Amnesty International’s questions, though, on the allegation that those who make joint complaints may face charges of mutiny in response. The MoD’s statements of principle do not allay

\(^7\) ibid.
\(^7\) ibid.
\(^7\) The failure of the UK to protect children from bullying and ill treatment while in the Armed Forces also violates Article 19 of the CRC. The Army Act 1955 provides that any officer, warrant officer or NCO, who ill-treats personnel of inferior ranks is liable to a trial by court-martial and a term of imprisonment not exceeding two years. (s65)
\(^7\) Global Report on Child Soldiers, op. cit., pg. 376-377. Also see Amnesty International Report, pg. 3 and 31-33 for further examples of bullying and ill treatment in the Army.
\(^7\) In June 2000 the Special Investigation Branch of the military police was investigating 30 allegations of brutality, and at least 30 servicemen were separately suing the Ministry of Defence after suffering assaults from fellow-officers. “Amnesty International Report, pg. 3.
\(^7\) Amnesty International Report, pg. 3.
\(^7\) Amnesty International Report, pg. 33-34.
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calls about accessibility to procedures for reporting a complaint, particularly with regard to children who may be easily intimidated and confused, particularly about the popular perception by young recruits that bullying is part of military life and that complaints will not be impartially investigated and acted upon.”

While bullying is not confined to under-18s, this age group is more vulnerable to being targeted because of their age and stature and because they are more liable to be intimidated by their superiors into remaining silent. Amnesty International claims that recruits are further discouraged from speaking of their experiences and seeking help from outside the Armed Forces, having been forced to sign the Official Secrets Act upon joining up. While the Official Secrets Act is not designed to prevent personnel airing grievances, younger recruits might be convinced that they are breaching the OSA by talking about their experiences and therefore are wary of speaking out. This is compounded by the inadequate complaints procedures in the Armed Forces. Bullying and ill treatment is of further concern as it directly leads to many of the cases of absenteeism (AWOL and desertion), especially in the Army.

➢ Other international instruments

The Council of Europe, recognizing the widespread problem in Europe of ill treatment and bullying of new recruits, invited States to protect children from these practices, which violate Article 3 of the European Convention on Human Rights. Further, the Committee Against Torture has expressed its concern about the practice of bullying young soldiers asserting that: “[t]he allegations of bullying and ill-treatment, coupled with inadequacy of the complaints procedure, may amount to cruel, inhuman or degrading treatment of recruits.”

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283 Amnesty International Report, pg. 34.
284 Amnesty International Report, pg. 34. “Signing the OSA is populist shorthand for a procedure officially known as ‘indoctrination’, which actually involves signing a form acknowledging that one has been formally warned of the penalties for breach of the Official Secrets Acts. At one time this procedure was only implemented for personnel working on material classified as Top Secret or Secret (as distinct from Confidential, Routine and Unclassified), which would never include young and raw recruits. Routine ‘indoctrination’ of under-18s, regardless of its inhibition on reporting complaints, imposes needless stress which could affect mental health.” Email from William Hetherington to the Children and Armed Conflict Unit, Peace Pledge Union, 24 May 2002.
285 Almost all of the cases of absenteeism (AWOL and desertion) come from the junior ranks and from the Army. Global Report on Child Soldiers, op. cit., pg. 376.
286 Amnesty International Report, pg. 35. Article 3 ECHR “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.