

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's Submission to the JCHR
Inquiry on Children's Rights in the UK**

October 2016

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

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Executive Summary

In this briefing, Liberty identifies a number of areas where the UK Government must make changes to protect the human rights of children and young people. We call on the Government to:

- grant the right to vote to 16-17 year olds
- improve the provision of legal aid to protect the rights and entitlements of young people
- end the practice of immigration detention of children
- ensure that vulnerable children are supported to navigate the UK's complex asylum and immigration systems by reintroducing legal aid and abolishing "deport first appeal later"
- bring forward reforms to the Immigration Rules to allow children granted refugee status or humanitarian protection to be joined in the UK by family members
- reform the family migration rules to repeal the English language requirement and minimum income requirement
- end the collection of nationality data gathered by schools
- drop clauses 29-33 from the Children and Social Work Bill
- repeal the Prevent duty
- increase the age of criminal responsibility
- review the detention and treatment of children in custody, in particular the use of private contractors
- ensure that restraint is only used against children as a last resort and only to prevent harm to that child or others.
- repeal section 60 Criminal Justice and Public Order Act 1994 and require ethnicity monitoring is re-instated for stop and account.
- abolish the overly-broad powers contained in the Anti-Social Behaviour, Crime and Policing Act
- raise the minimum age of enlistment to the armed forces to 18 years old.
- add to the national curriculum study of the post World War 2 human rights framework (ECHR and HRA) as well as ensure that teachers are equipped to support children and young people to understand how the rights these frameworks protect operate in practice. This includes legislating for mandatory teaching of sex and relationship education.

Introduction

1. This is Liberty's response to the JCHR inquiry on the UK's record on children's rights. Liberty endorses the UNCRC's recommendations following its periodic review of the UK as made in its report of 9 June 2016. We strongly encourage the Committee to hold the Government to account to ensure that **all** the recommendations are implemented. In this short submission we wish to draw particular attention to a number of human rights violations raised in the Concluding Observations report.

Voting age

2. More than 1.5 million 16 and 17 year olds in the UK are currently disenfranchised. Young people that fall into this age category are entrusted with a long list of civic responsibilities yet they are denied a political voice and a say in the wide range of issues affecting their lives. In any system of democratic representation, there is an ever-present risk that those who are disenfranchised are less well served by political leaders. As demonstrated by the length and breadth of issues raised by the UNCRC in its concluding obligations, there is significant and legitimate concern that the UK Government does not respect the rights of children and young people. **Granting the right to vote to 16-17 year olds is a vital first step in correcting this.**¹

Legal aid

3. The Legal Aid, Sentencing and Punishment of Offender Act 2013 made significant changes to the civil legal aid system, making it significantly harder for individuals to access the courts in family, housing, welfare, education, and immigration cases.. The Government refused to guarantee that all children and young people will receive legal aid when they bring a case. In addition, in many cases with a significant impact on the rights of a child, the child's parent will not be able to secure funding. The so-called safety net system of providing "exceptional cases funding" where human rights are involved has been shown to be an abject failure. **The Government should undertake a post-legislative review of LASPO as soon as possible and makes provision to better protect the access to justice rights of children and their families.**

¹ See Liberty's response to the Youth Select Committee Inquiry into Votes at 16, published May 2014, available here - https://www.liberty-human-rights.org.uk/sites/default/files/Liberty%27s%20Evidence%20to%20the%20Youth%20Select%20Committee%20%28Votes%20at%2016%29%20%28May%202014%29_0.pdf.

