

# 10 Juvenile Justice

## INTRODUCTION

- 10.1** Our terms of reference invite us to “... address the structure, management and resourcing of the publicly funded elements of the criminal justice system and... bring forward proposals for future criminal justice arrangements...”. Juvenile justice is an important and integral part of the criminal justice system. Early in our consultation process it became clear that a number of organisations were anxious that we should examine the ways of dealing with juvenile crime and the arrangements for managing and delivering juvenile justice. What we say in this chapter must be read in conjunction with our proposals for youth conferencing in Chapter 9. Those proposals form the heart of a new approach, and our thinking on other aspects of juvenile justice is, to an extent, built around them.
- 10.2** This chapter addresses the issues which have been raised with us in the course of our consultation process, including:
- the aims and human rights standards to which the Government should adhere in developing and delivering juvenile justice arrangements;
  - the arrangements for the management of the juvenile justice system;
  - the range of disposals which are available to the courts in respect of juvenile offenders;
  - the way in which the prosecution process and the courts operate in respect of juvenile offenders;
  - the arrangements for the provision of custodial facilities for juveniles; and
  - the age range that the juvenile justice system should cover.
- 10.3** Juvenile offending is a concern in almost every country, and Northern Ireland is no exception. People are most likely to offend when they are young, and for many young people involvement in crime is something that occurs as they make the transition from childhood to adulthood, and which then tails off. A minority of young people appear to start their offending at a very early age and continue to offend more frequently and persistently into adulthood. Juvenile offenders account for much of the petty criminality in society, and for a significant proportion of more serious crimes. It is the responsibility of society as a whole to

provide the opportunities and mechanisms that minimise the likelihood of young people committing offences, and to provide an effective and helpful means to deal with offending that does occur. That is why most countries have developed criminal justice systems and processes which take account of the special needs of juveniles and which emphasise and uphold their fundamental rights.

## Human Rights Background

**10.4** A range of international instruments bear upon juvenile justice arrangements in Northern Ireland, most notably:

- the *European Convention on Human Rights 1950* (ECHR);
- the *International Covenant on Civil and Political Rights 1966* (ICCPR);
- the *United Nations Convention on the Rights of the Child 1989* (UNCRC);
- the *United Nations Guidelines for the Prevention of Juvenile Delinquency 1990* (the Riyadh guidelines);
- the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules); and
- the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990* (RDL).

**10.5** Not all of these instruments have the same nature and status. The ECHR is one of very few instruments to be formally incorporated into the domestic law of the United Kingdom. The other instruments can be divided into two types: those that are considered internationally binding, and those that are not. We consider the nature and status of each of these instruments briefly, noting that they are examined in more detail in the research report on juvenile justice<sup>1</sup>, which is published along with this report, and that the meaning of the terms “binding” and “non-binding” were considered in Chapter 3.

## THE EUROPEAN CONVENTION ON HUMAN RIGHTS

**10.6** The Human Rights Act 1998 formally incorporates the ECHR into domestic law by making it unlawful for a public authority to act in a way that is incompatible with a Convention right. The Convention and the jurisprudence around it, as they relate to juvenile justice, are

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<sup>1</sup> O'Mahony and Deazley, Research Report 17.

regarded as somewhat less advanced than subsequent human rights instruments on the rights of children. The Convention continues, however, to be used to address juvenile justice issues, such as the issues surrounding the trial and detention of T and V in the Bulger case.<sup>2</sup>

## THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) AND THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)

- 10.7** Juveniles are entitled to benefit from all the rights contained in the ICCPR. It was the first global document to contain specific provisions relating to the administration of youth justice including:
- the separation of accused juveniles from adults, and speedy adjudication (Article 10(2)(b));
  - the incarceration of juvenile offenders separately from adults (Article 10(3));
  - provisions relating to public adjudications where the offender is a juvenile (Article 14(1)); and
  - a requirement that criminal procedures shall take account of the age of juvenile offenders and the desirability of promoting their rehabilitation (Article 14(4)).
- 10.8** The UNCRC is more recent and important in relation to juvenile justice. It spans the spectrum of civil, political, economic, social and cultural rights. It focuses specifically on the rights of children up to the age of majority. Articles 37 (torture, capital punishment, and deprivation of liberty) and 40 (juvenile justice) create international standards in relation to juvenile justice.
- 10.9** Although the ICCPR and the UNCRC are not directly applicable in the domestic law of the UK, the courts may use them as persuasive authority in their interpretation of the law. They may also have an impact on the operation of the juvenile justice system and wider criminal justice system in other ways. Although the United Nations does not have the power to enforce binding international instruments directly, it has established a number of international institutions to monitor their implementation and make reports on member countries. Examples include the Human Rights Committee of the United Nations (established under the First Optional Protocol to the ICCPR) and the UN Committee on the Rights of the Child (established under the UNCRC). In addition, the Belfast Agreement specifically invites the Northern Ireland Human Rights Commission to draw on such instruments in defining the scope of additional rights to be constituted in a specific Bill of Rights for Northern Ireland.

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<sup>2</sup> Cases of *T & V v United Kingdom*, at the European Court of Human Rights (App. Nos. 24724/94 and 24888/94), judgments, 16 December 1999.

