

UNIVERSAL PERIODIC REVIEW – UK
(2012 examination)

State of Children's Rights in England

PREPARATION OF THIS REPORT

1. The Children's Rights Alliance for England (CRAE) is one of the largest NGO children's rights alliances in the world. Established in 1992, we protect the human rights of children by lobbying government and others who hold power, by bringing or supporting test cases and by using national and international human rights mechanisms. We provide free legal information and advice, raise awareness of children's human rights, and undertake research about children's access to their rights. We mobilise others, including children and young people, to take action to promote and protect children's human rights. Each year we publish a review of the state of children's rights in England.
2. This report is based on our ongoing monitoring of children's rights, following the comprehensive submission we made to the UN Committee on the Rights of the Child for its autumn 2008 examination of the UK. During that process, CRAE made 152 recommendations for ensuring the effective implementation of the Convention on the Rights of the Child (CRC) in England; over 100 NGOs working with and for children in England endorsed these recommendations.
3. Further evidence was obtained from our annual children's rights symposiums in 2010 and 2011, the latest of which (July 2011) was attended by 60+ member organisations. In December 2011, CRAE will publish its detailed State of Children's Rights in England report on Government action across the past 12 months on the UN Committee on the Rights of the Child's latest concluding observations on the UK.

POSITIVE DEVELOPMENTS

Statutory measures to end child poverty and socio-economic inequalities

4. The Child Poverty Act 2010 places a statutory duty on the Secretary of State to meet child poverty targets and to introduce a UK child poverty strategy, giving particular consideration to groups of children who disproportionately experience socio-economic disadvantage. The Act was widely supported by NGOs working with and for children (though its implementation is deeply disappointing – see below).

Political recognition of the harm caused by immigration detention

5. The coalition Government made an historic pledge in May 2010 to end the detention of children for immigration purposes; and there has been a significant reduction in this harmful practice. Child detention continues, nevertheless, and there has been no change in the law relating to when, and for how long, children may be detained. Between October 2010 and August 2011 (latest published figures), **56** children entered detention for immigration purposes.¹

Children in England to get a Children's Commissioner that will be required by law to promote and protect their rights

6. The coalition Government established an independent review of the Office of the Children's Commissioner for England; accepted in principle all of its recommendations; and recently completed a public consultation on the role, independence and powers of the Children's Commissioner. The promise of a Children's Commissioner empowered by law to promote and protect children's is strongly supported across the NGO community.

Safeguards for children in armed forces

7. Following revelations that children had been imprisoned for attempting to leave the armed forces without authorisation (going absent without leave) in June 2011 the Ministry of Defence introduced new regulations granting children in the armed forces the right to be discharged up until their eighteenth birthday (though with a three-month waiting period).²
8. The Government promised in May 2011 to amend regulations that require children recruited into the Army to serve a longer minimum service period than adults (the "six-year trap").³ This will be a positive development when implemented though the UK has the lowest recruitment age in Europe and is the only permanent member of the UN Security Council to recruit 16 year-olds.⁴

Promise of reform of child protection system

9. The coalition Government established an independent review of the child protection system; and has accepted the overarching recommendation that procedures and practices must place the child at the centre and protect their rights. It is with regret, however, that this review focused on child protection in the community and excluded vulnerable children in institutional care, including those in residential "special" schools, custody and immigration detention.

Strengthening of child's right to be heard

10. Since the last UPR, there have been a number of positive developments in relation to implementing the child's right to be heard and taken seriously (Article 12, CRC). This includes a new duty on schools to invite and consider children's views (though this has not yet come into force); the strengthening of the independent reviewing officer role for children in care (with a new duty to ensure the child's wishes and feelings are considered); duties on central and local government to consult children in the

development of child poverty strategies; and the piloting of an independent right of appeal for children regarding Special Educational Needs decisions with a view to extending this to all children.