Asylum seeking, refugee and migrant children

4. Liberty believes that immigration detention is one of the most severe stains on the UK's human rights record of recent years. Even worse, the UK continues to detain children for immigration purposes, despite its 2010 promise to end the practice. In 2015, for example, 128 children were detained – 41 of these in pre-departure accommodation, known as Cedars, and 63 in a 'family unit' within an ordinary Immigration Removal Centre, Tinsley House. The Government announced this year that it plans to close Cedars, and detain all children in Tinsley House IRC. It has provided nothing to indicate how it will make good on its promise to end the immigration detention of children. **The UK Government must end the practice of immigration detention of children.**

5. Under the Immigration Act 2016 unaccompanied children in care – awaiting resolution of their immigration status – are no longer entitled to support as care leavers. Barely adults, and many extremely vulnerable, they will need significant support in navigating the immigration system to ensure that they are treated fairly and that their lives are not endangered by return. Moreover, many will have good claims to remain, and be entitled to the support wrongly stripped from them by these new provisions – with all the damage that this lack of support may have caused. The Government has introduced a 'Deport First, Appeal Later' scheme by which the Government seeks to remove individuals before their appeal is heard. The idea that any teenager so removed will be able to adequately conduct an out-of-country appeal – in a place to which they may have not have been since they were very young – is fanciful, and risks severe breaches of the rights of children. **The Government should ensure that vulnerable children are supported to navigate the UK's complex asylum and immigration systems by reintroducing legal aid and abolishing "deport first appeal later".**

6. There is currently no provision under the Immigration Rules for children granted refugee status or humanitarian protection in the UK to be joined by their parents. Whilst provision may be made on an exceptional basis, Government figures reveal that the number of such applications has fallen sharply from 77 in 2011 to 12 in 2014. **The Government should bring forward reforms to the Immigration Rules to allow children granted refugee status or humanitarian protection to be joined in the UK by family members.**

7. As a result of reforms in 2012, British citizens with non-EU family members face a financial threshold and English language requirement before being able to bring a spouse to

the UK.² This has had devastating consequences for children in the UK separated from a parent as a result of these rules.³ Under the minimum income requirement, those wishing to bring a non-EU spouse or partner into the UK must earn over £18,600. It is estimated that over 43% of the UK population don't meet this requirement. Research by the Children's Commissioner and JCWI found that around 15,000 children had been negatively affected by the rules, either separated indefinitely from an exiled parent or British citizen children forced to live outside the UK.⁴ A challenge against this rule which argues that it breaches Article 8 of the HRA has been heard by the Supreme Court and judgment has been reserved.⁵ **The Government should reform the family migration rules to repeal the English language requirement and minimum income requirement.**

National Pupil Database and collection of nationality and Country of Birth data

8. Since June of this year, the Government has expanded the data to be collected from pupils during its census of pupils to include their country of birth and nationality.⁶ The Government has since tabled a statutory instrument – the Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 – to provide a legislative basis to these changes.

9. We think this is a dangerous and stigmatising expansion of border control powers into children's school lives. With consistently high levels of hate crime reported since the Brexit referendum,⁷ measures such as these risk victimising young children in schools, a

² For more see 'Liberty's Response to the Home Office's Consultation on Family Migration', October 2011, available at: <https://www.liberty-human-rights.org.uk/sites/default/files/liberty-s-response-to-the-home-office-s-family-migration-consultation-oct-11.pdf>, and 'Liberty's submission to the All Party Group on Migration's Inquiry into the new family migration rules', January 2013, available at: <https://www.liberty-humanrights.org.uk/sites/default/files/changes-to-immigration-rules-briefing-on-family-migration-inquiry-jan-2013.pdf>.

³ See the selection of real-life stories on the BritCits website:

<http://britcits.blogspot.co.uk/search/label/stories>.

⁴ Children's Commissioner, Skype Families, September 2015. Available online at:

<http://www.childrenscommissioner.gov.uk/sites/default/files/publications/SkypeFamilies-CCO.pdf>.

⁵ *R (on the application of MM (Lebanon)) (AP) (Appellant) v Secretary of State for the Home Department (Respondent)*.

⁶ Education (Pupil Information) (England) (Miscellaneous Amendments) Regulations 2016 (SI 2016/808). For the Departmental Guidance on the new census, see Department for Education, 'School census 2016 to 2017 Guide, version 1.3', September 2016, available here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/554478/School-census-2016-to-2017-guide-version-1.3.pdf.

