

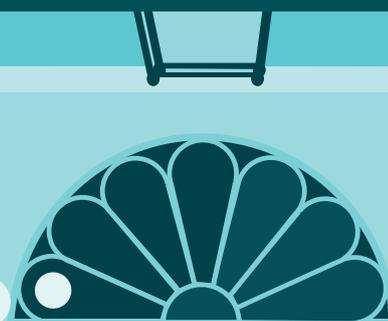
State of Children's Rights in England 2017



2

Briefing 2

Children at the Centre - The General Measures of Implementation and General Principles of the CRC



Briefing 2

Children at the Centre - The General Measures of Implementation and General Principles of the CRC

Article 2 States Parties shall respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment.

Article 3 In all actions concerning children, the best interests of the child shall be a primary consideration.

Article 4 States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the CRC. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of available resources.

Article 6 States Parties recognise that every child has the inherent right to life and shall ensure to the maximum extent possible the survival and development of the child.

Article 12 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 should be given due weight in accordance with the child's age and maturity.

Article 23 A disabled child should enjoy a full and decent life in conditions which ensure dignity, promote self reliance and facilitate the child's active participation in the community. States Parties recognise the right of the disabled child to special care and ensure they have effective access to education, training, health care, rehabilitation, preparation for employment and recreation opportunities.

Article 42 States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 44.6 States Parties shall make their reports widely available to the public in their own countries.

Definitions and glossary

Children: All children and young people under-18 as set out by article 1 of the UN Convention on the Rights of the Child (CRC).

States Party: Countries that have ratified the CRC.

General Measures of Implementation (GMIs): Articles 4, 42 and 44.6 of the CRC, which set out what is required to ensure children's rights are fully respected. Further guidance is set out in a General Comment by the UN Committee. This says that States Parties should take legal measures to implement the CRC so that decisions can be challenged in court, and non-legal measures such as carrying out child rights impact assessments when making policy and budgetary decisions.

Reservation and Declarations: A Reservation allows a State to ratify a Convention as a whole, but to place a specific exception on part of a Treaty. A Declaration sets out how a State interprets an aspect of a Treaty that they believe is unclear.

Optional Protocol: An additional legal instrument that adds to a treaty. The CRC has three Optional Protocols on: the involvement of children in armed conflict; the sale of children, child prostitution and child pornography; and a communication procedure. States must independently ratify a protocol.

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.

This briefing is part of CRAE's *State of children's rights in England 2017* and assesses the progress made in England towards implementing the UN Committee's recommendations relating to the CRC General Measures of Implementation (GMIs) and General Principles. It highlights areas of progress and concern since last year's *State of children's rights in England 2016* was published in December 2016. It 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 (FOI) 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).

Key to UPR recommendations:

UPR Supported UPR Noted

Concerns of the United Nations

In June 2016 the UK Government was examined by the **UN Committee on the Rights of the Child** (the UN Committee) on its compliance with the CRC for the first time since 2008. The UN Committee made a number of recommendations (Concluding Observations) for change¹. In May 2017 the UK was examined on all its human rights treaties, including the CRC, by the 193 member states of the Human Rights Council as part of the **Universal Periodic Review (UPR)**.² This is a process where states can reiterate previous recommendations made by UN Committees and can be used by civil society and parliamentarians as an additional advocacy tool. The Government can choose whether to "support" (accept) recommendations or "note" them (reject or not agree). We are very disappointed that the Government has only supported 28% of the recommendations relating to children's rights compared to 42% of all the recommendations it received. Below are the relevant UN Committee and UPR recommendations for this briefing:

- Ratify the Third Optional Protocol to the CRC on a complaints procedure **CRC** **UPR**
- Withdraw the interpretive Declaration to the Optional Protocol on Children in Armed Conflict **CRC** **UPR**
- Ensure any reforms to the Human Rights Act do not lead to decreased rights protection **UPR**
- Develop a comprehensive action plan to ensure full CRC implementation **CRC**
- Introduce a statutory obligation to systematically conduct child rights impact assessments **CRC**
- Allocate sufficient human, technical and financial resources to ensure effective coordination and evaluation of CRC implementation **CRC** **UPR**
- Assess the impact and expedite the review of the reforms on legal aid **CRC** **UPR**
- Ensure that implementation of counterterrorism measures does not have a discriminatory and stigmatising impact on any group of children **CRC** **UPR**

