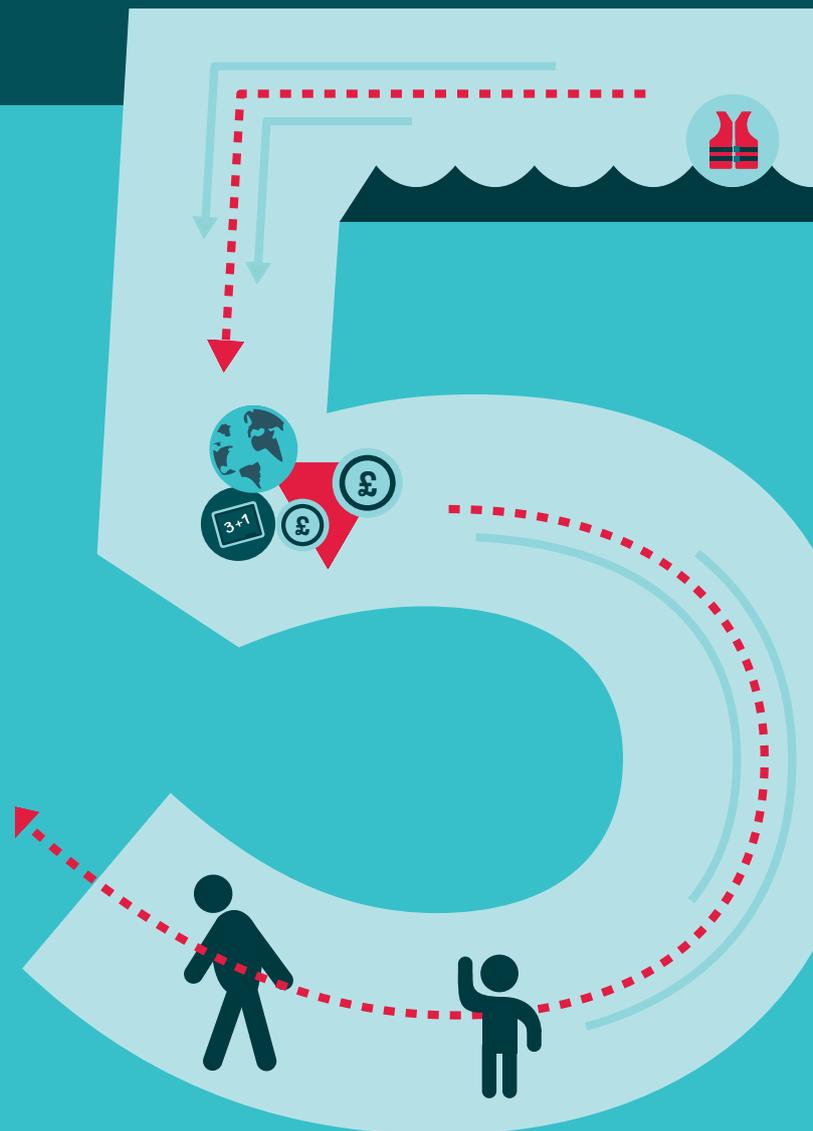




Children's
Rights Alliance
for England

State of Children's Rights in England **2016**

Briefing 5 Immigration, Asylum & Trafficking



Briefing 5

Immigration, Asylum & Trafficking



ARTICLE 10 Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

ARTICLE 19 Children have a right to be protected from all forms of violence.

ARTICLE 20 Children separated from their family should be well cared for.

ARTICLE 22 Children who are seeking refugee status are entitled to special protection and the other CRC rights.

ARTICLE 32 States Parties should protect children from economic exploitation, and any harmful work.

ARTICLE 34 States Parties must protect children from all forms of sexual exploitation and abuse.

ARTICLE 35 States Parties should make sure children are not abducted, sold or trafficked.

ARTICLE 39 Children who experience any exploitation should receive the help they need to recover and reintegrate into society.