AREAS OF CONSIDERABLE CONCERN

No constitutional protection of children's rights

11. There has been no progress on the development of a Bill of Rights or the incorporation of the principles and provisions of the CRC into domestic law.
12. In December 2010, the coalition Government promised to give due consideration to the CRC when developing new law and policy. Yet CRAE's analysis of legislation and policy developed since this pledge shows virtually no progress.⁵
13. Children enjoy some human rights protection in domestic law through the Human Rights Act 1998 (HRA). However, this Act only protects the rights in the European Convention on Human Rights (ECHR), and then not all of them. The duty in Section 6 of the HRA – that public authorities act compatibly with the ECHR – provides an excellent model for a children's rights public sector duty, which would begin to see the CRC mainstreamed in public services and policy decision-making (as a stepping stone towards full incorporation). Whilst HRA protection is vital, and has made a considerable impact, the civil and political rights in the ECHR were not designed with children in mind and offer much less protection than those in the CRC. For disabled children, the UN Convention on the Rights of Persons with Disabilities, which the UK ratified in July 2009, elaborates even further on civil and political rights. Furthermore, the reluctance of successive UK Governments to enshrine economic and social rights leaves many vulnerable children unprotected – in a still very wealthy country.
14. Political and media attacks on the HRA make many in the human rights community extremely fearful of retrenchment and forces us into defending the status quo, when children (and others) desperately need **far greater** rights protection.
15. It is deeply regrettable that the UK has to date only signed up to two international complaints mechanisms (for the UN Convention on the Elimination of Discrimination Against Women and the UN Convention on the Rights of Persons with Disabilities).

Socio-economic inequality

16. In 1991, the year the UK ratified the CRC, 31% of British children lived in poverty (below 60% of median income after housing costs). By 2009/10 this had reduced by just two percentage points to 29% of UK children. This is a fall from 4.1 million children living in poverty to 3.8 million.⁶
17. More than 1 in 10 children in England (13%) live in severe poverty, with this figure increasing to as high as 27% in some northern cities and areas of London.⁷

18. The Institute for Fiscal Studies (IFS) assessed Government spending decisions in 2010 and concluded they were disproportionately harming children and families. Its preliminary analysis of the new Universal Credit notes that families with children will be among the winners but lone parents will lose out once transitional protection ends.⁸
19. The Universal Credit will merge all state benefits and tax credits into a single scheme. IFS has recently assessed that 450,000 more children will be taken out of poverty between 2015 and 2020 as a consequence of the Universal Credit but that the coalition Government's policies will '*fall far short*' of meeting statutory child poverty targets, with the likelihood of relative child poverty in 2020 being at its highest rate since 1999 and absolute child poverty the highest since 2001.⁹
20. The UK is characterised by enormous socio-economic inequalities – a fact consistently confirmed by Government and NGO research, reviews and policy papers. However, there is a growing reluctance from policy makers to recognise their obligations under international human rights law to end these inequalities. The prevailing ideology is to demean, blame and punish the victims of economic and social rights violations. Children North East, the longest established independent children's charity in the North East of England, reports that many families reliant on welfare benefits have had all support withdrawn whilst under investigation for fraud – a presumption of guilt rather than innocence.
21. Remarkably, the UK Government's first ever child poverty strategy, published in April 2011, included housing benefit cuts and reductions in support for sick and disabled people. Office for National Statistics figures show that in 2009 infants from the poorest households in England and Wales were almost twice as likely to die in their first year than infants with parents in higher managerial and professional occupations. There is nearly 16 years difference in life expectancy for babies born into the poorest and richest areas of the UK.¹⁰ 83 children aged 14 years or under were admitted to hospital with malnutrition in England in the past three years.¹¹

Access to justice under grave threat

22. The Legal Aid, Sentencing and Punishment of Offenders Bill, presently going through Parliament, threatens to remove civil legal aid from 75,000 children and young people each year. This includes more than 25,000 social welfare cases relating to housing, debt, employment and welfare benefits.
23. When legislation establishing an entitlement to legal aid was first introduced into Parliament, in December 1948, the then Attorney General explained:

*I should be inclined to call this Bill a charter. It is the charter of the little man to the British courts of justice. It is a Bill which will open the doors of the courts freely to all persons who may wish to avail themselves of British justice without regard to the question of their wealth or ability to pay.*¹²

Protection from age discrimination only applied to adults

24. The Equality Act 2010 provides protection from age discrimination in services, public functions and associations (coming into force in April 2012). But this protection is itself discriminatory as it only applies to people over the age of 18 years. Despite strong lobbying by CRAE and others, and the recommendations of the UN Committee on the Rights of the Child, former Ministers persisted with excluding children from protection from age discrimination. The latest policy document states:

