



Standing Committee for Youth Justice

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

March 2008

THE AMENDMENT

80 on the Revised Marshalled List

Lord Thomas of Gresford
Baroness Falkner of Margravine

After Clause 102 insert the following new Clause—

"Treatment of 17 year-olds as children for remand purposes

(1) Section 23 of the Children and Young Persons Act 1969 (c. 54) (remands and committals to local authority accommodation) is amended as follows.

(2) In subsection (12), in the definition of "young person", for "seventeen" substitute "eighteen"."

PURPOSE

To treat under 18 year olds as children and young people for remand purposes

BRIEFING

The Bill fails to address the continued treatment of 17 years olds as adults for the purposes of bail and remand. This means that at court 17 year olds cannot be remanded to Local Authority Accommodation (secure or non secure) and are automatically remanded to custody if bail is denied. The Government originally stated its intention to address this situation in its response to *Youth Justice - The Next Steps consultation published in March 2004*.¹

Background to the current situation

The Bail Act 1976 applies in its entirety to children and young people and as a result, any court is under the same obligation to consider the question of bail, as it would be for any adult defendant. It is only when the Court refuses bail that the law as regards children is substantially different to that applying to an adult. As a result of the Criminal Justice Act 1991 young people below 17 years of age are now dealt with in the youth court system and benefit from rules that are designed to ensure that, whilst bail may not be granted, other provisions are in place to make certain that a remand into custody is always an absolute last resort. There is currently a four-tier remand system for this age group that consists of:

- Bail with or without conditions
- Remand to Local Authority Accommodation (non Secure) – girls and boys up to 16 years old inclusive. Additional conditions can be added to this Remand to manage any identified risk concerns (including YOT pre court programmes and electronically monitored curfews).

¹ Home Office (2004) *Youth Justice – The Next Steps. Summary of responses and the Government's proposals* Section 2 paragraph 8.

- Remand to Local Authority Accommodation with secure requirement (Court Ordered Secure) – available for girls up to 16 inclusive, and for boys to 14 years and then also boys 15 and 16 years of age where the additional criteria of vulnerability applies.
- Remand to YOI or STC for 15-16 year old boys where they are deemed not to be vulnerable.

However those who are 17 years old are anomalously still dealt with under ‘adult’ provisions for the purpose of bail and remand. Where bail is refused, they are automatically remanded in custody (with some exceptions during ‘breach’ proceedings) and do not have the protective ‘buffer’ of the option of remand to local authority accommodation and are not ‘looked after’.

This means that in a case in which the Court, for example, feels that bail cannot be granted due to the risk of future non-attendance at Court appearances, a 17 year old must be remanded to custody, whereas a 16 year old would have other options pre custodial remand. Youth Justice Board statistics evidence that during 2005/2006 there were 6,561 ‘episodes’ of 17 year olds being remanded to custody.

Human rights considerations

In its response to the UK government’s report on the implementation of the UNCRC in 2002, the UN Committee on the Rights of the Child stated

‘In addition, the committee notes with concern that...

e) Young people of 17 years of age are considered as adults for the purposes of remand...

In particular, the committee recommends that the State party...

h) Review the status of young people 17 years of age for the purpose of remand with a view to giving special protection to all children under the age of 18 years’

There are no obvious grounds for distinguishing between 16 and 17 year olds in respect of bail and remand decisions. Therefore the current system may be seen to be in breach of Article 14, which requires equal treatment on the basis of age.

Damaging effects of the use of custodial remands

There is growing concern over the increase in custodial rates and poor outcomes associated with young people being held in custody and in particular, the capacity of the prison service to deal appropriately with the levels of vulnerability frequently displayed by young people in the criminal justice system. It is worth noting that these problems are compounded for children from Wales who are necessarily taken to England to be imprisoned.

Moreover, custodial regimes for remanded inmates are particularly impoverished compared with those for sentenced prisoners. Children and young people will experience this as especially oppressive and they may be locked in their cells for many hours a day with little or no constructive activity to occupy them. As a result of prison overcrowding, children and young people may be placed in establishments at considerable distances from their home areas, thus creating difficulties for their families, friends and legal advisers to visit them.

The proposed amendment

Amending the definition of the age from 17 to 18 years would ensure that 17 years olds are treated in the same manner as 16 year olds. The current distinction in the remand regime for juveniles between girls and boys as described above would remain. The effect of the change therefore would be that 17-year-old females could no longer be remanded to prison custody, and 17-year-old boys could be placed in Secure Training Centre or Local Authority Secure placement where there is significant evidence of vulnerability. Youth Offending Team officers currently complete vulnerability assessments for 15 and 16 year old boys and this practice could be extended to include 17 year old boys.

The amendments will have short-term resources implications for the Local Authorities but these can be outweighed in the longer-term by improving re-offending rates. The present arrangements that treat 17 year olds children differently from those 16 and under are indefensible and must be revised. Notwithstanding the Standing Committee for Youth Justice's principled position that there should be an immediate end to the use of prison custody for children and young people this amendment would represent progress towards this ultimate goal.

The Government's response at Lords Committee Stage

*'A great deal of detailed work has been undertaken to find a solution to this issue. I hope, even if the noble Baroness is disappointed by the conclusion we have reached tonight about her amendment, that she and the Committee will accept that a lot of work is still going on to try to solve this issue. It is not straightforward. There is a whole catalogue of linking factors that, with great respect, her amendment does not cover; for example, the status of 17 year-olds under police bail, which is covered by the Police and Criminal Evidence Act. That would need to be examined to consider the impact on the police in terms of accommodation for 17 year-olds and issues such as the provision of appropriate adults.'*²

It is unacceptable that this situation remains unresolved after four years of deliberations. **In order to ensure that another four years does not elapse before it is resolved, we would like the Minister to outline on the floor of the House a process and timescale for addressing the matter.**

For further information please contact

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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