⁷ National Police Chiefs' Council, 'Hate crime is unacceptable in any circumstances, say police', 27 June 2016, available here: <http://news.npcc.police.uk/releases/hate-crime-is-unacceptable-in-any-circumstances-say-police> and *The Independent*, 'Brexit caused lasting rise in hate crime, new figures show', 8 September 2016, available here: <http://www.independent.co.uk/news/uk/crime/brexit-hate-crime-racism-eu-referendum-poland-islam-more-in-common-a7231836.html>. See also *The Independent*, 'Hate crimes soared by 41% after Brexit vote, official figures reveal', 13 October 2016, available here: <http://www.independent.co.uk/news/uk/crime/brexit-hate-crimes-racism-eu-referendum-vote-attacks-increase-police-figures-official-a7358866.html>.

place where they should feel free and safe to learn and grow – rather than be a source of information on their parents or a target for immigration enforcement. Requests under the Freedom of Information Act 2000 have revealed that such data sharing has already occurred, with information from the National Pupil Database being passed on the Home Office many times since 2012.⁸ Vastly more will likely take place once pupils' nationality data is recorded. **The Government should end the collection of this data and to destroy any data already gathered.**

Children & Social Work Bill

10. Clauses 29-33 of the Children and Social Work Bill would permit local authorities to apply to the Secretary of State to create Regulations to exempt that local authority from complying with a provision of children social care law or to modify the way in which such a provision applies to the local authority for a period of up to three years, renewable by a further three years. In circumstances where the Secretary of State has exercised her powers to intervene in the functions of a local authority, the Secretary of State may in effect make regulations exempting herself from acting in accordance with requirements set out in primary or secondary legislation. The laws which can be disapplied include all of the social care services children receive from local authorities, including child protection, family support, the care system and support to care leavers, children and young people in custody, and services for disabled children.

11. Liberty supports the development of better and innovative ways of working to support and protect children and young people. However, new measures must be taken within a lawful, coherent and controlled manner that respects the various and distinct roles of practitioners, experts, Government and Parliament, requiring thorough consultation and robust safeguards to protect young people, with children's rights placed at the centre of any developments. Instead, the proposed scheme undermines a system which places the rights and entitlements of children and young people at its centre. **Liberty strongly encourages Government to drop these clauses from the Children and Social Work Bill.**

Prevent and counter extremism

12. As the Communities and Local Government Committee concluded in their inquiry into the Prevent program in 2010, the counter-terror agenda, and the Prevent program in particular, has created a climate in which members of the Muslim community feel labelled as potential terrorists in all aspects of their life. But the reach of this discredited programmed

⁸ *The Guardian*, 'Parents urged to boycott requests for children's country of birth information', 26 September 2016, available here: <https://www.theguardian.com/uk-news/2016/sep/26/parents-boycott-requests-childrens-country-of-birth-information>.

has only widened and deepened, with the now statutory Prevent duty in the Counter-Terrorism and Security Act 2015 – applicable even to schools and nurseries – and a further batch of measures promised in a forthcoming Counter-Extremism Bill. Prevent's stigmatizing effect on children, and Muslim children in particular, has led to reports of children feeling unable to express their identity in school, or even seek to use prayer rooms, for fear of being reported. Teachers, in addition, are feeling hampered in the education they can provide for fear of breaching the Prevent duty. Some now opt to avoid some topical and ethical subjects altogether – denying their pupils a full education in which they can freely and appropriately explore ideas. In October 2016, the Open Society Justice Initiative published the most comprehensive review of the Prevent statutory duty in the Health and Education sector to date, including analysis of its many structural flaws.⁹ **Liberty encourages the Government to repeal the Prevent duty and ensure that teachers are supported to educate children in a manner that does not encourage discrimination nor stifle freedom of speech.**

Age of criminal responsibility

13. The UNCRC has repeatedly warned the UK that setting the minimum age of criminal responsibility at 10 years old is “internationally unacceptable”. In Scotland, a child cannot be prosecuted until the age of 12. **Liberty urges the Government to recognise the grave and urgent need to increase the age of criminal responsibility in accordance with international standards.**

