



Children's
Rights Alliance
for England

CIVIL LIBERTIES

STATE OF CHILDREN'S
RIGHTS IN ENGLAND

2014

CIVIL LIBERTIES

ARTICLE 13 - Children have a right to share their views and to receive and share information, as long as the information or views are not damaging to either themselves or others.

ARTICLE 14 - Children have the right to think and believe what they like, and can show their beliefs publically, so long as they do not harm others in doing so. Parents can offer guidance to children where they are deciding what to think and believe.

ARTICLE 15 - Children have a right to meet together, and to join groups and organisations, as long as it does not stop others from enjoying their rights.

ARTICLE 16 - No child should be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

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

ARTICLE 37 (a) - No child should be subjected to cruel, inhuman, degrading treatment or punishment.

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What does the Convention say?

Children have a right to be visible, to access space and to move freely in public spaces. They have a right to meet up and spend time with each other in private and in the community. Children have a right to think and believe what they like, to access information and to speak their mind, so long as this is not harmful for others; they have a right to keep personal matters and communications private; and they have a right to be protected and free from violence.

In 2008, the UN Committee on the Rights of the Child highlighted its concern about a number of areas relating to children's civil rights and freedoms. Among these, it recommended that the UK Government:

- Think again about how some anti-social behaviour measures infringe children's rights and their freedom of movement
- Treat Tasers as weapons subject to rules and restrictions
- Intensify efforts to respect the privacy of children in the media
- Set up mechanisms to monitor the extent to which children are subject to violence, abuse, neglect or exploitation, and make sure they are not further victimised in court

There are four general principles, which underpin each of the specific rights outlined in the rest of the Convention:

- Article 2 - children should not be discriminated against in the enjoyment of their rights
- Article 3 - the child's best interests should take precedence in every decision and action taken relating to a child
- Article 6 - children have a right to life and develop to their full potential
- Article 12 - children have a right to express their views and have them given due weight

What progress have we made?

There is no definitive list of indicators which determines whether or not children enjoy their rights. This section presents indicators which have been used to illustrate particular rights issues facing children in England, and is based on a combination of official statistics, published research and additional material gathered through Freedom of Information requests. In addition, it summarises significant laws or policies which affect children's human rights.

Children in public spaces

In 2008, the UN Committee on the Rights of the Child asked the UK Government to reconsider the anti-social behaviour measures which were in force at that time, which inhibited children's right to move freely within the community and failed to protect their privacy. Anti-social behaviour legislation has been changed, with the old anti-social measures replaced by some new ones. It is now easier for the authorities to issue an anti-social behaviour measure against a child and the measures can impose more onerous requirements upon a child, which are, therefore, easier to breach. The consequences of breach are, at least, not all criminal, but can still result in imprisonment.

Dispersal orders

In 2008-09, 30% of adults said there was a fairly or very big problem with teenagers hanging around on the streets in their local area; in 2013-14, only 20% of adults reported the same problem.¹ Despite this, powers to disperse young people have been extended.

Dispersal orders, created under the Anti-Social Behaviour Act 2003, give police forces powers to disperse groups of two or more people from areas where persistent anti-social behaviour is occurring, and take home any child under 16 who is on their own between 9pm and 6am in any dispersal zone - designated as such in partnership with the relevant local authority. When asked under Freedom of Information law, only two police forces were able to provide information to CRAE on the number of dispersal orders given to children - nine in one area and six in the other in 2008, falling to five and zero in 2013. These do not indicate there is a need to extend the range of the order.

Part 3 of the Anti-Social Behaviour, Crime and Policing Act 2014² introduces a new and additional measure: dispersal directions give police the power to direct anyone aged 10 and up who has or is believed likely to commit anti-social behaviour from a specific area for 48 hours - relying on a subjective judgement being made about the child's behaviour and intentions. A child under 16 can be taken to a place of safety. Failure to comply with the dispersal direction is a criminal offence, and can lead to a maximum fine of £2,500.