- Undertake preventive activities against discrimination and stigmatisation **CRC** **UPR**
- Ensure children's views are systematically heard in policy making and by professionals, including young children and disabled children **CRC**
- Integrate consideration of a child's best interests in all legislation, administrative and judicial proceedings and decisions **CRC**
Address the underlying causes of infant and child mortality **CRC**

Introduction

The political debate continues to be consumed by Brexit, with a focus on the economy, trade, and EU citizenship (in relation to adults) with little space for issues affecting children. The EU (Withdrawal) Bill also poses a threat to the continued enjoyment to the rights and entitlements that children currently enjoy though Britain's membership of the EU.

More positively, the Department for Education (DfE) continues to take forward constructive measures to help raise awareness and understanding of children's rights across Whitehall, and to embed children's rights thinking in policy making.

What progress have we made?

A CRC Action Group was set up in January 2016, co-chaired by the Director of the Children's Rights Alliance for England and a senior civil servant. The Action Group's aim is to work collaboratively to: *'help strengthen and deliver' the Programme of Measures announced in the Government's response to the Concluding Observations.*³ Representatives of the major children's organisations sit on the group alongside the Children's Commissioner for England and a representative of the Joint Committee on Human Rights (JCHR).

A Civil Service Learning training programme on children's rights is in development and officials are working on a template for a Child Rights Impact Assessment (CRIA), which will assist officials to assess policy development against CRC standards. The DfE also funded a child friendly version of the Concluding Observations, which included a foreword from the Children's Minister.

Positively, the Government abandoned proposals in the then Children and Social Work Bill to allow local authorities to opt out of specific pieces of children's legislation for up to six years. The Government Race Disparity Audit is also welcome.⁴

Where do we need to improve?

General Measures of implementation

No progress on signing up to CRC complaints procedure

There remains no progress on signing the Optional Protocol on a Communications Procedure (OP3 CRC) or removing its declaration to the Optional Protocol on the involvement of children in armed conflict (OPAC), which sets out when it might not be possible to prevent deployment of under-18s in hostilities. The UK was urged by several countries to both ratify OP3 CRC and remove its declaration to OPAC under UPR.

Children's legal rights under threat

The EU (Withdrawal) Bill currently making its way through Parliament does not bring the EU Charter of Fundamental Rights (the Charter) into UK law, despite all other EU law being transposed. The Charter imposes a constitutional obligation on EU Member States to adhere to it when implementing EU law. While all Charter rights apply to children, article 24 gives rights specifically to them, including the right to the protection and care necessary for their wellbeing, and to have their views taken into consideration. In the White Paper on the Bill,⁵ the Government argued that it isn't necessary to transpose the Charter as many of

the rights within it are also found in UN and other international treaties, which the UK has ratified. While true, the UK has not incorporated the vast majority of these rights into domestic law.

The so-called “Henry VIII powers” in the Bill have also raised widespread concern that significant changes to laws could be made with inadequate parliamentary scrutiny or assessment of how such changes could affect children.

The Human Rights Act remains under threat. The Conservative 2017 General Election Manifesto states that it will: ‘consider our human rights framework when the process of leaving the EU concludes.’ Worryingly, it also commits to only remaining a: ‘signatory of the European Convention on Human Rights for the next parliament.’⁶ The UK received strong calls to safeguard the Human Rights Act under UPR.

Still no Cabinet Minister for Children

There is still no senior minister responsible for children’s rights in the UK Government. The UN Committee has made clear that senior political leadership is required if children’s rights are to be fully respected. More is also needed to ensure adequate coordination of CRC implementation. A child rights team staying in place is welcome, as is the positive engagement with civil society, but more capacity and authority is needed to effectively monitor and coordinate children’s rights across Government.