## NON-BINDING INTERNATIONAL LAW

- 10.10** There are three non-binding international instruments concerning the operation of the juvenile justice system: the *United Nations Guidelines for the Prevention of Juvenile Delinquency 1990* (the Riyadh Guidelines); the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules); and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990* (RDL). Together these instruments address the full range of juvenile justice issues. They set standards covering the prevention of crime, the child's involvement in the criminal justice process, and the conditions under which children may be deprived of their liberty.
- 10.11** These instruments are non-binding in that they have no direct legal impact upon either international or national legislative bodies, and they are purely recommendatory. They serve, however, to identify current international thinking on human rights for juveniles and to inform national and international debate on juvenile justice issues. They represent the minimum recommended standards.
- 10.12** In considering the issues that have been raised with us in the course of the consultation process, and the options for change, we have reflected upon all of the above instruments and sought to develop recommendations that meet and build upon the standards that they set.

## Operation of the Juvenile Justice System in Northern Ireland

- 10.13** There have been very recent changes in juvenile justice legislation, which have led to significant changes in the way in which juvenile justice operates in Northern Ireland. Some of these have only been in operation for a matter of months. This section of the report sets out in brief how the juvenile justice system currently operates. A more detailed description of the history and operation of the system is set out in sections 5 and 6 of the research report.<sup>3</sup>
- 10.14** The juvenile justice system in Northern Ireland deals with those aged 10 years or over and under 17. Because the law presumes children under ten to be *doli incapax* (incapable of crime) they cannot be prosecuted for criminal offences. If they come to the notice of the police in connection with a criminal act they are drawn to the attention of social services and dealt with under child welfare legislation. Those aged 17 or over are deemed to be adults, and are dealt with in the adult courts.

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3 O'Mahony and Deazley, Research Report 17.

**10.15** The first point of contact with the juvenile justice system is the police, who have considerable discretion in how they deal with juvenile offenders. Specialist officers deal with juveniles as part of the Juvenile Liaison Scheme. The officers have four broad options open to them:

- (i) To take no further action.
- (ii) To issue an “informal warning and advice”, in which case the juvenile is warned about the consequences of the behaviour and is given advice about staying out of trouble. This does not form part of the juvenile’s criminal record, but the police do keep a record of the warning for their own purposes.
- (iii) To administer a “formal caution” which does not form part of the juvenile’s criminal record but which can be cited in court at a later date.
- (iv) To prosecute the case through the courts, usually where the offence is particularly serious or the juvenile has a history of previous offending behaviour, and where a formal caution is considered inappropriate.

**10.16** In 1997 just under 13,000 cases were dealt with through the Juvenile Liaison Scheme. No further action was taken in 22% of cases, 56% resulted in informal warning or advice, 12% resulted in a formal caution, and 10% were prosecuted. Trends over the period from 1987 to 1997, and the nature of juvenile offending in Northern Ireland, are set out in the research report.<sup>4</sup>

**10.17** A recent innovation has been the introduction of Juvenile Liaison Bureaux, which built on the Juvenile Liaison Scheme and involve representatives from the police, social services, probation and education. The Bureaux consider cases where the juvenile has admitted the offence and advise on whether he or she should be prosecuted or diverted, for example by way of a formal caution. The final decision remains with the police. Until recently only seven Bureaux were in operation in Northern Ireland. A full-time co-ordinator was appointed in 1998 to extend the number of Bureaux to cover the whole of Northern Ireland and to standardise their operation. Twenty-one Bureaux have now been established across Northern Ireland and there are plans to establish the remaining seven necessary to complete coverage of Northern Ireland in coming months. There are also some plans to extend the role of the Bureaux into “children’s panels”, which would consider cases referred by any of the agencies involved, and which would aim to identify children who are “at risk” of offending, and offer them and their families help before problems arise.

**10.18** A Diversionary Working Group was established in 1997. It is chaired by a Northern Ireland Office official and comprises representatives from the Department of Health and Social Services, Department of Education, the RUC, Health and Social Services Boards, Probation Service, the Youth Service, and Whitefield. Two major voluntary organisations - the Extern Organisation and the Northern Ireland Association for the Care and Resettlement of

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4 O’Mahony and Deazley, Research Report 17, section 5.

Offenders - are also represented on the Group. The aim of the Group is to encourage the development of diversionary approaches for juveniles across Northern Ireland. Whitefield plays a major role in diversionary activity. It operates under the aegis of the Juvenile Justice Board (see below) and is funded by grant from the Northern Ireland Office. It works in partnership with other statutory and voluntary agencies and has developed 12 community-based projects across Northern Ireland. It works with and supports young people who are at risk of involvement in crime, and receives almost two thirds of its referrals from Social Services, the remainder coming from the education sector, Juvenile Liaison Bureaux, the courts and a number of other sources. It can also deal with adjudicated referrals from the Probation Service. It provides programmes tailored to the needs of individuals and their families, with an emphasis on developing life skills, education, training and work opportunities, and individual support to sustain young people in the community.

**10.19** Juveniles are normally dealt with in the youth court, unless they are charged with adults or, in the case of certain serious offences, they are tried in the Crown Court. The youth court has jurisdiction to hear and determine cases brought against children under 17 for offences other than homicide. It is normally constituted by a resident magistrate and two lay panel members drawn from the Divisional Juvenile Court Panel, one of whom must be a woman. The youth court is less formal than the adult magistrates' court, and the public is excluded from the proceedings. There is no dock, there are no wigs and gowns worn in court, and most of the participants sit on the same level. The bench at which the resident magistrate and the two lay panel members sit is normally raised a little above floor level, but not so much as in the adult courts. The prosecution process, however, can be lengthy, and the average time juveniles spend on remand is around 4.5 months.

