

IMPORTANT

- The information we provide on our rights4children website is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: info@article39.org.uk

Rules and punishments

- + Rules exist wherever we live. They can be very helpful. But also frustrating. Especially if there are punishments for breaking rules.
- + Rules can be basic – like don't forget to close the fridge door or take off your muddy boots before walking on the carpet (eek).
- + Or they might be about how we treat one another. Like taking turns to speak, or knocking on a person's bedroom door before entering.



Families and places like schools, children's homes and prisons often have their own rules. For people new to the family or a place, these rules can take time to get used to. They can feel strange or scary.

Families don't usually have rules written down. But places where lots of people live or work together do.

Your rights – general

Rules and punishments must always be fair.

You never have to put up with bad treatment just because you are a child. In fact, the law gives you extra protection *because you are a child*.

So, let's start with a law passed by our Parliament in London in 1998. This is called the Human Rights Act. It gives rights to children and adults. Three of the rights are very relevant to rules and punishments:

- + You have the right to respect for your private life. This is about your mind and your body being safe. This protection comes from Article 8 of the European Convention on Human Rights, which is one of the rights protected by our Human Rights Act. Punishments that harm children's bodies or minds could be

violating this human right. This would make them unlawful. A recent example of this is a boy who was kept in his prison cell for over 100 days with hardly any time outside. A judge said his Article 8 right to protection had been violated.

- + You also have the right to protection from inhuman and degrading treatment or punishment. This protection from very cruel treatment comes from Article 3 of the European Convention on Human Rights. Judges in an important case 10 years ago said staff deliberately causing pain during restraint just to make children follow orders would be violating this Article 3 right.¹ **Hopefully you also know that staff can never hit you or abuse you in any way, even if you have done something wrong.**
- + You have the right to a fair trial. This is Article 6 of the European Convention on Human Rights. Article 6 gives you the right to put your side across; to have help putting your side across; and to be told what people are saying you have done wrong. This right applies in courts if you are suspected of committing a crime. It also applies whenever decisions are taken that would affect your civil rights – the rights connected to your personal freedom. In any group setting – like a school, hospital, children’s home or prison – if staff are considering whether you have broken a rule and should be punished, your right to a fair trial applies.

If your rights are at risk, please consider getting help from an independent advocate. They are there for YOU.

Before we look at individual places where you might be living, here are some other rights which all children and young people have wherever you live:

- + Even if you have done something wrong, the people who look after you must protect your welfare. They are never allowed to mistreat you.
- + Rules and punishments must always be fair. You must be told about them and have the chance to question them. There must be ways for you and others to try and get them changed if they are unfair.
- + It is against the law for staff to hit you.
- + It is against the law for staff to use physical restraint to punish you.
- + Staff must always follow the rules where you live. They are not allowed to make up their own punishments.
- + If you are treated badly by staff, you have the right to get help to make this stop.
- + You have the right to explain your feelings and your side of the story if there are any disagreements about rules being broken.

Your rights – extra

This section gives you information about your extra rights in different places.

Words in “quotation marks” come from laws and legal rules. Laws and legal rules must be followed by the people who look after you.

Children’s home

The people in your home should encourage and celebrate good behaviour. You should be treated with kindness and respect.²

The police should not be called for behaviour that would not be treated as a crime in a family home.³

The law says people who work in your home are **not allowed** to:

- + Use any control or discipline which is excessive or unfair.
- + Hit you to make you do something or as a punishment.
- + Use food or drink as a method of punishment.
- + Restrict your contact with your parents, relatives or friends (unless a judge has said this can happen).
- + Restrict the visits you have from your parents, relatives or friends (unless a judge has said this can happen).
- + Restrict you speaking with your lawyer, advocate, social worker, independent visitor or an inspector visiting your home (unless a judge has said this can happen).
- + Restrict your access to any internet-based or telephone helpline providing counselling for children (unless a judge has said this can happen).
- + Use medication or medical or dental treatment as a way of making you do things or punishing you.
- + Deliberately stop you from sleeping as a way of making you do things or punishing you.
- + Fine you (though they can make you pay a reasonable amount to make up for something you have taken or damaged).
- + Physically examine you in private areas of your body (for example by forcing you to undress).
- + Take away any aids or equipment you need if you are disabled.
- + Make you punish another child.
- + Punish a group of children and young people for the behaviour of one child.

