

The Queen's Speech **Tuesday 25 May 2010**

Briefing from the Children's Rights Alliance for England¹

The Children's Rights Alliance for England (CRAE) will be working throughout the 2010/11 Parliamentary session to highlight significant threats and opportunities for children's human rights, and to support Parliamentarians to strengthen legal protection for children's human rights as set out in the United Nations Convention on the Rights of the Child (CRC) and other human rights instruments.

The CRC was adopted by the United Nations in 1989 and ratified by the UK in December 1991. October 2008 saw the third examination of the UK Government's implementation of the CRC, which resulted in almost 120 recommendations detailing where more needs to be done to strengthen children's human rights in England.²

This briefing highlights key children's rights issues in the following Bills being considered in the 2010/11 Parliamentary session:

- Academies Bill
- Armed Forces Bill
- Decentralisation and Local Government Bill
- Education and Children's Bill
- Freedom (Great Repeal) Bill
- Health Bill
- Identity Documents Bill
- Police Reform and Social Responsibility Bill
- Public Bodies Reform Bill
- Welfare Reform Bill

Academies Bill

State-funded academies should be required as a condition of public funding to operate within the principles and provisions of the United Nations Convention on the Rights of the Child. Simplifying the process to become an academy must take into account the ability of the local authority to retain an overview of where children and young people are receiving their education, and to ensure that children and young people, regardless of background or circumstance, are able to enjoy an education aimed at the development of their personality, talents and mental and physical ability to their fullest potential. There must be provision for students' views to be considered in the decision of a school to become an academy, and freedom over the curriculum must not jeopardise the provision of a broad, balanced education conducive in content and approach with human rights. The rights of disabled children to inclusive education must be strongly protected in moves to give schools greater freedom.

¹ The Children's Rights Alliance for England (CRAE) is an alliance of organisations and individuals that seek the full implementation of the UN Convention on the Rights of the Child in England. Our vision is of a society where the human rights of all children are recognised and realised. The content of this briefing does not necessarily reflect the views of all CRAE members.

² UN Committee on the Rights of the Child (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*

Armed Forces Bill

Provisions relating to Service personnel will affect 16 and 17 year-olds and as such must meet the UK's obligations to children and young people under the CRC. In its 2008 examination of the UK's implementation of the Optional Protocol on the Involvement of Children in Armed Conflict³, the United Nations Committee on the Rights of the Child made 30 recommendations criticising the extent of human rights protection for children and young people employed by or in contact with the UK Armed Forces. This included a recommendation that the Government review its position and *'raise the minimum age for recruitment into the Armed Forces to 18 years in order to promote the protection of children throughout an overall higher legal standard'*.⁴

The UN Committee's recommendations included ensuring that children in conflict with the law, *'irrespective of its military or civil nature'*, are dealt with in the juvenile justice system and treated in accordance with standards set out in the CRC. This includes being detained separately from adults. Three under-18s were court-martialled in 2008 yet there is no separate system for trying under-18s in conflict with military law; in addition, children in the Armed Forces continue to be detained with adults in the Military Corrective and Training Centre at Colchester. Changes to Court Martial powers must take the UN's recommendations into account.

Decentralisation and Localism Bill

CRAE welcomes moves to devolve powers to local areas, giving councils and communities more control over planning and housing decisions, and powers to instigate local referendums and to save services and facilities threatened with closure. Children and young people are an intrinsic part of local communities, and we urge Parliamentarians to ensure that the provisions in this Bill apply equally to children and young people and strengthen their rights to engage in decision-making affecting their communities, local area and local services. A legal duty should be introduced to require public authorities to actively seek the views of children and young people in relation to community decision-making and services used by them. Safeguards will need to be devised to ensure that no group within a community suffers discriminatory treatment as a result of increased community power – particularly given the disproportionately negative view of children and young people in many communities, described by the UN Committee on the Rights of the Child in its 2008 concluding observations as *'the general climate of intolerance and negative public attitudes towards children'* – and that community engagement is representative of all sections of the local community.

Education and Children's Bill

The curriculum and school accountability

CRAE urges the Government to make the CRC part of the national statutory curriculum in order to fulfil the UK's obligations to disseminate information and provide public education about children's human rights. CRAE welcomes proposals to give schools greater freedom over the curriculum; however, the delivery of the curriculum must be accurate and balanced, and in line with the aims of education as set out in Article 29 of the CRC.⁵ Unnecessary and

³ The CRC Optional Protocol on the Involvement of Children in Armed Conflict was ratified by the UK Government in 2003.