Optional Protocol to the CRC on the sale of children, child prostitution and child pornography

States Parties shall prohibit the sale of children, child prostitution and child pornography, recognise the vulnerability of child victims, protect their privacy, provide support and ensure their safety.

Definitions and Glossary

Children: This briefing refers to “children” which covers all children and young people under-18 as set out by article 1 of the UN Convention on the Rights of the Child (CRC).

Separated children: This briefing refers to “separated children”. This covers children under-18 who are outside their country of origin and have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. We use the term separated children to include unaccompanied children seeking asylum in the care of local authorities.

Unaccompanied children: This refers to unaccompanied children seeking asylum in the care of local authorities, often referred to as UASCs by the Government.

Dublin III Regulation: A European Union law that determines that EU Member States examine an application for asylum seekers seeking international protection. It requires refugees to claim asylum in the member state in which they first arrive and allows for family reunification for children.

About this briefing

The UK ratified the UN Convention on the Rights of the Child (CRC) in 1991. This means that all areas of government and the state; including local government, schools, health services, and criminal justice bodies, must do all they can to fulfil children's rights. In June 2016 the UK Government was examined by the UN Committee on the Rights of the Child (UN Committee) on its compliance with the CRC for the first time since 2008. The UN Committee set out a number of concerns (summarised below) and recommendations (Concluding Observations) for change.¹

This briefing is part of CRAE's *State of Children's Rights 2016* and assesses the progress made

in England towards implementing the UN Committee's recommendations on refugee, migrant and trafficked children's rights which is an area of Special Protection Measures in the CRC. It highlights areas of progress and concern since July 2015 when CRAE coordinated the England civil society report to the UN Committee as part of the last UK examination.² This was endorsed by 76 civil society organisations.³

This briefing is based on written and oral evidence from CRAE's members and additional analysis of recent laws and policies, newly published research, official statistics, and responses to Freedom of Information requests.

What is the CRC?

The CRC applies to all children aged 17 years and under and sets out the basic things that children need to thrive - the right to an adequate standard of living, to be protected from all forms of violence, an education, to play, be healthy, and be cared for. Children's rights should act as a safety net – meaning children always receive at least the minimum standard of treatment whatever the changing economic climate.

The CRC has four guiding principles (General Principles) which are rights in themselves but also the framework through which all the rights in the CRC should be interpreted. They are: non-discrimination (article 2); the best interests of the child (article 3); survival and development (article 6); and respect for the views of the child (article 12).

England's compliance with these General Principles is covered in Briefing 2.

Concerns of the UN Committee 2016

- Data on asylum seeking children and those whose age is disputed remain unavailable
- All separated children do not have access to an independent guardian or legal advice
- Children can be assessed as adults based on their physical appearance
- Children can be detained, including in short-term holding facilities when entering the country and age disputed children seeking asylum can be detained in adult facilities
- Separated refugee children face restrictions on family reunification
- Asylum seeking, refugee and migrant children and their families face difficulty in accessing education and health care, and are at high risk of destitution
- The removal of unaccompanied children in care with an irregular or unresolved immigration status to leaving care support and the "deport first, appeal later" scheme bought in by the Immigration Act 2016
- Children are returned to their country of origin without adequate safeguards

Introduction

2016 saw the continuation of the greatest refugee crisis since the Second World War which included an increase in the numbers of separated children on their own and children in families making dangerous journeys and seeking asylum in the UK. At the same time, the UK voted to leave the European Union and whilst the exact timing and consequences are unknown at the time of writing, this is likely to have an impact on the UK's immigration policy.

These events have presented a number of challenges for the Government and as a result it has taken a number of steps to further their policy of creating a "hostile environment" for migrants. In particular, we are extremely troubled by a number of measures that have come into effect through the Immigration Act 2016 that further erode migrant and refugee children's rights. **We are disappointed that the Government continues to ignore the best interests of refugee children (article 3) and prioritises immigration control over children's welfare.**

What progress have we made?