*[Protection from age discrimination] does not apply to the under-18s because a child's age is closely related to his or her levels of development and need. Therefore, the basic principle of age discrimination legislation – that people should be treated the same regardless of their age – is rarely appropriate to the treatment of children. A three-year-old would usually need to be treated differently from a teenager, for example.*¹³

25. It then outlines the many exceptions that will be introduced to cater for the vast diversity of need within the adult population, because:

*We do not want the law to interfere unnecessarily where age is used in a valid way to help target or provide services, but need to ensure that age discrimination [against adults] is taken as seriously as other types of discrimination.*¹⁴

Discrimination faced by Gypsy, Roma and Traveller children

26. The Government acknowledges that *'Gypsies and travellers face the most serious disadvantages of all ethnic minority groups with a much shorter life expectancy, low income and poor access to finance. Their children have high mortality rates and the lowest educational attainment'*.¹⁵ Yet Ministers are making it even harder for Gypsy, Roma and Traveller families to access sites with adequate amenities and safe play areas for children. They have failed to protect Traveller education services from local authority cuts (made as a consequence of reduced funding from central Government). Nearly half of local authorities in England and Wales have either abolished their Traveller education service or made major cuts, despite a Government report in 2010 concluding *'much more needs to be done to achieve equality in educational opportunities for Gypsy, Roma and Traveller pupils. Without a framework of targeted support at both local and national levels, the improvement of outcomes for these pupils is likely to remain unacceptably slow'*.¹⁶
27. The coalition Government made available considerable funds¹⁷ to forcibly evict 86 Traveller and Gypsy families from land they own at Dale Farm in Basildon, Essex.
28. The UN Committee on the Elimination of Racial Discrimination urged the UK authorities to delay the eviction, to no avail.¹⁸ Riot police were tasked with forcing the families from their land and heavy machinery used to destroy homes and possessions. The removal began at 7am on 19 October 2011 with the disconnection of all electricity supplies. Up to 150 children lived on the land.

29. In the 1970s, the local authority gave planning permission to 40 English Romany families to live next to a scrapyard (an area called Oak Lane). In 1996, the scrapyard owner sold the adjoining land, Dale Farm, to an Irish Traveller family. Over the years more families joined, leading to the two sites at one stage being the largest Traveller community in the UK. The families were repeatedly refused planning permission and the local authority commenced legal proceedings in 2001. Local authorities have not been under any duty to provide Traveller sites since the Criminal Justice and Public Order Act 1994 repealed Part II of the Caravan Sites Act 1968.

Rights of disabled children

30. Disabled children are affected by all of the rights issues raised in this submission. In addition, their right to family life is compromised by out of area residential placements, which make continuing links with family and community extremely difficult. The UN Committee on the Rights of the Child recommended in 2008 that the UK Government review why so many disabled children live in institutional care: this has not been done.
31. There has been no progress in removing the reservation to the Convention on the Rights of Persons with Disabilities in relation to inclusive education (Article 24). The UK Government claims in its draft submission to the UN Committee on the Rights of Persons with Disabilities that *'Discrimination against disabled people in education is prohibited in Great Britain by the Equality Act 2010'*, yet legislation still allows schools to refuse admission to a disabled child who has a statement of special educational needs if the child's attendance at the school would be incompatible with the provision of efficient education for other children or the wishes of parents.¹⁹
32. There is insufficient action to ensure that the right to be heard and taken seriously in Article 12 of the CRC is applied to disabled children. Research conducted by KIDS, an NGO working with disabled children, young people and families, found that disabled children's access to outdoor play spaces is very limited (over half of parents / carers said their child visits a play space just once a month or less). Parents cited a number of barriers impeding children's right to play: *'a lack of accessible routes to and around play spaces, play equipment, transport and parking, toilets and information about appropriate play opportunities'*.²⁰
33. Furthermore, there is a disproportionate harmful effect of welfare reforms on disabled children, including reductions under the Universal Credit. The Children's Society reports that the introduction of the Universal Credit could leave families with a young carer nearly £3,000 short a year. Currently, disabled adults are entitled to a £70 a week Severe Disability Premium – claimable if they have no-one to care for them or receive assistance from a young carer.²¹

Violence against children

34. Five years after the publication of the UN Secretary-General's Study on Violence Against Children, the UK has still not published (or even promised) a national strategy to end all violence against children.

