

## **The translation of articles from the United Nations Convention on the Rights of the Child into education legislation: the narrowing of Article 12 as a consequence of translation**

### **Abstract**

This paper is concerned with the inclusion, exclusion and reshaping of articles within the United Nations Convention on the Rights of the Child (CRC) (1989) as they are translated into English education legislation. The CRC comprises 54 articles aimed at outlining rights and freedoms for children and was ratified by the United Kingdom (UK) government in 1991. The paper builds on a previous publication by the authors which highlighted how the mobilisation of articles within the CRC into professional practice undergoes multiple translations. This paper takes an in-depth and critical look at the first stage of the translation process in which articles are mobilised from the CRC into national legislation. Specifically, the paper presents findings from a documentary analysis which explored the translation of principles pertaining to Article 12 of the CRC into English Education Regulations, Acts and Statutory Guidance for schools. Findings demonstrate that the reshaping of the article within education legislation strongly reflects the government's priorities and agendas. The study raises new insights into the need to establish processes to ensure the full mobilisation of Article 12 and questions whether specific principles pertaining to the article could or should be incorporated into national legislative systems.

### **Introduction**

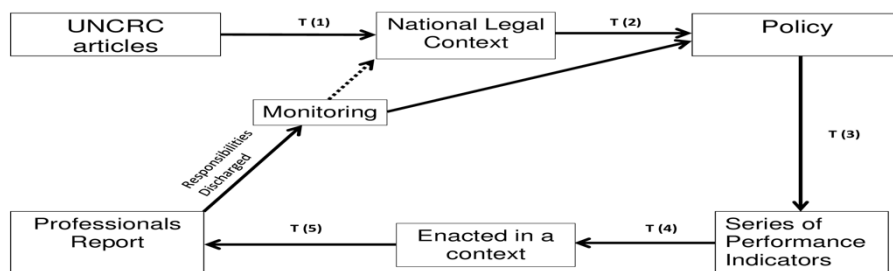
This paper is concerned with the inclusion, exclusion and reshaping of articles within the United Nations Convention on the Rights of the Child (CRC) (1989) as they are translated into education legislation in England. The UNCRC comprises 54 articles aimed specifically at outlining rights and freedoms for children. It was published in 1989 and has since been ratified by all countries worldwide with the exception of the United States of America. The United Kingdom (UK) government ratified the CRC in 1991 and, although the CRC is not yet incorporated into UK domestic law, in 2010 the Children's Minister made "a commitment that the government will give due consideration to the CRC articles when making new policy

and legislation” (Tether, 2010). The UK government, therefore, has an obligation to ensure that children’s human rights are considered when developing legislation that is likely to impact on children and young people.

In an ideal world major international documents such as the CRC would be translated into legislation, and then into policy and practice, in ways which fully capture the principles inherent within it. However, the lived reality of such translations can result in a growing distance between the original narrative or intention and the actual practice (Ball et al., 2012) with no linear progression linking the initial document to legislation, policy design or implementation in practice (Harper et al., 2010).

In a previous paper (XXXX, 2017) we highlighted how the translation of the CRC into professional practice involves multiple translations of the CRC text and leads to a series of performative demands to which adults become accountable within their professional practice with children and young people. We identified five distinct stages of this translation process in an International Economy of Children’s Rights, presented in Figure 1 below:

Figure 1: The International Economy of Children’s Rights (from XXXX)



Within Figure 1 T = translation, and the five specific translations are as follows:

**Translation 1 (T1)** represents the legal translation of the CRC articles into member states legislative systems.

**Translation 2 (T2)** represents the translation from legal instantiation to policy discourse at multiple levels (national, regional, local levels etc.).

**Translation 3 (T3)** represents the translation of policy into organisational and professional expectations, typically through the construction of a series of performance indicators. In educational practice these might be designated as, for example, ‘quality indicators’ as they become distributed across multiple forms of professional accountability – e.g. Teacher Professional Standards (GTCS, 2013).

**Translation 4 (T4)** represents the translation of organisations and professionals in engaging with these indicators in their practice.

**Translation 5 (T5)** represents the translation in reports by professionals on the success, or otherwise, of their mobilisation of rights in term of, for example, achievement of performance indicators.

This paper focuses on the initial stage of the translation process, T1. To enable an in-depth and critical look at this aspect of the process, the paper explores the translation of one specific article within the CRC into a narrow strand of the UK national legal context, that of education legislation. More specifically, within this paper T1 will be represented by the translation of Article 12 of the CRC into English Education Regulations, Acts and Statutory Guidant for schools. This first phase of the translation process is particularly significant as a weak translation at this stage will be reflected throughout the remainder of the translation process (T2-T5). Thus, if the principles pertaining to Article 12 are diluted or marginalized as they are translated from the CRC into Education legislation, these principles are likely to be

further attenuated or, indeed, omitted entirely during future translations from legislation into policies and practices (T2-5 in figure 1).

### **The translation of Article 12 in English education legislation**

Article 12 of the UNCRC comprises of two parts, as follows:

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

Part 2: For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. (UNCRC, 1989, 5).

Although both parts of the article have relevance for matters of education and schooling, this paper is concerned solely with Part 1 as this relates directly to the day-to-day practices and activities within school, while Part 2 is relevant for only those pupils involved in judicial and administrative proceedings.