⁴ UN Committee on the Rights of the Child (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/OPAC/GBR/1)

⁵ Article 29 of the CRC states that education should develop the child's personality, talent and abilities to their fullest potential; develop respect for human rights and freedoms, for the child's parents, cultural identity, language

excessive testing of children and young people must be stopped. Existing tests must be re-formulated in such a way as not to discriminate against students on the basis of socio-economic, ethnic, geographical or cultural background. Inspection and accountability frameworks must be transparent, based on legal duties towards children (including the CRC), and should ensure that the views of students and parents form a central part of any assessment of a school's effectiveness. Regulations must be published to commence the duty on governing bodies to invite and consider the views of school students in the Education and Skills Act 2008 (Section 157), and include seeking students' views on a wide range of matters affecting their education including but not exclusive of school discipline, measures to tackle bullying, the curriculum, and staff recruitment.

Behaviour in schools

Measures to improve behaviour in schools must involve children and young people, be based on the framework of the CRC and aimed at promoting respect, equality, dignity and fairness. An explicit cross-curricular focus on the CRC in schools will aid in establishing a human rights ethos within schools, contributing to better understanding among students, teachers and other school staff about their human rights and the need to respect the human rights of others. New duties for schools on recording the use of force against students must be retained, and disaggregated data must be kept so as to monitor and take action to prevent any disproportionate (or discriminatory) use on disabled students or students from black and minority ethnic communities, among others. Both the use of force and searching without consent must only be used as a genuine last resort by teachers and in a proportionate manner as set out in law.

Access to independent appeal panels must be retained to ensure children and young people who have been excluded are able to seek redress and independent oversight of the decisions of headteachers. Children and young people should have the right, in law, to participate fully in all aspects of the exclusion process, from being notified about the intention to exclude to attending the hearing of the independent appeal panel. This must include the right to receive that information in a form and manner accessible to them, taking into account the particular support needs of each individual child, and the right to have access to an independent advocate. All children and young people should be given the right to appeal permanent exclusions, statements and assessments of special educational needs, and to make disability discrimination claims.

Pupil premium

CRAE welcomes the introduction of financial measures that adequately address the inequalities of different groups of children, and will follow individual children and young people throughout their education. However this, on its own, will not tackle child poverty and deeply-embedded structural inequalities.

We await clarification on how the pupil premium will be implemented for extremely mobile and transient children (for instance, children in care, traveller children), how the premium will ensure better education provision for disabled children, how it will apply for children entering custody, and whether it will apply to refugee and asylum seeking children. Will similar funding apply to the poorest children who are home educated? Local authorities should be required to make freely available to primary and secondary students all the equipment necessary (including books, stationery, school trips, musical instruments) to fulfil a broad national curriculum based on the aims of education in Article 29 of the CRC. In order to increase take up and support children's learning and well-being, consideration should also be given to the provision of free school meals to all students.

Freedom (Great Repeal) Bill

CRAE welcomes the introduction of the Freedom Bill and urges the Government to give significant attention to reinstating the lost civil liberties of children and young people, particularly with regard to the use of public space, the retention and use of private and personal information, and the proliferation of civil and criminal offences that has had the effect of drawing ever more children into the criminal justice system. CRAE will be consulting its members about measures limiting children's civil liberties that they would like to see repealed, and freedoms that they would like to see reinstated, through this Bill.

CRAE urges the Government to establish a clear independent lead for the protection of children's privacy rights, particularly but not exclusively in relation to computerised databases and the collection and retention of biometric data on children.

Collection and retention of children's DNA

The Government should establish a general presumption that DNA samples will not be taken from children (under-18s) following arrest, charge or conviction unless this is required for the purposes of investigating the offence for which the child was arrested. While CRAE welcomes proposals to adopt the Scottish model for the National DNA Database, we urge the Government to go further and ensure its proposals for the DNA database will achieve both proportionality and a sufficient differentiation between adults and children in the collection and retention of DNA. The retention of the DNA profiles of children must always be subject to regular review, including automatic review conducted by an independent authority, when any child whose DNA profile has been retained reaches the age of 18.

CCTV and biometric data

CRAE welcomes moves to further regulate the use of CCTV. We urge the Government to require schools and public bodies to demonstrate that their use of CCTV is necessary and proportionate, and to ban the use of CCTV in "private" areas within schools such as school toilets. Regulations to govern the collection and retention of biometric data in schools are needed to safeguard the personal data of children and young people, and must include detailed guidance on obtaining the informed and explicit consent of children and young people and parents/carers, as well as information on legal requirements under data protection and human rights law. The law must prohibit the collection of biometric data on children and young people for the purposes of delivering administrative tasks such as school registration, school meals and library borrowing.

ContactPoint

The Children Act 2004 established the ContactPoint database, holding the details of all those aged under-18 in England. A commitment has been made in the coalition agreement to abolish the database and, given the significant concerns regarding the security, privacy, transparency, accuracy and proportionality of the ContactPoint database, this commitment must be taken forward as a matter of urgency. Children themselves have voiced concerns about what information is held about them, who has access to it, and what it may be used for. In abolishing the ContactPoint database, CRAE urges the Government to look at more effective mechanisms for protecting children and young people from harm. Central to this will be refocusing safeguarding services to genuinely put the child at the centre.