Nothing in this list stops a doctor or dentist taking action to protect your health.

Nothing in this list stops the people who work in your home from taking action to stop someone being injured or to stop serious damage to property.⁴

Hospital or other health place

The law says your care or treatment while in hospital must never:

- + Involve discrimination
- + Involve you being controlled or restrained when this is not necessary to stop you or someone else being harmed.
- + Be degrading.
- + Lose focus on your care and treatment.⁵

Immigration detention

The law says officers who work in detention centres must:

- + Tell the government if any person is abused in the centre.
- + Tell the government if they know about any bad behaviour by other officers.
- + Give special attention to their duty to look after your well-being.
- + Tell the health care team if there are any concerns about your mental or physical health.
- + Encourage people to work together in the centre (instead of using force or threats).
- + Treat you in a way which encourages you to have respect for yourself and to respect others.⁶

Prison

If you are living in a **young offender institution**, you can be punished for offences against discipline. This doesn't mean staff have the right to bully or mistreat you. You should be treated with respect and fairness at all times.

Before we look at how you might be punished if you commit any prison offences, here is the list of things the law says you **must not do, try or encourage others to do** in a young offender institution:

- + Assault someone.
- + Assault someone using racism.
- + Make someone stay in a place against their will.
- + Stop someone who works in your prison from entering an area (this would include your cell).
- + Fight with anyone.

- + Intentionally put anyone's health or safety in danger.
- + Intentionally stop an officer, or anyone else working in your prison, from doing his/her job.
- + Escape or run away.
- + Take illegal drugs.
- + Be drunk as a result of knowingly drinking alcohol.
- + Have an unauthorised item.
- + Sell or give another young person an unauthorised item.
- + Take another young person's property.
- + Intentionally or without care set fire to any part of the prison.
- + Destroy or damage any part of the prison or any property belonging to someone else.
- + Destroy or damage the prison or someone else's property through racism (racist graffiti, for example).
- + Fail to be in a place you are meant to be.
- + Be in a place you haven't got permission to be in.
- + Be disrespectful to an officer or any other person working at the prison, or anyone visiting the prison.
- + Use threatening, abusive or insulting words or behaviour.
- + Use threatening, abusive or insulting racist words or behaviour.
- + Intentionally fail to work properly.
- + Refuse to work.
- + Disobey any lawful order.
- + Fail to follow any rule.
- + Get illegal drugs from one of your visitors.
- + Get anything else from one of your visitors without permission from the prison.
- + Draw or put on the wall any racist drawings or put on display any things that are racist.⁷

The law allows governors to punish children and young people in prison, if they have been found to commit any of the above offences.

The prison holds what's called an adjudication hearing to find out if a child or young person has committed any of the offences above. The test for deciding if you have committed an offence is the same as in criminal courts – beyond reasonable doubt.⁸

You can get help from an independent advocate to make sure you are properly listened to in an adjudication hearing.⁹ **This is a very important right which we hope you will use.**

If a judge from outside the prison is involved in your hearing, you have the right to have a lawyer.¹⁰ Your lawyer will speak with you before the hearing. He or she will work for you at the hearing. **We strongly advise you to use this important right.**

If a child or young person is found to have committed any of the above offences, he may be punished in one or more of the following ways (we say ‘he’ because girls are not locked up in young offender institutions):

- + He may be given a warning.
- + He may lose his privileges (like a television or time out of cell) for up to 21 days.
- + He may be stopped from doing activities for up to 21 days (**though he cannot be stopped from education or training courses or work or physical education as a punishment**).
- + He may be given extra work to do for up to 21 days, though this cannot be more than 2 hours a day.
- + He may get money taken away or stopped for up to 42 days (the maximum amount cannot be more than 21 days’ pay).
- + He may be moved from his wing or living unit for up to 21 days.
- + He may have to stay longer in prison (up to 42 days longer).

If you are ever given a warning (called a caution) for an offence in prison, you cannot be given any other punishment for this same offence.

You have the right to question any punishment that might be against the law or unfair.¹¹ If you are in any doubt, please contact an advocate or the Howard League for Penal Reform Legal Advice Line.

