

Article 39 is a registered charity which fights for the rights of children living in state and privately-run institutions in England. We do this through awareness-raising of the rights, views and experiences of children; legal education; promoting excellence in children and young people's advocacy services; and policy advocacy, research and strategic litigation. We run the Children and Young People's Advocates Network which has 490 members working directly with children and young people in different settings. Our ON YOUR SIDE advice service provides legal information to independent advocates and others to help protect the rights of individual children. We take our name from Article 39 of the United Nations Convention on the Rights of the Child, which entitles children who have suffered rights violations to recover in environments where their health, self-respect and dignity are nurtured.

General feedback

1. Article 39 continues to strongly object to the Ministry of Justice conducting selective consultations on critical areas of child policy. Once again, the department has circulated a draft (revised) policy to a select number of organisations. Consultations should be open and publicised to children, young people and their families, with sufficient time allowed for gathering different perspectives.
2. Government agreed in December 2016¹ with the recommendation of the Charlie Taylor review that young offender institutions and secure training centres "should be replaced in the longer term by smaller secure schools situated in the regions that they serve". Charlie Taylor stated: "If the astonishingly high reoffending rates are to be reduced, mental health problems tackled and the educational attainment of children in custody improved, the government must be prepared to change the entire way it thinks about youth custody".²
3. This draft policy framework comes seven years after government's acceptance that juvenile young offender institutions (YOIs) and secure training centres (STCs) must be closed, yet they continue to exist. Of the 418 children in custody in November 2023, 67% were held in YOIs and STCs.³ This is the unacceptable context for the 'Caring for children' policy framework.
4. The purpose of the policy framework is not clear. Key questions include:
 - a. What does the policy framework aim to achieve for children and young people;
 - b. How should it be used, and by whom;
 - c. Who is ultimately responsible for ensuring it is implemented – at the establishment level and across the Youth Custody Service (YCS); and
 - d. Why are there different approaches for different custodial settings.
5. The opening paragraph (1.1) suggests it is a reference document only. Yet the cover page refers to mandatory requirements (which presumably begin at current page 15). When there

¹ <https://assets.publishing.service.gov.uk/media/5a81a230ed915d74e33ff425/youth-justice-review-government-response.pdf>

² <https://assets.publishing.service.gov.uk/media/5a80b2b540f0b62305b8ca3f/youth-justice-review-final-report.pdf>

³ <https://www.gov.uk/government/publications/youth-custody-data>

are mandatory requirements, it is not always clear whether this is due to legislation and/or government policy. There is inconsistent use of 'must' and 'should' when statutory duties apply.

6. Far too much of the document is descriptive – explaining why a policy exists rather than clearly and succinctly setting out the policy itself. To be useful in practice, the whole document requires extensive restructuring and editing.
7. The contents do not follow any obvious order – it's neither following the individual child (from their journey from court to the establishment, all the way through to returning to their communities), nor covering the different aspects of caring for children from an organisational perspective.
8. The first reference to section 11 Children Act 2004 applying to governors / directors does not appear until paragraph 4.3.32. It inaccurately refers to governors/directors having to “pay due regards to their obligations...”, when the duty is to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children. This welfare duty and the overarching responsibilities of managers – at establishment level and within the YCS – should be set out very early on in the document.
9. There are key aspects of caring for children that are absent from the current policy, including:
 - a. Supporting children's relationships with their families and other loved ones.
 - b. Ensuring individual needs are consistently met, and children's perspectives and wishes and feelings are understood and taken seriously.
 - c. Promoting children's physical and mental health, including through nutritious meals appropriate to growing adolescents, regular access to the outdoors and access to a varied programme of fulfilling leisure activities.
 - d. Maintaining comfortable and homely living environments.
 - e. Ensuring a skilled, supported and stable workforce.
 - f. Responding to concerns about children's safety and well-being.
10. The education rights of children are scantily addressed. Given the high proportion of children in custody who have special educational needs, it is critical that duties and entitlements around Education, Health and Care Plans are outlined fully.
11. Human Rights Act 1998 obligations are missing. The references to the Equality Act 2010 appear to suggest that only the public sector equality duty applies.
12. Many policies appear to be drawn wholly or partly from the adult prison estate. For example, the policy states that children do not share cells (4.3.30). Nevertheless, the cell sharing risk assessment (designed for adult prisons) is said to apply to other assessments for shared, unsupervised spaces, including showers. This is not appropriate. Children in YOIs have fewer family visits than those in STCs (page 33) – not because their needs are different, but because the latter more closely emulate adult prisons. The same applies to different legal and policy requirements in respect of the use of force in YOIs, STCs and SCHs, and the use of prison adjudications in YOIs but not in STCs and SCHs.

13. There does not appear to be any cross-referencing with His Majesty's Inspectorate of Prisons 'Children's expectations'.⁴
14. In 2019, we published 'Principles and minimum expectations for children deprived of their liberty'⁵ which we hope the Ministry of Justice can also consider and integrate into the next version of this policy.