1 ONS (2014) *Crime in England and Wales, year ending March 2014*. <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-march-2014/stb-crime-stats.html#tab=Anti-social-Behaviour>

2 *Anti-Social Behaviour, Crime and Policing Act 2014*. <http://www.legislation.gov.uk/ukpga/2014/12/contents>

Anti-social behaviour orders (ASBOs)

ASBOs can be used for children from the age of 10, prohibit them from doing certain things like going into a designated area, and last for two or more years. In 2013, 21% of all ASBOs were issued to children.³ While relatively low-level childhood behaviour can result in a child being issued with an ASBO, the consequences of breaching an ASBO can be very severe. Breach of an ASBO is a criminal offence, and can lead to a fine, community sentence or custody. Children find it difficult to comply with ASBOs - more than two-thirds of children breached their ASBOs at least once in 2013. In 2013, 23% of children who breached their ASBO were sentenced to custody, with an average sentence of five months. In 2012-13, 7% of children in prison were there for breach of a statutory order.⁴

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In a 2011 consultation on extending anti-social behaviour measures,⁵ the Government complained that Anti-Social Behaviour Orders (ASBOs) were not working because breach rates are high and the numbers issued have been declining. Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 replaces Anti-Social Behaviour Orders with civil injunctions which can apply to children from the age of 10 and can last for up to one year. There are a number of notable differences between the ASBO and the civil injunction which supplants it. The injunction can prohibit certain behaviours and actions, but can also require children to fulfil positive obligations, such as drug classes or alcohol treatment. While breaching an injunction is not considered a criminal offence - an advance in children's rights - it can lead to the youth court making a supervision order or detaining the young person in custody,⁶ replicating one of the main criticisms of the ASBO - that non-criminal behaviour could lead to a custodial sentence.

Stop and search

An inquiry into children and the police undertaken by the All Party Parliamentary Group for Children found that, between 2009 and 2013, more than one million stop and searches were carried out on children and young people over 26 police forces in England and Wales⁷ - 1,136 on children under 10, which is the age of criminal responsibility. Depending on the police force area, between 13% and 28% of all stop and searches involved children and young people under 18. Almost half of the children stopped were from black and minority ethnic groups.⁸

Ten police forces responded to a Freedom of Information request from CRAE to provide information on the number of stop and searches carried out on children in their area in 2008-09 and in 2013-14. These suggested a significant fall in overall figures, but that children from black and minority ethnic groups were significantly over-represented. The figures also indicate that, although it is usually boys and young men who are stopped and searched, the proportion of girls being stopped is increasing in some areas.

| STOP AND SEARCHES | 2008-09 | 2013-14 |
|---------------------|---------|---------|
| Under the age of 18 | 239,198 | 78,449 |
| Under the age of 10 | 936 | 178 |
| By ethnic group: | | |
| White | 47.7% | 55.7% |
| Black | 27.1% | 23.6% |
| Asian | 11.3% | 9.2% |

3 Home Office (2014) Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics – England and Wales 2013

4 Ministry of Justice (2014) Youth Justice Statistics 2012-13

5 Home Office (2011) More effective responses to anti-social behaviour. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118297/asb-consultation-document.pdf

6 Anti-Social Behaviour, Crime and Policing Act 2014. Reform of anti-social behaviour powers: statutory guidance for frontline professionals. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

7 These figures are based on responses to a Freedom of Information request sent to all police forces in England and Wales by the All Party Parliamentary Group for Children

8 All Party Parliamentary Group for Children (2014) All Party Parliamentary Group for Children inquiry into children and the police: initial analysis of information request to police forces. http://www.ncb.org.uk/media/1150494/appgc_police_data_report_july_2014_final.pdf

In April 2014, the Home Secretary announced a package of reforms to the use of stop and search⁹, including:

- A revision of the Police and Criminal Evidence Act 1984 (PACE) Code A, which provides the statutory framework for police stop and search powers¹⁰
- Training for police on stop and search
- Her Majesty's Inspectorate of Constabulary (HMIC) to include stop and search in its annual assessments of police force performance
- Making stop and search data more readily available on police.uk
- Improving the recording of stop and search through a voluntary Best Use of Stop and Search Scheme,¹¹ which all 43 police forces in England and Wales have joined

There is little direction from government on the use of stop and search with children, or how police should build trust with and safeguard under-18s. The new measures will not require police to record the date of birth or age of those they stop and search, which will make it increasingly difficult to monitor how the power is being used.

The child's right to privacy

Article 16 of the UNCRC protects children's right to privacy and to freedom from interference in their family life, their homes, and their reputations. This is supported by Article 8 of the European Convention on Human Rights (ECHR) which states that everyone has the right to respect for his or her private and family life.

