

## **Inhuman sentencing of children in the United Kingdom**

Briefing for the 27th session of the Human Rights Council Universal Periodic Review in April 2017, submitted by the Child Rights International Network ([www.crin.org](http://www.crin.org)), September 2016.

### **Inhuman sentencing of children in the United Kingdom**

1. In England and Wales, life sentences in the form of “detention during Her Majesty’s pleasure” are lawful for offences committed while under the age of 18. In Northern Ireland, the corresponding sentence of detention “during the pleasure of the Secretary of State” fulfils the same function and in Scotland the sentence of “detention without limit of time” functions as a life sentence for persons convicted of offences while under the age of 18.

2. In England and Wales, children can be held criminally responsible from the age of 10<sup>1</sup> and Northern Ireland also sets the minimum age of criminal responsibility at 10.<sup>2</sup>

3. In Scotland no child under the age of 8 can be found guilty of a criminal offence,<sup>3</sup> no person under the age of 12 may be prosecuted for an offence and no person older than 12 may be prosecuted for an offence committed while under the age of 12.<sup>4</sup> The gap between the minimum age of prosecution and the minimum age of criminal liability means that criminal offences committed between the age of 8 and 12 may be included on a child’s criminal record, though a prosecution may not take place. As of July 2013, the Scottish Government said it “[would] consider calls for the minimum age of criminal responsibility to increase”.<sup>5</sup>

### **The legality of inhuman sentencing of children**

#### ***England and Wales***

4. Detention during Her Majesty’s pleasure is a mandatory sentence for murder committed while under the age of 18<sup>6</sup> and mirrors life imprisonment sentences for adults. The sentence includes a tariff period, which is the minimum period of detention that a convicted person must serve. When a tariff period has been completed, the offender becomes eligible to be released on licence, but subject to the order of the Secretary of State as directed by the Parole Board. If released, a person subject to a life sentence is referred to as “on licence”, by which it is meant that he or she is subject to certain requirements which may involve supervision or limitations on movement. Should the requirements of the licence be breached, the person on licence can be “recalled”, that is returned to custody without conviction. It is comparatively rare for a person on a life sentence to remain in custody for his or her entire

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<sup>1</sup> Children and Young Persons Act 1933, Section 50. Available at:

<http://www.legislation.gov.uk/ukpga/Geo5/23-24/12>.

<sup>2</sup> Criminal Justice (Children) (Northern Ireland) Order 1998, Article 3. Available at:

<http://www.legislation.gov.uk/nisi/1998/1504/article/3>.

<sup>3</sup> Criminal Procedure (Scotland) Act, Section 41. Available at:

<http://www.legislation.gov.uk/ukpga/1995/46/contents>.

<sup>4</sup> The Criminal Procedure (Scotland) Act 1995, Section 41A(1)-(2).

<sup>5</sup> The Herald Scotland, “Dismay as reform fails to stop criminal records for children” 1 July 2013.

Available at:

<http://www.heraldscotland.com/news/home-news/dismay-as-reform-fails-to-stop-criminal-records-for-children.21493503>.

<sup>6</sup> Criminal Courts (Sentencing) Act 2000, Section 90.

life, but all persons serving life sentences are subject to detention should they not fulfil the requirements of their licence.

5. When determining the tariff, the Criminal Justice Act 2003, sets out a series of “starting points” - the minimum term to be served in detention proportionate to the severity of the offence.<sup>7</sup> According to the specifics of the offence, the court must then deduct terms of imprisonment for mitigating factors and add years for aggravating factors. When a person is being sentenced to life imprisonment for an offence committed while under the age of 18, the starting point used to calculate the minimum term is 12 years.<sup>8</sup>

6. “Detention for public protection” (DPP) in many ways also acts as a life sentence for people convicted of offences while under 18.<sup>9</sup> The sentence has been abolished, but people who received DPP sentences while the provisions were in force continue to serve those sentences. As with a life sentence, a person sentenced to DPP must serve a minimum period of detention before he or she could be considered for release on licence. Unlike a life sentence, however, the sentence can be brought to an end by the Parole Board when an offender has been released on licence for 10 years and has not been recalled to detention.<sup>10</sup>

### ***Northern Ireland***

7. Any person under the age of 18 who would be sentenced to life imprisonment but for his or her age, must be sentenced to be detained “during the pleasure of the Secretary of State” in such conditions as the Secretary of State may direct.<sup>11</sup> Persons serving life sentences in Northern Ireland are given a “tariff period”, which is the minimum period to be served in detention. After the tariff period expires, the person serving the sentence becomes eligible for parole. The Parole Commission of Northern Ireland will consider release approximately 6 months before the expiry of the tariff period, and every two years should parole be refused. When released on parole from a life sentence, “licence” conditions are applied which place restrictions and requirements on the person serving the sentence. Should a person breach the conditions attached to their license, they are subject to recall to custody.<sup>12</sup>

### ***Scotland***

8. Persons under the age of 18 at the time of committing murder must be sentenced to “detention without limit of time”.<sup>13</sup> As is the case with DHMP in England and Wales and DSSP in Northern Ireland, a person sentenced to detention without limit of time must serve a minimum tariff period before being considered for release on licence and may be recalled to detention for breach of any of the conditions of release.

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<sup>7</sup> See Criminal Justice Act 2003, Schedule 21.

<sup>8</sup> Criminal Justice Act 2003, Schedule 21, Section 7.

