



Ministry  
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BILLS (13-14) 133

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### CRIMINAL JUSTICE AND COURTS BILL PART 2 (YOUNG OFFENDERS)

Thank you for your letter of 12 March 2014. I am grateful for the opportunity to set out how the provisions in the Bill which relate to Secure Colleges impact upon the rights of children.

**Q1: Please provide a Memorandum containing the Government's analysis of the implications of any provisions in Part 2 of the Bill for the rights of children in the UN Convention on the Rights of the Child, and of relevant international standards, including in particular the UN Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the UN Guidelines for the Prevention of Juvenile Delinquency Deprived of their Liberty. In your Memorandum, please explain the Government's view of why the provisions in Part 2 are compatible with those standards.**

I am content that the provisions in Part 2 of the Bill are compatible with the standards the committee has referred to.

The UN Convention on the Rights of the Child (UNCRC), along with the UN Rules for the Protection of Juveniles Deprived of their Liberty, the Riyadh Guidelines and the Beijing Rules, are of fundamental importance in securing the rights of children within the youth justice system.

In particular, the Government notes the UNCRC requirements that the best interests of the child shall be a primary consideration in all actions concerning children (Art. 3), the requirement that the imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (Art. 37(b)), and the requirements that every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances (Art. 37(c)).

It also notes the emphasis placed on suitable and effective education and vocational training in both the UN Rules (see Part E) and the Riyadh Guidelines (see Part B).

As you will be aware, the Bill establishes the Secure College in law as a form of secure custodial accommodation for under-18s. Beyond specifying this legal framework, the legislation does not specify the details of the regime to be delivered within the Secure College. Furthermore, it does not abolish, or indeed alter provisions relating to Young Offender Institutions (YOIs), Secure Training Centres (STCs) and Secure Children's Homes (SCHs).

Much of the content of the international instruments mentioned above is, of course, directed at questions concerning the appropriateness of detention, either as a criminal sentence or during a period of remand. The focus of this Bill is solely on the nature of the secure estate; it makes no provision in relation to the custodial sentencing of young offenders, either in relation to liability to detention or to length of detention.

It is worth making a few general points in relation to the Secure College proposals and their interaction with the guarantees in the UNCRC and the other instruments to which you have referred.

I believe that Part 2 of the Bill promotes the best interests of the child by providing the legal basis for Secure Colleges, which are institutions which will place a significantly greater emphasis on education within the secure estate. As mentioned above, both the UN Rules and the Riyadh Guidelines rightly place significant emphasis on the role of education. As you will be aware, the fundamental aim of the Secure College proposal is a focus on improving the education engagement and attainment of young offenders, as well as providing them with the skills, motivation and self-confidence necessary to help them lead law-abiding lives in the community and contributing to reducing the risk of reoffending. In the Government's response to the *Transforming Youth Custody* consultation we indicated that high quality teaching will be at the heart of a Secure College, with a principal at the core of the leadership team running the establishment.

It will continue to be the case that child and adult detainees are separated. The Secure College is to be an institution occupied solely by those aged under 18 (as is the case in YOIs, STCs and SCHs). The only exception, as is the case now, is where young people turn 18 whilst in youth custody but only have a short period of their sentence remaining. In such circumstances, to prevent unnecessary disruption the young person may remain in youth custody until the end of their sentence.

I accept that the configuration of the under-18 secure estate engages the right of a child to maintain contact with their family through correspondence and visits, save in exceptional circumstances (Art. 37(c)), as well as the ECHR 1950, Art. 8 (which protects a person's right to respect for private and family life). This specific issue is discussed in relation to question 2 below.

**Q2: What consideration has the Government given to the impact of secure colleges on the children's rights to respect for their private life, family life and home in view of the fact that they are likely to be detained some distance from their homes?**

As noted above, the Bill creates the legal framework for Secure Colleges.

The Committee will be aware that the Government proposes to build and operate a 'pathfinder' Secure College in the East Midlands, to open in 2017. The decision to locate the pathfinder in this region was taken on the basis that there is currently a shortfall of youth custodial provision in the Midlands and the east of England. It is anticipated that situating a Secure College in the East Midlands will better align the supply of youth custody to the number of young people remanded or sentenced to custody from this part of the country, and that, as a result young people will be able to be placed in custodial establishments closer to their homes.

Decisions on the withdrawal or closure of youth custodial establishments associated with the opening of the pathfinder will be taken closer to the time and in the light of any changes in the youth custodial population. These decisions will be taken with due regard to the impacts of those decisions in respect of the young people affected by these changes, including on their distance from home.

