



**CRIMINAL JUSTICE AND IMMIGRATION BILL
HOUSE OF LORDS – REPORT STAGE**

March 2008

Principles of the Youth Justice System

THE AMENDMENT

**Lord Thomas of Gresford
Lord Wallace of Tankerness**

Before Clause 1, insert the following new Clause-

" Principles of the youth justice system

(1) Section 37 of the Crime and Disorder Act 1998 (c. 37) (aim of the youth justice system) is amended as follows.

(2) Before subsection (1) insert-

"(A1) Principles of the youth justice system

(1) The principles of the youth justice system are

- (a) the best interests of the child shall be the paramount consideration,
- (b) arrest and deprivation of liberty of a child shall be used only as a measure of last resort and for the shortest possible time, and
- (c) the child shall at all times be treated with humanity and respect for his or her inherent human dignity.

(2) The Secretary of State shall issue a code of practice designed to ensure all persons and bodies carrying out functions in relation to the youth justice system do so in accordance with the principles set out in subsection (1). "

PURPOSE

To set out the fundamental principles of the Youth Justice System in accordance with the UK's human rights obligations.

BRIEFING

Current arrangements for dealing with children who break the law in England and Wales are seriously flawed. The Youth Justice System continues to be dominated by a punitive approach, deriving from a determination to be tough on all crime while considerations of child welfare, essential to an effective strategy for reducing youth crime, have been allowed to fall by the wayside.

Human Rights obligations

The UK's record of compliance with legal obligations in relation to children's human rights as they apply to children in trouble with the law is very poor. The UN Committee in 2002 made extensive criticisms when it last reported on the United Kingdom's implementation of the UN Convention on

the Rights of the Child (UNCRC).¹ The UK has since been criticised by the UN Committee against Torture (2004)² for its high prison population, the European Social Rights Committee (2005)³ for its low age of criminal responsibility, and by the Council of Europe's Human Rights Commissioner (2005)⁴ for its approach to tackling anti-social behaviour, especially 'naming and shaming', and its treatment of child prisoners. A recent analysis of the implementation of the Convention on the Rights of the Child in England concludes that the UK Government has 'torn up the treaty' for children in trouble with the law.⁵ A review in Wales reached similar conclusions.⁶

The UN Committee will next examine the UK Government later this year. The Standing Committee for Youth Justice (SCYJ) considers that it is imperative to seize this opportunity to address the Committee's previous criticisms.

Reform of the Youth Justice System

The Children's Plan published by the Department for Children, Schools and Families in December 2007 acknowledges that the current system is in need of fundamental reform. It calls for:

*'more effective action by children's services and youth justice agencies to **reduce youth crime** through a reformed approach to youth justice, that has a stronger emphasis on prevention, rehabilitation and action to stop repeat offences by young people.'*

We welcome this commitment to re-evaluate the direction of youth justice policy, already underway through the development of the Youth Crime Action Plan. However this is a proposal for the future. We do not know when any resultant changes might be implemented, but they are unlikely to be quick. The more radical the changes the more they will require general and detailed debate, and the more substantial the place they will require in the oversubscribed legislative programme.

Enshrining our UNCRC obligations in domestic legislation now, would set a clear direction of travel for the proposed reforms and provide a strong foundation on which to build a more effective, rights based, approach to dealing with children who break the law. Moreover the proposed Code of Practice would provide a vehicle through which to address a number of the specific flaws that have been brought to light during the debates on this Bill in both Houses of Parliament. These are discussed in more detail below.

Best interests of the child

The duty to ensure that in all actions undertaken by institutions including courts of law, the best interests of the child shall be a primary consideration is enshrined in Article 3 of the UNCRC. In domestic law The Children Act 1989 establishes that decisions taken by the court must be taken in the child's best interests through the establishment of the welfare checklist and the need for the court to take all matters into account.

Regrettably the Crime and Disorder Act 1998 arguably eroded this principle for children who offend by stressing the primary aim of preventing offending above all other considerations. This means that the Youth Justice System often neglects considerations of child welfare, so essential to an effective strategy for reducing youth crime. It is deeply regrettable that the Purposes of Sentencing for children as proposed in Clause 9 of this Bill do not address this deficit; placing as they do instead emphasis on the punishment of offenders and the protection of the public.