**10.20** In 1997, 1,814 criminal cases were disposed of in what was then termed the juvenile court and only 22 juveniles appeared in the Crown Court as defendants. Most juveniles appearing before the youth court pleaded guilty and of those who plead not guilty most were acquitted. The nature of juvenile offending is different from that of adults. As the research report notes:

“... the majority of juveniles are proceeded against for property related offences. Proportionately, more juveniles are proceeded against for theft, criminal damage and burglary than adults. Adults are more involved in serious crimes such as violent and sexual offences. It is also clear that the vast majority of juveniles dealt with are male and at the older end of the age spectrum, mostly 14 to 16 years of age, and that the vast majority plead guilty and are simply sentenced by the courts after considering the facts and relevant reports.”<sup>25</sup>

**10.21** The range of disposals available to the courts in Northern Ireland for juveniles includes:

- an absolute or conditional discharge;

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5 O'Mahony and Deazley, Research Report 17.

- a monetary penalty such as a fine, recognizance or compensation order;
- a community order, such as probation, community service (which is only available for those 16 years or over) or an attendance centre order (which is not available in every area in Northern Ireland); and
- a custodial order, such as a juvenile justice centre order (which is available for 10-16 year olds inclusive), detention in a young offenders centre (which is available for 16-21 year olds, inclusive), or for grave crimes, detention at the Secretary of State's pleasure (which is available for 10-16 year olds inclusive) or detention under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (which is available for 10-16 year olds inclusive). In the case of the latter two orders, it is for the Secretary of State to determine where the juvenile should be held.

**10.22** In 1997 probation accounted for 33% of all disposals, conditional discharges 25%, while custody accounted for 19%. The least used were fines (6%), recognizances and absolute discharges (5%) and suspended custodial sentences (3%).

**10.23** The Criminal Justice (Children) (Northern Ireland) Order 1998, which came into force in January 1999, introduced a number of significant changes into the juvenile justice system. The principal aims of the Order were to reduce the number of juveniles remanded in custody and reduce the time sentenced children spend in a custodial setting. The changes that the Order made included:

- the introduction of criteria for remands in custody and a presumption of bail other than in exceptional circumstances;
- the introduction of seriousness and persistent offending as criteria for custody;
- the renaming of the juvenile court as the youth court and training schools as juvenile justice centres;
- the creation of a new determinate juvenile justice centre order of between six months and two years duration, the second half of which is served under close supervision by the Probation Service in the community, to replace the old semi-determinate training school order; and
- allowing time served on remand in custody to count as part of a custodial sentence.

**10.24** Responsibility for the provision of custodial facilities for juvenile offenders rests between the Northern Ireland Office, through the Juvenile Justice Board, which is responsible for the provision of juvenile justice centres, and the Northern Ireland Prison Service. The latter provides young offenders centre facilities and adult prisons. Juvenile justice centres fall into two types: those which are funded by the Northern Ireland Office, but managed by voluntary boards; and those which are managed and funded directly by the Northern Ireland Office. St

Joseph's in Middletown (which provides a very small number of places for female offenders) and St Patrick's in Belfast fall into the former category, while Rathgael in Bangor and Lisnevin in Millisle fall into the latter. Rathgael and Lisnevin are managed by a "Juvenile Justice Board", which is comprised of Northern Ireland Office officials (although it must be said that this arrangement was intended to be temporary, and that it had been decided by the Northern Ireland Office that changes in this area would be delayed pending our report). All juveniles sentenced to or remanded in custody by the courts are sent first to Lisnevin, which is a closed institution, with the possibility of being moved to another centre after their case is considered at a case conference. Case conferences are held weekly.

## Views Expressed During the Consultation Process

**10.25** From a very early stage of the consultation process it became apparent that despite the recent legislative reforms, which were generally welcomed, there were still concerns about the operation and management of the juvenile justice system and the way in which juvenile offenders were treated in Northern Ireland. Around 25% of the written submissions received in the course of the consultation process referred, amongst other issues, to juvenile justice. Issues concerning the treatment of juvenile offenders also generated a great deal of constructive debate in the consultation seminars. Restorative justice emerged as a theme throughout the discussions relating to juveniles, as it does in international comparisons, but comments on the potential application of restorative justice to juveniles, young adults and adults were addressed in the previous chapter.

**10.26** A wide range of issues was raised in the course of the review, including:

- the principles underlying the juvenile justice system;
- the age of criminal responsibility and the age at which young people make the transition from the juvenile justice system to the adult system;
- the need for development and use of diversion at all stages of the juvenile justice process;
- the impact on juveniles of the laws of evidence and in particular those on the right of silence;
- the use of bail and remands in custody for juveniles;
- the way in which the youth court operates;
- the range and nature of disposals available to the courts for juveniles, including the use of indeterminate sentences for grave crimes (Secretary of State's pleasure cases);
- restorative justice;

- the way in which the juvenile justice system, particularly the custodial elements of that system, is operated and managed;
- where political responsibility for juvenile justice should lie, and whether there should be a Minister or Commissioner for children;
- the development of partnership approaches to dealing with juvenile offending;
- the training needs of all juvenile justice personnel, including the legal profession;
- the needs of ethnic minority children and those with learning or other disabilities;
- the need for research into the effectiveness of juvenile justice disposals and diversionary techniques;
- the need to focus resources on dealing with juvenile offenders in the community;
- finding ways in which the views of young people can be taken into account in developing juvenile justice; and
- the extent to which the staff within the juvenile justice system are reflective of the general population.