Our intention is to determine the extent to which Part 1 of Article 12 is translated into English education legislation through exploring ways in which the principles inherent within the article are included, excluded and/or reshaped during their translation from the CRC into the legislation. In the context of this paper, English education legislation includes Education Regulations, Acts and Statutory Guidance which sets out standards, procedures and principles that must be followed to comply with the law. It is important to note that this differs from education policy which sets out principles to guide decisions but is not subject to legislation. For example, education polices include national, as well as regional and local,

policies such as those relating to anti-bullying, school admissions, and pupil behaviour and discipline.

The decision to focus on Article 12 and its translation into English Education legislation was based on three key factors. Firstly, our informed assessment of the ambiguity that surrounds understandings ascribed to Article 12 and its weak and often diverse representation within educational policies and practices across different nations (Lundy, 2007; Arnot, 2008; Thomas, 2011; Raby, 2014; XXXXX). Secondly, we were mindful that reports by the United Nations (UN) Committee on the Rights of the Child (hereafter referred to as the UN Committee) had documented concerns relating to the UK's implementation of Article 12 regarding school children not being systematically heard or consulted on matters affecting them (UN, 1995, para 27; UN, 2002, para 29; UN, 2016, para 30). Thirdly, we specifically wanted to explore the translation of Article 12 into an education system of a nation which had ratified the CRC but had not incorporated it into national law.

In the sections that follow we outline general measures adopted for incorporating the CRC into national legislation and highlight specific measures aimed at implementing Article 12. We provide contextual information relating to the situation in England by highlighting approaches taken by the different jurisdiction of the UK to incorporate Article 12 into national legislation. We then draw on concepts from an Actor Network Theory (ANT) to discuss the inclusion, exclusion and reshaping of Article 12 within education legislation in England.

### **Legislative and non-legislative measures for implementing the CRC**

The UN Committee asserted that for the effective implementation of the CRC, in addition to legislative measures, non-legislative measures such as 'the development of special structures and monitoring, training and other activities' are also needed (UN, General Comment 5, 2003, 2). The adoption of specific implementation strategies, however, fall within each state's

discretion (Lundy, 2012; Lundy et al., 2013) with the outcome that nations adopt different approaches to implementation (KilKelly, 2019, 323).

Legal measures of implementation include the direct and indirect incorporation of the CRC into national legislation. Direct incorporation entails the full or partial incorporation of the CRC directly into the domestic legal system so that it forms part of the national law and becomes binding and enforceable in court (McCall-Smith, 2019, 430). With indirect incorporation, decision-making must take account of the CRC requirements but the substantive rights do not become part of the domestic legal order (Lundy et al., 2013, 451). Direct and indirect incorporation can be implemented either systematically or on a sectoral basis (Lundy et al., 2013, 446); where there is sectoral incorporation, specific provisions of the CRC are transposed into relevant sectoral laws, for example, those relating to education (Lundy et al., 2012, 3).

The ways in which countries incorporate the CRC into their national legislation is highly contingent upon, and varies according to, the constitution and legal systems of individual countries (Lundy et al. 2012; 2013). Lundy et al. (2013) found that it was most common for states to incorporate specific CRC provisions into relevant legislation, rather than transposing the entire treaty into the national legal system, with the “right to be heard” principle in Article 12 being one of the provisions most frequently incorporated on a sectoral basis (Ibid., 446). Where there was high-level incorporation of the CRC (e.g. in the constitution or through an act of general implementation), it was more likely that the CRC principles would be translated into domestic law and that there would be a culture of respect for children’s rights in that country (Lundy et al, 2013, 453).

Non-legislative measures for incorporating the CRC include the adoption of child impact assessment processes to anticipate the impact of proposed laws, policies or budgetary allocations; the establishment of co-ordinating and advocacy services e.g. a children’s

commissioner or ombudsperson; and the provision of systematic children's rights training, and awareness and capacity building for those who work with and for children (Lundy et al., 2012, 2013; Kilkelly 2019).

### **Promoting the effective implementation of Article 12 within education practices**

Lundy et al. (2012) argue that where Article 12 was incorporated into law and became part of the domestic legal system, this “provided opportunities for strategic litigation” and conveyed a strong message about the status of children and children's rights (Ibid., 4). Similarly, Lansdown (2011) and Stern (2017) assert that the right of children to be heard in all relevant aspects of their lives should be built into national statutory law as a matter of entitlement, and that doing this would support the inclusion of Article 12 into national and local policies. Principles relating to Article 12 are more likely to be built into national policies where a Children's Commissioner, Ombudsperson, and/or Human Rights Institutions have been established to advocate for this (Lansdown 2011; Lundy et al., 2012, 2013). Furthermore, in relation to incorporating the CRC generally into education policy, Lundy (2012) noted that, although countries face ongoing issue with implementing the CRC into education policy and practice, the UN monitoring process supports countries to make progress with this.

Lundy (2007, 928) noted a 'gap between the UK's international commitments [relating to Article 12] and what happens in practice in relation to educational decision making', and Stern acknowledged the divide between rhetoric and theory, and reality and practice, in relation to implementing articles within the UNCRC, particularly Article 12 (2017, 8-9). For Article 12 to be considered effectively realised it needs to be implemented in day-to-day practices with children and to become meaningful not only on a conceptual level “but also on the ground” (Stern, 2017, 166), and within a school context, children need to be involved at each stage at which decisions are made which will ultimately impact on the child in the classroom (Lundy, 2007; Harris, 2009). Lundy (2007) asserts that to achieve this,

consideration needs to be given to four inter-related factors, namely: space (to provide opportunities for children to express a view); voice (children must be facilitated to express their views); audience (children's views must be listened to); and influence (children's views must be acted upon as appropriate) (Ibid., 932-933). Furthermore, Struthers (2016) advocates for guidance on how to incorporate Article 12 into teaching to be provided for in- and pre-service teachers. Lansdown (2011) and Lundy (2012) also argue that continuing pre- and in-service training on the meaning of Article 12 and its implementation, including awareness raising and capacity building of professionals, is necessary for all professionals who work with and for children. Moreover, they assert that for Article 12 principles to be implemented into practice, there needs to be benchmarks established that measure the extent to which children's participation is realised, and these should be supported by research and independent evaluations (Lansdown 2011; Lundy et al., 2013).

