



Police and Justice Bill

Briefing for Report Stage: inspectorate reform and children in custody House of Lords

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Introduction and summary

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.
2. This briefing is intended to highlight two of JUSTICE's main concerns regarding the Police and Justice Bill and the amendments put forward for Report stage. Where we have not commented upon a certain provision in the Bill, that should not be taken as an endorsement of its contents.
3. We support the amendment of the Bill at Report stage in order to:
 - **Prevent the merger of HM Inspector of Prisons with the other criminal justice inspectorates;**
 - **End the use of penal custody for children.**

Inspectorate reform

4. JUSTICE is deeply concerned that the merger of HM Chief Inspector of Prisons with the other criminal justice inspectorates, as envisaged in Part IV and Schedule 9 of the Bill, will lead to a decline in the independence and influence of prisons inspection. In our briefing on the Bill on Second Reading, we said that:

the independent inspection of places of detention, required under the Optional Protocol to the UN Convention Against Torture,¹ has a function that is distinct from inspection regimes based upon improving the performance of public services and encouraging the attainment of government targets. It focuses upon the treatment of those in custody, ensuring that international human rights standards are complied with and that safety is maintained in places of detention.

¹ The UK signed and ratified the Optional Protocol in 2003.

It is necessary, in order to carry out this function, that the custody inspectorate is well-resourced; able to make unannounced visits; and able independently to set its own criteria, grounded in human rights principles, for custodial institutions.

5. The Parliamentary Joint Committee on Human Rights were also concerned about this Part of the Bill, saying that in their opinion without the insertion of specific guarantees listed by them, the regime envisaged 'would not be compatible with the requirement of the Optional Protocol to the UN Convention Against Torture that there be independent monitoring of places of detention at the national level' and would 'give rise to a greater risk of breaches of the human rights of prisoners, in particular their rights to life and not to be subject to inhuman or degrading treatment, because they are likely to lead to less effective monitoring in practice.'²
6. At Committee stage, the Minister, while giving no undertaking on all six safeguards put forward by the JCHR, said that the government would 'use the summer break to look at its proposals in more detail.'³ We welcome the amendments that have been put forward by the Minister that would provide for a requirement that the inspection function in relation to prisons be carried out by actual visits to places of detention, and for an express power to make unannounced inspections.
7. However, the government has failed to address the other safeguards required, in the JCHR's view, to ensure compatibility with the Optional Protocol. These are:
 - a requirement of regularity of visits;
 - stronger guarantees of independence, including removal of the power of ministerial direction;
 - express power for the inspector to set their own standards; and
 - an express requirement that prisons inspection be carried out by reference to human rights standards.
8. We remain of the opinion, therefore, that there are insufficient safeguards in the legislation to ensure that prisons inspection will continue to be carried out to the high standards of the current framework. It should not be forgotten that 173 people died in prison last year, including 78 self-inflicted deaths and 10 others comprising homicide,

² Joint Committee on Human Rights, session 2005-2006, *Legislative Scrutiny: Twentieth Report*, para 1.57.

other non-natural courses or awaiting classification;⁴ that chronic prisoner overcrowding daily affects human rights standards in prisons; that our children in custody have experienced practices that would be called child abuse in any other setting.⁵ At such a time a strong and independent inspectorate is of even greater importance. Further, if the new regime is not compliant with the Optional Protocol to the UN Convention Against Torture, the UK will be in breach of its international obligations and will need to put another mechanism in place to ensure compliance. **We therefore support the amendment of the Bill in order to remove the inspection of places of detention from the functions of HM Chief Inspector of Justice, Community Safety and Custody.**

Children and custody

9. As a member of the Standing Committee for Youth Justice, JUSTICE is very concerned at the high numbers of children in custody in England and Wales and at the prevailing use of Prison Service accommodation – young offender institutions (YOIs) and private secure training centres (STCs) – in preference to local authority secure childrens' homes. The deaths of 29 children in custody since 1990 in YOIs and STCs, and the findings of the Carlile Inquiry, have highlighted the inappropriateness of Prison Service accommodation for vulnerable children and young people. As long ago as 2004, the Joint Committee on Human Rights, in its report on deaths in custody, said that

local authority secure accommodation should be used wherever possible for children, with use of prison service custody reduced to an absolute minimum.⁶

10. The UN Convention on the Rights of the Child requires that '[t]he arrest, detention or 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'.⁷ While the use of custody as a last resort is the government's official policy, this has for too long been a policy that exists in name but is not applied in practice. The UK has been

³ *Hansard*, 6 July 2006, col 462.

⁴ Statistics from INQUEST, www.inquest.org.uk

⁵ Lord Carlile of Berriew QC (2006), *The Carlile Inquiry*.

⁶ Joint Committee on Human Rights, Third Report, 2004-2005, *Deaths in custody*

⁷ Article 37(b).

criticised by the UN Committee that monitors compliance with the Convention: in its concluding observations on the UK in 2002, it said

... the Committee is deeply concerned at the increasing number of children who are being detained in custody at earlier ages for lesser offences and for longer sentences imposed as a result of the recently increased court powers to issue detention and restraining orders. The Committee is therefore concerned that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37 (b) of the Convention. The Committee is also extremely concerned at the conditions that children experience in detention and that children do not receive adequate protection or help in young offenders' institutions (for 15- to 17-year-olds), noting the very poor staff-child ratio, high levels of violence, bullying, self-harm and suicide, the inadequate rehabilitation opportunities, the solitary confinement in inappropriate conditions for a long time as a disciplinary measure or for protection, and the fact that girls and some boys in prisons are still not separated from adults.⁸

11. **We support the amendment of the Bill to provide that children should not be detained in young offenders' institutions or secure training centres.** If passed into law, the implementation of the provision could be delayed in order to ensure that the proper arrangements were in place for accommodating children of different ages and degrees of vulnerability in local authority secure children's homes.

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⁸ CRC/C/15/Add.188, 9 October 2002, para 59.