**10.27** A number of organisations commented upon the need for principles to underpin and inform the operation and development of the juvenile justice system. Some advocated that the principles that might formally be established for the criminal justice system in respect of children and young people should be closely and explicitly based on those underpinning the Children (Northern Ireland) Order 1995. Some argued that the principles underlying the juvenile justice system should be based upon and informed by the Human Rights Act 1998 and international rights instruments as they relate to juvenile justice. Others argued that the welfare of the child should be *the* paramount concern of the juvenile justice system. One consortium of organisations with an interest in children’s rights argued, “an agreed set of principles and values for the criminal justice system as a whole... is to be commended provided they represent legally enforceable standards”. The same group went on to suggest that any statement of principles and values should include statements relating specifically to children to the effect that “... the best interests of the child shall be the primary consideration in all matters affecting him or her... the rehabilitation and reintegration of the child shall be assisted as far as possible... the promotion of the development of the child to full and responsible citizenship shall be supported”. Others expressed similar comments, but argued that the need to protect the public should be the primary concern in the case of serious, persistent and violent crime.

**10.28** Some of those who commented on juvenile justice issues called for the age of criminal responsibility to be reviewed. Some argued that the age should be raised to 14, others that it should be kept under regular review. One noted that “... one of the specific recommendations of the United Nations Committee on the Rights of the Child [in its response to the first

United Kingdom report] was that consideration should be given to raising the age of criminal responsibility”, and that the former Standing Advisory Commission on Human Rights had recommended an inquiry and research into the issue. Others argued that children aged 10-13 years old inclusive must be held accountable for their actions and pointed to the fact that the rebuttable presumption of *doli incapax* had been abolished both in England and Wales and Northern Ireland.

- 10.29** Some organisations recommended that 17 year olds should be brought within the juvenile justice system, rather than being dealt with as adults, suggesting that the current situation was in contravention of the provisions of the *United Nations Convention on the Rights of the Child*. Others agreed but pointed out that there were both practical and welfare problems in housing 10 year olds and 17 year olds together in a custodial environment.
- 10.30** Several of those who commented supported the development of diversion. One commented that “... any criminal justice system which relates to children and young people should have at its core the aim of reducing the number of children who are caught in the system... this is best served by investing in the community and developing projects to divert children from offending”. Another suggested that the opportunities for diversion should be maximised and to this end that the partnership model of youth offending teams introduced in England and Wales should be developed in Northern Ireland. Some also recommended that the resources that the Government expected to save as the use of juvenile custody declined should be ploughed back into diversionary, community-based schemes.
- 10.31** There were calls from some for a review of the law of evidence as it relates to juveniles. Many called for juveniles to be exempted from the provisions of the Criminal Evidence (Northern Ireland) Order 1988 and from the provisions of the Prevention of Terrorism (Temporary Provisions) Act 1989, the Northern Ireland (Emergency Provisions) Act 1996, and the Criminal Justice (Terrorism and Conspiracy) Act 1998. Two groups called for those representing juveniles in criminal cases to undergo specific training in relation to obtaining information from a child and advising a child, and for training about the *United Nations Convention on the Rights of the Child* and other international instruments.
- 10.32** Some groups raised concerns about the use of remands in custody by the courts, believing that too many juveniles continued to be remanded in custody for long periods, despite recent legislation. Some recommended that research should be conducted into the reasons for remands. Others suggested that a lack of bail support and bail hostel facilities might contribute to the perceived over-use of remands in custody by the courts.
- 10.33** There were concerns about the disposals available to the courts for juveniles. Some believed that while prison accommodation is rarely used for children under 17, the use of custody should be restricted further, in that it should not be possible to hold 15, 16 and 17 year olds, whether girls or boys, in prison or young offenders centre accommodation. They wanted the power to transfer those 15 years or over to a young offenders centre to be severely restricted

or removed altogether. Others argued that the courts should have the power to commit 17 year olds to a period of custody in a juvenile justice centre. Some felt that the range of community disposals available to the courts for juveniles was limited, and that some form of community service should be made available for those under 16. Others argued for the abolition of, or at least the review of, the use of indeterminate sentences for juveniles, arguing that their use contravened international instruments.

**10.34** Many of those who commented on the operation of the juvenile justice system recommended a review of the way in which the youth court operates, advocating the development of a more “child-friendly” court. Issues commonly cited were the design and layout of the court, the use of plain English, the need for all those participating in the proceedings to make themselves heard, with procedures which cater for the needs of ethnic minorities and children with learning or other disabilities.

**10.35** We heard a range of views and proposals about the way in which the juvenile justice system should be operated and managed, particularly the custodial elements of that system, and where political responsibility for the system should lie. Many called for a coherent and co-operative approach across agencies to developing and delivering juvenile justice, suggesting ideas such as a Minister with overarching responsibility for children, a Children’s Commission, a Children’s Ombudsman, a Juvenile Justice Board drawing together all those agencies and actors with an interest in juvenile justice, and the creation of a Department for Children. Others called for the management of juvenile facilities to be separated from the development of policy, criticising the current management arrangements, or for responsibility for the provision of care and justice services to be combined within a single organisation. Some were concerned about the centralisation of custodial provision for juveniles, and recommended small, local units to provide custodial facilities. Others took the opposite view, and recommended centralisation to ensure that the scale of the centre was sufficient to enable appropriate education and rehabilitative programmes to be provided for all those in custody or on remand. Some also drew attention to the perceived deficiencies of the complaints mechanisms for juveniles, particularly in custodial institutions, noting the absence of an independent element.