### **Incorporating Article 12 into national legislation: the situation in England**

The role of the Children's Commissioner for each England (and for each of the other the three jurisdictions of the UK) is to protect the rights of children and young people, however, this role does not include ensuring that the content of the CRC articles are adequately translated into legislative documents, thus, nations rely on government directives for the inclusion of the CRC into legislation. Although this paper is primarily concerned with the incorporation of Article 12 into English legislation, to aid understanding of the English context brief details of how the CRC is incorporated within all jurisdictions of the UK are outlined below.

In 2010, the UK government reasserted its intention not to include the CRC into domestic law (DCFS, 2010, 4). While this remains the situation in England and Northern Ireland, the situation is different in Scotland and Wales. In 2018 Scottish government



committed to directly incorporating the CRC into Scottish law by stating ‘we will incorporate the principles of the UN Convention of the Rights of the Child into domestic law...[and] consider where it may be possible for Scots law to go further than the Convention requires, where that is demonstrably beneficial for children and young people (Scottish Government, 2018, 83). This builds on the Children and Young People (Scotland) Act 2014 which placed a duty on Scottish government ministers to consider how they might ‘secure better or further effect in Scotland of the UNCRC requirements’ (Acts of Scottish Parliament, 2014, asp8, Part 1, 1).

The Welsh government implemented measures to indirectly incorporate the CRC into their national law in 2011. The Rights of Children and Young Persons (Wales) Measure placed a duty on Welsh Ministers to have due regard to the requirements of the CRC and its Optional Protocols when making decisions about a provision to be include in an enactment, the formulation of new policy and/or legislation, or a review of or change to an existing policy and/or legislation (Lundy, 2013, 451; Payne, 2019, 414). More recently in 2017, a duty was placed on the Welsh government ‘to produce a children’s schemes and to promote the CRC throughout society and institutions’ (McCall-Smith, 2019, 434).

### **Conceptual framework for understanding the translation of Part 1 of Article 12 of the CRC into English educational policy**

To frame our endeavour of ascertaining whether principles relating to Article 12 were included, excluded or reshaped during their translation from the CRC into the English education legislation, we drew on concepts from a socio-material approach. Concepts from an ANT approach are adopted, such as those exemplified in the work of Latour (2005), Law (1992) and Callon (1986) which focus on the processes of translation and acknowledges that actors and organisations bend, distort, rebuild and reshape elements as they are transposed from one setting to another (Law, 1992, 386). Although the original purpose of ANT was not

intended to analyse the translation of texts per se, adopting the basis of such an approach enabled us to apply a framework to understand the processes involved in translating principles pertaining to Article 12 into English education legislation and how these principles were included, excluded or reshaped during the translation process. Socio-material studies of translation acknowledge that once a translation is complete, the original intention usually becomes invisible. This line of thinking resonates with the translation of Article 12 into national legislation and thence into policy and professional guidelines as, once translated, any changes to the terms or principles of the article are likely to go unnoticed and the translated version will be regarded as exemplifying the originating article.

In ANT terms the CRC and its component articles can be viewed as putative “immutable mobiles” (Latour, 1986). That is, objects/inscriptions that are viewed as fixed and which can travel across geographical, cultural and political spaces where it is presumed that their acceptance is not context dependent (Latour, 2005). The CRC text as a whole, as well as each individual article within it, are in this sense “immutable” as they are universally accepted as fixed, unquestionable texts relating to the rights to which all children are entitled. These fixed texts of the articles are also “mobile” as they are transported and taken on board by governments and organisations within different political, economic, geographic and cultural contexts worldwide. In the process of moving objects from one domain (i.e. the CRC) to another (i.e. legal context such as Education Regulations, Acts and Statutory Guidance), however, immutable mobiles have embedded within them the potential for a variety of iterations, rendering the original object fallible, with the outcome that the translation may not successfully speak for what it originally represented (Latour, 2005; Law, 1992).

To support our understanding of the mobilization of Part 1 of Article 12 into education legal contexts we draw on Callon’s notion of obligatory passing points or

‘moments’ through which objects/inscriptions move during the translation process (Callon, 1986, 1998).

An account of Callon’s four moments, and the application of these in the context of this paper are as follows:

- i) The moment of Problematization. This occurs when a rationale for the need to mobilise an object to address a problem, and the actors who will be involved in its mobilisation, are identified (Callon, 1986). In the context of this study, the moment of Problematization occurred when the UN Committee asserted that the UK government gave insufficient priority to implementing the general principles of the CRC, specifically, Article 12 and recommended that greater priority be given to incorporating these principles, especially the provisions of Article 12, in legislative measures (UN, 1995, para 27I). The UN Committee re-asserted this problem in 2016 and suggested that the UK government should establish structures to support children’s active and meaningful participation, and give due weight to children’s views in designing laws, policies and services at local and national levels (UN, 2016, para 31).
- ii) The moment of Interessement. This moment acknowledges that the primary actor, that is, the person, group or organization which defined the problem, needs to enlist the cooperation of other actors to resolve their problem and reach their goal of mobilising the object (Callon, 1986). Within this study, the UN Committee is the primary actor as they identified the ‘problem’ that Article 12 was not being adequately implemented within UK legislation. The translation of Article 12 entered Callon’s moment of Interessement when the UN Committee placed responsibility on the UK government to establish measures to assist with the mobilisation of Article 12.