Detention

14. As of August 2016 there were 881 children and young people under the age of 18 detained in secure custody. Once in the justice system, young people face additional vulnerabilities and potential harms. Between 2011 and 2016 one 15 year old and two 17 year olds have died while detained.¹⁰ Earlier in 2016, BBC's Panorama programme recorded numerous incidences of staff at the Medway Secure Training Centre in Kent abusing children in their care. A subsequent investigation held that G4S ran Medway as a "place of coercion" for the "corralling and control of children, rather than their full rehabilitation". It also found that the Youth Justice Board was made aware of at least 35 incidents from over seven years but failed to act.¹¹

⁹ Eroding Trust, The UK's PREVENT Counter-Extremism Strategy in Health and Education, OSJI, 2016, available at - <https://www.opensocietyfoundations.org/reports/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education>.

¹⁰ http://inquest.org.uk/pdf/reports/INQUEST_T2A_report_final.pdf

¹¹ Medway Improvement Board, Final Report of the Board's Advice to Secretary of State for Justice, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523167/medway-report.pdf

15. Youth detention services are now predominantly delivered by a small group of private security firms with appalling records of rights violations. Liberty has published a dossier cataloguing G4S's record of service in the UK.¹² Private firms are not democratically accountable, and therefore not suited to provide core state functions, such as prison provision nor to wield intrusive and coercive powers. They are – as a matter of law – accountable to no one but their shareholders, whose imperatives are private profit, not public provision. This, in turn, drives down standards – as large private firms race to offer their services at the lowest possible cost to themselves. Such behaviour not only represents poor value for money, but risks the serious rights abuses. Additionally, private companies do not share society's objectives of rehabilitation, education, training, and reintegration, nor the imperative to ultimately reduce the prison population. Instead, the profit motive creates an incentive for longer sentences and increased numbers in detention.

16. In view of its own experience of low standards and poor accountability from private security providers, earlier this year, the US Justice Department's announced that it will end its reliance on private providers for the management of its prisons.¹³ **The UK Government must review its detention and treatment of children, in particular its use of private contractors to detain children, and take steps to ensure that restraint is only used against children as a last resort and only to prevent harm to that child or others.**

Stop and search

17. The APPG for Children found that between 2009 and 2013, more than one million stop and searches were carried out on children and young people in 26 police forces in England and Wales.¹⁴ Lax stop and search powers have also allowed disproportionate targeting of young people, particularly Black and Asian boys. Among some communities it is seen as a fact of life that young boys will be inevitably searched by the police as they go about their daily lives, and such discriminatory policing leaves young people feeling alienated and disengaged. In 2013, Liberty's client, a vulnerable 12-year-old black boy, who is autistic, was stopped by Metropolitan Police officers outside his youth club. They told him that there had been some robberies in the area and they wanted to check whether he had

¹² G4S: a history of discrimination, human rights violations, malpractice and mismanagement in the UK, September 2016, available at - <https://www.liberty-human-rights.org.uk/sites/default/files/G4S%20dossier.pdf>.

¹³ *The Washington Post*, 'Justice Department says it will end use of private prisons', 18 August 2016, available here: https://www.washingtonpost.com/news/post-nation/wp/2016/08/18/justice-department-says-it-will-end-use-of-private-prisons/?utm_term=.a572b5733d4b.