The publication of both the new Association of Directors of Children's Services (ACDS) and Home Office working guidance on age assessments and ACDS practice guidance is a positive step given the UN Committee's continued concern about this issue over many years.⁴

The Government has made a series of welcome pledges to address the refugee crisis: expanding its scheme to resettle 20,000 Syrian refugees by 2020 and an additional 3000 at-risk children and families from the Middle East and North Africa;⁵ and an initiative in May 2016 to work with local authorities to relocate vulnerable separated children registered in Greece, Italy or France before 20 March 2016.⁶ As part of this, the Government has started to relocate separated children (some of whom will be reunited with their families) in October 2016 after the closure of the migrant camp in Calais.⁷ Alongside this

the Government increased the funding for local authorities supporting unaccompanied children by 20% for the current financial year and £60,000 per year to bolster regional structures.⁸

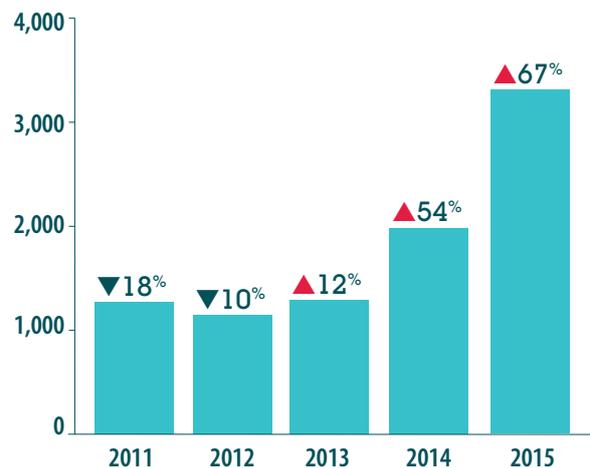
Where do we need to improve?

Immigration and Asylum

Increase in unaccompanied child asylum seekers

3253 unaccompanied children sought asylum in the UK in 2015, a 67% increase on the previous year.⁹

Graph 1: Asylum applications from unaccompanied children



Source: Home Office Immigration statistics¹⁰

In 2015 there was a notable increase in the number of children coming from Eritrea and Afghanistan. However, the numbers coming from Albania have fallen significantly, having previously been the biggest source country, see table below. Nevertheless, this is only a fraction of the millions seeking protection. The EU Home Affairs Sub Committee expressed deep concern that according to Europol there are at least 10,000 unaccompanied migrant children currently missing in the EU.¹¹ In addition, there was a 75% increase in the number of unaccompanied children permanently disappearing from care facilities in the UK in 2015, a total of 239.¹²

Table 1: Unaccompanied children's status and nationalities in 2015

	Total	Refugee Status	Humanitarian Protection	Discretionary Leave	UASC Leave	Family or Private Life	Refusals
Albania	440	1	0	8	288	0	143
Eritrea	368	137	13	2	162	0	54
Afghanistan	241	41	0	11	147	0	42
Egypt	75	0	0	1	54	0	20
Syria	68	26	0	0	32	0	10
Vietnam	63	13	0	0	40	0	10
Sudan	58	57	0	0	1	0	0
Iran	55	22	0	0	21	0	12

Source: Home Office Immigration statistics¹³

Only 22% of unaccompanied children were granted refugee status in 2015, the majority (52%) were refused asylum and granted a temporary form of leave (UASC leave). Such temporary leave is rarely in children's best interest as it does not provide them with a durable solution.¹⁴ See Briefing 2 for more details. There is a significant difference between rates of refusal for children from different countries, see table 1 below. Albania and Egypt stand out as the countries with the highest refusal rates, whereas only one child from Sudan was refused asylum.