- iii) The moment of Enrolment. Enrolment occurs when new actors accept the roles placed on them by the primary actor to help solve the identified problem during Interessement; in other words, Enrolment is achieved when Interessement is successful (Callon, 1986). During Enrolment, additional actors may be recruited into the network to support the mobilisation of objects. In this study, the moment of Enrolment is achieved when the UK government accepts the need for structures to be established to support the implementation of Article 12 within the legislation and is willing to take measures to realise this need. In the UK, the government is led by a Prime Minister who has the ultimate responsibility for all legislation, and ministers and civil servants support, and work on behalf of, the Prime Minister. Thus, in establishing structures to implement Article 12, the Prime Minister places responsibility on education ministers and civil servants to develop infrastructures to enable principles pertaining to Article 12 to be mobilised into education legislation. This may include, for example, new or revised Education Regulations, Acts and/or Statutory Guidance.
- iv) The moment of Mobilization. The final moment of the translation process is that of Mobilization. This occurs when the object/inscription has been mobilised into a new arena. In the context of this study the moment of Mobilization is reached when principles relating to Article 12 are incorporated within education legislation. It is at this stage where the extent to which principles have been translated, and any exclusion or reshaping of principles becomes apparent, and the first stage of translation (T1) within the Economy of Children's Rights (see Figure 1) is complete.

## **Methodology**

To address the aim of this paper and determine ways in which the principles of Part 1 of Article 12 are included, excluded and/or reshaped during their translation from the CRC into English education legislation, a documentary analysis (Bowen, 2009) was conducted. A number of publicly available documents were systematically reviewed to gain an in-depth understanding of the content and meanings inherent within these documents (Corbin and Strauss, 2008). During the content analysis, quotes were noted and used as data (Labuschagne, 2003) to illustrate meanings attributed to principles pertaining to Part 1 of Article 12 and to highlight references to these principles within English Education Regulations, Acts and Statutory Guidance. The documentary analysis was divided into two sequential stages.

The first stage drew on the UN Committee's interpretations of Part 1 of Article 12, as documented within the General Comment 12 on the right of the child to be heard (UN, 2009), to identify the key principles inherent within the article. Once identified, the second stage of the documentary analysis was conducted. This involved scrutinising all English Education Regulations, Acts and Government Statutory Guidance for mainstream schools/education between 2002 and 2018 to identify explicit and implicit references to principles relating to Article 12. Only documents published from 2002 onwards were scrutinised as the notion of consulting with/listening to pupils started to appear within statutory education legislation in the 2002 Education Act. Throughout the documentary analysis a record was made of any reference to the principles within Part 1 of Article 12. This enabled us to build a picture of the emphasis placed on different principles, and to determine any exclusion or shifts in the principles that had occurred during the translation from the CRC into education legislation.

## Findings

### *Findings relating to Stage 1 of the documentary analysis: Principles inherent within Part 1 of Article 12*

Findings from the first stage of the documentary analysis focusing on the UN Committee’s interpretation of specific phrases within Part 1 of Article 12 are outlined in Table 1 below.

Table 1: Meanings attributed to Part 1 of Article 12 of the CRC as outlined in the UN General Comments of the Committee on the Rights of the Child (UN, 2009)

<b>Specific phrases from Part 1 of Article 12 of the CRC (UN, 2009)</b>	<b>Meanings attributed to phrases within Part 1 of Article 12 as stated in the UN General Comments of the Committee on the Rights of the Child (UN, 2009)</b>
Capable of forming his or her own views (UN, 2009, 9)	Countries which have ratified the CRC “should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity” (UN, 2009, para 20);  “...full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expression, and drawing and painting, through which very young children demonstrate understanding, choices and preferences” (Ibid., para 21);  “it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but ...has sufficient

	understanding to be capable of appropriately forming his or her own views on the matter” (Ibid.).
The right to express those views freely (UN, 2009,10)	The word “freely”... “means that the child can express her or his views without pressure and can choose whether or not she or he wants to exercise their right to be heard” (UN, 2009, para 22) [and] “the child must not be manipulated or subjected to undue influence or pressure” (Ibid.);  “The realization of the right of a child to express her or his own views requires that the child be informed about matters, options and possible decisions to be taken and their consequences’ of such decisions” (Ibid., para 25).
In all matters affecting the child (UN, 2009, 10)	“the child must be heard if the matter under discussion affects the child” (UN, 2009, para 26).
The views of the child being given due weight in accordance with the age and maturity of the child (UN, 2009, 11)	“...simply listening to the child is insufficient; the views of a child have to be seriously considered when the child is capable of forming their own views” (UN, 2009, para 28);  “...age alone cannot determine the significance of a child’s views... the views of the child need to be assessed on a case-by-case examination” (Ibid., para 29);  The word “maturity” is difficult to define, “in the context of article 12 it is the capacity of a child to express her or his views on issues in a reasonable and independent manner” (Ibid., para 30);

	<p>“the child has the right to direction and guidance, which have to compensate for the lack of knowledge, experience and understanding of the child” (Ibid., para 84).</p>
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Drawing on the breakdown of Part 1 of Article 12 and the associated meanings attributed to phrases within it, as detailed in Table 1, we assert that this article encompasses the following eight principles:

1. Children should be informed about matters, so they have sufficient understanding to be able to form their own views.
2. Children should be supported to understand that they have the right to express these views, and have opportunities to express these freely.
3. The context in which children exercise their right to be heard should be enabling and encouraging.
4. Children should be given the opportunity to decide whether or not they want to exercise their right to be heard.
5. There will be recognition, by those listening to children, that views may be expressed in non-verbal, as well as verbal ways.
6. Children’s views need to be taken seriously when they are capable of forming their own views.
7. Children’s views need to be considered and assessed on a case-by-case basis.
8. Children should be informed about how their views were considered, and about the outcomes of any decisions affecting them.