Spotlight on: online activity

The internet, and social media, are hugely important in promoting children's rights to access information, to form opinions, to have their voices heard and actively engage in debate and to communicate with others. Children can also be exposed to harm online, which they have a right to be protected against. A study across European countries, including the United Kingdom, found that children were concerned about harassment and cyber-bullying, contact from online strangers, including requests for personal information, over-exposure to advertisements and scary content.¹² They were also worried about privacy. Children reported negative feelings about: *'the pressure to reveal information or to be constantly online, or the sensation of being constantly watched and spied on'; 'filling in information about themselves for various online accounts, websites or contests. . . and concerns about strangers accessing it' and 'peers posting private or embarrassing information (pictures, videos) of the respondent without the child's will.'*

There is increasing recognition that children's privacy rights are not adequately protected when they engage in online activity, and that measures designed to protect children can inappropriately restrict children's access to the benefits and opportunities provided by the internet. In September 2014, the UN Committee on the Rights of the Child held a day of discussion on digital media and children's rights *'to understand the impact on and role of children's rights in this area, and develop rights-based strategies to maximize the online opportunities for children while protecting them from risks and possible harm.'*¹³ The Committee was seeking ways to balance the child's right to information, their right to communicate and participate, with their right to be protected from exploitation and public exposure. The iRights initiative is undertaking a similar task at the domestic level.

In court

Similarly, rules protecting a child's right to privacy when they are involved in court proceedings have not kept pace with technological developments which are undermining this right. Public identification of children involved in proceedings relating to divorce, care or domestic violence or identification of a child who is a victim, witness or defendant in criminal proceedings can have a hugely negative impact on a child's life, which can extend long into their future.

9 Home Office (2014) Police powers of stop and search: summary of consultation responses and conclusions. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307545/StopSearchConsultationResponse.pdf

10 Home Office (2014) Consultation on revised PACE Code A. <https://www.gov.uk/government/consultations/revised-pace-code-a>

11 Home Office (2014) Best use of stop and search. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346922/Best_Use_of_Stop_and_Search_Scheme_v3.0_v2.pdf

12 Smahel, D and Wright, M F (2014) The meaning of online problematic situations for children: Results of qualitative cross-cultural investigation in nine European countries

13 UN Committee on the Rights of the Child (2014) Day of General Discussion: "Digital media and children's rights" 12 September 2014. Programme and backgroundpapers. <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2014.aspx>

The law on the reporting of criminal cases involving children dates back to the Children and Young Persons Act 1933.¹⁴ Section 49 prohibits the publication of information which would identify any child, including photographs, appearing in a youth court, unless the court orders otherwise. Section 39 of the same Act allows any court to prohibit the identification of any child involved in other proceedings.

However, there are several gaps in protection: the restrictions do not apply before a child is charged, do not cover social media and expire when a child turns 18. There is anecdotal evidence that the courts are increasingly lifting the reporting restrictions in relation to child defendants. Further, the new anti-social civil injunctions presume that children subject to an injunction will be publicly named unless the court orders otherwise.

This is an anomaly that has been criticised by the UN Committee in the past. A Standing Committee on Youth Justice review set out the consequences and impact of the public identification of young people in trouble with the law:

- Named children can be put at risk of verbal or physical attack, or exploitation
- Being publicly identified can undermine a child's rehabilitation and future life chances
- Family members of the child, including brothers and sisters, may also be identified – and placed at risk – as a result of “naming and shaming” of children involved in such cases.¹⁵

A child's right to privacy has also been undermined in family cases – in order to open up the courts to public scrutiny, help the public better understand the system and improve confidence in the court. In January 2014, Sir James Munby, President of the Family Division of the High Court and the Court of Protection, issued practice guidance on transparency in the courts,¹⁶ transforming the rules on media coverage of cases involving children and families. The guidance states that:

Permission to publish a judgment should always be given whenever the judge concludes that publication would be in the public interest and whether or not a request has been made by a party or the media.

This guidance applies to child protection, care proceedings, adoption placements and orders, secure accommodation orders, and applications relating to medical treatment. The President of the Family Division is currently consulting on disclosing certain documents to the media and on hearing some family cases in public.¹⁷

Recent research from NYAS and the Association of Lawyers for Children found that - when asked - children and young people ***‘did not wish the intimate details of their care and maltreatment - and the circumstances and failures of their parents - to be publicised by the media: they did not want the media in court, and they did not want the media to have access to any documentation’***.¹⁸ Additionally, professionals raised concerns that children would be less willing to talk to someone about ill treatment or abuse if they felt their private lives could become subject to public scrutiny.