Concerns around new transfer system

The Government has launched a new voluntary National Transfer Scheme to encourage all local authorities across the country to support their "fair share" of separated children.¹⁵ However, current reports suggest that almost a quarter to half of councils may not take part which risks children being left in limbo awaiting transfer and delays.¹⁶ If voluntary arrangements do not work, the Government has previously stated it will compel local authorities to take children. The Government has increased the funding for local authorities per child by 20% for the current financial year¹⁷ but a recent study found the money provided only covers 50% of the true cost.¹⁸

Despite the transfer protocol stipulating that the decision to transfer should be based on an initial assessment of the child's best interests, NGOs have reported that decisions are being made in relation local authority capacity, immediate risks and a limited assessment of the child's health. Concerns have also been raised about the capacity and expertise of already

stretched local authorities across the country to adequately support these children, as well as ensure their right to access to legal advice and representation.¹⁹

Removal of leaving care support

Provisions in the Immigration Act 2016 have removed the entitlement of former unaccompanied children in care who do not have a pending asylum or first immigration application for leave to remain in the UK to leaving care support and services which risks leaving these vulnerable young people homeless and destitute, and at serious risk of abuse or exploitation.²⁰ Recent research has found that there are already *'considerable inconsistencies in the way local authorities are discharging their duties to [these] vulnerable young people coupled with a lack of funding from the Home Office to support their care'* which is likely to become more pronounced once these provisions are enforced.²¹

Instead, some care leavers will be supported as part of the adult asylum system and could be dispersed away from their support networks. These provisions effectively override children and leaving care legislation and policy, and prioritise immigration control over children's welfare considerations. In effect they create a clear two-tier system of support for care leavers based on their immigration status and severely limit the corporate parent duties of local authorities.²²

As the UN Committee pointed out, these measures are clearly incompatible with the CRC and should be urgently reviewed before being rolled out nationally.

Increase in number of children whose age is disputed

There has been a large increase – 148% - in the number of children whose ages are disputed. 23 789 children were “age disputed” in 2015, demonstrating that children are still regularly disbelieved about how old they are and face harmful, protracted age disputes despite guidance from the UN Committee that *‘age assessments should only be conducted in cases of serious doubt.’* Children from Afghanistan are by far the most disputed, with double the number undergoing age assessments – 235 in 2015 compared to around 100 from Iran, Eritrea and Iraq which combined account for over 70% of total cases.

‘age assessments should only be conducted in cases of serious doubt.’

The Home Office’s ‘Assessing Age’ policy allows for individuals claiming to be children to be treated as adults if their appearance/demeanour *‘strongly suggests they look significantly over 18’* despite Department for Education statutory guidance which states that *‘children should only have an age assessment carried out where there is a “significant” reason to doubt the individual is a child.’*²⁴ This is extremely problematic given the inherent difficulties in judging age based on appearance and can result in children being denied local authority support as a child and being housed or even detained with adults.

(See case study). From January to 31st July 2016 the Refugee Council assisted 16 young people detained as a result of the Immigration Officer’s decision. Of these, in November 2016 seven have already been assessed as children, eight are being looked after pending the completion of the assessment and one is still detained at the time of writing. However, in a positive step, the High Court recently ruled that it was unlawful to detain children just because they look 18 or over.²⁵

Child detention continues

In July 2016, the Home Office announced the closure of Cedars, the specialist family Pre-Departure Accommodation and the relocation of family services to Tinsley House Immigration Removal Centre.²⁷ In practice, this is unlikely to mean that fewer children will be detained, but that they will be held even more unsuitable facilities. Given the Government announced an intention to end child detention for immigration purposes in 2010, this is an unfortunate backwards step.

In 2015, 128 children were locked up in immigration detention.²⁸ So far this year three quarters of the children who left detention with their families were released back into the community rather than removed from the country. It is therefore hard to see how detention is being used as a last resort prior to removal.²⁹ Although the numbers of children detained have decreased overall due to the new procedures, this still breaks the Government’s promise and the UN Committee’s persistent calls to *‘Cease the detention of asylum-seeking and migrant children.’*



▲ 141%
Increase in age disputes during 2015 compared to 2014
766 children were age disputed in 2015

Case study

Illegal protracted age assessment. Just for Kids Law

Farhad*, aged 15, fled Iran because ISIS was infiltrating his town. Both his parents had died, his father fighting against ISIS. He arrived in the UK in a lorry and was arrested. He had an ID document that stated his age which the Home Office accepted.

