

the Howard League for Penal Reform

Criminal Justice and Courts Bill, House of Commons Committee Stage Secure Colleges: use of restraint (Schedule 4) March 2014

Introduction

The Criminal Justice and Courts Bill (the Bill) legislates for the introduction of secure colleges (SCs) as a form of youth detention. The Bill allows children detained in SCs to be restrained in order to maintain good order and discipline.

Please support Amendment 36

Amendment 36 – limits the circumstances in which restraint may be used in SCs to those where there is an imminent threat of injury:

Schedule 4, page 75, line 26, leave out from 'where' to end of line 27 and insert 'a young person poses an imminent threat of injury to himself or others, and only when all other means of control have been exhausted.'

Restraint and the use of force

The Bill sets out that an SC custody officer may "use reasonable force" "to ensure good order and discipline" (GOAD), "if authorised to do so by secure college rules" (Schedule 4, (8(c)) and (10)). The use of force for GOAD is dangerous and unlawful and should be prohibited. The Bill should be absolutely clear about the circumstances in which force can be used and should prevent SC officers from using force to maintain GOAD.

- The use of force to maintain GOAD has been linked to the deaths of children in custody.
- The term "GOAD" is so broad, that it will allow force to be used in almost any situation.
- In 2008 the Court of Appeal ruled that the use of force for GOAD was unlawful because it amounted to "inhuman or degrading treatment" and the Government had not shown that use of force to maintain GOAD was necessary. The Rules thus breached Article 3 of the ECHR.¹
- Allowing force to maintain GOAD in SCs would be unlawful, given the 2008 judgement. There has been no significant change in circumstances which is likely to make the use of force "necessary" for GOAD now, when it was not necessary in 2008.
- The Government could limit the use of force in Secure College Rules, but these are yet to be drafted. The Government plans to introduce them via Secondary legislation.
- This matter is too important to be left to Regulations, particularly since Secondary Legislation is subject to less scrutiny.
- The courts have found that the confusion between the primary and secondary legislation relating to the use of force in secure training centres (STCs) resulted in the widespread illegal restraint of children for GOAD in the STCs.² Primary legislation needs to be clear and definitive on this issue.
- In addition, wide ranging use of restraint would not be compatible with the UN Convention on the Rights of the Child.³ The UN Committee on the Rights of the Child has urged the United Kingdom: "to ensure that restraint against children is used only as a last resort and exclusively to prevent

harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished". Last year, the UN Committee against Torture reiterated this recommendation.⁴

- **Please support amendment 36 which limits the circumstances in which SC custody officers can use force against children, and prevents their using force to maintain GOAD.**

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The contents of this document do not necessarily reflect the views of all member organisations of CRAE and the SCYJ.

¹ R (on the application of C) (a minor) v Secretary of State for Justice [2008] EWCA Civ 882

² Confusion between the Criminal Justice and Public Order Act 1994 and the Secure Training Centre Rules resulted in illegal restraint of children for GOAD in the STCs. (See *R (on the application of C) (a minor) v Secretary of State for Justice [2008] EWCA Civ 882*)

³ In 2010 the government made a commitment to have regard to children's rights when developing law and policy affecting children. Article 19 of the the UN Convention on the Rights of the Child (UNCRC) protects children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Article 37 of the UNCRC requires state parties to ensure that every child deprived of liberty shall be treated with humanity and respect for their inherent dignity. The proposals to authorise the use of restraint techniques run counter to these provisions.

⁴ Committee Against Torture (May 2013) Concluding Observations on the Fifth Periodic Report of the United Kingdom, adopted by the Committee at its Fiftieth Session (6–31 May 2013)