At the police station: strip searching

Under Freedom of Information law, CRAE asked 40 police forces in England about the number of times children had been subject to strip searches at the police station in 2008, and in 2013; the ages of the children; whether an appropriate adult had been present during the strip search; and whether the child was charged following the search. Only five police forces responded, but of those, the strip-searching of children has almost doubled between 2008 and 2013. The youngest child strip-searched in 2013 was 12. In almost half of the cases in which a child was strip-searched by the police (45%), there was no “appropriate adult” present – the child's parents, carers, or other supportive adult. Appropriate adults are an important safeguard for children's rights at the police station, offering support, advice and promoting the welfare of often frightened and distressed children at the police station. Almost half of the children who were strip-searched by the police (49.6%) were released without charge.

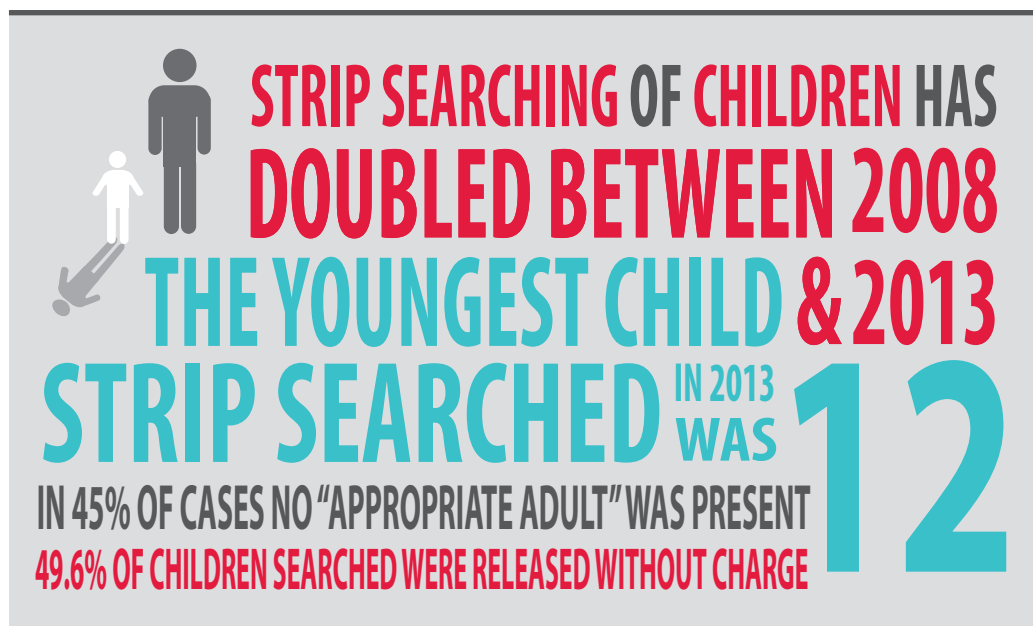
14 Children and Young Persons Act 1933. <http://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

15 Hart, D (2014) What's in a name?: the identification of children in trouble with the law. http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf

16 Munby, Sir James (2014) Transparency in the family courts. Practice guidance issued on 16 January 2014. http://www.familylaw.co.uk/system/redactor_assets/documents/1171/transparency-in-the-family-courts.pdf

17 Munby, Sir James (2014) Transparency - the next steps: a consultation paper issued by the President of the family division

18 Brophy, J and others (2014) Safeguarding, privacy and respect for children and young people & the next steps in media access to family courts. <https://www.nyas.net/wp-content/uploads/2014/07/NYAS-ALC-REPORT-CHILDREN-SAFEGUARDING-AND-NEXT-STEP-MEDIA-ACCESS-TO-FAMILY-COURTS-FINAL-7.pdf> Wirral: NYAS and the Association of Lawyers for Children.



All children have a right to be safe from violence. Article 19 of the UNCRC makes Governments responsible for taking whatever measures are necessary to protect children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation.

Children in England are not protected against all forms of violence.

Parents and those in loco-parentis, including in informal education and care settings such as madrasas and after school clubs, can rely on a defence of "reasonable punishment" to a charge of assault in respect of their children.¹⁹

Staff have a legal power to use force on children in certain regulated settings. In certain settings, this includes restraint techniques which involve the deliberate infliction of pain on children.

In some settings, the circumstances in which force can be used are tightly regulated, whilst in others, staff are permitted to use force in a very broad range of circumstances. For example, in schools and in Young Offenders Institutions (YOIs), force can be used by staff in order to maintain "good order and discipline". Most settings require special training for staff in the use of force, though schools are the exception to this.

