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**Potential breaches of the UN Convention on the Rights of the Child
arising from the
Criminal Justice Bill**

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Context

The Criminal Justice Bill is currently going through Parliament. It is now in its final stages and will be law by the time the Committee examines the UK Government delegation. It represents a fundamental assault on civil liberties both in terms of erosion of civil freedoms that currently

exist within the UK, and the powers it gives to the courts to sentence children and young people.

It will:

- introduce secure training centres for 12-14 year olds
- double the maximum prison sentence for 15-17 year olds from 12 months to two years
- extend the powers of the courts to imprison 10-13 year olds convicted of serious offences for extended periods.

It is important to recognize that the age of criminal responsibility in EW and NI is 10 years (8 in Scotland). Until now, this low age limit has to some degree been tempered by a provision in common law that in criminal cases involving 10-14 year olds that the judge must ascertain that they understood the difference between right and wrong before determining the guilt or otherwise of the child (a principle known as *Doli Incapax*). However, it has now been held by a judge in a recent case to be an inappropriate and outdated concept which should no longer be applied. In other words, children from 10 years old (8 in Scotland) are now held to be fully accountable without exception for their actions in criminal proceedings.

Furthermore, new guidance has recently been issued by the Home Office to police warning against excessive use of cautioning. In many areas this guidance is being interpreted as meaning that only one caution should ever be given to a child. This means that children from the age of 10 can be prosecuted after committing only one possibly very minor offence.

The combined impact of these changes will mean **more** children being prosecuted in the courts who will have far **greater powers to imprison children at earlier stages of criminal activity and in respect of younger children**. We would argue that they will lead to breaches of Article 37((a)(b) &(c), Article 9, Article 40(1) &(4)

Secure Training Centres

The Bill introduces secure training centres - prisons to which children aged between 12-14 years will be sentenced for 12 months at a time, followed by a period of 12 months community service during which a child can be recalled to prison. Courts will be able to make these orders where a child has committed three offences which would be imprisonable if committed by an adult, and has been found to have breached a supervision order.

Represents breach of Article 37(b) - The Government argue that these centres are necessary to tackle the problem of persistent offenders who have failed to respond to other forms of intervention. In fact secure training order can in effect be triggered by 3 comparatively minor offences, an imprisonable offence although it sounds serious can in fact be a very minor theft. A possible scenario might be a 12 year old child who receives a caution for a first attempted theft from a local shop, followed by a supervision order for a second similar offence. If the child on a subsequent occasion, committed two more offences, of burglary or theft, leading to a second court appearance, and having failed to turn up for a meeting required by his or her social worker, that child could be sent to a secure training centre for a year.

In other words having committed four offences in total and after only two court appearances, the grounds for a secure training order would have been met. This cannot be consistent with the requirement to use imprisonment "as a measure of last resort and only for the shortest possible period of time".

Represents a breach of Article 9, there will be only 5 centres each able to accommodate 40 children. It will be inevitable that many children will be placed a considerable distance from their homes. For example, for children living in West Wales, the nearest centre will be in Oxford, as much as 200 miles away. Evidence that demonstrates the importance of maintaining family contact if the child is to be reintegrated back into the community and diverted from future criminal activity. The Government defend themselves against criticism that family contact will

be severed arguing that the centres will strive to encourage family visits and contact including paying for travel costs. However, realistically it will not be possible for families at those distances to maintain regular visits. Invariably those families whose children get caught up in the criminal justice system are amongst the poorest in our society. Most will not have access to their own transport, most will have other children for whom they will not be able to afford child care during visits, many will not be able to afford the time to undertake weekly visits over hundreds of miles over a 12 month period. Without those sustained high levels of contact, the right of the child to *"maintain personal relations and direct contact with both parents on a regular basis"* will not be respected.