**10.36** We also heard of the need to ensure that staff in the juvenile justice system were reflective of the population of juveniles for which they were responsible, and the need to ensure that staff and sentencers were adequately trained to deal with the particular needs of juvenile offenders.

**10.37** A strong case was made for research into the effectiveness of juvenile justice disposals and diversionary techniques. Most of those who commented on these issues advocated the development of a programme of research into “what works” in Northern Ireland. Some also suggested that the Government should develop innovative new mechanisms for involving young people in the development of policies and services for juveniles, citing a number of participative and consultative models emerging in other fields.

**10.38** This section does not aspire to be comprehensive. A rich variety of issues was raised with us in the course of our consultation process and it is impossible to record all of the views expressed.

## Research and International Comparisons

**10.39** We commissioned a review of relevant research information in respect of juvenile justice, to look at models and systems of juvenile justice in other jurisdictions, to consider accountability mechanisms, to consider the international instruments which bear upon the issues of juvenile justice, and to consider what options existed for juvenile justice in Northern Ireland. As mentioned above, the research report is published along with this report.<sup>6</sup>

**10.40** We do not intend to reproduce the bulk of the material that is included in the report in this chapter. We do, however, think that it is important to draw upon the report and the information we gathered in the course of our study visits to set out a number of themes that are emerging in approaches to juvenile justice in other jurisdictions.

**10.41** The arrangements for juvenile justice were particularly interesting in a number of the jurisdictions we visited. We found Canada, England and Wales, the Netherlands, New Zealand, Scotland and South Africa particularly instructive, for a number of reasons. New Zealand had possibly the most comprehensive care and justice legislation of any of the jurisdictions we visited, and was particularly notable for the development of a comprehensive statutory statement of principles relating to juvenile justice and the development of an integrated mainstream approach to restorative justice for juveniles. Canada had just introduced new juvenile justice legislation which was rights-based, and which also incorporated a statement of guiding principles. Approaches to juvenile justice in England and Wales have been developing apace in recent years. Scotland has long had a very different approach to juvenile justice, based more on a welfare model, while the Netherlands has developed an innovative, simple, and quick approach to dealing with petty juvenile crime that we felt was worthy of consideration. South Africa did not have a recognisable juvenile justice system as such, but is fast developing a comprehensive, rights-based approach as a result of a Law Reform Commission project. We also consider the juvenile justice developments that are likely to flow from the Children's Bill currently before the Oireachtas in the Republic of Ireland.

### CANADA

**10.42** New legislation is being introduced in Canada designed to build upon the arrangements set out in the Young Offenders Act 1984. Important principles of the new Act are:

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<sup>6</sup> O'Mahony and Deazley, Research Report 17.

- proportionate sanctions;
- clear differentiation in the approach to be taken between violent and non-violent offenders; and
- non-court processes for all non-violent first time offenders.

**10.43**

The intention is that the law should be clear and that custody should be a last resort and used only for violent offenders. To achieve this the Act sets out explicit sentencing principles. It will also introduce a mix of rehabilitative and restorative measures and a number of more punitive measures. The Act contains a preamble and declaration of principles that make clear the purpose of the youth justice system. The preamble and principles underscore that protection of society is the primary objective of the youth justice system. The preamble also recognises the UNCRC to which Canada is a signatory. The core principles of the Act state that:

- the protection of society is the paramount objective of the youth justice system, which is best achieved through prevention, meaningful consequences for youth crime and rehabilitation;
- young people should be treated separately from adults under criminal law and in a separate youth justice system that emphasises fair and proportionate accountability, keeping in mind the dependency and level of development and maturity of youth. A separate youth justice system also includes special due process protections for youth as well as rehabilitation and reintegration;
- measures to address youth crime must: hold the offender accountable; address the offending behaviour of the youth; reinforce respect for social values; encourage repair of the harm done to victims; respect gender, ethnic, cultural and linguistic differences; involve the family, community and other agencies; and be responsive to the circumstances of youth with special requirements; and
- parents and victims have a constructive role to play in the youth justice system, and should be kept informed and encouraged to participate.

**ENGLAND AND WALES**

**10.44**

The Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999 have introduced a range of new arrangements and disposals relating to juvenile justice. Under the Crime and Disorder Act all the agencies involved in dealing with juvenile justice at the local level are brought together into youth offending teams. The Act establishes a duty on local authorities to establish such teams and requires chief officers of police, probation committees and health authorities to co-operate. It also sets out the aims of the youth justice system and provides the courts with a number of new sentences for juveniles, including

action plan orders, which require the offender to comply with a three month action plan, supervised by a probation officer, social worker or other member of a youth offending team, and a final warning scheme to replace juvenile cautions.

**10.45** The Act also established the Youth Justice Board, a non-departmental public body, with a monitoring and advisory role. This includes a role in disseminating best practice, providing training, and commissioning and purchasing secure juvenile accommodation.

**10.46** The Youth Justice and Criminal Evidence Act 1999 creates a new sentence of referral to a youth offender panel, available for juveniles convicted for the first time, lasting for a period of between three and 12 months, depending on the seriousness of the offence. The youth offender panel will work with the juvenile to agree and implement a programme for the juvenile to follow. The panel comprises a member of the youth offending team and at least two other members who will be directly recruited from the community by the youth offending team. The parents or guardians of the juvenile can be ordered by the court to attend meetings with the panel.

