



Standing Committee for Youth Justice

POLICING AND CRIME BILL
HOUSE OF COMMONS - SECOND READING
19 January 2009

INTRODUCTION

The Standing Committee for Youth Justice (SCYJ) believes that the current youth justice system is insufficiently distinct from that for adults and so does not focus adequately on children's particular characteristics, needs and interests. Legislation and policy for children who offend is not congruent with that which deals with children and families more broadly, in respect of welfare, safeguarding, education and health. **Within this context our chief interest in the Policing and Crime Bill is in ensuring that provisions intended for adults do not impact adversely on those under 18 by default.**

In its concluding observations on the United Kingdom, published on 3 October 2008, the United Nations committee on the rights of the child (UNCRC) made a number of severe criticisms of the UK's failure to comply with the convention on the rights of the child (CRC) in its treatment of children in the criminal justice system.

The committee made a number of recommendations relevant to the Policing and Crime Bill, the most pertinent of which were that the UK should:

- Raise the minimum age of criminal responsibility
- Develop a broad range of alternative measures to detention for children in conflict with the law and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle
- Ensure that children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with
- Consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders¹

PART 1: POLICE REFORM

Clause 1 inserts into the Police Act 1996 a requirement for police authorities, when discharging any of their functions, to have regard to the views of the public concerning policing. This duty is intended to complement the duty of police authorities, under s.96 of the Police Act 1996, to obtain the views of the public concerning policing.

The SCYJ is concerned about how this proposal may impact on children and young people. The Children's Commissioner for England has referred to a widely held fear of children within our society and the negative portrayal of young people in the media.² In this context there is a significant risk that public opinion (as distinct to informed public judgment), based on negative stereotypes of young

¹ UN committee on the rights of the child, 49th session, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, 3 October 2008 (CRC/C/GBR/CO/4).

² The UK children's commissioners report to the UN committee on the rights of the child (2008)

people, could result in policing priorities that are skewed against the interests of this group. This could seriously undermine existing multi-agency partnership approaches both within and without the criminal justice sector to tackling youth crime.

It is also vital that consideration is given to the question of how the police will ensure that they obtain the views of children and young people themselves. The Government's recent Youth Crime Action Plan (YCAP) recognised the high incidence of children and young people, as victims of crime and this must be reflected in these provisions.

We urge Members to seek further information from the Government about how the police will canvass public opinion about what policing should focus on and how specifically this will include the views of children and young people.

PART 2: SEXUAL OFFENCES AND SEX ESTABLISHMENTS

Prostitution

Part 2 (clauses 13, 14 and 18) creates a range of new offences, including paying for sexual services of a controlled prostitute and soliciting. The SCYJ strongly believes that a welfare-orientated response rather than a punitive one should be taken to young people under the age of 18 who may be engaged in such activities. **These offences must not apply to under 18s.**

Clause 15 amends the offence of loitering or soliciting for the purposes of prostitution, as set out in s.1 of the Street Offences Act 1959 ("the 1959 Act"). The section currently makes it an offence for a "common prostitute" to loiter or solicit in a street or public place for the purpose of prostitution. Subsection (2) removes the term "common prostitute" from s.1 of the 1959 Act, but inserts the word "persistently".

The SCYJ regrets that, despite the Government's repeatedly stated intention to make clear that involving children in prostitution is a form of child abuse, this Bill does not abolish the power to prosecute of a child over the age of ten for offences under s. 57 Street Offences Act 1959 which this clause amends. The UNCRC criticised this position its recent concluding observations on the UK recommending that '*... the State party should always consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders.*' During the passage of the Criminal Justice and Immigration Act 2008 the Minister, Vernon Coaker gave an assurance that the Government would give further consideration to this matter and we are therefore disappointed not to see the legislation amended in this Bill.³

The numbers of children aged under 18 who have been prosecuted under s. 57 are extremely low – one prosecution and two cautions in 2005.⁴ However even though the levels of prosecution are very low the fact that the offence remains is potentially very damaging, not least because the young people on the street are not aware of that. What they will know, or be told, is that it continues to be illegal and therefore they are at risk of prosecution. That alone is likely to make a young person sceptical of working with the authorities. Even more worrying, however, is research that suggests that continuing to criminalize young people in this way actively assists the controlling influence of those who exploit young people through prostitution. It has been demonstrated that 'pimps' of young prostitutes are able to exercise control by threatening to report them to the police. The use of threats within domestic child abuse literature demonstrates that such threats can seem real and exercise a controlling influence over a child or young person and yet again this literature appears to be ignored.⁵

³ Hansard, House of Commons Tuesday 27th November. Column 537ff

⁴ *ibid.*

⁵ Gillespie. A. A., Web Journal of Current Legal Issues (2007) Diverting children involved in prostitution.

The case for decriminalisation is further underlined by clauses 13 and 14, the effect of which, if passed un-amended, will be to make it more likely that children involved in prostitution will become even less visible.

Closure Orders

Clause 20 and Schedule 2 insert a new Part into the Sexual Offences Act 2003 granting the courts the power to close, on a temporary basis (for an initial period of up to three months and not more than six months), premises being used for activities related to certain sexual offences. The provisions are very similar to those in Part 1 of the Anti-Social Behaviour Act 2003, which relate to closure orders in respect of premises where Class A drugs are used unlawfully and s.118 of the Criminal Justice and Immigration Act 2008, which relate to closure orders in respect of premises associated with persistent disorder or nuisance.

