



**CPAG submission on the Communities
and Local Government Department
Review of statutory duties placed on
local government**

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**Child Poverty Action Group
94 White Lion Street
London N1 9PF
www.cpag.org.uk**

Summary

1. The Government has launched 'an informal' 6 week consultation reviewing the '1,294 statutory duties that central government currently places on local authorities, the majority of which arise from primary legislation - and we are aware that at this stage it is not a complete list'.
2. The Government suggests that 'While some duties remain vital, others may no longer be needed or may create unnecessary burdens or restrictions on local authorities' and are therefore carrying out 'a wide ranging review to establish the duties which are no longer needed and to remove them, giving local authorities freedom to operate in a way that meets local needs and priorities.'
3. The Government is 'inviting you to comment on the duties and to challenge government on those which you feel are burdensome or no longer needed.'
4. The statutory duties range from 'The Enforcement of Plugs and Sockets etc. (Safety) regulation, and 'Enforcement of Nightwear (Safety) Regulation' to a range of vital duties contained in a raft of legislation that has placed the wellbeing and safety of children centre stage.
5. The statutory duties that are under review include a range of duties and responsibilities that have evolved over many decades, many of which were put in place to prioritise and protect some of the most vulnerable groups in the country.
6. These include statutory duties under the National Assistance Act 1948, the Public Health Act 1961 and 1975, the Mental Health Act 1983, The Children Act 1989, the Education Act (EA) 1996, Parts 6&7 of the Housing Act 1996, the Schools Standards and Framework Act 1998, the Learning and Skills Act 2000, the Education Act 2002, Adoption and Children Act 2002, the Homelessness Act 2002, the Education Act 2005, The Education and Inspectors Act 2006, the Children Act 2004, the Childcare Act 2006 the Education and Skills Act 2008, the Health and Social Act 2008 and the Apprenticeship Skills Children and Learning Act 2009.
7. Statutory Duties contained in the Equality Act 2010, and the Child Poverty Act 2010 are also under review.
8. CPAG believes that the approach taken by the review which is to lump all or any of the statutory duties together and effectively ask people and organisations to pick their favourites while calling for the removal of those of which they do not approve is profoundly misplaced. The statutory duties placed on local government to protect many of the most vulnerable people in society are too important to do this.
9. The recently published child poverty strategy outlines how the Government will set about 'Supporting local areas to assess and address child poverty', at a time of significant cuts in financial support to claimants, to public services and to local authorities which is resulting in significant cuts to services that support families (such as Sure Start). It is very hard to see how the current review will tackle either income poverty, or implement policies designed to support early intervention and reduce educational and health inequalities – both of which are closely linked with and driven by socio-economic disadvantage.

10. Reviewing the statutory duties of local authorities in order to cope with a funding crisis is likely to be extremely damaging in the short-term, and sets dangerous precedents for future governments, who might choose to remove duties rather than seek out different ways of enabling national and local government to fulfil them.
11. Although this submission cannot address all of the local authority duties being reviewed, it is a source of considerable concern that a raft of duties which provide a legislative framework, which since the Children Act 1989 has firmly placed the welfare of children at the forefront of public policy, and without which the Child Poverty Act targets will be difficult to achieve, are now in danger of being scrapped
12. Given the range of statutory duties and their likely impact on the health and wellbeing of children and their families – including groups of children who have been identified as facing the greatest risk of living in poverty, such as disabled children, children in care, children leaving care, and young people not in full time education, employment or training (NEETS) - we are unable to focus on and defend each and every statutory duty that has been listed.
13. Reviewing a range of statutory duties that protect the wellbeing of children (by placing their welfare at the forefront of the delivery of services), focus on the delivery of high quality early years support (by providing delivering high quality services in children's centres and ensuring the delivery of high quality childcare) and enhance social mobility (by promoting educational equality) actively undermines the foundations of many of the Government's key policies outlined in its child poverty strategy and its strategy for social mobility.
14. Many of the duties being reviewed also provide safeguard a vital infrastructure of support for the effective delivery of welfare to work policies as outlined in the Welfare Reform Bill.
15. Moreover, the statutory duties CPAG is most concerned with are often duties which flow from the Human Rights Act 1998 and international treaties, conventions and directives. Examples being the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child. It is disingenuous to suggest that such legal obligations are 'burdens' which can somehow be jettisoned
16. It is worrying that the Government should launch a time-limited, not widely advertised 'informal consultation' on changing a legislative framework that underpins and supports policies that have been put in place by the previous and the current Government designed to tackle child poverty.
17. We are concerned that the erosion of local authority duties at a time when we are concerned about central government's child poverty strategy will result in responsibility for the eradication of child poverty falling between two stools.
18. Although in its recently published child poverty strategy the Government claims to be fulfilling its duties under the UN Convention on the Rights of the Child, we believe that this rushed, poorly thought out review constitutes a systematic erosion of children's rights in the UK, and should be vigorously challenged.
19. This response focuses on the statutory duties that far from being 'burdensome or no longer needed' are absolutely fundamental to protecting the best interests of