35. There were 722 child homicides in the past 10 years (75% of children knew the suspect).²²
36. 31 children have died in custody since 1990, two following restraint-related incidents. Yet there has not been a single public inquiry into the treatment of children in custody.
37. Tasers were used on children aged between 13 and 17 years **252** times by police forces in England between July 2007 and December 2009 (latest available statistics).²³ In November 2006, the Home Office Scientific Development Branch reported a safety notice issued by the manufacturer Tasertron (now Taser Technologies Inc.) warning against the use of Tasers on children. Amnesty International reviewed 334 deaths following Taser use by law enforcement officers in the US (including the deaths of three children). It examined available research literature which pointed to the enormous risks of Taser use on children and other people of small stature.²⁴
38. The “reasonable punishment” defence is still available to parents and others acting in loco parentis, meaning that parents and carers are permitted to lawfully assault a child. The National Society for the Prevention of Cruelty to Children conducted research in 2009 on child abuse and neglect and found that 42% of parents or carers had physically punished or “smacked” their child in the past year (39% had assaulted an under 11 year-old; and 46% a child aged between 11 and 17 years).²⁵

Further erosion of civil rights in schools

39. School and college staff powers to search children without their consent have been extended despite no evidence of their necessity. Staff are already able to search students for weapons,²⁶ alcohol, drugs, and stolen property.²⁷ The Education Act 2011 extends the items for which staff can search children to include any article that staff reasonably suspect has been (or is likely to be) used to commit an offence or to cause personal injury or damage to property, as well any other item prohibited in a school's rules. In addition, the 2011 Act enables staff to look through students' phones, laptops and other devices and delete information *‘if the person thinks there is a good reason to do so’*.²⁸
40. As well as extending the search powers themselves, the Education Act 2011 removes a number of significant safeguards for children who are being searched. It removes requirements for the search to be carried out by a member of staff of the same sex as the child, and to be witnessed by another member of staff, if they reasonably believe that there is a risk that serious harm will be caused if the search is not conducted. There is no requirement to record when a child is searched.
41. The coalition Government has decided to repeal the duty on schools to record significant incidents where force is used on a child and to report these incidents to parents,²⁹ with potentially serious consequences for very young children and some disabled children (including those in residential schools) unable to communicate concerns to parents and

carers. The decision follows two Government reviews of the duty carried out in the past year. The first concluded in January 2011 that implementing the duty *'is in the best interests of teachers, pupils and their parents'*.³⁰ The second concluded that the duty *'is [not] necessary either to keep children safe or to protect school staff'* and that *'it would add to the bureaucratic burden of some, but not all, schools'*.³¹ Duties to record use of force are already in place in other settings including children's homes (including secure children's homes), secure training centre, young offender institutions, immigration detention centres, and by police and mental health workers.³²

42. There is still no legal provision for children's views to be heard in exclusion proceedings and only parents have the right in domestic law to appeal exclusion from school. Furthermore, the removal of exclusion appeal panels' power to reinstate excluded students, contained in the Education Act 2011, removes any chance of a child's perspective having any weight in challenging exclusion – making domestic law even more incompatible with Article 12 of the CRC. In addition, parents retain the legal power to remove students from sex and relationships education that is not part of the science national curriculum. Only sixth-formers have the legal right to opt out of collective worship (since February 2009; only extended to sixth-formers attending “special” schools in September 2011).

43. **State's failure to protect especially vulnerable children – separated children**
Guardianship has still not been established for separated children, despite the recommendation of the UN Committee on the Rights of the Child in 2002. ECPAT UK explains that this failure has *'catastrophic consequences for child victims of trafficking'*.³³ A report published by UNICEF UK in 2010 on the experiences of separated migrant children in three English local authority areas highlights how vital social work and other support is to separated children:

*There was overwhelming evidence to suggest that one of the most significant factors determining unaccompanied or separated migrant children's ability to access services and support is the presence of supportive, reliable and consistent adult support in their lives.*³⁴

44. But this crucial support was not always there for children:

*... all too often the time social workers had available to play this role was severely limited and meant that they were doing little more than trouble shooting and sign-posting. Many unaccompanied or separated migrant children and young people were lonely and isolated and missed the kind of support provided by a family.*³⁵

45. **State's failure to protect especially vulnerable children – juvenile justice**
There has been very little progress in juvenile justice policy to address the issues raised in the 2008 UPR and other subsequent treaty monitoring processes.