We acknowledge that by restricting our analysis of Article 12 to these interpretations alone, consideration is not given to other possible interpretations, such as whether the emphasis of the article lies with the individual child or on the collective



rights of children (Percy-Smith and Thomas, 2010, 2; Cantwell, 2011). However, the interpretation of the article phrases was published by the UN Committee following the Committee noting the need for a better understanding of what Article 12 entails and to ‘support States parties in the effective implementation of article 12’ (UN, 2009, para 8). Thus, they explicate the meanings and values the UN Committee attributed to this article and, for this reason, will be used as a basis for discussing the meanings attributed to Article 12.

*Findings relating to Stage 2: references to principles relating to Part 1 of Article 12 within English education legislation*

Within Stage 2 of the documentary analysis, an initial examination of all statutory English educational legislation between 2002 and 2018 identified the following seven documents as including reference to one or more of the principles pertaining to Part 1 of Article 12:

- 2002 Education Act (Act of Parliament, 2002)
- 2004 Statutory Guidance (Curriculum and Standards)- Working together: giving children and young people a say (DfES, 2004)
- 2005 Education Act (Act of Parliament, 2005)
- 2006 Education and Inspection Act (Act of Parliament, 2006)
- 2008 Education and Skills Act (Act of Parliament, 2008)
- 2008 Statutory Guidance for schools - Working Together: Listening to the voices of children and young people (DCFS, 2008)
- 2014 Statutory Guidance - Listening to and involving children and young people (DfE, 2014)

It is of significance that Educational Regulations for England since 2002, analysed as part of this study, lacked reference to any of the principles pertaining to Article 12. Rather, these were found to be concerned with regulations relating to issues such as school staffing,

inspection, performance and information, teachers' qualifications and school health standards.

The 2002 Education Act (Act of Parliament, 2002) acknowledged principles within Part 1 of Article 12, asserting that the views of the child should be given due weight in accordance with their age and maturity. However, the Act stated that these measures did not apply to children in nursery education (Ibid., para 176, 105) although no reason was given for this. Two years later, the 2004 Statutory Guidance (DfES, 2004) made direct reference Article 12 and introduced the notion of pupil participation in the planning and evaluation of their learning and other school decision-making processes. The Education Act of 2005 (Act of Parliament, 2005) then broke new ground by requiring the Chief Inspector to have regard to the pupils' views, and the 2006 Education and Inspections Act (Act of Parliament, 2006) placed further emphasis on listening to pupils' views. This Act also extended the remit for giving due weight in accordance a child's age and maturity to include children in nursery education (Ibid., para 167, 118).

In 2008, the Education and Skills Act (Act of Parliament, 2008) reinforced the need for school governing bodies to invite and consider pupils' views, and Statutory Guidance (DCFS, 2008) placed further expectations on school leaders and practitioners to encourage pupil participation. More recently in 2014, Statutory Guidance (DfE, 2014) encouraged schools to have regard for the CRC and specifically mentioned Article 12, however, as noted by Harris and Davidge (2019, 497) reference to Article 12 is brief (two pages only), offering no examples of how or in what context participation and engagement should occur.

Table 2 below presents a detailed account of references to principles pertaining to Part 1 of Article 12 within the analysed English Education Acts and Statutory Guidance for schools.

Table 2: Principles within Part 1 of Article 12 of the CRC, as reflected within English Education Acts and Statutory Guidance for schools

<b>Principles within Part 1 of Article 12 of CRC</b>	<b>Evidence of principles pertaining to Article 12 included in English Education Acts and Statutory Guidance for schools</b>
<p><i>Principle 1 - Children should be informed about matters so they have sufficient understanding to be able to form their own views</i></p>	<p>It was acknowledged that:</p> <ul style="list-style-type: none"> <li>➤ To support pupils’ participation, information should be “available, timely and relevant” (DfES, 2004, 6; DCFS, 2008, 10).</li> <li>➤ “Schools should endeavour to ensure that the children and young people they work with are not simply passive receivers of decisions and services, but contribute to them and, ultimately, help to ‘co-produce’ them” (DCFS 2008, 5).</li> </ul>
<p><i>Principle 2 - Children should be supported to understand that they have the right to express these views and have opportunities to express these freely</i></p>	<p>It was acknowledged that schools/practitioners should:</p> <ul style="list-style-type: none"> <li>➤ Listen to pupils generally (Act of Parliament, 2002; DfES, 2004; DCFS, 2008; DfE 2014), and specifically in relation to school matters affecting them (DCFS, 2008; DfE, 2014).</li> <li>➤ Create opportunities and encourage the participation of pupils in school decision-making (DfES, 2004; DCFS, 2008; DfE, 2014).</li> <li>➤ Encourage the participation of hard to reach groups “in as wide a range of decision-making process as possible” (DfES, 2004, 2).</li> </ul> <p>And that:</p> <ul style="list-style-type: none"> <li>➤ When conducting school inspections, “the matters to which the Chief Inspector must have regard include any views expressed to him by...registered pupils at the school” (Act of Parliament, 2005, 5).</li> <li>➤ School governing bodies must consult with pupils when revising written statements relating the general principles of good behaviour and discipline in</li> </ul>