Despite this, the local authority responsible decided to assess his age and he was deemed to be 16 years old. He was not provided with a copy of the age assessment document or informed of the reasons why it determined him to be older than the age stated on his ID.

Farhad's key worker referred him to Just for Kids Law who launched the pre-action process for judicial review. They highlighted the local authority's failure to give Farhad the benefit of doubt, especially given he had ID stating his age and the fact that the local authority had failed to conduct a lawful age assessment. He did not have an appropriate adult at the age assessment meetings and he was not given reasons as to why the local authority thought he was older, or an opportunity to respond to any adverse points raised.

The local authority conducted a second unlawful assessment of Farhad's age, again failing to provide adequate reasons why it deemed him to be older than his stated age and failing to comply with the procedure set out in *R (B) v Merton*²⁶, including relying heavily on his physical appearance and demeanour.

Just for Kids Law sent further pre-action correspondence to challenge the assessment, following which the local authority agreed to review Farhad's case and finally accepted his age as claimed.

*Not his real name

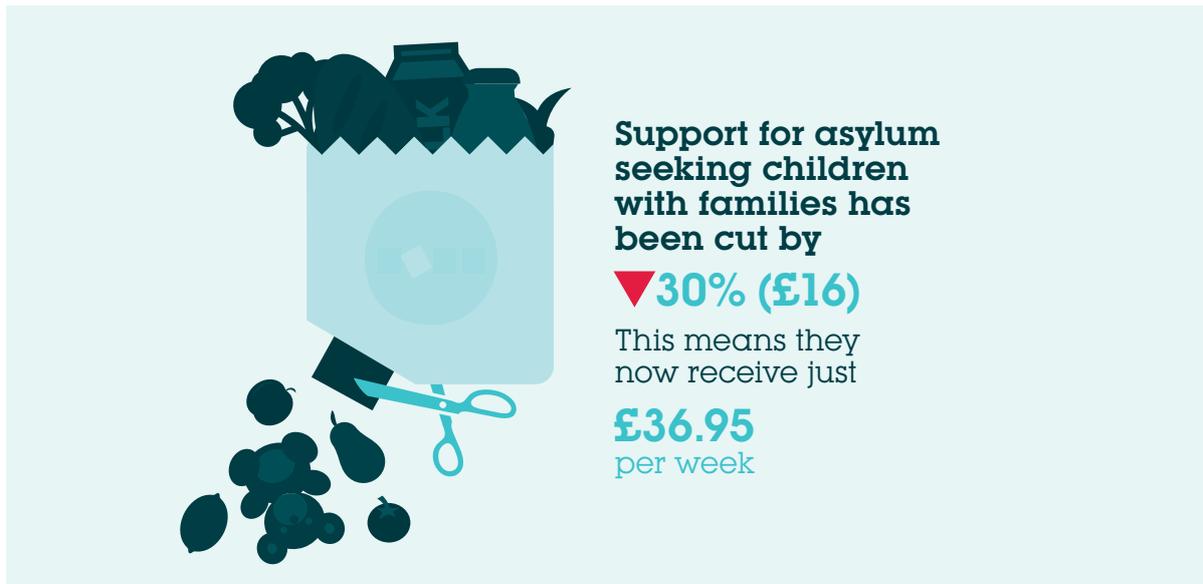
New "Remove first, appeal later" provisions

The Immigration Act 2016 has removed the right for both separated children and children with their families to appeal immigration decisions on human rights claims (e.g. Article 8 of the European Convention on Human Rights – The Right to Family and a Private Life) from within the UK unless the Government deem there to be "serious risk of harm" on return. These provisions mean that more children may be separated from their parents or forcibly removed from the UK for appeal proceedings without any judicial scrutiny and consideration of their best interests.

This will have significant and severe consequences for many migrant as well as British and settled children who have been in the country for many years. For some children remaining in the UK would undoubtedly be in their best interests. In many cases children have no lasting connections to their parents' country of origin. Without a right to appeal in the UK, children could be at greater risk of being sent to a country where they have no support network, no family, are unable to speak the language, and where their safety would be at risk.