46. While there has been a welcome drop in the numbers of children incarcerated, the UK has the 7th highest proportion of child prisoners among all OECD member countries.³⁶ There is no statutory safeguard ensuring that custody is used only as a last resort and for the shortest period of time – recommended by both the UN Committee on the Rights of the Child and the Council of Europe Commissioner for Human Rights in 2008.
47. The authorities' responses to this summer's public disorder at best contributed to a misperception that the majority of offenders were young people. The UK's juvenile justice obligations, particularly in relation to protecting the child's right to privacy and ensuring contact with the criminal justice system is a last resort, did not feature in Ministerial interventions.
48. In September 2011, the Ministry of Justice issued a statistical bulletin on the August disturbances. This showed that, as of 12 September:
 - a. 21% (364) of those brought before the courts were children
 - b. 45.2% of these children had no previous offences
 - c. Of 26 children sentenced to immediate custody, only **one** was convicted of a violent disorder offence.³⁷
49. The recent drop in custodial numbers has led to welcome de-commissioning of custodial places, but this has been disproportionately in the secure children's homes sector (rather than in prison accommodation).³⁸ The closure of some units means that children may be placed further away from their home area and there are fewer options for the most vulnerable; for example, there is now no secure children's home in Greater London.
50. The coalition Government has established a Restraint Management Board and a Restraint Advisory Board and commissioned an "alternative" system for restraint in young offender institutions and secure training centres. The new system is not yet in the public domain but it is likely that it will continue to allow the deliberate infliction of severe pain as part of restraint techniques – contrary to the criticisms and recommendations of the Royal College of Paediatrics and Child Health (2006)³⁹, the UN Human Rights Council (2008), the UN Committee on the Rights of the Child (2008)⁴⁰, the European Committee for the Prevention of Torture (2009)⁴¹, the parliamentary Joint Committee on Human Rights (2008)⁴² and the UK's four Children's Commissioners (2008).⁴³ In October 2008, Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, observed:

*The Commissioner has been struck by the apparent focus in UK custodial settings on the issue of restraint techniques and what is "allowed" and "not allowed". **He is not aware of any other member state that sanctions the use of deliberate pain as a method of restraining a child** [our emphasis].*⁴⁴
51. Government officials within the Department of Health have stated:

*...children and young people displaying challenging and difficult behaviour can be successfully managed without the use of restraints or methods involving pain compliance, which would be in line with the management of aggression and violence across healthcare settings.*⁴⁵

52. Statistics published by the Youth Justice Board (YJB) and the Ministry of Justice in January 2011 show:
- a. There were 6,904 incidents of restraint in child custody in 2009/10
 - b. 257 (4%) incidents resulted in recorded injuries on children
 - c. On average, 11% of children in custody are restrained at least once whilst incarcerated
 - d. For every 100 girls entering custody, 42 are subject to restraint
 - e. For every 100 boys entering custody, 15 are subject to restraint
 - f. The YJB reports no difference in the use of restraint according to children's ethnicity
 - g. No data appears to be collected on the use of restraint on disabled children in custody
 - h. No data appears to be collected on the use of restraint on pregnant girls in custody.⁴⁶
53. In March 2011, the Office of the Children's Commissioner released a report of 89 children's views and experiences of restraint in child custody. Children's testimonies are deeply disturbing and possibly indicative of widespread unlawful practice across all forms of custody:
- a. Reports of staff using gratuitous physical and verbal violence during and after restraint – *'I've been bent up a few times and certain gavs would go hard on me ... some would give me a couple of slaps'; 'Certain members of staff get carried away, start calling you a c**t and all of that ...'; 'I was restrained on my first day here [in a secure children's home] and had cuts on my hand from it and they left me all night in the cold and asked if I wanted a doggy basket'; 'I think when you get restrained you should be given the bed back'*
 - b. A report of a child being thrown on the floor and "twisted up" during restraint
 - c. Reports of staff not reducing the use of force as a child calms down / when they have control of the situation – *'they should at least loosen a bit when they've got control because obviously it's putting people in pain'; 'When you tell them you're alright and have calmed down they don't lay off you, they just carry on'*
 - d. Reports of staff not reducing the use of force when a child is complaining of excessive pain – *'I said loosen it because I was in so much pain, and they said no, I'm going to use the force'; 'See when they bend you up, they're only supposed to use so much force but they don't listen to that'; 'I've witnessed*

someone getting bent up and they were saying I'm not resisting, I'm not resisting they had his hand and they started breaking it'

