



Joint Committee on Human Rights

Committee Office · House of Commons · London · SW1A 0AA

Tel 020 7219 2797 Email JCHR@parliament.uk Website www.parliament.uk



From Rt Hon Harriet Harman MP, Chair

Rt Hon Theresa May MP
 Secretary of State for the Home Department
 Home Office
 2 Marsham Street
 London
 SW1P 4DF

15 June 2016

Dear Theresa,

As you will be aware, the Joint Committee on Human Rights is currently scrutinising the Government's Policing and Crime Bill, in the light of the requirements of human rights law.

We understand that the Government sees the Bill as a "human rights enhancing Bill" and note that the Bill would amend the Police and Criminal Evidence Act so as to distinguish between the treatment of an adult detainee and a detainee under the age of 18 – a measure which gives protection to those under 18 as required under the United Nations Convention on the Rights of the Child.

I am writing to you today in relation to two matters addressed by the Bill, namely: proposed amendments to the Mental Health Act 1983 and requirements to confirm nationality.

In respect of the first point, the Committee notes that the mental health provisions contained in the Bill are designed to enhance human rights protections. The provisions relating to the reduction in the use of police cells as 'places of safety' (including the prohibition on taking a child to a police station under the proposed new s 136A to the Mental Health Act 1983) are clearly a significant improvement in human rights terms and are to be welcomed. However, the Committee is considering whether some additional safeguards may be needed to protect a person taken to a 'place of safety' under s 135 or 136 of the Mental Health Act 1983. Does the Government consider that in such circumstances a useful safeguard would be to ensure that a person should have the right, either to an independent mental health advocate, or some other representation (perhaps the relative or guardian responsible for that person's care); particularly in circumstances where they are taken to their home as a 'place of safety'. If not, why not?

The second point relates to the provisions contained in Part 9 of the Bill, on requirements to confirm nationality. The Government's ECHR Memorandum acknowledges that these clauses raise potential issues under the European Convention on Human Rights. Although the Government has accepted that Article 14 of the Convention may be engaged in respect of foreign nationals, the ECHR memorandum does not consider any potentially differential impact on BAME UK citizens. The Bill gives a discretion to the individual officer as to whether or not to ask the arrested person to state their nationality. This raises the prospect

of UK nationals who are members of ethnic minorities being more likely to be asked to state and then prove their nationality than other UK nationals. The risk is that individuals may find themselves subject to discrimination contrary to Article 14 of the Convention in conjunction with Article 8. Accordingly, we would ask the Government to address this issue of possible differential impact and explain how this differential impact can be avoided or justified.

An additional issue is that it is not plain from the face of the Bill what the consequences would be for a UK citizen who is unable to comply with a direction to produce a nationality document (defined primarily as a passport). The relevant clause makes clear that a rather loosely defined document that can be used (in some or all circumstances) instead of a passport might suffice. We would like clarification that, in circumstances where a UK national does not have a 'nationality document', it would be enough to provide documentation sufficient to demonstrate a right to such a document. If this is the Government's intention, it may be that this would require a minor amendment to the Bill.

It would be helpful if we could have your reply by 23 June.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'H Harman', with a small dot at the end.

Rt Hon. Harriet Harman

Chair of the Joint Committee on Human Rights