Lack of children’s rights plan

The Government continues to resist plans for a children’s rights action plan or strategy. This is urgently needed so that Government can set out how it will implement the recommendations made by the UN Committee and under UPR, and be held accountable on such action.

Little movement on securing a statutory assessment of decisions against children’s rights

Government plans to develop a CRIA template are welcome, but concern remains that a requirement to do so has not been placed on a statutory footing alongside a child rights duty on public authorities, as recommended by the UN Committee. The Government opposed attempts to introduce amendments, which would have achieved this

during the parliamentary passage of the Children and Social Work Act 2017. As a result, England remains behind both Wales and Scotland.⁷

Inadequate legal aid remains a key threat to children’s rights

The drastic reduction in legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) persists in being one of the greatest threats to children’s rights. The *Bach Commission* recommended: ‘All matters involving children should be brought back into the scope of funded legal aid. It has been estimated that this would cost £7m per annum.’⁸

A recent report concludes that the changes, which mean all non-asylum immigration claims fall out of scope for legal aid, have been: ‘particularly pernicious for unaccompanied and separated children, who are some of the most vulnerable young people in our society.’⁹ It also highlights that most free services to help children with their immigration status are concentrated in London and the South East, and that overall such services have reduced by 50% in four years.

It has been estimated that between 12,200 to 15,000 children are now out of scope for legal aid. Including stateless children, children that have had a break-down in their relationship with parents/carers, and trafficked children who haven’t been identified



Source: The Children’s Society and University of Bedfordshire (2017) *An update to cut off from justice: The impact of excluding separated migrant children from legal aid*

The Government review of legal aid has commenced. It is crucial that the review is not limited to areas set out in its post-legislative memorandum to the Justice Select Committee,¹⁰ but also looks fully at how the cuts have affected children. It must also hear directly from children affected by the changes. The UN Committee called on the UK to: *'assess the impact and expedite the review of the reforms on legal aid [...] in order to ensure that such reforms do not negatively affect children's access to justice.'*

General Principles

Discrimination persists for particular groups

The UN Committee recommended that the Government: *'strengthen awareness-raising and other preventive activities against discrimination and stigmatisation'*, yet groups of children continue to experience discrimination based on particular characteristics such as ethnicity or sexuality.

Table 1: Demographics of children who have been bullied

Transgender	65%
Children who Identified as Lesbian	73%
Children who Identified as Gay	82%
Children who identified as Bisexual	79%
Children with a Physical disability	70%
Children with a learning disability	52%
Children with Autism/ Asperger's	75%

Source: Ditch the Label (2017) *Anti bullying survey*

Anti-terrorism strategy risks stigmatising children

Figures on referrals to the Prevent Strategy show that 65% relate to concerns about "Islamist extremism". Of all those referred, 36% left the process requiring no further action and 50% were signposted to alternative services, which appears to support concern from Muslim groups that they are being unfairly targeted. The biggest number of referrals (one third) came from the education sector, with over half of these being children under the age of 15 years (2,000 children).¹¹ The Conservative MP Lucy Allan has raised concern that the Prevent duty, which places a statutory duty on teachers and many public servants to

Case study

The Children's Society Former asylum seeker prevented from securing long term status

Asif was just 14 years old when he arrived in the UK from Afghanistan. When he first submitted his asylum application, it was refused and he was given discretionary leave to remain until he was 17 and a half years old.

When it was time for his leave to be extended, an article 8 claim (based on his right to a private life and longstanding connections to the UK) for leave to remain was submitted.

Between his asylum claim and the extension of his leave, Asif had begun to settle into his new life with a very supportive foster family. He had been suffering from Post Traumatic Stress Disorder and had been self-harming for some time after his arrival, but this had improved with the sustained kindness and hospitality of his foster carer.

Asif had no contact with his family in Afghanistan. His article 8 application to extend his leave was not covered by legal aid and there were significant issues in accessing public funds not just for legal provision, but for the necessary expert psychiatric evidence.

Asif was lucky. His foster family were able to finance the process and his case was successful.