The Government accepts that where a child is detained, the ECHR 1950, Art. 8 is engaged in relation to the distance between the child's home and the place where the child is detained. See, for example, *R (JM) v Secretary of State for Justice* [2013] EWHC 2465 (Admin), in which the Secretary of State and the Youth Justice Board (YJB) for England and Wales (which is the body which makes commissioning decisions in relation to the under-18 secure estate) successfully defended a challenge which was based on distance from home. The YJB has developed and will continue to develop robust policies which are designed to ensure that both commissioning decisions and individual child placement decisions are compatible with the child's rights under Art. 8. The Secretary of State and the YJB have recognised – and will of course continue to recognise – the need to balance the child's rights with the need to ensure coherent, efficient, safe and flexible secure accommodation across England and Wales.

**Q3: Please provide the Government's assessment of the impact of secure colleges on (1) girls and (2) children under the age of 16.**

The Government is committed to ensuring that all young people who are remanded or sentenced to custody receive access to services which will equip them with the skills, qualifications and self-discipline they need to build a life free from crime. We believe that Secure Colleges have the potential to deliver improved outcomes for all detained young people.

It is the intention that Secure Colleges can accommodate both boys and girls between the age of 12 and 17. This reflects the position in STCs, and also in SCHs where boys and girls aged 10-17 are accommodated.

The enhanced education provision to be delivered in Secure Colleges, and its integration with a range of wider services to rehabilitate young offenders, will achieve

a custodial environment better equipped to raise educational attainment and contribute to reducing reoffending. Both girls and under-15s should be able to benefit from this improved provision.

The Bill itself does not prescribe the size of Secure Colleges. The pathfinder Secure College in the East Midlands will hold up to 320 young people. It will be configured in a campus style with accommodation units of different sizes, enabling girls and younger and more vulnerable children to be accommodated in smaller units with the necessary facilities and levels of staff supervision. Similarly, the education facilities will allow for the separation of different groups of young people to ensure that appropriate safeguarding arrangements are in place, and to recognise the differing abilities and interests of young people,

No decisions have yet been made on who will be accommodated in the pathfinder Secure College. These decisions will be taken close to the opening of the pathfinder in 2017, in light of careful analysis of the needs of the youth custodial population at that time. As the Government's proposals for Secure Colleges are developed we will therefore continue to have regard to the impacts in respect of all young people affected by these changes, their families, staff working within the youth custodial estate, and any other relevant groups.

**Q4: What evidence exists about the implications for child safety of, respectively, large secure institutions such as secure colleges and smaller secure institutions such as secure children's homes?**

We are aware of the arguments made by a number of stakeholders that smaller establishments allow for more contact time between staff and young people than there is in larger establishments. However, neither the Government nor the YJB are aware of any studies that have directly looked at the links between the size of an establishment or unit and the impact on safety, or are any studies looking at impact of contact time between staff and young people.

A 320-place Secure College will allow the Government to meet regional demand for custodial places and provide a broad curriculum and range of services to young people. The size of the pathfinder has been informed by the experience of commissioning youth custodial services and feedback from providers. More important than the size of the establishment to the safeguarding of young people and achieving better outcomes will be the facilities, services and regime available in a Secure College

**Q5: Why has the Government excluded deaths of children under 18 from the scope of the independent inquiry to be conducted by Lord Harris into the deaths in custody of 18-24 year olds?**

The Government take deaths in custody across all age groups extremely seriously and every incident is fully investigated.

A number of actions and processes have recently been undertaken which address issues relating to under-18s. In particular the YJB published a report "Death of Children in Custody: Lessons Learnt, Action Taken" on 20 February. The report sets

out the actions that the YJB has undertaken in order to respond to recommendations, from various sources, following the deaths of children in custody.

Furthermore, there are investigations into a number of recent deaths of children in detention which are ongoing. Until we can take stock of the outcome of all the outstanding inquests there are limitations on what a review could consider if the scope of its inquiry were expanded to the under-18 age group. If the outstanding investigations do collectively raise new and important issues then the Government would consider if any further action is needed.

As well as considering what work was underway to learn lessons for under-18s, the Government also had to consider what terms of reference would make for the most effective inquiry. There are particular issues relating to young adults that make this group potentially vulnerable, including with regards to their transition to adult services, transfers between other services and their relatively lower levels of maturity, that will benefit from a detailed consideration as part of the review.

