



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

March 2008

Court's power of direction: child welfare

THE AMENDMENTS

After Clause x insert the following new Clause—

"Court's power of direction: child welfare

- (1) Where a person aged under 18 comes before the court, in circumstances in which a question may arise with respect to the welfare of that person, the court may direct the appropriate authority to undertake an investigation of the circumstances of that person.
- (2) If the court decides to direct an investigation, the provisions of section 37 (sections 2 to 6) of the Children Act 1989 (c. 41) shall apply.
- (3) Pending the investigation by the local authority concerned, the case of the person before the court shall be adjourned.
- (4) Upon receiving the information from the local authority concerned, the court shall decide whether to hear the case or dismiss the summons or adjourn the case generally."

Insert the following new Clause—

"Court's power of direction: child welfare (No. 2)

- (1) Where a child under the age of 14 comes before the court, in circumstances in which a question may arise with respect to the welfare of that child, the court may direct the appropriate authority to undertake an investigation of the child's circumstances.
- (2) If the court decides to direct an investigation, the provisions of section 37 (sections 2 to 6) of the Children Act 1989 (c. 41) shall apply.
- (3) Pending the investigation by the local authority concerned, the case of the child before the court shall be adjourned.
- (4) Upon receiving the information from the local authority concerned, the court shall decide whether to hear case or dismiss the summons or adjourn the case generally."

PURPOSE

For 10-17 year olds, or alternatively just 10–13 year olds, a criminal court should be able to:

- suspend a criminal case (adjourn before plea) where there appear to be welfare concerns
- require LA children's social services to investigate under s37 CA 1989 and report back to it ; then
- proceed with the case, drop it (taking account of any substantive action the social services decide on) or further adjourn it (to see how the child progresses with social services help).

ALTERNATIVE AMENDMENT

Insert the following new Clause-

“ Investigations and reports by local authorities

(1) Section 9 of the Children and Young Persons Act 1969 (investigations by local authorities) is amended as follows.

(2) At the end of section 9(1) insert –

“; together with their plans or proposals for work with the child or the reasons if they have no such plans or proposals“

(3) After section 9(1) insert –

“(1A) If the child is looked after the local authority shall, in addition to any information under subsection (1), provide their care plan for the child or young person including what further steps they would take if the court were to convict and sentence them for the offence.“

(4) In section 9(2), line 1, replace “subsection (1)“ with the words “ subsections (1) and (1A) “

PURPOSE

For any child who is prosecuted, to require local authorities to provide not only information but also, if requested by the YOT or the Court, their plans or proposals for work with the child, or reasons if they propose to do nothing. For existing looked after children criminal courts would additionally be able request a copy of their updated care plan.

BRIEFING

Considerations of child welfare are essential to an effective strategy for reducing youth crime. The Government Social Exclusion Unit's 2002 report *Reducing Re-offending by Ex-Prisoners*¹ illustrated graphically the wider social and welfare problems faced by children in trouble with the law. 60% had been 'looked after', as a result of social and family problems, 35% with 3 or more placements, 25% of males and 40% of females had suffered violence at home, 87% had missed significant education, as a result of which over 25% had literacy and numeracy skills below age 7 and 50% below age 11.

Moreover there is ample evidence that even when on the caseload of children's services, children continue to experience major welfare deficits. The Government's own *Care Matters: Time for Change* White Paper in June 2007 summarised the indisputable evidence of poor outcomes including criminality for children who are looked after children.

“...despite improvements in outcomes in recent years, there remains a gap between the outcomes of those in care and outcomes for all children.: In 2006, only 12% of children in care achieved 5 A-C grades at GCSE (or equivalent) compared to 59% of all children; their health is poorer than that of other children. 45% of children in care are assessed as having a mental health disorder compared with around 10% of the general population; over 50% of children in care responding to Care Matters said that they had difficulties accessing positive activities; 9.6% of children in care aged 10 or over were cautioned or convicted for an offence during the year – almost 3 times the rate for all children of this age; and 30% of care leavers aged 19 were not in education, employment or training (NEET).”²*

Often poor outcomes are not accidental, but reflect system failures to help children manifestly in need or at risk. Youth Offending Teams (YOTs) experience many such cases in their daily work, in all parts of the country. The Howard League for Penal Reform takes up some of the worst cases, which represent just the tip of a large iceberg. Their February 2008 submission to the current Children, Schools and Families Select Committee's inquiry into Looked after Children identifies individual failures to identify properly children in need and to look after children who are in care.

'In the case of those children who are not looked after on entering custody, entry to the criminal justice system should be an opportunity to assist the home local authority in complying with their duties under section 17 of

¹ Social Exclusion Unit (2002) *Reducing Re-offending by Ex-Prisoners* Annex D.

² DCSF (2007) *Care Matters: Time for Change* para. 3

the Children Act 1989 to identify the most vulnerable children in their area. It is the experience of the Howard League's legal team that many children in custody have not been assessed or assisted by social services despite having asked for help or being extremely vulnerable.'

*'The Howard League for Penal Reform currently has a case being heard by the House of Lords. At the age of 17, our female client 'M' had been ejected, homeless and without support, from the family home by her terminally ill mother who was unable to cope with her. Despite presenting herself to social services on numerous occasions, with handwritten notes from her mother requesting she be accommodated, M was never assessed as to whether she was a child who required a home and support under the provisions of the 1989 Children Act. Instead of the local authority taking on its corporate parenting responsibilities and children's services handling her case, M was placed in a string of unsafe bed and breakfasts by the housing department where she lived a chaotic life and committed criminal offences. On release from custody, she and her unborn child were returned to exactly the same chaotic circumstances which had seen her jailed in the first place.'*³

Why do the criminal courts need stronger powers to address welfare issues?