**10.47** The programme, which takes the form of a contract agreed between the panel and the juvenile, will be guided by the following three principles:

- (i) making reparation to the victim;
- (ii) achieving reintegration into the law-abiding community; and
- (iii) taking responsibility for the consequences of offending behaviour.

**10.48** Contracts should always include an element of reparation to those affected by the offence, if those individuals consent, and this could involve a direct apology or financial or other reparation. Where there is no identifiable victim, reparation can be made to the community. Any additional elements of the contract will depend on the factors that appear to have led to the offending behaviour.

## **THE NETHERLANDS**

**10.49** A major role in the juvenile justice system in the Netherlands is played by the “Halt” system, whereby petty offenders (vandalism, petty property crime up to a value of £500 and shoplifting up to a value of £80) are diverted, primarily by the police, but also by prosecutors, to one of 63 local Halt schemes.

**10.50** In general the scheme operates within tightly defined legislation and regulations as follows:

- When a juvenile is arrested for a petty crime, the nature of the crime and the circumstances of the crime are considered by the police. If they match the criteria laid

down in regulations for referral to a Halt scheme, and the juvenile and juvenile's parents or guardians consent, the case is referred to a Halt office. If the police are in any doubt, they consult the Halt staff or the local prosecutor.

- The case is normally referred to a Halt scheme on the day of arrest, and the first interview with Halt staff would take place within one week of the arrest. In the meantime the Halt staff contact the victim, if one exists, and find out the nature and cost of any damage caused.
- Within two weeks of arrest the Halt staff will have negotiated a package with the offender and his or her parents, which may include up to 20 hours of community service, payment for the damage caused, and could include an educational assignment. The entire process is completed within seven weeks of arrest.

**10.51** The Halt scheme is respected by the police, the prosecutors, Parliament and the public. It is believed to work well, and offers the advantage of being a quick and effective response to petty juvenile crime. A reparative element is central to the scheme, and the community service often brings the offender face to face with the victim. It is common, for example, for shoplifters to work for the shop from which they have stolen, and for property damage to be repaired by the offender. Victims are generally happy with the Halt process. It is not, however, used for more serious cases, or for very minor cases for which a police warning is more appropriate.

## **NEW ZEALAND**

**10.52** The Children, Young Persons and their Families Act 1989 underpins the operation of both the child welfare and justice system in New Zealand. The Act contains two separate processes: one concerned with care and protection and one focusing on youth justice. The aims and principles, which underlie the Act in respect of youth justice, are clearly set out in it.

**10.53** The family group conference is the mainstream response by the juvenile justice system to juvenile offending in New Zealand. The way in which the family group conference works, and the philosophy which underlies it, are set out more fully in the last chapter, but at this point we should note that the family group conference can be and is used as both a police diversionary measure and a tool of the court. The family group conference produces a plan that normally includes:

- a punitive element, such as community work, a condition not to drive a motor vehicle, or to abide by a curfew or a non-association clause;
- a restorative element, such as an apology, either face to face or in writing, community service, or the payment of reparation by money or in kind; and

- a rehabilitative element for the offender, such as drug and alcohol counselling, change of residence and lifestyle, or psychological counselling and treatment.

## SOUTH AFRICA

- 10.54** The juvenile justice system in South Africa is not separate from that for adults. In December 1996 the South African Law Commission established a project committee to investigate the development of a separate juvenile justice system. The project committee published an issue paper in 1999,<sup>7</sup> which identified a wide range of issues to be considered, including those surrounding the operation of a juvenile justice system and the incorporation of international principles on juvenile justice in legislation.
- 10.55** The issue paper made it clear that any legislation should aim to promote the well being of the child and to deal with each child in an individualised way. The central focus of the system that the Law Commission subsequently recommended was on the diversion of cases away from the criminal justice system, either to the welfare system or to suitable diversion programmes. The involvement of the family and the community was seen as of vital importance, as was sensitivity to culture, tradition and the empowerment of victims.
- 10.56** The Law Commission also advocated that where a child did go through the criminal justice system, he or she should be tried by a competent authority, with legal representation and parental assistance, in an atmosphere of understanding. It strongly recommended that the child should participate in decision making and that all proceedings should take place within the shortest appropriate period of time, with no unnecessary delays.

## SCOTLAND

- 10.57** The Kilbrandon Committee Report in 1964 led to the passing of the Social Work (Scotland) Act 1968, which replaced the juvenile jurisdiction of the Scottish courts in respect of care cases, and all but the most serious criminal cases, with a more specialised welfare orientated children's hearing system. This was implemented in 1971, and operated without fundamental change until 1997 when the 1968 Act was replaced by the Children (Scotland) Act 1995.
- 10.58** The 1995 Act incorporates principles within specific provisions, and conforms to the provisions of the UNCRC. The children's hearing system considers cases involving juveniles under 16 referred to it by the "Reporter",<sup>8</sup> who in turn will receive referrals from the police

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7 South African Law Commission, *Discussion Paper 79: Project 106: Juvenile Justice*.

8 The Kilbrandon Report envisaged that the decision to refer children to a children's hearing should be that of a single individual, namely the Reporter. The Reporter is involved in all aspects of the hearing procedure - the referral of cases, the hearing of cases and the recording and transmitting of decisions.

and, in more serious cases, the prosecutor. The hearing is conducted by a panel of lay people. It decides on the measures that should be taken to help the individual child. If the facts of the case are in dispute, the case will be considered by a court to determine innocence or guilt, and referred back to the children's hearing.