These powers enabling the temporary or permanent closure of premises used for trafficking or child sexual exploitation are requirements of the Council of Europe conventions on trafficking and the protection of children against sexual exploitation and abuse and as such we recognize that they have an important role to play in safeguarding children who are victims of sexual exploitation. However where a premises closure order is being considered, **we seek assurances that the local authority must first take into account the needs of any children who may be made adversely affected as a result of the closure order being made.**

Orders imposed on sex offenders

We welcome the effect of **Clause 22 (1)** that amends any reference to children under 16 in s.115 and s.116 of the Sexual Offences Act 2003 to under 18. This raises the age of a child that must be at risk in order for a foreign travel order to be made, and alters the criteria determining which offenders qualify for a foreign travel order, to include those that have committed sexual offences against children under 18, rather than offences against children under 16.

PART 3: ALCOHOL MISUSE

Confiscating alcohol from young persons

Clause 28 amends the police's power to confiscate alcohol from young people in a public place so that they no longer need to prove that the individual intended to consume the alcohol. This amendment also requires the young person to give their name and address to the police, and allows the police to return the individual to their home or a place of safety if they are under 16.

We do not consider confiscation to be the best way to deal with young people drinking outdoors and are concerned that such an approach could antagonise young people, resulting in conflict between them and the police. The clause is more problematic than the previous confiscatory powers since a 15 year old may be taking the alcohol home - where he or she can legally drink it - if there is no link to public consumption.

We are further concerned that the power to return the individual to their home or a place of safety is very broadly drafted. A similar power in s. 30 of the Anti-social Behaviour Act 2003 to remove persons under 16 to their place of residence can only be exercised when certain conditions are met, that is to say it can only be used between the hours of 9pm and 6am and only where the relevant officer has grounds for believing that any members of the public has been intimidated, harassed, alarmed or distressed by the presence or behaviour of groups in the locality and where anti-social behaviour is a significant and persistent problem.

In response to the YCAP, the SCYJ cautiously welcomed *Operation Stay Safe* under which the Police use existing child protection legislation to remove children and young people from the street

late at night to a 'place of safety', but expressed concern that it was being used under the banner of controlling anti-social behaviour and that it should not result in children being swept off the streets.

Children should only be 'removed to a place of safety' if they are at risk of harm as defined by the Children Act 1989. The interpretation of 'at risk' and 'place of safety' need careful consideration in this context.

Clause 29: Offence of persistently possessing alcohol in a public place

Clause 29 introduces a new offence of persistently possessing alcohol in a public place. Under 18s can be prosecuted for this offence if they are caught with alcohol in a public place three times within a 12-month period. The maximum punishment is a level two fine (currently £500).

We do not agree that this new offence is either necessary or helpful. For young people who are drinking at harmful levels and getting into trouble, the most effective method of supporting them will be through voluntary access to education and treatment, rather than through drawing them into the criminal justice system.

Furthermore clause 29 involves the criminalisation of children by the creation of an offence that does not even have a functional analogy in the case of an adult and appears to blur non offending and offending behaviour in an unhelpful way (it is not illegal if you do it once or twice, it is not illegal if you do it 10 times over a period of 4 years, but it is illegal if you do it once every 4 months within a given year). We anticipate serious difficulties in implementation, as this would require the police to record any child in possession of alcohol in a public place in case that incident subsequently becomes an element in a substantive offence if the other two elements are committed. Finally the drafting of the phrase '*without reasonable excuse*' requires further clarification, as it is very broad and potentially subjective.

Clause 30: Directions to individuals who represent a risk to disorder

Clause 30 extends the police's powers to issue Directions to Leave under s. 27(1) of the Violent Crime Reduction Act 2006 so that they can be issued to persons aged 10-15. S. 27 grants a power for a police constable to issue an individual with a direction to leave a locality for up to 48 hours. A direction may be issued if an individual in the locality is likely, in all the circumstances, to cause or contribute to the occurrence, repetition or continuance of alcohol-related crime or disorder in that locality and the direction is necessary to remove or reduce that likelihood.

We do not agree that the Directions to Leave power should be extended to included 10-15 year olds. As outlined above we believe that a welfare-orientated response rather than a punitive one should always be taken to young people in this age group and where there are child protection concerns they should be referred to social services and relevant protocols followed. The criteria for use of the power are again extremely broad and moreover there is already legislation that allows the police to confiscate alcohol and to deal with being drunk and disorderly / incapable as an offence.

There are no requirements in the provisions to ensure that a child who was required to leave a location is adequately safeguarded. There is, for example, no requirement for the child to have access to an independent adult to explain the implications of the Directions but if he or she refuses to comply or comes back within 48 hours, he or she commits an offence.

In light of these concerns we would like not only to see this clause deleted from the Bill but also s.27(1) amended to exclude 16 and 17 year olds.

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.

Members are: Action for Children, Association of YOT Managers, Barnardo's, Catch22, Children Law UK/TACT, The Children's Society, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, NSPCC, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA and VOICE.

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