In an ideal world it would be inappropriate and unnecessary for criminal courts to involve themselves in care system issues. Neither they nor YOTs have the expertise to assess such matters that relate to a separate institutional and deliberative framework and go much further than a general duty in sentencing to take account of welfare. Children's Services have clear duties to investigate and take action on safeguarding and welfare and clear duties and powers to apply to the family court in respect of risk of significant harm. Moreover YOTs can ask other services to contribute to Pre-Sentence Reports, and under s.9 of the Children and Young Persons Act 1969 courts can require a local authority to investigate and report on a young defendant's home surroundings, school records, health and/or character, although not consideration of any substantive action.

However in the real world there are several reasons to strengthen criminal courts' relevant powers particularly as courts do not use their s. 9 (CYPA 1969) power, and YOTs do not encourage its use, because it can provide no more than descriptions, something social services already provide administratively for Pre-Sentence Reports.

As described above, in practice the children's social services often have failed and continue to fail to deal effectively with welfare or harm threats to children coming before the courts. When YOTs ask about social services' intentions towards a looked after child who is being prosecuted, they are frequently told that this will be considered once the court has sentenced. This leaves courts poorly placed to decide what use to make of residence, education and treatment sentencing options, all of which should complement rather than cut across care plan arrangements. Particularly in light of the new Youth Rehabilitation Order introduced under this legislation, with its full menu of interventions, unless assured that someone else is gripping the problem criminal courts may be tempted to overload sentences with menu options intended to address welfare and child protection issues.

Won't *Care Matters*, *Every Child Matters* and/or the Youth Crime Action Plan put all this right?

In *Care Matters* and the Children and Young Persons Bill currently before Parliament, the Government does commit itself to improving the situation of children in care, including £300m investment over the next 4 years to ensure that they get a better start in life, clarifying the responsibilities of social workers, enabling them to devote more one to one time, better training and support for carers to cope with multiple difficulties, better early years education and bursaries for later. However it will clearly take a number of years to achieve these envisaged improvements, and sadly there will in any case be a carry-over of teenagers coming before the courts whose problems had not been tackled in early life before the reforms took effect. Against that background, it would be sensible to put powers into statute now and review in, say, 10 years 'time whether the *Care Matters* improvements have had the desired effect on the circumstances of children coming before the courts.

Every Child Matters and the subsequent provisions of the Children Act 2004 offer the prospect of improved coordination between services dealing with children through the creation of combined children's education and social services, wider partnerships under the leadership of children's services directors, improved information sharing and lead professionals. However the experience of YOTs so far is that this partnership working reduces identification failures, that is to say children slipping completely through the net between services, but in the absence of new resources is not improving social services interventions with young people who are in

³ The Howard League for Penal Reform (2008) Submission on the Children and Young Persons Bill to the Children, Schools and Families Select Committee

trouble with the law. In a world where resources remain limited, there is all the more reason to prioritise cases to ensure that the crime risk to the wider community is not overlooked.

The Youth Crime Action Plan is a proposal for the future. Signalled in Chapter 6 of the *Children's Plan* published by the Department for Children, Schools and Families, it is expected to take a more radical look than past government documents at how emerging offending can best be dealt with by reference to the need to tackle social risk factors to reduce offending particularly among the under 15s. In his response to these amendments at Lords Committee Stage the Minister was perhaps right to suggest that this would be the appropriate context to consider any radical changes; but from our perspective it is insufficient reason to close down present discussion of targeted improvements that might be made through this Bill. 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. Children are coming before the courts now, every day, who are at risk and require proper attention from the social services. Taking selective remedial action now would enable a less frenetic debate about the future 'ideal world' approach.

What would be the effect of these amendments?

The amendments proposed by Baroness Butler-Sloss at Lords Committee would extend to the criminal court, the family court's existing power under section 37 of the Children Act 1989. S.37 permits the court to direct the local authority to investigate when it is considering any welfare question that might warrant a care or supervision order. The local authority has to consider whether to apply for an order or take other action. If it decides not to apply for an order, it has to report back, normally within 8 weeks, why not and what else it has done or proposes to do.

By giving the criminal courts a similar power in the event of a prosecution, the local authority would have power **but be under no obligation** to initiate family court care or supervision order proceeding if after investigation this was identified as an appropriate course of action. The aim of this would be to divert away from the criminal courts first-time or trivial offenders who were victims of adverse experiences. The Standing Committee for Youth Justice (SCYJ) is supportive of this proposal.

In his response to these amendments at Lords Committee Lord Hunt essentially sympathised with the underlying aim whilst making clear that the Government feel it would be inappropriate to override or delay the criminal justice process in the way proposed. He referred to existing power given to courts in section 9 of the Children and Young Persons Act 1969 and acknowledged that PSRs needed to be improved. He also pointed more generally to the work towards the Youth Crime Action Plan as the best way to take forward examination of these issues.

The alternative version of this proposal outlined in the amendment drafted by the SCYJ seeks to address some of the Government's concerns whilst still moving in the same direction as the proposal put forward by Baroness Butler-Sloss. For any child who is prosecuted, section 9 of the CYPA 1969 would be amended to require local authorities to provide not only information but also, if requested by the YOT or the Court, their plans or proposals for work with the child, or reasons if they propose to do nothing. For existing looked after children criminal courts would additionally be able request a copy of their updated care plan. All such information would be required within say 2 weeks of the child being charged for an ordinary offence or 4 weeks of an offence triable in the Crown Court.

We believe that strengthening the existing section 9 provisions in this way would give the criminal court helpful information about social services' plans and proposals where they needed it. Moreover the requirement to report on actions and intentions to a court of law would focus the attention of Children's Services Directors on developing this aspect of local children's services partnership working in line with the Every Child Matters change programme and their duties under s.10 Children Act 2004.

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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