From The Children's Society and University of Bedfordshire (2017) *An update to Cut off from justice: The impact of excluding separated and migrant children from legal aid*

report signs of radicalisation, is undermining trust between teachers and pupils.¹²

Research looking at the experiences of schools and colleges implementing the Prevent duty found that staff were concerned that Muslim students may feel singled out by the Prevent Strategy.¹³ While the study found that most schools and colleges felt largely confident about implementing the Prevent duty as part of

their safeguarding duties, many who took part expressed concern about linking Prevent and the promotion of “fundamental British values”, which they thought could undermine efforts to promote shared values.

Despite this and other concerns with the Prevent Strategy,¹⁴ the Government announced in the Queen’s Speech that it intended to extend it following an internal Home Office review. The UN Committee called on the UK to: *‘ensure that the implementation of the counterterrorism measures [...] will not have a discriminatory and stigmatising impact on any group of children’*, which is echoed in the UPR recommendations.

Gypsy/Roma and Traveller children remain significantly disadvantaged

Gypsy/Roma and Traveller children have the lowest educational attainment out of any ethnic minorities in the UK. However local authority Traveller Education Services (TESs), set up to address this issue, have been severely cut or disbanded due to local authority funding cuts. The TESs also provided a link between nomadic and homeless families and schools so that children can quickly access schools with spaces. Now parents must try to navigate the process themselves, which often leads to failing to secure their child with a school place.¹⁵ See Briefing 4 for more information on the educational attainment gap and exclusion figures.

Gypsy/Roma and Traveller children and their families also experience a high level of homelessness. Out of a total of 22,004 Gypsy/Roma and Traveller caravans counted in England, 780 are on unauthorised encampments, which means they have no authorised site to stop on and are statutorily homeless. A further 2,141 are on unauthorised developments, which means they could be moved on at any time and face homelessness.¹⁶

Gypsy/Roma and Traveller children are particularly over represented in the youth justice system with Secure Training Centres (STCs) holding a hugely disproportionate number of Gypsy/Roma and Travellers—12% of the male STC population and 15% of the female are Gypsy/Roma and Travellers. In Medway STC, Gypsy/Roma and Travellers made

up 22% of the population.¹⁷ See Briefing 8 for more information.

Respect for the views of the child not fully realised

Children not systematically involved in national decision making

Children continue to not feel listened to. **There continues to be no permanent structure or action plan to facilitate systematic participation of children in policy making**, although the DfE has indicated it wishes to improve such engagement and has recently published several “child friendly” consultation documents. The UN Committee recommended that Government:

‘Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national level.’

Children still have key participation rights denied in school, including to be heard and taken seriously by school Governing Bodies, and the right to appeal on their own behalf against school exclusions unless they are disabled.

The Children and Social Work Act 2017 introduced seven Corporate Parenting Principles (CPPs) for local authorities for looked after children. Two of the CPPs focus on children’s participation rights to encourage children to express their views, wishes and feelings, and to take them into account. If implemented effectively, they could help address the persistent concerns of looked after children that their views are often not heard and acted upon.¹⁸ The DfE is currently consulting on draft statutory guidance on applying the principles to care and pathway planning.¹⁹ Positively, it emphasises that the participation principles: ‘apply to every looked after child, regardless of their age, circumstances or needs’, and stresses the need to involve those with barriers to participation such as young children, disabled children and those currently disengaged. However the guidance lacks explicit reference to the CRC, detail on what good participation looks like, the importance of participation in decisions relating



to individual children (as well as strategic decision making), and the need for clear accountability mechanisms.

Over 30 children's organisations have come together to call for the development of a national strategy for children's right to independent advocacy, framed around what children value and want from their advocates and a legal right to an independent advocate for all children receiving or seeking care or support from the state.²⁰

A joint chief inspectors report, which considered the extent of which professionals were effective in safeguarding children who live with domestic abuse, found insufficient attention is given to listening to children.²¹ It concluded:

'There are clearly many individuals who are listening to children and taking close account of their views. In some areas, however, this was only down to the efforts of individuals and not as part of a standard practice.'

Very worryingly, there were some instances where: 'children were forgotten about, missed, not spoken to or simply not considered.' The report also found evidence that the voices of very young children were sometimes missing from assessments because they were seen as too young to give a view.