In some settings in which force is used on children, such as youth custody, institutions are required to record and publish information about the extent and outcome of use of force incidents. This information is not available in respect of others, such as schools. Under Freedom of Information law, CRAE asked the relevant government departments and inspectorates for details of how often force was used on children in schools and academies, mental health settings, immigration detention, police detention and youth custody. Use of force statistics are available for children in custody and can be found in the section on Criminal Justice. Statistics in relation to immigration detention are in the chapter on Immigration. Schools, mental health settings and the police were not able to respond to the question, nor were the relevant government departments or inspectorates. Although no longer required to do so, some police forces do complete a "use of force" form whenever an incident occurs, but the information is kept in individual case records, and so is difficult to retrieve. A lack of transparency can make it difficult to scrutinise whether children's rights are being respected, in practice.

Children who have experienced the use of force understand that there are times when it may be necessary, for example to prevent children from hurting themselves or others, but only as a measure of last resort, and after staff have tried to calm things down and defuse the situation. Children say that physical restraint should never hurt a child or young person.²⁰ Issues of abuse and exploitation are also addressed in the chapter on Family and Alternative Care.

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Tasers

The use of Tasers by police forces in England and Wales was introduced in 2003, and the circumstances in which they could be used widened in 2007. Tasers are described as a “less lethal option” to firearms, but as is noted by the Independent Police Complaints Commission, their use is contentious.²¹ Police must be trained to use Tasers and have to record any instances when they use them.

In 2008, the UN Committee on the Rights of the Child expressed concern at the authorisation of Tasers for police officers in England and Wales and called for them to be classified as weapons. In 2013, the UN Committee against Torture recommended that the UK ban their use on children.²² Instead, their overall use is increasing.

Under Freedom of Information law, CRAE asked 40 police forces in England about the number of times the police has used Tasers in relation to children in 2013. Across the 15 police forces which responded to the request, Tasers had been used on 230 children. The youngest children were 13, and more than 1 in 4 uses of Tasers on children (26%) was on a child aged between 13 and 15. While in the vast majority of cases Tasers were drawn, aimed or used to “red dot” a child, in 7.5% of the cases where Tasers were used on children, the weapons were either fired or the “drive stun” technique was used - where the Taser is held against the subject’s body and the trigger pulled, causing pain but not an incapacitating effect. The Independent Police Complaints Commission (IPCC) has said it has ‘*major concerns about the use of Tasers in “drive stun mode,”*’ which is ‘*purely a means of pain compliance.*’²³

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21 Independent Police Complaints Commission (IPCC) (2014) IPCC review of taser complaints and incidents. http://www.ipcc.gov.uk/sites/default/files/Documents/guidelines_reports/Taser_report_final_2014.pdf

22 Committee against Torture (2013) Concluding observations on the fifth periodic report of the United Kingdom, para.26

23 IPCC (2014) IPCC review of Taser use and complaints published. <https://www.ipcc.gov.uk/news/ipcc-review-taser-use-and-complaints-published>

Recommendations

- Change the law so that the range of anti-social behaviour orders cannot be issued in response to normal childhood behaviour and breach does not result in a custodial sentence
- Police forces should be required to collect the date of birth of those they stop and search, and the Home Office annual review of stop and search should assess the proportionality of stop and search in relation to age and ethnicity
- Change the law so that there is a presumption that the privacy of children involved in criminal proceedings will be protected, that the protections cover social media, the period before charge and extend beyond a child's 18th birthday
- Promote adherence to the IRights initiative
- Ensure that children are not subjected to strip-searching unless absolutely necessary, and then only in the presence of an appropriate adult
- Ban the use of physical punishment on children in all settings, including the home
- Ban the deliberate infliction of pain on children as a means of securing a child's compliance with instructions
- Ensure that the regulation, training and guidance on use of force on children in various settings is clear that force can only be used as a last resort, where it is absolutely necessary, for strictly limited purposes and where its use is proportionate to those purposes. Each use of force should be recorded, and include information about the reasons for its use, the outcome, and the child's characteristics. This data should be published in a way which is disaggregated by age
- Ban the use of Tasers on children, and, in the meantime, improve the regulations, training, guidance and transparency around the use of Tasers on children, as specified above in relation to other use of force

CRAE believes that human rights are a powerful tool in making life better for children. We're one charity working with over 100 organisational and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world. Our vision is a country that values and upholds every child's human rights.

We fight for children's rights by listening to what children 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.

CRAE has produced an annual State of Children's Rights in England report since 2003. This report is one chapter from the full report State of Children's Rights in England 2014.

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