children and their families at a time when financial support and services are under threat and which are essential to ensure that responsibility and accountability for safeguarding and protecting children and families is not swept away.

Context

Child wellbeing: a legislative framework

20. A raft of legislation has been put in place to ensure that 'child welfare' (more recently, 'child wellbeing') is placed at the forefront of children's services. 'Child wellbeing' now has a legal definition in the UK which is reflected in the five Every Child Matters outcomes 'to give all children the support they need to: be healthy; stay safe; enjoy and achieve; make a positive contribution; achieve economic well-being.'
21. This legislative framework, which has evolved over many decades, supports the current Government's belief – as outlined in the Coalition Programme - that 'strong and stable families of all kinds are the bedrock of a strong and stable society. That is why we need to make our society more family friendly and to take action to protect children from excessive commercialisation and premature sexualisation' and that 'the most vulnerable children deserve the very highest quality of care.'¹
22. This framework also provides a vital legislative infrastructure which will help ensure that the recently published child poverty strategy 'is in line with our duties under the UN Convention on the Rights of the Child'² and its stated aspiration to focus on '[I]mproving children's health and development outcomes from conception to the age of five' and 'explore the potential to develop an indicator of young children's health and well-being at age two to three, building on existing measures of children's development'³
23. Elements of this legislative framework are outlined below.

The Children Act 1989

24. (1989 Chapter 41) states that it is 'An Act to reform the law relating to children; to provide for local authority services for children in need and others; to amend the law with respect of children's homes, community homes, voluntary homes and voluntary organisations; to make provision with respect to fostering, child minding and day care for young children and adoption; and for connected purposes. (16th November 1989). Part 1 confirms that 1 (1) When a court determines any questions with respect to –
 - the upbringing of a child; or
 - the administration of a child's property or the application of any income arising from it
 - the child's welfare shall be the court's paramount consideration.

The Children Act 2004

25. The definition of child wellbeing is also enshrined in the Children Act 2004, legislation which provides the legal underpinning for Every Child Matters. The Children Act 2004 also established a Children's Commissioner, who should ensure that children's views and opinions are sought.

The Childcare Act 2006

26. Section 1 Childcare Act 2006, 'General duties of local authority in relation to well-being (as defined in the Children Act) of young children' provides that: 'An English local authority must:

- (a) improve the well-being of young children in their area, and
- (b) reduce inequalities between young children in their area in relation to the matters mentioned in subsection (2)

27. Subsection (2) goes on to define well-being in terms of physical and mental health and emotional well-being, protection from harm and neglect, education, training and recreation, their contribution to society, and their social and economic well being.

The Child Poverty Act – an overview

28. The *Child Poverty Act 2010* was passed with the support of all political parties, and received Royal Assent on 25 March 2010. It enshrines the Government's commitment to eradicate child poverty by 2020 in legislation. It establishes four separate child poverty targets to be met by 2020/21, requires the UK Government to publish a regular UK child poverty strategy, requires Scottish and Northern Irish Ministers to publish child poverty strategies, establishes a Child Poverty Commission to provide advice and requires the UK Government to publish annual progress reports.

29. Part 2 of The Child Poverty Act places duties on local authorities and named partner authorities to cooperate with a view to reducing, and mitigating the effects of, child poverty in their local areas.