- 10.59** A number of outcomes are possible from a children's hearing, including: a decision to take no further action; the imposition of a supervision requirement; the imposition of a residential requirement (including secure detention); or the imposition of conditions restricting contact with other children. The courts consider appeals against the decision of a children's panel. The 1995 Act also introduced the concept of a "Safeguarder", appointed by the panel or the court where they consider it necessary, to represent the child's best interest in children's proceedings. Reparative and restorative interventions are rarely used.

## THE REPUBLIC OF IRELAND

- 10.60** The juvenile justice system in Ireland is in the process of significant change. A comprehensive Bill to modernise and improve the law relating to children is currently before the Oireachtas. The Bill includes a range of provisions relating to juvenile justice, with the aim of diverting children away from court and custody. The Bill's provisions include:

- raising the age of criminal responsibility from 7 to 12 years;
- putting in place a system of police-led "family conferences", which will include parents and victims, and will produce action plans which could include curfews, school attendance, and compensation for the victim; and
- a power for the courts to require parents to get treatment for addictions, to attend a parenting course, to compensate victims or to control their children.

## EMERGING THEMES

- 10.61** A number of themes emerged from our examination of juvenile justice arrangements in other jurisdictions. These included:
- the inclusion in statute of clear statements of principles, firmly based upon international instruments, for the juvenile justice system which set out the purpose it serves and what it hopes to achieve;
  - the increasing use of diversion as a means of dealing with juvenile offenders;

- the development of approaches which aim to address offending behaviour and so reduce the propensity of juveniles to commit crime, and which build restorative elements into the operation of the juvenile justice process;
- a move away from court-based retributive approaches to juvenile justice, except for serious and persistent offenders;
- a move away from welfare-based models towards models which focus more on justice outcomes, and which are evidence-based and subject to rigorous evaluation;
- the development of open and transparent processes at all levels which enhance the accountability of the juvenile justice system and, ultimately, its credibility;
- the trend towards conferencing, panels and other means of determining programmes for offenders in settings other than formal courts; and
- the trend in many other jurisdictions to place juvenile justice policy and practice centre-stage in the response to the problems created by crime and criminality, and to devote considerable resources to tackling youth crime.

## Evaluation and Recommendations

**10.62** We were struck by the range and complexity of the issues raised with us in relation to juvenile justice in the course of our work. The juvenile justice system is a microcosm of the wider criminal justice system, and many of the issues that bear upon the system for adults are thrown into even sharper relief where juveniles are concerned. Given the limited time and resources available to us to carry out this review, it has not been possible to examine many of the issues raised with us with the rigour they deserve. We do, however, have a number of recommendations to make in several areas.

### THE AIMS AND PRINCIPLES OF THE JUVENILE JUSTICE SYSTEM

**10.63** Other countries, such as New Zealand, Canada and South Africa, have drawn upon all the international instruments to which we have referred in this chapter to develop the aims and principles of the juvenile justice system that are enshrined in their legislation. We considered what those principles and aims might be, and whether they might be incorporated into future legislation on juvenile justice in Northern Ireland.

**10.64** We believe that there would be value in drawing up and agreeing the aims and principles of the juvenile justice system, drawing in particular upon the *United Nations Convention on the Rights of the Child*, the *International Covenant on Civil and Political Rights*, the

*United Nations Guidelines for the Prevention of Juvenile Delinquency*, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, and the *United Nations Guidelines for the Protection of Juveniles Deprived of their Liberty*. We believe that such a set of aims and principles would inform the development of juvenile justice policy, providing a yardstick against which policy and practice can be measured, and that it would inform the work of all those involved in the administration of the juvenile justice system. We note that the Northern Ireland Office published a set of aims for the juvenile justice system in 1999,<sup>9</sup> and we suggest that these should be reconsidered and, if necessary, revised in the light of the international instruments.

**10.65** We believe that the focus of the juvenile justice system in Northern Ireland should be the prevention of offending. It should embrace the rehabilitation of the offender and diversion. It should provide meaningful consequences for those juveniles who commit crime. It should pay particular regard to the provisions of the *United Nations Guidelines for the Prevention of Juvenile Delinquency*, and the duty to regard the best interests of the child as a primary consideration under Article 3 of the *United Nations Convention on the Rights of the Child*. We also believe that there is considerable merit in enshrining such a statement of aims and principles in future juvenile justice legislation.

**10.66** **We recommend that in drawing up legislation flowing from this Review, the Government should develop, agree and incorporate a clear statement of the aims of the juvenile justice system in Northern Ireland and a statement of the principles which should guide those who exercise the powers conferred by the legislation with due regard to the international human rights standards to which the United Kingdom has given commitment.**

## THE AGE OF CRIMINAL RESPONSIBILITY

**10.67** International instruments and practice in other jurisdictions provide only limited guidance in respect of the age of criminal responsibility. International practice varies widely. England and Wales, Northern Ireland and most Australian states set the age at 10. Canada sets the age at 12, and Germany and many other countries at 14.

**10.68** Article 40(3)(a) of the *United Nations Convention on the Rights of the Child* requires states to “promote the establishment of a minimum age below which children shall not have the capacity to infringe the penal law”. Rule 4.1 of the Beijing Rules also states that the age of criminal responsibility “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”. Whilst providing no precise guidance, the UN Committee on the Rights of the Child constantly refers in its Concluding Observations on

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<sup>9</sup> *Aims of the Juvenile Justice System* (1999), Northern Ireland Office, available from Juvenile Justice Branch, Criminal Justice Services Division, Massey House, Stoney Road, Belfast, BT4 3SX.