	<p>the school (Act of Parliament, 2006, 70), and about the conduct of the school (Act of Parliament, 2008, 104).</p> <ul style="list-style-type: none"> <li>➤ From September 2003, school governing bodies can invite and appoint pupils as “‘associate members’ allowing them to attend full governing body meetings and become members of governing body committees” (DfES, 2004, 11).</li> </ul>
<p><i>Principle 3 - The context in which children exercise their right to be heard should be enabling and encouraging</i></p>	<p>It was acknowledged that:</p> <ul style="list-style-type: none"> <li>➤ Participation is supported through “respecting and trusting” pupils (DfES, 2004, 6; DCFS, 2008, 10), creating “time, space and resources for participation” (DCFS, 2008, 10), and through “a clear commitment to... linking children’s and young people’s participation to ongoing organisational development” (Ibid.).</li> <li>➤ The governing body must consult with pupils (in such manner as appears to them to be appropriate) “about school-related matters” (Act of Parliament, 2006 para 88, 70).</li> </ul> <p>And measures should be taken to:</p> <ul style="list-style-type: none"> <li>➤ Provide “training and support for children and young people to ensure that they are able to participate effectively” (Ibid.).</li> <li>➤ Ensure “children and young people’s age, maturity and understanding are taken into consideration when deciding how to support their participation” (DfES, 2004, 7; DCFS, 2008, 11).</li> <li>➤ Determine ways of encouraging the participation of those who lack confidence or are less articulate, and hard-to reach groups, and those with special needs (DfES, 2004, 7).</li> </ul>
<p><i>Principle 4 - Children should be given the</i></p>	<ul style="list-style-type: none"> <li>➤ Nothing specific pertaining to this principle.</li> </ul>

<p><i>opportunity to decide whether or not they want to exercise their right to be heard</i></p>	
<p><i>Principle 5 - There will be a recognition by those listening to children that views may be expressed in non-verbal, as well as verbal ways</i></p>	<p>It was acknowledged that:</p> <ul style="list-style-type: none"> <li>➤ Measures should be taken to find ways to involve those who “are less articulate” and there should be “special support... to help ‘hard-to-reach’ groups and those facing the greatest barriers, e.g. some pupils with Special Educational Needs” (DfES, 2004, 7).</li> <li>➤ A variety of ways should be made available to listen to pupils. <i>Suggestions were given about how pupils could be listened to, including through young people councils, circle time, and working with peers, such as peer-mediation (DfES, 2004, 8-9).</i></li> </ul>
<p><i>Principle 6 – Children’s views need to be taken seriously when they are capable of forming their own views</i></p>	<p>It was acknowledged that:</p> <ul style="list-style-type: none"> <li>➤ The views of the child should be given due weight in accordance with their age and maturity (Acts of Parliament, 2002, 2006 and 2008; DfES, 2004).</li> <li>➤ When consulting with pupils, provision must be made “for a pupil’s views to be considered in the light of his age and understanding” (Act of Parliament, 2002, para 176, 105).</li> <li>➤ School governing bodies are required to invite and consider pupils’ views on “prescribed matters” relating to the conduct of the school and ...in doing so, must have regard to the age and understanding of the pupils who expressed them” (Act of Parliament, 2008, para 157, 104).</li> <li>➤ Children and young people should be “active partners in their education, including planning and evaluation of their own learning... in as wide a range</li> </ul>

	<p>of decision-making process as possible, subject to rules on confidentiality and data protection” (DfES, 2004, 2).</p> <p>➤ Children and young peoples’ views should be “heard and valued in the taking of decisions which affect them [and] ...should therefore be involved in as wide a range of decision-making as possible” (DCFS, 2008, 5).</p>
<p><i>Principle 7 - Children’s views need to be assessed on a case by case basis</i></p>	<p>It was acknowledged that:</p> <p>➤ Provision should be made for sixth form pupils who so request, to be excused from attending religious worship. (Act of Parliament, 2006, para 55(1b), 44).</p>
<p><i>Principle 8 – Children should be informed about how their views were considered, and about the outcomes of any decisions affecting them</i></p>	<p>It was acknowledged that:</p> <p>➤ All pupils should be provided with “clear and timely feedback on outcomes... not just those directly involved in a given decision-making process” (DfES, 2004, 6; DCFS, 2008, 11).</p> <p>➤ Pupils should be informed “where outcomes have made a difference” (DfES, 2004, 6).</p>

Table 2 clearly illustrates that some principles pertaining to Part 1 of Article 12 are strongly reflected, others are less strongly reflected and, in some cases, there is no evidence of principles being mobilized from the CRC into the legislation. Table 3 illustrates the relative strength of translation of the principles following their mobilisation from the UNCRC into English Education Acts or Statutory Guidance.