30. Responsible local authorities and their named partner authorities are required to:

- *Cooperate*: The Act places a duty on responsible local authorities (those with top-tier functions) to put in place arrangements to work with partner authorities named in the Act to reduce, and mitigate the effects of, child poverty in their local area. The Act also places an expectation on partner authorities to cooperate with the local authority in these arrangements;
- *Understand needs*: The Act places a duty on responsible local authorities and their partner authorities to conduct a local child poverty needs assessment. This will enable them to understand the characteristics of poor families in their area, and the key drivers of poverty that must be addressed; and
- *Develop and deliver a strategy*: The Act requires responsible local authorities and partner authorities to create a joint local strategy for reducing child poverty, which must set out the contribution that each partner authority will make and must address the issues raised in the needs assessment.

31. The duties covered by this guidance came into force in 25th May 2010, two months after Royal Assent, after which point local authorities and their named partner authorities are required to have regard to this guidance in responding to those duties.

32. According to the previous Government, 'The new duties on responsible local authorities and partner authorities which were agreed following formal

consultation ahead of the introduction of the Child Poverty Act are not intended to create unnecessary new structures and burdens' but should be 'seen as part of the wider strategic planning that is overseen by the Local Strategic Partnership'.

33. The then Department for Children Schools and Families (now the Department for Education) stipulated that 'if potential new burdens do arise as a result of this guidance, DCSF commit to fully funding all new burdens on local authorities.'
34. More recently it has been announced that 'The Child Poverty Unit (a joint DfE, DWP, HMT Unit) is making available £9.5 million funding in 2010-11 to those top-tier Local Authorities who are responsible for leading the cooperation arrangements with partners in recognition of the costs of developing, consulting on, and publishing local child poverty needs assessments and strategies. The Child Poverty Unit will not be prescribing exactly how these duties should be fulfilled but has allocated funding to Local Authorities to reflect the scale of the challenge in fulfilling the duties and putting measures in place to address child poverty in the area.'⁴
35. According to a letter from the Child Poverty Unit to some local authorities 'There are very significant economic and social costs on public services and on local communities of dealing with the short and long-term consequences of child poverty. The Part 2 duties and the additional funding being made available in 2010-11 provide a critical opportunity to focus capacity and resource on understanding needs in the local area and reprioritising and refocusing local services accordingly.'⁵ CPAG response to consultation on the review of statutory duties
36. CPAG is particularly concerned about the proposal to review the statutory duties outlined in the Child Poverty Act 2010, and we outline our concerns below.

Specific duties

37. Child Poverty Act 2010 - **DFE_167** – Duties of local authorities and other bodies in England requires local cooperation arrangements to be made to reduce and mitigate the effects of child poverty in local areas; the arrangements to include arrangements to prepare and public local child poverty needs assessments, and to prepare joint child poverty strategies for local areas.'
38. ***What does this duty help local authorities to achieve?***
 - As discussed above, Part 2 of the Child Poverty Act places duties on local authorities and named partner authorities to cooperate with a view to reducing, and mitigating the effects of, child poverty in their local areas. That cooperation must lead to the production of local child poverty needs assessments, which in turn inform local child poverty strategies.
39. ***Does undertaking this duty present local authorities with a burden?***
 - While fulfilling the duty may have short term financial implications (as well as long term benefits) for some local authorities, the Government has a moral and a legal responsibility to ensure that the resources needed to fulfil absolutely vital statutory duties is made available. Simply removing the statutory duty is at odds with effective government and sets fateful precedents for the future.