- e. Reports of disproportionate numbers of staff restraining an individual child – *'Twenty men to restrain a five foot woman'; 'And you don't need six officers, they need two, because six, that's just way over the top. And plus I'm a juvenile'*
 - f. A report of staff jumping on children during restraint
 - g. A report of children being stood on and scratched during restraint.
54. Children reported feeling embarrassed, powerless, angry and panic-stricken when being restrained. Whilst some of the 89 children recalled restraint being used in an appropriate way and for justifiable reasons, none described staff and managers promoting a positive, non-violent culture.⁴⁷
55. Recent criminal justice law and policy makes little or no distinction between adults and children – for example, the use of gang injunctions and mandatory custodial sentences for 16 and 17 year-olds convicted of carrying a knife.
56. The Legal Aid, Sentencing and Punishment of Offenders Bill proposes that the status of children who are refused bail and remanded will be that of a looked after child. This is a very welcome development. However, many organisations, including the National Association of Youth Justice, wish to see this protected status extended to **all** children who are sentenced to custody, consistent with Article 20 of the CRC.
57. There have been no changes to anti social behaviour legislation although the coalition Government has indicated that it may publish a Green Paper in 2012. It was deeply disappointing that a Government consultation this year on “new” measures to tackle anti-social behaviour proposed to treat adults and children in much the same way; and retained custodial punishments for civil offences. Local authorities and criminal justice agencies have applied anti-social behaviour sanctions to the young in a grossly disproportionate way. When anti-social behaviour orders were first introduced, Government guidance stated they would *'be used mainly against adults'*⁴⁸, yet 10 to 17 year-olds account for 40% of orders and only 10% of the population.⁴⁹

RECOMMENDATIONS

58. The UK should fully incorporate the principles and provisions of the CRC into domestic law.
59. The UK should accept the right of individual petition within: the International Covenant on Civil and Political Rights Optional Protocol; the International Convention for the Elimination of All Forms of Racial Discrimination (Article 14); and the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (Article 22).

60. There should be one government department in charge of all policy affecting children, working consistently and explicitly within the framework of the Convention on the Rights of the Child.
61. Substantial additional resources must be invested towards the realisation of children's rights, with a particular focus on eradicating child poverty and tackling inequality. Expenditure on children must be separated out and shown discretely and collected systematically.
62. The Convention on the Rights of the Child should be included in the statutory national curriculum.
63. The former duty on local authorities to provide Traveller sites must be reinstated.
64. The provision in Section 316 of the Education Act 1996 (as amended by the Special Educational Needs and Disability Act 2001) that permits the refusal of a child with a statement of special educational needs to attend a mainstream school because of the efficient education of other children should be removed from law.
65. The UK Government should develop a national strategy to end all forms of violence against children.
66. The use of Taser guns on, or in the vicinity of, children should be prohibited in law.
67. As a matter of urgency, an independent review should be undertaken of disabled children's right to family life and active participation in the community, to examine why so many disabled children are in long term institutional care and to review the care and treatment of children in these settings.
68. Reporting restrictions relating to antisocial behaviour and civil and criminal (breach) proceedings involving children, should be reinstated as a matter of urgency.
69. The UK Government should legislate to remove the "reasonable punishment" defence completely to ensure children equal protection under the criminal law on assault and build the promotion of positive, non-violent relationships with children into all parenting education and support programmes and the training of all those who work with children and families.
70. The UK Government should ensure that all health and social care frontline staff are trained in human rights principles and it should introduce a statutory duty to raise awareness of children's rights on all public authorities working with children or parents. Funding should be available to schools and other children's services to meet this new duty.