Represents a breach of Article 40(1)&(4) - The Government argue that the centres will be entirely consistent with the requirement to promote the child's sense of dignity and to recognize the desirability of promoting the child's reintegration into society and assuming a constructive role. However, all the facts demonstrate that the use of custodial sentences are very substantially ineffective as a means of diverting the child from crime and enabling them to pursue a constructive role. All past attempts - borstals, approved schools, the short sharp shock regimes produced a recidivist rate of between 80-85% They do not work. Indeed, the Home Office itself had acknowledged this until the introduction of the current legislation. There has until now been a broad consensus between all those involved in youth justice, police, courts, probation, children's organisations, politicians, magistrates that community based disposals were the most effective and humane means of responding to youth crime and diverting young people into more socially acceptable behaviours. These new prisons are not consistent with the requirement to ensure that children are dealt with "in a manner appropriate to their well-being and proportionate to their offence", nor will they facilitate the child's reintegration into society. They will in fact achieve the opposite and in a majority of cases reinforce the criminal behaviour and deny the child opportunities which are known to be effective for crime diversion.

Represents a breach of Article 37(a) - it is proposed that these centres will be used for both boys and girls. Given the lower rates of offending amongst girls it is likely that there would only be one or at most two girls in any centre at any given time. It will therefore be impossible to cater adequately for their needs. The facilities will inevitably be primarily if not exclusively designed for boys. In addition it is likely that girls in these circumstances would be subject to harassment, extreme social isolation and vulnerability and to place them in such accommodation would constitute *"cruel, inhuman and degrading treatment"*.

Represents a breach of Article 37(c) - the new centres will be run by the Home Office and not the Department of Health and as such will not be run on the principles established under the Children Act which are rooted in the principle of the welfare of the child as the paramount consideration. Draft rules published earlier this year indicate much lower standards of care than those prescribed under the Children Act regulations. eg. in the new centres, staff will be instructed to "not use force unless it is necessary to do so and when force is necessary no more force than is necessary shall be used". These instructions give far more latitude than is allowed in DH secure units, where staff are restricted to using physical force only in those situations where a child is injuring him or herself or assaulting others. Young people will be able to be strip searched, locked in isolation, denied family contact and the draft rules make no mention of the risks of self harm and potential suicide and steps necessary to prevent them. Yet there have been 45 suicides amongst young people under 20 in prisons in the past 5 years. The numbers of young people who have attempted suicide or self-injury is far higher. Amongst 12-14 year olds who are clearly even more vulnerable and more likely to experience depression and loss at the separation from their families, the risks are obviously greater. There is real cause for concern that these new centres, managed under the ethos of imprisonment and punishment rather than welfare and care, will expose young people to very real possibility of self-harm as well as bullying which is known to be endemic in penal institutions in this country. These risks would appear to breach the requirement in Article 37(c) that children deprived of liberty must be *"treated with humanity and in a manner which takes into account the needs of persons of his or her age"*.

Extended sentencing powers

At the same time as introducing new prisons for children, there are proposals to double the length of sentence for 15-17 year olds in prison from one to two years. There is no evidence that could possibly justify this increase. It is generally believed that the change is only being introduced in order to equalize the maximum period of imprisonment for this age group with the sentence being introduced under the new secure training orders. Indeed as argued earlier all the evidence that does exist points to the failure of imprisonment to serve as a means of diverting young people from crime. It cannot possibly be consistent with the requirement in Article 37(b) to imprison for the shortest possible period of time to introduce this change.

Changes are also being introduced to give the courts powers to detain young people aged 10-13 for long periods for "serious" crimes which can in fact include aggravated burglary. Hitherto only young people convicted of murder could receive long sentences in penal custody. There has always been provision within the welfare sector to lock up under 13s if they pose a danger to themselves or others. The new sentences are fixed term and will always be made for more than a year which will represent a violation of Article 37(b).

Conclusions

This legislation clearly violates Articles 37, 9 and 40 of the Convention. It seeks to undermine the constructive consensus that had developed in response to juvenile crime and which sought to find solutions aimed at diversion within the community. These measures not only shift the emphasis from treating young people as people first and criminals second but fly in the face of all the evidence available on criminal behaviour amongst young people.

If this Bill becomes law, the Government will be in clear breach of its obligations under the Convention and it will take treatment of offenders back 20 years, losing sight of all the lessons that have been learned meanwhile.

We would therefore urge the Committee to seek clarification from the UK Government on whether it has considered the implications of the legislation in the light of those obligations.

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