40. In your opinion, could this duty be removed?

- No. We believe that the removal of this duty is morally and legally wrong, and will remove any incentives in central and local governments to seek out innovative ways to tackle child poverty in the short-term, or put in place the sort of long-term strategies that are needed to tackle child poverty in their area.
- It is particularly important to safeguard this duty at a time when child poverty in some local authority areas is likely to rise significantly.
- In its recently published child poverty strategy the Government reports that 'The government is currently reviewing these and other statutory duties to make sure they strike the right balance between giving local authorities the freedom and discretion they need to get things done, whilst protecting the most vulnerable people.' **We believe that the removal of many of the statutory duties listed above will do the exact opposite.**
- The Government suggests that the strategy should be seen in conjunction with a new Social Mobility Strategy – *Opening Doors, Breaking Down Barriers* – and argues that 'progress is needed on both these agendas to achieve success in eradicating child poverty, and achieve our vision of a fair society' – we believe that removing this duty will undermine that objective.
- The Child Poverty Strategy clearly states that 'On entering government last year we stated upfront our clear commitment to ending child poverty in the UK', but we believe that the removal of this duty would greatly undermine this ambition.
- The removal of this statutory duty is at odds with other elements of the Government's child poverty strategy which outlines 'new funding structures' which recognise 'the importance of early, sustained, decentralised and targeted support to empower families and communities'. **The removal of this duty (along with others listed below) will actively undermine the delivery of such services.**
- Apart from a heavy reliance on the delivery of early intervention and holistic services to support families - all of which are likely to suffer due to significant cuts in funding and the erosion of statutory duties on local authorities to deliver them - the strategy also considers 'Improving housing and the local environment', 'Supporting children's school years' and 'Promoting physical and mental health and reducing health inequalities'. **We believe that this duty provides an essential framework to enable the government to fulfill these ambitions.**
- The current review of statutory duties purports to be in line with the Government's 'localism approach' which focuses on:
 - Lifting the burden of bureaucracy
 - Empowering communities to do things their way
 - Diversifying the supply of public services – by ending public sector monopolies

- Strengthening accountability to local people
- However, we believe that the removal of this duty will actively undermine the achievement of these aims.
- In the general section entitled 'Localism, the Big Society and child poverty' the child poverty strategy reports that 'Tackling child poverty in a sustainable way requires empowered, engaged local decision-makers with the right tools, combined with strong local accountability'. We believe that the removal of this duty will undermine the planning and delivery of sustainable local approaches to tackling child poverty, and actively reduce accountability.
- The child poverty strategy reports that 'Assessing local need is integral to identifying gaps in provision and agreeing targeted action against the causes of poverty' – and yet proposes dissipating the obligation placed upon local authorities to do this.
- The strategy outlines how – 'working collaboratively allows local partnerships to develop a more comprehensive understanding of child poverty in their area and of the families who are most at risk.' The removal of the duty is at odds with this aspiration.
- The strategy suggests that 'reforms to the way public services are organised and delivered ...will provide the levers for local decision-makers to target their services more effectively for their communities.'
- The strategy suggests that 'Publishing evidence-based child poverty needs assessments, and action-based child poverty strategies with clear ownership and deliverables, can support this.' But by diluting the statutory duties it actually obfuscates ownership and there is a danger that responsibility for tackling child poverty will fall into a vast vacuum created by wider cuts.
- ***What are the particular benefits of this duty being removed and who would benefit?***
 - We believe no-one would benefit from removing duties that help end child poverty.
- ***What do you consider are the adverse effects of removing this duty and who would this affect?***
 - The removal of this statutory duty undermines both the legislative integrity and the ability to meet the targets outlined in the Child Poverty Act. Removing this duty would lead to greater costs that it is accepted would come with higher child poverty rates.
 - We are concerned that the removal of this duty will end the shared aspiration for the eradication of child poverty in 2010 and that children and families will suffer as a consequence of the removal of this duty.

- ***In your opinion are powers and/or guidance helpful or do they create a burden?***
 - Although the Government is sceptical of targets and favours a 'light touch' approach to the delivery of public services, the recent economic crisis suggests that lack of regulation can contribute to reckless and irresponsible behaviour.
 - Recent evidence on a dramatic increase in waiting times in accident and emergency departments have been attributed to a combination of the removal of targets and cuts in services. We fear that this pattern will be replicated in local authorities struggling to balance their budgets at a time when many will be coping with an influx of low income families being driven out of the more affluent areas due to changes in housing benefit.
- ***Would you like to add any general comments about this particular duty?***

Specific duties

41. CPAG is also concerned about the proposed erosion of a range of other duties under review which we believe are particularly relevant to the wellbeing of children, and the eradication of child poverty.
42. Although we cannot list all the duties being reviewed, CPAG is particularly concerned about the suggestion that the following statutory duties may be swept away. We have organised the statutory duties currently under review under headings that we believe are directly relevant to the eradication of child poverty as enshrined in the Child Poverty Act.