If you are in a **secure training centre**, the law says there must be a system of rewards, encouragements and punishments which are suitable for the “ages, characters and circumstances” of young people living in the centre.¹²

When you first arrive in the secure training centre, you should be told what kind of behaviour is acceptable and what kind of behaviour is unacceptable. You should also be told about the rewards and punishments in your centre, and when these are used. All of this information should be written down in a way that children and young people can understand.

Throughout your time at the centre, you should be reminded about behaviour which is acceptable and unacceptable, and rewards and punishments.¹³ This should be done in a pleasant, respectful way. Staff do not have the right to bully you.

The centre must keep records of any rewards, encouragements and punishments given to children and young people.¹⁴

School

Your school must have a written document which explains how it encourages good behaviour. This document must be written in a way that children and young people can understand. As well as encouraging good behaviour, the document must say:

- + How the school deals with bullying.
- + What the school rules are.
- + What punishments are used in the school.¹⁵

The law says schools must be reasonable when punishing children and young people. In working out what is reasonable, schools must think about what is fair as well as “any special circumstances” including:

- + The child or young person’s age.
- + If the child or young person has special educational needs.
- + If the child or young person is disabled.
- + If the child or young person is affected by any religious rules.¹⁶

The law says your school must keep a record of punishments given to students.¹⁷

If children and young people live in your school **more than 295 days a year**, the school must also follow laws and rules for children’s homes. The staff who look after you when you are not at school must follow children’s homes’ laws and rules. You can find out about these in the section on children’s homes.

Secure children’s home

The people who work in your home should encourage and celebrate good behaviour. You should be treated with kindness and respect.¹⁸

The police should not be called for behaviour that would not be treated as a crime in a family home.¹⁹

The law says people who work in your home are **not allowed** to:

- + Use any control or discipline which is excessive or unreasonable.
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- + Restrict your contact with your parents, relatives or friends (unless a judge has said this can happen).
- + Restrict the visits you have from your parents, relatives or friends (unless a judge has said this can happen).

- + Restrict you speaking with your lawyer, advocate, social worker, independent visitor or an inspector visiting your home (unless a judge has said this can happen).
- + Restrict your access to any internet-based or telephone helpline providing counselling for children (unless a judge has said this can happen).
- + Use medication or medical or dental treatment as a way of making you do things or punishing you.
- + Deliberately stop you from sleeping as a way of making you do things or punishing you.
- + Fine you (though they can make you pay a reasonable amount to make up for something you have taken or damaged).
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1 R (C) v Secretary of State for Justice [2008] EWCA 882.

2 Department for Education (2015) Guide to the children's homes regulations including the quality standards.

3 Department for Education (2015) Guide to the children's homes regulations including the quality standards.

4 Regulation 19, The Children's Homes (England) Regulations 2015.

5 Regulation 13, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

6 Rule 45, Detention Centre Rules 2001.

7 Rule 55, The Young Offender Institution Rules 2000.

8 HM Prison and Probation Service PSI 47/2011 (re-issued September 2017).

9 HM Prison and Probation Service PSI 47/2011 (re-issued September 2017).

10 HM Prison and Probation Service PSI 47/2011 (re-issued September 2017).

11 HM Prison and Probation Service PSI 47/2011 (re-issued September 2017).

12 Rule 6, The Secure Training Centre Rules 1998.

13 Youth Justice Board for England and Wales (2012) Managing the behaviour of children and young people in the secure estate. Code of practice.

14 Rule 6, The Secure Training Centre Rules 1998.

15 The Education (Independent School Standards) Regulations 2014; Department for Education (2015) Boarding schools. National minimum standards, standard 12; Department for Education (2015) Residential special schools. National minimum standards, standard 12.

16 Section 91(6)(b) Education and Inspections Act 2006.

¹⁷ Residential special schools must record all sanctions: Part 2 of Schedule The Non-Maintained Special Schools (England) Regulations 2015. Boarding schools must record all sanctions given for serious misbehaviour: Part 3 of Schedule The Education (Independent School Standards) Regulations 2014.

18 Department for Education (2015) Guide to the children's homes regulations including the quality standards.

19 Department for Education (2015) Guide to the children's homes regulations including the quality standards.

20 Regulation 19, The Children's Homes (England) Regulations 2015.