71. Schools should be required by law to record all significant incidents of use of force; and to report these to parents and carers.
72. The right to be heard and taken seriously should be systematically implemented in the education system – for all children.
73. The UK Government should establish an independent statutory guardianship system for all separated children.
74. Separated children should be taken into care. A local authority should have parental responsibility for the child under Section 20 or 31 of the Children Act 1989. They should be entitled to all the same care and support as other looked after children (not simply provided with accommodation). Policy responsibility for these children should move to the Department for Education.
75. The policy of detaining families with children under Immigration Act powers should be stopped immediately. The separation of young children from their primary caregiver during the immigration process should be prohibited in law unless this is not in the best interests of the child. Alternatives to detention must comply with all aspects of the Convention.
76. The UK Government should commit itself to a distinct juvenile justice system, based on meeting the child's needs and positive rehabilitation. Punishment must have no place in the juvenile justice system; proposals to include punishment as one of the statutory purposes of sentencing should be scrapped.
77. The age of criminal responsibility in England should be amended to reflect the requirement of international human rights standards for a completely distinct approach to dealing with all juvenile crime.
78. Children should not be tried as adults in crown courts (though the right to a jury trial should be retained).
79. A distinct children's custody threshold should be introduced in law to ensure that only children who have caused (or could reasonably be expected to have caused) serious physical or psychological harm and who are a serious danger to others can be held in custody; and then for only the shortest period of time.
80. Children should only ever be detained in child-centred environments which have a single joint aim: to provide positive rehabilitation and to meet the child's needs. These environments must operate to the highest child care and human rights standards, be non-punitive and demonstrably distinct in culture and practice from prison establishments. Children in custody should have a statutory right to independent advocacy. To ensure equitable care and protection with other vulnerable children, both in and after custody, they should have "looked after" legal status.

81. Restraint techniques in child custodial settings that deliberately aim to cause pain should be prohibited in law.

Contact:

Carolyne Willow

National co-ordinator

CRAE

cwillow@crae.org.uk

00 44 (0)20 7278 8222 ext 22

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- ²⁸ Clause 2, subsection 4(b) and Clause 3, subsection 4(a)
- ²⁹ House of Commons 5 Sep 2011: Hansard Column 7WS
- ³⁰ Letter from Nick Gibb MP, Minister of State for Schools, to Hywel Francis MP, Chair of the Joint Committee on Human Rights, 20 January 2011
- ³¹ Charlie Taylor (2011) *Review of the Recording and Reporting of the Use of Force in Schools*
- ³² See analysis of law on restraint and use of force in different settings in State of Children's Rights in England report 2011.

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- ³³ ECPAT UK (October 2011) Watch over me. A system of guardianship for child victims of trafficking. Page 10.
- ³⁴ Brownlees, L. and Finch, N. (2010) Levelling the playing field. A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England. Page 118.
- ³⁵ Brownlees, L. and Finch, N. (2010) Levelling the playing field. A UNICEF UK report into provision of services to unaccompanied or separated migrant children in three local authority areas in England. Pages 118-119.
- ³⁶ This position is shared with Israel
- ³⁷ Ministry of Justice (15 September 2011) Statistical bulletin on the public disorder of 6th to 9th August 2011.
- ³⁸ Strategy for the secure estate for children and young people. Ministry of Justice consultation document 19th July 2011.
- ³⁹ RCPCH media statement, 17 February 2006, 'Royal College of Paediatrics and Child Health welcomes Carlile report'
- ⁴⁰ UN Committee on the Rights of the Child, Forty-second session, Geneva, 15 May-2 June 2006, General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia) (CRC/C/GC/8, 2 March 2007). Paragraph 15.
- ⁴¹ Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 November to 1 December 2008. Page 50.
- ⁴² Joint Committee on Human Rights (March 2008) The Use of Restraint in Secure Training Centres. paragraph 86.
- ⁴³ UK Children's Commissioners' Report to the UN Committee on the Rights of the Child (June 2008). Page 15.
- ⁴⁴ MEMORANDUM by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom (5-8 February and 31 March-2 April 2008). Issue reviewed: Rights of the child with focus on juvenile justice. October 2008.
- ⁴⁵ Smallridge, P. and Williamson, A. (2008) Independent review of restraint in juvenile secure settings. Page 43.
- ⁴⁶ Youth Justice Board and Ministry of Justice (January 2011) Youth Justice Statistics 2009/10 England and Wales. Youth Justice Board / Ministry of Justice. Statistics bulletin.
- ⁴⁷ Office of Children's Commissioner (March 2011) Young people's views on restraint in the secure estate. Research carried out by User Voice.
- ⁴⁸ Home Office (1998) Introductory guide to the Crime and Disorder Act.
- ⁴⁹ Ministry of Justice (2010). Anti-social behaviour order statistics: England and Wales 2008.