Duties to safeguard and promote the welfare of children and support families

- The Children Act 1989 – DFE_5 – Imposes a general duty on local authorities to safeguard and promote the welfare of children in need in their area and so far as is consistent with that duty to promote the upbringing of children by their families by providing a range and level of services appropriate to those children's needs
- The Children Act 1989 - DFE_014 – Places a duty on local authorities to safeguard and promote the welfare of children in their area who are in need. And, so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs
- Children Act 2004 Section 11 – DFE_102 – Duty to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children; and applies where services provided through a third party.
- Children Act 2004 Section 10(3) – DFE_107 – Duty to have regard to the importance of parents and carers in improving children's wellbeing

Duties to protect children under the age of five and delivery of high quality childcare

- Childcare Act 2006 Section 1 DFE_128 – General duty to improve the well-being of children under five and reduce inequalities
- Childcare Act 2006 – DFE_130 – Specific duties in relation to early years services. Includes duties to: make arrangements to ensure the integrated provision of early years services; take steps to identify parents not using services and to encourage them to do so; to encourage the involvement of various interested parties in the making and implementation of arrangements made under this section of the Act; have regard to such information about the views of young children as is available, and have regard to statutory guidance. ‘Section 3 encourages local authorities to work with health services and employment services when arrangement early years service’
- Childcare Act 2006 Section 12 – DFE_133 – Duty to provide information, advice and assistance (on the provision of childcare and on other services or facilities...provide particular help to parents from groups likely to find it more difficult to access suitable childcare, eg parents of disabled children
- Childcare Act 2006 Section 5A – DFE_134 – Duty to secure sufficient children’s centres to meet local need, so far as this is practicable
- Childcare Act 2006 Section 5D – Duty to secure that consultation is carried out before children’s centres are opened or closed or have significant changes made to services
- Childcare Act 2006 – DFE_137 – Duty to consider whether early childhood services should be delivered through one of the children’s centres in the area
- Childcare Act 2006 Section 6 – DFE_139 – Duty to secure sufficient childcare places for working parents
- Childcare Act 2006 Section 11 – DFE_140 – Duty to secure prescribed early years provision free of charge
- Childcare Act 2006 Section 11 – DFE_141 – Duty to assess childcare provision in their area
- Childcare Act 2006 Section 13 – DFE_142 – Duty to provide information, advice and training to childcare providers, and prospective childcare providers

Duties to protect children who face the greatest risk

- The Children Act 1989 – DFE_2 – Promoting the educational achievement of looked after children
- Education Act (EA) 1996 – DFE_036 – identifying and assessing special educational needs, making and reviewing SEN statements and a transition plan from 14. Keeping arrangements for SEN under review....
- Education Act (EA) 1996 – DFE_037 – ‘must have particular regard for the need to secure SEN provision for pupils with SEN (subject to proposals in SEN Green paper)

- Children Act 1989 Section 22 – DFE_172 – Safeguarding and promoting the welfare of looked after children

Duties to tackle educational inequalities

- Education Act (EA) 1996 – DFE_021 – Charges and remissions policies required by all governing bodies (to provide clarity about what can and cannot be charged for)
- Education Act (EA) 1996 – DFE_033 – Ensure that all children get a suitable education
- Education Act (EA) 1996 – DFE_038 – To provide school lunches (upon request) to those pupils for whom it would not be unreasonable to provide lunches – ensures that local authorities where the school meal budget has not been delegated to schools, supply school lunches where appropriate
- Education Act (EA) 1996 – DFE_039 – to ‘Promote Sustainable Modes of Travel to assess general school travel needs.’
- Schools Standards and Framework Act 1998 – DFE_048 – to comply with the legislative code on admissions ... Schools Admissions Code 2010 came into force in February 2010, Schools Admission Appeals Code came into force February 2009
- Schools Standards and Framework Act 1998 – DFE_049 – to provide advice and assistance to parents when deciding on a school place and allow parents to express a preference
- Schools Standards and Framework Act 1998 – DFE_050 – to provide a national picture of admissions issues
- Schools Standards and Framework Act 1998 – DFE_051 – publish the prescribed information about the admissions arrangements for each of the maintained schools in their area
- Schools Standards and Framework Act 1998 – DFE_052 – make arrangements for enabling the parent of a child to appeal against admissions decisions
- Schools Standards and Framework Act 1998 – DFE_055 – ensures the school estate is not subject to decay which could put the health and safety of children at risk