¹ UN Committee on the Rights of the Child (2002) *Concluding observations of the United Nations Committee on the Rights of the Child: United Kingdom*, United Nations

² Committee against Torture CAT/C/CR/33/3 *Conclusions and recommendations of the Committee against Torture United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories*

³ European Social Charter European Committee of Social Rights. Conclusions XVII-2. Volume 2. Chapter 18. September 2005

⁴ Report by Mr. Alvaro Gil-Robles Commissioner for Human Rights on his visit to the UK 4th – 12th November 2004. Strasbourg, 8 June 2005

⁵ *State of children's rights in England* (2005) Children's Rights Alliance for England

⁶ Croke, R and Crowley, A (eds) (2006) *Righting the wrongs: the reality of children's rights in Wales*, Save the Children

By clearly stating that the child's best interests remain paramount when they come into contact with the Youth Justice System this amendment seeks to pave the way for the development of more effective, welfare-based response to youth offending.

Custody as a measure of last resort

Article 37 of the UNCRC requires that *'No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'*.

Nevertheless at any one time there are about 3,000 children held in juvenile custody in England and Wales and over a third of these are officially classed as vulnerable.⁷ Despite the Youth Justice Board's target of a 10% reduction in children entering custody between 2005 and 2008 (approved by the Home Office), the numbers of children entering custody have risen, not decreased. Four in every 100 children in custody are subject to a care order. Six more children have died in custody since the UK was last examined by the UN Committee on the Rights of the Child in 2002: this brings to 30 the total number of child deaths in custody since 1990. Custody is known to be one of the least effective, and most harmful, of criminal justice disposals for children, with nearly eight out of 10 reoffending within one year of release. Public surveys show consistent and strong support for tackling juvenile crime without resort to imprisonment.

This issue has been the subject of significant debate during the passage of the current bill and although it has resisted a number of amendments designed to reduce the number of children entering custody the Government has repeatedly restated its commitment to the principle of last resort. This amendment offers the Government a chance to demonstrate that this commitment of real and to set out in detail in the Code of Practice how it can be realised.

Dignity and Respect

Article 40 (1) of the UNCRC requires that *'States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth...'* and Article 37 (c) states that *'every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person'*.

There are a number of current practices within the Youth Justice System that could be argued to be in breach of these obligations. For example in its recent report on The Use of Restraint in Secure Training Centres (STCs) the Joint Committee on Human Rights made the following comment about the treatment of children in custody.

'The United Nations Convention on the Rights of the Child 1989 ("UNCRC"), ratified by the UK in 1991, emphasizes a recognition of the dignity and worth of children. In the context of detained children and young people, this principle is vital to the rehabilitation of the child and to his or her ability to be an effective citizen when released. However, law and practice in the UK relating to children and young people in detention calls into question the Government's commitment to that principle.'

Another example is the absence of automatic reporting restrictions for children facing ASBO proceedings, a policy known as 'naming and shaming'. In June 2005, Alvaro Gil-Robles, the Council of Europe's Human Rights Commissioner, reported on the UK. On 'naming and shaming', he said, *'[It is] entirely disproportionate to aggressively inform members of the community who have no knowledge of the offending behaviour, and who are not affected by it, of the application of ASBOs. It seems to me that they have no business and no need to know.'*⁸

The development of a Code of Practice setting out how the fundamental principles of the YJS should be applied by those working within it offers the opportunity to systematically review the

⁷ Written answer to Parliamentary Question, 28 March 2007: Column 1653W

⁸ Report by Mr. Alvaro Gil-Robles Commissioner for Human Rights on his visit to the UK 4th – 12th November 2004. Strasbourg, 8 June 2005.

treatment of children in trouble with the law.

For further information please contact:

Katherine Hill (née Sullivan), Parliamentary Adviser, The Children's Society
E Mail: katherine.hill@childrenssociety.org.uk Tel: 020 7841 4480

*The **Standing Committee for Youth Justice (SCYJ)** is a membership body which:*

- *Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and*
- *Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.*

Its members are: Barnardo's, Children's Rights Alliance for England, Just for Kids Law, JUSTICE, Nacro, Association of YOT Managers, National Association for Youth Justice, National Children's Bureau, NCH, NSPCC, Prison Reform Trust, Rainer, Secure Accommodation Network, SOVA, The Children's Society, The Howard League for Penal Reform, The National Youth Agency, The Princes Trust and VOICE

The contents of this briefing do not necessarily reflect the views of all member organisations.