Table 3: To illustrate strong, partial and minimal translation of principles pertaining of Article 12 into English education legislation

Principle pertaining to Part 1 of Article 12 of CRC	Strength of translation into English education legislation	Aspects of principle included/excluded/reshaped following translation into English Education  Acts and Statutory guidance
<p>Principle 3: <i>The context in which children exercise their right to be heard should be enabling and encouraging.</i></p> <p>Principle 6: <i>Children’s views need to be taken seriously when they are capable of forming their own views.</i></p>	Strong translation	<p><i>Aspects of principles included:</i></p> <p>Principles 3 and 6 - frequent reference is made to requiring school leaders and practitioners to:</p> <ul style="list-style-type: none"> <li>➤ Listen to the views of pupils, in accordance with their age and maturity, and to support pupils to be involved in as wide a range of decision-making as possible, specifically in relation to school-related matters affecting them (DfES, 2004; DCFS, 2008; Acts of Parliament, 2002; 2006; 2008).</li> <li>➤ Allocate time, space and resources to developing processes to enable pupils’ participation, including those who are lacking in confidence, less articulate, have special needs and hard-to-reach, and to ensure the age, maturity and understanding of children are considered when listening to pupils (Acts of Parliament, 2002, 2006 and 2008; DfES, 2004; DCFS, 2008; DfE 2014).</li> </ul>

<p>Principle 1: <i>Children should be informed about matters so they have sufficient understanding to be able to form their own views.</i></p>	<p>Partial translation</p>	<p><i>Aspects of principle included:</i></p> <ul style="list-style-type: none"> <li>➤ Information should be available, timely and relevant to enable pupils to participate in, and contribute to decision-making (DfES, 2004; DCSF, 2008).</li> </ul> <p><i>Aspects of principle excluded:</i></p> <ul style="list-style-type: none"> <li>➤ There is a lack of direction or suggestions relating to matters about which pupils should or could be informed, or that pupils should be informed about a range of matters.</li> </ul>
<p>Principle 2: <i>Children should be supported to understand that they have the right to express their views and have opportunities to express these freely.</i></p>		<p><i>Aspects of principle included:</i></p> <ul style="list-style-type: none"> <li>➤ Following its translation into education legislation, this principle is limited to supporting pupils participating in decision-making, where decision-making could include a very minimal range of matters about which pupils are invited to participate.</li> <li>➤ Opportunities should be created, and pupils encouraged, to participate in school decision-making. School governing bodies and inspectors are also required to consult with pupils and provide opportunities for pupils to express their views about matters relating to the conduct of the school and matters affecting them (Act of Parliament 2002, 2005, 2006 and 2008; DfES, 2004; DCFS, 2008; DfE, 2014).</li> </ul>



<p>Principle 5: <i>There will be a recognition by those listening to children that views may be expressed in non-verbal, as well as verbal ways.</i></p>		<p><i>Aspects of principle excluded:</i></p> <ul style="list-style-type: none"> <li>➤ There are no requirements to help pupils understand they have the right to express their views, or to encourage pupils to express their views ‘freely’.</li> </ul> <p><i>Aspects of principle included:</i></p> <ul style="list-style-type: none"> <li>➤ There is acknowledgement that opportunities should be provided to listen to pupils in a variety of ways (DfES, 2004).</li> </ul> <p><i>Aspects of principle not included:</i></p> <ul style="list-style-type: none"> <li>➤ References to examples of how to listen to pupils include only verbal means.</li> </ul>
<p>Principle 7 - <i>Children’s views need to be assessed on a case by case basis.</i></p>		<p><i>Aspects of principle included:</i></p> <ul style="list-style-type: none"> <li>➤ Only limited reference is made to situations where pupils’ views of their personal circumstances require consideration, e.g. where sixth form pupils request to be excused from attending religious worship (Act of Parliament, 2006).</li> </ul> <p><i>Aspects of principle excluded:</i></p> <ul style="list-style-type: none"> <li>➤ A general requirement to consider pupils’ views on a case by case basis according to their individual circumstances and situations is lacking.</li> </ul>

<p>Principle 8: <i>Children should be informed about how their views were considered, and about the outcomes of any decisions affecting them.</i></p> <p>Principle 4: <i>Children should be given opportunity to decide whether or not they want to exercise their right to be heard.</i></p>	<p>Minimal or no translation</p>	<p><i>Aspects of principle included:</i></p> <ul style="list-style-type: none"> <li>➤ Very limited reference is made to clear and timely feedback being given to pupils on the outcomes of pupil consultations (DfES, 2004; DCFS, 2008).</li> </ul> <p><i>Aspects of principle excluded:</i></p> <ul style="list-style-type: none"> <li>➤ There are no requirements to inform children about how their views are considered or about the outcomes of decision, more generally, which affect them.</li> <li>➤ Principle altogether excluded. Evidence of the principle was found to be lacking from the education legislation included in the analysis.</li> </ul>
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### **Cautionary notes**

Before drawing out the key conclusion, we would like to point out two notes of caution.

Firstly, throughout this paper notions around the principles pertaining to Article 12 are largely rooted in understandings relating to a western context and may not easily be applicable in parts of the world where other values are held to be ranked higher than what may be referred to as western ideals of liberalism and individualism. To exemplify this point, we draw attention to the UN Committee's General Comments (UN, 2009) in which it recognised that in relation to the implementation of Article 12, 'in some societies, customary attitudes and practices undermine and place severe limitations on the enjoyment of this right' (Ibid, para 76).

Secondly, due to word restrictions, the paper focuses on the situation in mainstream schools. Thus, reference to regulations, acts and statutory guidance specifically relating to pupils with special education needs and disability (SEND), as well as literature relating to the implementation of Article 12 for SEND pupils (e.g. Harris and Davidge, 2009) has not been included.