Measures in the Children and Families Act 2014 continue to help strengthen participation rights of disabled children, but challenges remain. A review of the Making Participation Work Project found:

*'Young people's individual participation was moving in the right direction but there was still a long way to go to ensuring children can participate in strategic decisions. This is because the processes are not accessible.'*²²

No progress on lowering the voting age

The Government continues to resist calls to lower the voting age to 16. In the run up to the 2017 General Election, the Prime Minister told the BBC: *'I continue to think it is right for it [the voting age] to be 18.'*²³ The Second Reading of a Private Members Bill²⁴ that proposed to lower the voting age took place on 3 November 2017 but was not taken to a vote due to lack of time. In Scotland, 16 and 17 years olds can vote in local and national elections, and proposals will soon mean that 16 and 17 year olds in Wales can vote in local elections.²⁵ The UN Committee recommended that the voting age be lowered alongside the delivery of active citizenship and human rights education.

Children's best interests not a primary consideration

There remains inadequate progress in enshrining children's best interests as a primary consideration in laws and policies, particularly in relation to the immigration and asylum process. The Independent Chief Inspector of Border and Immigration recently called for evidence on the Home Office's consideration of children's best interests. Evidence submitted by the Refugee Children's Consortium concluded:

'While we have seen some progress in terms of the language used in Home Office guidance, reports published since 2014 have highlighted continued gaps in the way in which children's best interests are currently being considered both as children go through the asylum process generally and in relation to substantive decision making.'

Following a 2013 JCHR report,²⁶ the Government committed: *'to consider the case for establishing a Best Interests Determination Process.'* However it then confirmed that it: *'believes the existing process continues to ensure that a child's best interests are taken into account.'*²⁷

Section 55 of the Borders, Citizenship and Immigration Act 2009 placed a statutory duty on the Home Office to safeguard and promote the welfare of children in the exercise of its functions. However research that reviewed decision making in family cases found that 40% of the sample of cases had not engaged with the child's best interests, and that 20% had only devoted a couple of sentences to the child's best interests.²⁸

The Government has set out its position on EU Citizens living in the UK and UK Nationals living in the EU post Brexit.²⁹ Children's charities have expressed concern that the proposals do not include explicit reference to the need to consider the best interests of the child when making decisions on residence and status.³⁰ See Briefing 5 for more information.

More positively, principle 1 of the CPPs (see above) is to: *'act in the best interests [of children] and promote their physical and mental health and wellbeing.'* The UN Committee recommended that consideration of children's best interests be: *'appropriately integrated and consistently applied in all legislation, administrative and judicial proceedings and decisions.'*

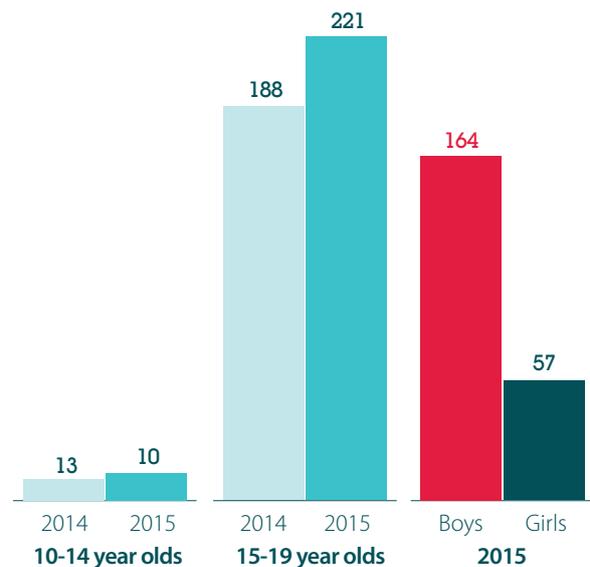
Right to survival and development not fully realised

In 2015 infant mortality in England and Wales increased for the first time since 2006. The rate rose to 3.7 deaths per 1,000 births, from the record low of 3.6 in 2014. There were 2,578 infant deaths (deaths under 1 year) in 2015 compared with 2,517 in 2014. **Risk factors contributing to infant mortality include low birthweight, the mother's age at birth of child, and parents' socio-economic status.**³¹

