

Article 39

3 September 2021

The Rt Hon Robert Buckland QC MP
Lord Chancellor and Secretary of State for Justice

By email

Dear Robert Buckland

COVID-19 DILUTION OF CHILDREN'S LEGAL PROTECTIONS IN CUSTODY

As you know, our organisations were deeply concerned that important legal protections for children in custody were last year watered down overnight without any consultation or parliamentary debate, through amendments to the statutory rules for prisons and secure training centres.¹

Although introduced to deal with the immediate COVID-19 emergency, both statutory instruments do not expire until 25th March 2022.

With the majority of coronavirus restrictions lifted within the community, vaccinations now available for teenagers aged 16 and 17, and schools re-opening, we write to ask that the statutory instruments made in May and July 2020 be revoked, and children's entitlements to education and family visits be reinstated.

Children in prison have suffered greatly during the pandemic and should be guaranteed to receive the statutory minimum requirement for education from now on. The minimum entitlement is only 15 hours in young offender institutions and 25 hours in secure training centres and should no longer be delivered only "so far as reasonably practicable". Ninety percent of children aged 16 and 17 entering young offender institutions have previously been persistently absent from school. Only around half of children in custody (the vast majority of whom are aged 15-17) have the literacy skills expected by the end of the

¹ In May 2020, The Prison and Young Offender Institution (Coronavirus) (Amendment) (No. 2) Rules 2020 reduced the rights of children detained in juvenile young offender institutions relating to education, training, physical education, family visits, access to chaplains and religious services, and the adjudication process. In July 2020, The Secure Training Centre (Coronavirus) (Amendment) Rules 2020 reduced the rights of children detained in secure training centres relating to education, activities, family visits, physical education and work to tackle offending behaviour. The accompanying Explanatory Memorandum states that children's time outside their cells can be reduced to a minimum of 1.5 hours a day (from 14 hours).

primary school years, and just a quarter have the expected writing skills of those leaving primary school.

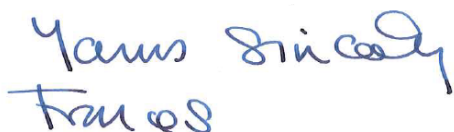
There is no possible justification for the temporary amendments to the rules introduced by the two statutory instruments to remain in place.

Further, the accompanying explanatory memorandum that purports to permit children in custody to be kept in solitary confinement is unlawful and sends out the wrong message to those charged with the care of children in prison.

We understand there were no children's rights impact assessments or equality impact assessments undertaken for these emergency changes to secondary legislation. In a legal challenge brought by Article 39 last year, the Secretary of State for Education was found to have acted unlawfully by removing and diluting legal protections for children in care – also through amendments to secondary legislation – due to his failure to consult the Children's Commissioner for England and other organisations concerned with the rights and interests of children.

If you are not willing to revoke the statutory instruments, please set out the evidence for their necessity. We also ask that you publish a children's rights impact assessment and an equality impact assessment which demonstrate the department has carefully considered the implications of introducing emergency regulations and continuing to keep them in force.

Given the importance of this issue, we will publish this letter on our websites. We look forward to hearing from you.



Frances Crook OBE
Chief Executive
Howard League for Penal Reform



Carolyn Willow
Director
Article 39

Cc: Keith Fraser and Claudia Sturt, Youth Justice Board