Further cuts to asylum support for children and families

In August 2015, the Government made significant cuts to asylum support by introducing a "flat rate" of support for all individuals. This is a cut of 30% (£16 a week) for children and families as they now receive the same as single adults, just £36.95 per week. This doesn't take into account the extra costs of having children and makes it increasingly difficult for parents to buy food or clothes for them. In some cases families on asylum support are getting just half of what they would get in the mainstream system leaving some families living on rates, which are 60% below the poverty line.³⁰ Another UN Committee also called on the Government to increase asylum support levels in its recent Concluding Observations on the UK's progress on the Covenant on Economic, Social and Cultural rights.³¹



In addition to these changes, the Immigration Act 2016 will bring into force new provisions which will cut off asylum support subsistence and housing entirely from children and families whose asylum claims have been refused following a grace period of 90 days. This provision is subject to new affirmative regulations to be debated in Parliament and no firm commencement dates have been set but they are likely to be in early 2017.

Safeguarding concerns about returns to Albania

The Home Office is continuing to explore the possibility of returning unaccompanied children to Albania. This is partly because it is an EU country and perceived as relatively easier and safer to return to and because up until 2014, Albania was the highest source country of separated children. However the numbers have dropped significantly this year from 632 to 481.³² NGOs have raised serious concerns about the pilot including about the capacity of Albanian local authorities to provide support and care, the level and quality of family assessments, the adequacy of legal representation and safeguarding, including re-trafficking concerns.³³

Inadequate family reunion policies

The ability to reunite with family members is a fundamental right of a refugee. Under

EU law (Dublin III Regulation), separated children are entitled to be reunited with their family elsewhere in Europe, including in the UK. However, despite the Government stating it will adhere to these regulations and positive decisions from the Courts,³⁴ this mechanism is not functioning or being used effectively.^{35,36} Before 2016 there had only been very few cases of Dublin transfers to the UK. This is a potential breach of Article 9 of the CRC, the principle of family unity.

We welcome the Government's recent commitment to accept an unspecified number of separated children from the Calais migrant camp to the UK under Dublin III and the "Dubs" amendment.³⁷ However, this is only a small fraction of the estimated 1200 children in the camp and fears have been raised that this will leave hundreds of vulnerable children still at risk or likely to go missing.³⁸ The UN Committee has criticised the Government for falling *'seriously short of their obligations under the CRC in the way they handled the situation of children living at the Calais migrant camp.'*³⁹ There are also still hundreds of separated children with family links in the UK living in unsafe and unsustainable conditions in the camps or on the streets in Europe as a result of the refugee crisis.

Additionally, the UK, unlike almost every other country in the EU, does not allow children with refugee status in the UK to sponsor their parents to join them. This is despite the fact they have been through an asylum determination process in the same way as an adult. The UN Committee called on the Government to *'Review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children within and outside of the State party, including through implementation of the EU Dublin III regulation.'*

The UN Committee has criticised the Government for falling 'seriously short of their obligations under the CRC in the way they handled the situation of children living at the Calais migrant camp'.

Trafficking

Delay in providing independent legal advocates

Despite emphasising its ongoing commitment⁴⁰ to the provision of Independent Child Trafficking Advocates following an independent evaluation⁴¹, the Government has still not rolled the scheme out across the country and has started a new trial in three "early adopter" sites. It is also disappointing that despite repeated calls from the UN Committee, the Joint Committee on Human Rights⁴² and the Lords EU Home Affairs Sub-Committee⁴³, **the Government has refused to introduce advocates for all separated children.** This falls short of provision in Northern Ireland and Scotland and fails to comply with the EU Directive and Council of Europe Convention of Trafficking.⁴⁴