Duties to protect young people and enhance social inclusion

- Education Act (EA) 1996 – DFE_046 – The duty to secure access to positive activities – ‘To ensure young people have access to sufficient educational leisure-time activities which are for the improvement of their well-being and personal and social development, and sufficient facilities for such activities, that activities are publicised; that young people are placed at the heart of decision making regarding the positive activity provision.
- Education and Skills Act 2008 Section 68 – DFE_150 – to make available to young people and relevant adults such services as they consider appropriate to encourage, enable or assist them to remain in education and training.

Conclusion

43. We believe that individually and cumulatively the removal of these duties undermine the integrity of legislation designed to safeguard the wellbeing of children, and at odds with the delivery of the Government's child poverty strategy which includes 'new child poverty indicators' which 'include, but go beyond the income targets set out in the Act' and include: family resources; family circumstances and children's life chances; 'in order to ensure that no child experiences socio-economic disadvantage'.
44. The strategy argues that focusing 'solely on household income is likely to overlook other factors that are crucial for children's longer term development...such as family, home environment, health and education.' The removal of the duties outlined above would have an adverse impact in all these areas.
45. It accepts Frank Field's recommendation that early intervention is the way forward, along with Graham Allen's recommendations 'that the public, parents, health professionals and, especially, newly pregnant women should be aware of the importance of developing social and emotional capability in the first years of life'.
46. It suggests that the expansion of Family Nurse Partnerships working alongside health visitors in Sure Start Centres will enable parents to 'adopt healthier lifestyles for themselves and their babies.'
47. The new approach outlines the Government's desire to monitor, where we can, the prevalence and impact of those behaviours that can be so damaging to a child's well-being or life chances such as parental addiction. It also outlines the Government's desire to monitor the impact of policies on those in the most severe poverty living in households with income below 50% of median
48. The strategy stresses that 'Alongside the income measures...we will track and monitor progress on achieving our overarching aim of getting people into work; ensuring that young people are established in the labour market; whilst taking steps to help people to progress in work and achieve financial independence.' Some of the duties listed below are likely to damage vulnerable young people, and reduce their ability to access paid employment.
49. The headlines indicators on promoting work and employment include:
 - Children in workless households;
 - In-work poverty
 - The successful transition of young adults into education, training and employment.
50. But the erosion of duties in and around childcare is likely to damage the delivery of high quality early years services and undermine the Government's desire to promote work and employment.
51. The erosion of statutory duties that protect children is extremely worrying at a time of significant cuts in financial support to claimants, to public services and to local authorities is resulting in significant cuts to services that support families

(such as Sure Start). We believe this is likely to increase child poverty, damage the delivery of early years services and increase educational and health inequalities.

About CPAG

CPAG promotes action for the prevention and relief of poverty among children and families with children. To achieve this, CPAG aims to raise awareness of the causes, extent, nature and impact of poverty, and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement. If you are not already supporting us, please consider making a donation, or ask for details of our membership schemes, training courses and publications.

Gabrielle Preston
Policy and Research Officer
Child Poverty Action Group
94 White Lion Street
London N1 9PF
tel: 020 7812 5231
fax: 020 7837 6414
email: gpreston@cpag.org.uk

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¹ See *The Coalition: our programme for Government*, (HMSO, May 2010) p.19, p. 29

² HM Government, *A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Families' Lives*, (HMSO, April 2011), p.13

³ See, HM Government, *Opening Doors, Breaking Barriers: A Strategy for Social Mobility*, (HMSO April 2011), p. 27 , p. 77

⁴ See

<http://media.education.gov.uk/assets/files/pdf/f/funding%20for%20child%20poverty%20local%20duties%202010-11.pdf>

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<http://media.education.gov.uk/assets/files/pdf/f/funding%20for%20child%20poverty%20local%20duties%202010-11.pdf>