The youth justice system is quite rightly set up differently to the adult justice system. To bring under-18s into the scope of the Lord Harris Review would have required the review to look at a significantly different system. This would have had an impact on the time it would take the review to make recommendations. Given the seriousness of these issues the Government wants to make recommendations to be made as swiftly as possible where there is the greatest current need. Of course, if lessons are learnt from the review that are considered applicable to under-18s, or to others, then these will be taken into account.

**Q6: Will a draft of the Secure College Rules be published to inform parliamentary scrutiny of the Bill?**

Rules establishing the operational framework for Secure Colleges will be developed to inform the process for procuring an operator for the pathfinder Secure College which will open in 2017. This process will follow the Bill receiving royal assent. A consideration of the terms of the UN Rules for the Protection of Juveniles Deprived of their Liberty will continue to form an important part of our analysis.

**Q7: In light of the decision of the Court of Appeal in the case of *C v Secretary of State for Justice* [2009] QB 647, that rules authorising the use of restraint in secure training centres where necessary for the purpose of ensuring good order and discipline were incompatible with the right not to be subjected to inhuman and degrading treatment and the right to respect for private life, why is it compatible with Articles 3 and 8 ECHR for Schedule 4 of the Bill to authorise the use of reasonable force by a secure college custody officer where necessary “to ensure good order and discipline”?**

**Q8: Will the Government consider amending the Bill to give concrete effect to the Court of Appeal’s judgement in *C v Secretary of State for Justice* by prohibiting the use of force to ensure good order and discipline?**

Questions 7 and 8 relate to the use of force to ensure good order and discipline. The Committee will be aware that these matters were subject to a full debate in Public Bill Committee in the House of Commons on 20th March, in relation to an Opposition

amendment on which the Committee divided. During that debate the Government set out in some detail its position on Bill provisions relating to the use of force to ensure good order and discipline. The Hansard record of the debate is available online at the footnoted address, starting at col. 298.<sup>1</sup>

In *C v Secretary of State for Justice* the Court of Appeal quashed provisions in the Secure Training Centre Rules 1998 (SI 1998/142) which purported to authorise the use of physical restraint for the purpose of ensuring good order and discipline. This was on the basis of inadequate consultation. However, the Court made *obiter* comments that the system of restraint in use engaged the ECHR 1950, Article 3 (which prohibits inhuman or degrading treatment or punishment) and was unnecessary in relation to ensuring good order and discipline, and that the relevant provisions in the Rules breached Article 3 insofar as they authorised physical restraint for that purpose. A similar view was taken in relation to Article 8.

It is important to note that the Court did not say that either the use of force or physical restraint for the purpose of ensuring good order and discipline was of itself incompatible with the Convention rights. The focus of the Court's comments was the specific system in use and its operation, in particular in relation to techniques of restraint which are designed to cause pain and the fact good order and discipline was undefined and appeared to be a broad term.

The Government's position is that there are some situations in which the use of some reasonable force to ensure good order and discipline (in limited and clearly defined circumstances) will be necessary, and that the relevant primary legislation should allow for that possibility.

In terms of the Bill itself, this makes it appropriate and necessary for provision to be made giving Secure College custody officers powers to use reasonable force where necessary to ensure good order and discipline. However, the Bill provides expressly that force may only be used where authorised by Secure College rules. So, importantly, although the Bill provides the framework for the authorisation of the use of force in contracted-out Secure Colleges, it is Secure College rules (and detailed policies) which will set the legal parameters on the use of force, with the necessary and appropriate safeguards. The rules and policy will be carefully designed to ensure that any use of force authorised is compatible with the Convention rights. .

Question 7 asks specifically how the provisions of Schedule 4 are compatible with the Convention rights. The technical answer is that they only authorise the use of force for the purpose of ensuring good order and discipline *where authorised by Secure College rules*. Such rules are made by the Secretary of State under the Prison Act 1952, s. 47(1). The Secretary of State is a public authority for the purposes of the Human Rights Act 1998, s. 6(1), and is therefore obliged – when making rules and promulgating policy – to act compatibly with the Convention rights of a person detained in a Secure College.

It is therefore not proposed to amend the Bill, as suggested in *question 8*.

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<sup>1</sup><http://www.publications.parliament.uk/pa/cm201314/cmpublic/criminaljustice/140320/pm/140320s01.pdf>

If I or my department can be of any further assistance to the Committee during its scrutiny of the Bill, please do let me know.

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**CHRIS GRAYLING**

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