Failure to introduce a non-prosecution clause for victims of trafficking

A statutory defence for children and adults forced to commit crimes as a victim of trafficking was introduced by the Modern Slavery Act 2015. However, this is not compliant with international and European law which states children should not be prosecuted for crimes related to their trafficking.⁴⁵ The UN Committee expressed disappointment that the new legislation did not include *'a clear obligation of non-prosecution, and ensure that they [trafficked children] are treated as victims rather than criminals by the law enforcement and judicial authorities.'* **NGOs remain concerned that children continue to be prosecuted and convicted for crimes they have been forced to commit by their traffickers due to poor identification of young victims and a lack of awareness of forced criminality, in particular, among police and prosecutors.** A lack of legal guardianship means victims often do not know their own rights and may plead guilty to crimes they are forced to commit.⁴⁶

Weak National Referral Mechanism

Whilst it is a welcome step that the revised National Referral Mechanism (NRM) now involves multi-disciplinary panels to make trafficking decisions instead of just the Home Office and UK Human Trafficking Centre, concerns remain that the new NRM does not embed the identification and safeguarding of trafficked and exploited children into existing child protection processes. This was echoed by the UN Committee who labelled the system *"weak"* and called for it to be *'embedded in existing child protection procedures.'* A failure to do so risks fragmenting the response of professionals to child trafficking and creating a dual system.

Recommendations

1. The Government should ensure that local authorities accepting unaccompanied children under the transfer scheme are sufficiently trained in supporting the needs of these children and that they are able to access high quality independent immigration advice and representation in making immigration claims that are in their best interests.
2. Commission an independent qualitative evaluation of the national transfers scheme including the views and experiences of the unaccompanied children affected by the scheme.
3. All care leavers, regardless of their immigration status, should have access to the full range of leaving care services – including access to training and education, a personal advisor and legal advice and representation if they require it.
4. Local authorities should report to the Department for Education about the number of care leavers subject to immigration control who have support withdrawn and are dispersed outside of their local area as a result of provisions in the Immigration Act 2016, and who are then directed into the adult asylum system under Section 10B.
5. Age assessments should not be solely based on visual appearance and should be a specialist, multi-agency approach that avoids the use of intrusive measures such as x-rays or dental exams.
6. The Government should renew and fulfil its commitment to ending the immigration detention of children, and set out its plans on how it will do so in the context of the closure of Cedars.
7. Robust safeguards need to be put in place to ensure that children are able to challenge poor Home Office decision-making effectively in the UK and that their best interests are core to all immigration and enforcement decisions made about them.
8. Where a parent with a child in the UK is appealing their deportation, the appeal should be bought from within the UK if this is in the best interests of the child.
9. Children should never be separated from their parents for the purpose of immigration control.
10. The Government should urgently conduct a full review into the impact on the Immigration Act 2016 on its compatibility with the CRC in regards to the removal of leaving care support and “remove first, appeal now” measures particularly on children’s best interests (article 3).
11. The flat rate for asylum support should be abolished for children and a cost of living increase should be implemented so that it reflects at least 70% of mainstream benefits paid for living expenses, where accommodation is provided - this should be increased annually in line with inflation.
12. Separated children should only be returned to their country of origin following a formal Best Interests Determination.
13. The Government should issue guidance making clear how implementation of the Dublin III regulation works for separated children to ensure it is fit for purpose, all professionals are aware of the role they play in it to effectively and quickly reunite separated children in Europe with their families in the UK.
14. The Government should review and amend the Immigration Rules for unaccompanied children so that they are in line with adults granted refugee status or humanitarian protection and can bring family members to the UK to join them.
15. The Government should roll out the national system of independent legal child trafficking advocates without delay and extend this to all separated migrant children.
16. The Government should introduce a non-prosecution provision in statute to prevent victims of trafficking from being prosecuted for crimes they were forced to commit.
17. The Government should introduce a NRM for children which is a multi-agency statutory model embedded in existing child protection procedures.

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About CRAE

The Children's Rights Alliance for England (CRAE) works with 150 organisations and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world.

We believe that human rights are a powerful tool in making life better for children. We fight for children's rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

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