Individual sections

15. We strongly suggest that each section contains a clear policy goal, concise children's outcomes, required actions at establishment level and YCS level, and an overview of how policy implementation is monitored, signposting the YCS lead for each policy area.
16. The child protection section requires clear instructions on the action to be taken whenever there are concerns that a child is suffering significant harm, or is likely to suffer significant harm. This must incorporate the process of alerting the local authority in which the establishment is located, children's access to independent advocacy, notifying parents/carers and the child's home local authority, and the remedial action to be taken to help the child recover (including their removal from an unsafe environment when this is necessary). Even when a child is found not to have suffered significant harm, it will be rare for them to have no unmet needs particularly if they originally communicated concerns about their safety or abuse.
17. The section on children arriving at the establishment should succinctly set out the required aspects of care and assessment that must be followed, including that children are personally welcomed by a staff member who will be their main contact during their first period, they will be offered a hot meal or a nutritious alternative, helped to make telephone or video contact with a parent or other loved one, and their questions about the establishment answered. We strongly suggest that each child receives a personal visit from an advocate during their first 24-48 hours of arriving at the establishment, to make sure they understand the vital role of the advocacy service in making sure their views, wishes and feelings are heard and their rights protected.
18. The policy states that first night packs must be provided but then lists what may be included in these (4.3.36). The YCS should establish minimum requirements for these; the pack should include information about the independent advocacy service plus an individualised letter from the governor/director which succinctly sets out expectations for how they will be cared for at the establishment and ways in which the child can communicate any worries or concerns. We also recommend a leaflet or some other concise document which answers children's common questions on first arrival (drafted in partnership with children and young people).
19. The content on local authority duties to looked after remanded children (pages 25-27) needs to be reviewed and rewritten as currently it is incomplete.

⁴ <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2021/07/Childrens-Expectations-FINAL-2021.pdf>

⁵ <https://article39.org.uk/wp-content/uploads/2019/04/ECI-Principles-and-Minimum-Expectations-FINAL-pub-18-April-2019.pdf>

20. The daily programme section should be redrafted so that education is prioritised. It is not clear whether the 30 hours education a week longstanding government policy (rarely achieved) has been dropped. If it remains in place, the secondary legislation should be amended and the differential hours in the YOI rules and STC rules rectified (4.6.5 and 4.6.15).
21. The policy should make it absolutely clear that solitary confinement is unlawful and not permitted in any circumstances.
22. The funds and shopping section of the policy should state that children should not have to use their personal funds to feed themselves (page 32).
23. The section on social visits (page 33) should be redrafted to set out the different ways in which families and other loved ones are welcomed into the establishment and shown where their child sleeps, eats, receives their education and health care.
24. So long as the prison adjudication system is applied to children, the adjudications section of this policy (page 47) should signpost the entitlement to legal advice and representation.
25. The use of restraint techniques and restrictive physical interventions (starting on page 47) should be rewritten to reflect the legal and professional expectation that use of force is used rarely. The prohibition of pain-inducing restraint techniques (from February 2024) should be included in this policy framework, together with the extremely limited circumstances when pain may be used to prevent loss of life or serious physical harm or life-changing injury.⁶
26. The reference to restraint being used to prevent serious damage to the fabric of the building (4.10.27) should be removed since serious property damage is already noted (and is derived from the statutory scheme).
27. The separation and reintegration section states the YCS separation policy framework “establishes a set of principles and requirements which can be consistently applied across” YOIs, STCs and SCHs (4.10.33). It is not therefore clear whether managers of establishments are required to implement the policy.
28. The searching section (YOIs only – pages 50-51) should concisely set out the known risks to children of being subject to ‘full searches’.
29. The body worn video camera section (YOIs only – pages 51-52) should be redrafted to explain the child welfare reasons for these being in use in children’s establishments. It is not clear from this policy framework why governors routinely reviewing recorded footage is discouraged. The policy notes the risk of staff mistrust and data protection challenges. However, if workplace incidents where children’s welfare is potentially compromised are being recorded for safeguarding purposes, then this should take precedence over an individual employee’s data protection concerns.
30. The preparation for release section (pages 54-55) should explain what needs to be in place for children leaving the establishment, including arrangements for their care and accommodation, education, training or employment and health needs.

⁶ <https://assets.publishing.service.gov.uk/media/64de3b25c8dee4000d7f1e6f/use-force-restraint-restrictive-practices-pf.pdf>

31. The sections on meeting the needs of girls (pages 63-64) and children serving long-term custodial sentences (page 65) should come much earlier in the document and sit within a new section which sets out how children's day-to-day needs as children will be met within the establishment. This includes helping children rebuild relationships with family and other loved ones in preparation for when they return to their communities.
32. The complaints section (pages 67-68) should set out the importance of having a timely, fair and responsive complaints procedure. It should describe the vital role of independent advocates in helping to ensure children's complaints are properly investigated and resolved.
33. The description of looked after children in the glossary (page 70) is not wholly accurate.
34. We strongly suggest the different roles and functions of key personnel within establishments, the YCS and local authorities are concisely set out in the policy framework, perhaps in an annex.