### **Conclusions**

Following the illustration of the relative strength of translation of the various principles pertaining to Part 1 of Article 12, it is clear that Acts and Statutory Guidance make frequent reference to some of the principles, including ensuring the context in which children exercise their right to be heard is enabling and encouraging, and ensuring children's views are taken seriously in accordance with their age and maturity. However, principles relating to children being informed about matters and being supported to understand they have a right to express their views, as well as given opportunities to do so in verbal and non-verbal ways, undergo reshaping and narrowing during their translation into education legislation. Although there is

a requirement for pupils to be provided with information to enable them to contribute to decision making and have opportunities to participate in such decision making, the remit of these requirements falls short of the expectations set out in the principles. For example, there is a lack of emphasis on the requirements to: inform pupils about, and involve them in, decisions about a ‘wide range of matters’; encourage pupils to express their views ‘freely’; provide opportunities for pupils to express views in ways other than verbally; and support pupils to understand they have the right to express their views. The principle relating to children’s views being assessed on a case-by-case basis is almost entirely excluded, as are the requirements to inform children about how their views are considered and the outcomes of decisions which affect them. Furthermore, the principles relating to children being given the opportunity to decide whether or not they want to exercise their right to be heard is completely excluded from the Acts and Statutory Guidance. We draw on Callon’s four ‘moments’ of the mobilization process (Callon, 1986) to develop insights into which stage, within the translation process, the full translation of the principles is disrupted.

The first stage of Callon’s mobilisation process, that of Problematization, occurred when the UN Committee identified that the UK government was placing insufficient priority on incorporating Article 12 into legislative measures and asserted that government needed to do address this. Callon’s moment of Interessement is then entered into when the UK government recognises its responsibility to give regard to the CRC in the development of new legislation. The translation process then enters Callon’s moment of Enrolment when the leader of the UK government acknowledges their role in supporting the implementation of Article 12, for example, through enlisting the support of ministers and civil servants to facilitate its implementation. It is at this stage that the processes and procedures that need to be established to enable Article 12 to be incorporated into legislation are considered. Ministers’ and civil servants’ understanding, partial understanding or lack of understanding

of the principles to be translated, as well as their preferences and biases, will significantly influence the emphasis placed upon principles, and the form they take within education legislation. Decisions made during the Enrolment stage reflect individual's political assessment vis-à-vis the desirability of a particular principle in relation to policy commitments and agendas. Only those principles, or aspects of principles, considered important will reach the final stage of the translation process, that of Mobilization, and appear in education legislation.

The process of mobilisation outlined above represents the first stage of the international economy of children's rights (represented by T1 in Figure 1). This is a crucial element of the translation process as the potential for principles to be further mobilised through stages 2-5 (T2-T5 in Table 1), from legislative documents into local policies, practices and monitoring processes is limited to only those principles, or aspects of principles successfully translated within this first stage (T1).

The situation though is complex. The CRC is not a perfect vehicle for the realisation of children's rights in education, in terms of both its articulation of the rights and its procedures for enforcement (Kilkelly and Lundy, 2006). In particular, ministers often have limited awareness of the provision and, with each change of government comes a change in the educational landscape (Struthers, 2016). Although incorporating Article 12 into national education legislation may help to mitigate this (Lundy, 2007), it is common for CRC articles to be only partially implemented, often on an ad hoc basis, even in nations where the CRC is part of national law. Thus, the reach of the CRC, although universal in scope, is determined by less-than-universal processes of mediation and translations that largely dictate the extent to which the principles inherent in a particular article are present within the contingent and local circumstances. This process has been illuminated with particular reference to the translation of Part 1 of Article 12 of the CRC into education legislation in England. Our

findings re-iterate those of previous studies that suggest there is no clear strategy for the implementation of Article 12 into education legislation, consequently, the translation of this article is only partial and incomplete (Lundy, 2012; Stern, 2017; Lundy et al., 2018; Gadda et al., 2019). However, this paper extends previous findings by providing detailed illustration of the reshaping, marginalisation and exclusion of principles during the translation from the CRC into English education legislation. We have demonstrated the significance of the stage within the translation process at which education ministers and civil servants make decisions about incorporating principles pertaining Article 12 into education legislation. These decisions reflect individual's political assessment vis-à-vis the desirability of a particular principle in relation to policy commitments and agendas, with the outcomes impacting on legislation developed.

Of particular concern is that those responsible for enacting the legislation may believe, in good faith, they are engaging with the article from the CRC (at points 2-5 in figure 1), whereas in actuality they are enacting a partial rendition and, since many of the translation processes are invisible, they tend to be immune from critique (Thede, 2001; XXXX). Thus, it will be *the article in translation* - as it appears in a given state's education legislation, that is mobilized into practice. Furthermore, it is highly likely if the translation of other CRC articles were examined, similar outcomes would emerge and, if each stage of translation process is influenced by the partial knowledge and biases of individuals, the gap between the intention of the original article and the article enacted in practice could significantly reduce the extent to which children's rights are acknowledged and met.

The study raises new insights into the need to establish structures to ensure the mobilisation of CRC articles in full. There should not be situations in which only those principles pertaining to CRC articles which are mobilised into legislation reflects the limited understandings and priorities of a small group of individuals with responsibility for informing

and writing the legislation. The analysis offered in this paper suggests the issue of translation needs to be foregrounded if a more critically informed engagement with children's rights is to be realised. It also raises two key questions. Firstly, whether the reshaping and marginalisation of the principles could be a consequence of the UN's failure, when developing the CRC, to acknowledge the potential for this during their mobilization from the CRC into legislation and later into practice. Secondly, whether specific principles pertaining to the spirit of Article 12 (and other CRC articles) could or should be incorporated into legislative systems and, if so, whether this would ultimately strengthen their translation into practices on the ground. Thus, the need for further research to monitor how countries which have ratified the CRC meet obligations to implement articles, and to gain insights into whether a more critical and detailed consideration of how articles could be interpreted to support their translation into legislation, cannot be overemphasised.

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