<sup>9</sup> Crime (Sentences) Act 1997, Section 34(2)(e) provides that for the purposes of Part II Ch. II, “life sentence” includes a sentence of detention for public protection under Section 226 of the Criminal Justice Act 2003.

<sup>10</sup> Criminal Justice Act 2003, Schedule 18, Section 31A (amending the Crime (Sentences) Act 1997).

<sup>11</sup> The Criminal Justice (Children) (Northern Ireland) Order 1998, Article 45(1).

<sup>12</sup> See the website of the Parole Commissioners for Northern Ireland for further information:  
<http://www.parolecomni.org.uk/index.htm>.

<sup>13</sup> The Criminal Procedure (Scotland) Act, Section 205(2)

## **Inhuman sentencing in practice**

### ***England and Wales***

9. Between 1995 and 2013, 361 people were sentenced to detention during Her Majesty's pleasure under the provisions applicable for offences committed while under the age of 18. Since 2004, the average minimum term to be served before being considered for release on licence has also been recorded. This figure varies from year to year from a low point of 9.6 years in 2004 to a high point of 14.6 in 2012.<sup>14</sup>

10. As of November 2011, the Ministry of Justice reported that it did not hold the details of the number of people currently serving detention at Her Majesty's pleasure. In response to a Parliamentary Question, then Justice Minister Lord McNally acknowledged that "[m]any offenders sentenced to be detained at Her Majesty's Pleasure as children will have passed their 22nd birthday and will therefore now be being managed as life sentenced prisoners." Data was available for individual case management, but not held for statistical purposes. This practice meant that the government was not able to identify how many of the people held within the prison population were being held as a result of being sentenced to detention at Her Majesty's pleasure or how long they served in detention in practice.<sup>15</sup>

11. According to figures published by the Ministry of Justice, 325 people were made subject to Detention for Public Protection for offences committed while under 18 while the sentence was lawful.<sup>16</sup> Of the people serving these sentences, six remained in detention according to figures provided by the Ministry of Justice following a freedom of information request.<sup>17</sup>

### ***Northern Ireland***

12. CRIN has been able to obtain very limited information on the number of people sentenced to be detained at the Secretary of State's pleasure (DSSP) in Northern Ireland. As of 10 August 2004, there were three people so detained.<sup>18</sup> It is not clear whether those sentenced to DSSP who were no longer classified as young offenders were included in the figures.

### ***Scotland***

13. Between 2001 and 2011, 113 "young offenders" were sentenced to detention without limit of time in Scotland. Unfortunately, these figures published by the Scottish Government include persons up to the age of 21, so it is not possible to identify how many people were under the age of 18 at the time they committed the relevant offence.<sup>19</sup>

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<sup>14</sup> Figures provided by the Ministry of Justice in response to a freedom of information request. The full response has been retained on record and can be provided on request.

<sup>15</sup> Hansard, HL Deb, 16 November 2011, c. 170w. Available at: <http://www.theyworkforyou.com/wrans/?id=2011-11-16a.170.3&s=2011-11-15..2011-11-17+section%3Awrans+speaker%3A13129#g171.0>.

<sup>16</sup> Sentencing tables: September 2012, Table Q5.7. Available at: <https://www.gov.uk/government/statistics/criminal-justice-statistics--2>.

<sup>17</sup> Full response to the freedom of information request has been kept on file.

<sup>18</sup> Northern Ireland Yearbook 2005, p. 132.

<sup>19</sup> The Scottish Government, "Statistical bulletin - crime and justice series: Part 7" 2011.

14. Because of the length of sentences, it is difficult to estimate how long a person sentenced to DWLT would serve in detention if convicted today. However, the Scottish Government conducted analysis of people serving such sentences between 1965 and 1996, which gives an indication of how these sentences were used across a sustained period and how they compare to other forms of life imprisonment sentence. Between January 1965 and December 1996, 127 males and 2 females were sentenced to DWLT for murder. Analysis of 67 people who had been released from detention while serving DWLT sentenced indicated that the average time spent in detention was 10 years and five months compared to 11 years and one month for mandatory life sentences in general across the same period.<sup>20</sup>

### **The review of the United Kingdom by the Human Rights Council**

15. In light of the international consensus against the imposition of life imprisonment for children<sup>21</sup> and the recognition of the Special Rapporteur on torture that this sentence amounts to cruel, inhuman or degrading treatment when imposed on children<sup>22</sup> as well as specific recommendations to the United Kingdom by the Committee on the Rights of the Child,<sup>23</sup> we urge States to recommend that the United Kingdom:

- Enact and enforce legislation explicitly prohibiting all forms of life imprisonment for any offence committed while under the age of 18, including detention during Her Majesty's pleasure, detention at the Secretary of State's pleasure and detention without limit of time;
- Review the sentences of people sentenced to detention for public protection;
- Raise the minimum age of criminal responsibility.

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<sup>20</sup> The Scottish Government, "Life sentence prisoners in Scotland", 1999, Chapter 4. Available at: <http://www.scotland.gov.uk/Publications/1999/05/ee951c69-5631-4322-a3f9-d33837d34433/Q/pno/7>.

<sup>21</sup> Human Rights Council Resolutions A/HRC/24/L.28, para. 22 and A/HRC/25/L.10, para. 8(g). Report of the Secretary-General on the question of the death penalty, A/HRC/C/27/23, 30 June 2014, para. 74. General Assembly Resolution, A/RES/67/166, 20 March 2013, para. 18.

<sup>22</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, para. 74.

<sup>23</sup> Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/5, 12 July 2016, para. 79(c): "Abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18"