In 2015, there were 3,147 stillbirths—down from 3,254 in 2014—but there were 1,436 deaths under 7 days, which is an increase from 1,376 in 2014. See Briefing 7 for more information on health inequalities.³²

Between 2014 and 2015 the percentage of child death reviews with modifiable factors increased by 24-27%, meaning nationally or locally achievable interventions could be modified to reduce the risk of future deaths.³³ Out of the 3,555 whose death was reviewed

Graph 1: UK suicide rate by age and gender 2014-2015



Source: The Samaritans (2017) *Suicide Statistics 2017*

(and it was possible to ascertain if there were modifiable factors), 68 children were subject to a child protection plan at the time of their death. Of these children, 59% had modifiable factors identified compared to 26% for children who had never been subject to a plan. There were 64 children subject to a statutory order,³⁴ and 45% of these children had modifiable factors, compared to 27% of children who had never been subject to a statutory order.³⁵

NHS England has made funding available to commission a National Child Mortality Database. Its purpose is to improve information-sharing about child deaths. The award for the contract will be made at the end of November 2017.³⁶

A recent study found that suicide in children is rarely caused by one thing and usually follows a combination of previous vulnerability and recent events. The main themes identified were family factors such as mental illness, abuse or neglect, bereavement / experience of suicide, academic pressures related to exams, social isolation, physical health conditions that have social impact, alcohol and illicit drug use, and mental health or self-harm.³⁷ See Briefing 7 for more information on children's mental health.

Recommendations

1. In consultation with stakeholders, the Government should give full consideration to ratification of the Optional Protocol on a complaints procedure, and remove its declaration to the Optional Protocol on children and armed conflict.
2. The EU (Withdrawal) Bill should be amended so that it transposes the Charter of Fundamental Rights into UK law. A statutory requirement to undertake a child rights impact assessment on any change made under the proposed delegated powers should be introduced.
3. The Government should scrap plans to repeal the Human Rights Act.
4. In consultation with stakeholders, the Government should develop a comprehensive action plan to take forward the recommendations made under UPR and by the UN Committee.
5. A Cabinet Minister with responsibility for children's rights should be appointed alongside sufficient human, technical and financial resources, to ensure effective coordination and evaluation of implementing the CRC.
6. The Government should introduce a statutory obligation on public authorities to conduct child rights impact assessments in all decision making affecting children, including in budgetary decision making.
7. The Government should ensure specific consideration of the effect of legal aid changes on children as part of its review, including engaging with children who have direct experiences of the changes, with a view to ensuring that all children can access adequate legal aid.
8. The Government should remove the Prevent duty from teachers and other public servants, and urgently review the Prevent strategy in partnership with key stakeholders, including Muslim groups.
9. The Government should take urgent action to address the discrimination experienced by many groups of children, especially in relation to bullying and school exclusions.
10. The Government should ensure that the best interests of the child as a primary consideration is enshrined in all relevant legislation and policy matters.
11. The Home Office should ensure that the best interest principle is a primary consideration in every action concerning children. A holistic and multi-agency Best Interests Determination process should be introduced to identify and implement a durable solution as early as possible for children subject to immigration control.
12. The Government should put mechanisms in place to allow for the systematic participation of children in decision making at national and local level including young children, disabled children and children from disadvantaged groups.
13. Local authorities must ensure that measures in the Children and Families Act 2014 to increase disabled children's participation are fully implemented.
14. The Government should develop a national strategy for children's right to independent advocacy, framed around what children value and want from their advocates; and enshrine in law a right to an independent advocate for all children receiving or seeking care or support from the state.
15. The Government should extend the right to vote and stand in public elections to 16 and 17 year olds.
16. The Government should ensure the new database on child mortality is functioning as soon as possible, and that learning is used to take further action to address the underlying causes of infant and child mortality.
17. The Government should ensure that disaggregated data is publically available on all children who self-harm or commit suicide including those in care, custody and immigration detention.

Endnotes

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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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