¹⁴ 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.

any stolen items on him. They went through his belongings and put their hands in his pockets, before checking the code in his mobile phone to see whether it was stolen. He had never before had any interaction with the police and the encounter, witnessed by a number of other children from his youth club, left him feeling humiliated and distressed. The officers did not provide their details, or a stop and search slip, and did not explain why they thought they had the power to stop and search him in this way. While the previous Home Secretary introduced some reform to stop and search powers, a report by Her Majesty's Inspectorate of Constabulary earlier in 2016 found that one in seven stops may be unlawful.¹⁵ **The Government should repeal section 60 Criminal Justice and Public Order Act 1994 and require ethnicity monitoring is re-instated for stop and account.**

Anti-social behaviour

18. The Anti-Social Behaviour, Crime and Policing Act replaced the previous and discredited ASBO regime, Unfortunately, it continues the trend of punitive sanctions without judicial due process. The breadth of restrictions that can be imposed – and which will remain possible under the new regime - means that onerous and inappropriate requirements can be placed on individuals, including countless young people, who would arguably be better suited to a different type of intervention. Unlike the previous regime, where statistics showed that children accounted for 37.7% of all ASBOs issued between 1 June 2000 and 31 December 2011, and for 44.9% of all ASBOs breached- it is exceptionally difficult to access statistics on the use of the new powers against children. However an injunction can be obtained where it is 'just and convenient' to prevent behaviour 'likely to cause harassment, alarm or distress'. This clearly has the potential to capture normal behaviour of children. Breach of an injunction can result in a youth court making a supervision order or detaining the young person in custody. The Act also legislates for dispersal orders and public space protection orders, which again both have the capacity to have a disproportionate and unjustified impact on the normal activities of children and young people. **The Government should abolish the overly-broad powers contained in the Anti-Social Behaviour, Crime and Policing Act.**

Recruitment to the armed forces

19. The UK is one of the only countries in the world that allows enlistment to the armed forces of those under the age of 18 years. The recruitment of children for military purposes is detrimental to their best interests and is not appropriate in modern armed forces. The UK is an active participant in international efforts to end the practice in other countries. In British

¹⁵ <https://www.theguardian.com/law/2016/feb/11/uk-police-forces-still-abusing-stop-and-search-powers>

society, the law safeguards children by proscribing choices that entail significant risks until they turn 18. It is therefore incongruous that the British armed forces still enlist personnel at age 16 and accept applications from age 15. **In view of the danger posed to physical and mental health of young recruits, the minimum age of enlistment should be raised to 18 year old.**

Human rights education

20. In 2013 the Department for Education consulted on a revised national curriculum for England which would have removed reference to human rights altogether.¹⁶ Liberty responded to the consultation urging the Department to re-draft the guidance and we are relieved that it saw fit to do so. Key Stage 3 of the Citizenship curriculum now contains reference to “*the precious liberties enjoyed by the citizens of the United Kingdom*” and Key Stage 4 refers to “*human rights and international law*”. We remain concerned that while reference to “*human rights*” is still included as part of the curriculum, there is no specific mention of the post WW2 human rights framework which plays such a significant role in protecting individuals in the UK every day, and there is no requirement to teach children and young people about the rights they possess and how to ensure they are respected and enforced. The Scottish and Welsh national curriculums similarly make no mention of the ECHR. The Personal and Social Education Framework in Wales references the UN Convention on the Rights of the Child and Scotland’s ‘Curriculum for Excellence’ mentions “*human rights*” only in passing. Further there is concern that human rights is a neglected part of Citizenship teaching, as it falls outside many teacher’s expertise and teachers feel unsupported in tackling the issues it raises. As Higher Education teacher Paul Davies has written “*teaching human rights education can make you feel professionally very lonely.*”¹⁷ Negative media portrayals and lack of teacher training are likely to make the subject seem daunting. **The Government should add to the national curriculum study of the post World War 2 human rights framework (ECHR and HRA) as well as ensure that teachers are equipped to support children and young people to understand how the rights these frameworks protect operate in practice. This includes legislating for mandatory teaching of sex and relationship education.**

Sara Ogilvie

¹⁶ See Reform of the National Curriculum in England, Department for Education, 2013 available at: <https://www.education.gov.uk/consultations/index.cfm?action=conResults&consultationId=1881&external=no&menu=3>.

¹⁷ “Teaching human rights can be lonely with little student and staff support” Paul Davies, *The Guardian*, available at: <http://www.theguardian.com/teacher-network/teacher-blog/2013/oct/14/teaching-human-rights-equality-citizenship>.