Anti-social behaviour legislation

CRAE urges the Government to use this Bill to consider how best to deal with the disproportionate application of Anti-Social Behaviour Orders (ASBOs) and other measures such as dispersal orders and curfews to children (as compared to adults). This issue has prompted concern from the UN Committee on the Rights of the Child with regard to the appropriateness and effectiveness of their use with children. An independent review should be established to consider how anti-social behaviour legislation is used with regard to children,

covering the number and characteristics of children affected since 1999, the compatibility of the legislation with welfare legislation and human rights requirements, and the effectiveness and desirability of using anti-social behaviour measures to change children's behaviour and increase community safety. The review should make recommendations as to whether ASBOs in particular should continue to be available for use with children. In terms of immediate action, police powers to move children off the streets under anti-social behaviour legislation should be repealed, leaving protective legislation in place, and automatic reporting restrictions should apply to all ASBO proceedings (whether criminal or civil) concerning children. The so-called mosquito device⁶ should be banned.

Health Bill

CRAE welcomes proposals to support a "patient-led" NHS and urges the Government to ensure that children and young people are supported to engage in the development of local health services, and to make decisions relating to their own health care. Promoting understanding among practitioners of the best interests and evolving capacities of the child when making health care decisions that affect children is crucial to ensuring high quality care that promotes and improves not only the physical but mental health and well-being of children.

Identity Documents Bill

CRAE welcomes this Bill to cancel the introduction of identity cards. The current scheme threatens to impact disproportionately on the most vulnerable and transient young people.

Police Reform and Social Responsibility Bill

Directly elected individuals to hold the police to account

While CRAE welcomes measures to increase the accountability of the police and to build stronger relationships between the police and local communities, introducing elected representatives may have the unintended effect of isolating children and young people from the police and from their communities, particularly where there is significant intolerance of children and young people in the local area. Differing mandates between elected individuals and local councillors may undermine the development of a shared commitment to children's human rights and best interests.

UK Border Force

The UK Border Force must be subject to the duty to safeguard and promote the welfare of children and young people under section 55 of the Borders, Citizenship and Immigration Act 2009.

Public Bodies Reform Bill

CRAE welcomes proposals to increase the transparency and accountability of public bodies. With regard to public bodies whose activities affect children and young people, full consultation must take place to determine where key functions cannot be transferred without compromising protection and representation for children. We urge the Government to recognise the vital and distinct roles of national children's rights safeguarding bodies such as the Children's Commissioner for England, the Equality and Human Rights Commission and the Children's Rights Director. They perform different yet complementary functions in relation to the promotion and protection of children's rights and freedoms and are an essential part of meeting the UK's human rights obligations. Parliamentarians will be aware that the powers

⁶ The "mosquito" is a sonic device emitting a high-pitched noise only heard by under-25s, the aim of which is to "repel" teenagers from public places.

and independence of the Children's Commissioner, established by the Children Act 2004, is the weakest in the UK and does not meet UN agreed rules for these bodies (the Paris Principles). When in opposition, the Conservatives and Liberal Democrats (as well as many Labour Parliamentarians) strongly advocated for a genuinely rights-based Children's Commissioner. It is crucial that children and young people have access to an independent national human rights institution that protects their human rights and promotes their views and experiences to policy-makers and legislators, so that decisions on law and policy can be made in the best interests of children, taking their views into account.

All Ministers and public authorities working for or with children should be placed under a duty to have regard to the CRC and its Optional Protocols when carrying out their functions (a move currently being proposed for Welsh Ministers through the Welsh Assembly Government's Rights of Children and Young Persons (Wales) Measure).

Welfare Reform Bill

CRAE welcomes proposals to simplify the benefits system for claimants. However, we urge careful and explicit consideration of how changes to current entitlements may impact on children and young people, recognising that reductions in parental income have a direct effect on children's well-being. Changes to current entitlements must take into account the costs of childcare where parents/carers re-enter the workforce. Welfare benefits for families with children should be dependent on need alone and sanctions should not be permitted where there are dependent children in the household. Asylum-seeking families should have access to mainstream benefits at the same rates as other families in need, and the prohibition on asylum seekers working should be lifted. Failed asylum seekers should be given full free access to health care (both primary and secondary), regardless of whether they are in receipt of asylum report from the UK Border Agency. No-one should be denied health care on the basis of their immigration status.

About the Children's Rights Alliance for England

CRAE seeks the full implementation of the CRC in England. Our vision is of a society where the human rights of all children are recognised and realised. CRAE protects the human rights of children by lobbying government and others who hold power, by bringing or supporting test cases and by using national, European and international human rights mechanisms. We provide free legal information and advice, raise awareness of children's human rights, and undertake research about children's access to their rights. We mobilise others, including children and young people, to take action to promote and protect children's human rights. Each year we publish a comprehensive analysis of the state of children's rights in England.

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