State Party Reports to the desirability of setting the highest possible minimum age. Countries where the minimum age of criminal responsibility has been set at 10 or below have been criticised.

**10.69** We have heard persuasive arguments for the raising of the age of criminal responsibility, but we are also aware of broader societal concerns about youth offending. We do not share the views of some that the criminality of 10-13 year olds is rapidly rising; there is little evidence to support this. We do, however, believe that 10-13 year olds should be held accountable for their actions, but that the means of doing so need not necessarily be the same as for older children. We believe that, where appropriate, 10-13 year old children should continue to be criminally responsible for their actions, but that they should not be drawn into the juvenile custodial system and that the presumption should be that they will be diverted away from prosecution unless they are persistent, serious or violent offenders. Where there is a need for accommodation outside the family home for children in this age group, we believe that it should be provided by the care authorities, rather than the juvenile justice system. **We recommend that children aged 10-13 inclusive who are found guilty of criminal offences should not be held in juvenile justice centres, and that their accommodation needs should be provided by the care system.** This will require discussion with the social service authorities about practicalities and funding.

## **THE DEFINITION OF A CHILD**

**10.70** The international view on the age at which a young person should be separated from the adult criminal justice system is clear. Article 1 of the UNCRC defines a child as a person below the age of 18 years "... unless, under the law applicable to the child, majority is attained earlier". Those below the age of 18 attract, therefore, the protections of the Convention. The Beijing Rules (Rule 2(2)(a)) define a "juvenile" as a "child or young person who under the respective legal system may be dealt with for an offence in a manner which is different from an adult". The age of majority in Northern Ireland is 18, and it is clear that the current exclusion of 17 year olds from the juvenile justice system is contrary to the UNCRC. **We recommend that 17 year olds be brought within the ambit of the youth court.**

**10.71** We noted that in England and Wales 17 year olds come within the remit of the juvenile justice system and are dealt with by the youth courts. Some we spoke to in England and Wales suggested that the inclusion of 17 year olds had changed the character of the court in that many more motoring offences and offences of violence were being dealt with by the court than had been the case previously, and that it had also increased disproportionately the volume of cases before the youth court. Others, including the Magistrates' Association for England and Wales, believed that the experience of bringing 17 year olds into the juvenile justice system had been positive. The experience of England and Wales will need to be taken account of in preparing for the inclusion of 17 year olds within the youth court in Northern

Ireland. Resource issues for the relevant agencies will also have to be considered. The Northern Ireland Court Service, for example, has indicated that business in the youth court will increase by 50% and that it will require funding in the region of £150,000 per annum for additional judicial and staff support.

## THE AVAILABILITY OF DISPOSALS TO THE COURTS

- 10.72** We considered what disposals should be available for juveniles at the various stages of their development. We first of all considered whether the juvenile justice centre order should be available for 17 year olds (which it is not at present). If the option of sending 17 year olds to the juvenile justice centres were available to the courts, it would open up the possibility of almost doubling the size of the population at the centres. This would in our view change the nature and ethos of the centres to an extent that would make it more difficult to provide properly for the younger age group of 14-16 year olds. Moreover we believe that 17 year olds should benefit from the sort of regime that is available at the young offenders centre for young people up to the age of 21. **In the particular circumstances of Northern Ireland we recommend that it should continue to be the practice for 17 year olds to be remanded and sentenced to the young offenders centre.** We gave some thought to the position of 17 year olds who might be vulnerable by reason of lack of maturity or for other reasons; we recognise that this could equally apply to some in the 18 to 21 year old age bracket. **We recommend that the staff at the young offenders centre pay particularly close attention to the 17 year olds in their care and be prepared to take special measures, including the provision of separate accommodation, for any who are assessed as being vulnerable or immature.**
- 10.73** Rule 18.1 of the Beijing Rules sets out a number of community-based disposals which should be made available to the courts so as to avoid institutionalisation to the greatest extent possible (and should be read together with Rule 19.1, which advocates the least possible use of institutionalisation and for the minimum necessary period). Article 40(4) of the *United Nations Convention on the Rights of the Child* also encourages states to provide “a variety of dispositions... and other alternatives to institutional care”.
- 10.74** We believed that it was necessary to consider how the range of community based disposals for juveniles might be expanded, particularly given the proposal we put forward in Chapter 9 to introduce youth conferencing and youth conference orders. The courts already have some community-based disposals available to them, but not necessarily of a sufficient variety for all age groups and to deal with offences of varying degrees of seriousness. For example, community service orders are only available for 16 year olds and above. We do not believe that traditional community service orders are best suited to the needs of those under 16, both because of the hours involved (which might interfere with the education of the young person) and the nature of the activities undertaken. We believe, however, that there is scope

for providing a form of community service order for those under 16, with a reduced maximum number of hours to be served and with the activities tailored to the needs of the age group. **We recommend that a form of community service should be developed for those under 16 years of age, with a maximum period of service of 40 hours. The service to be undertaken should be tailored to the needs of juveniles of that age group and be of a nature most likely to maintain and promote the development of the juvenile in responsible, beneficial and socially acceptable ways. The arrangements should be piloted and evaluated rigorously.**

**10.75** We also considered whether there was a need for “reparation orders” introduced by the Crime and Disorder Act 1998 in England and Wales. Such orders are available where a child or young person is convicted of any offence other than one for which the sentence is fixed by law. By allowing the offender to undertake some form of practical reparative activity that will benefit the victim (if the victim so wishes), it is hoped that the victim will gain a greater insight into the reasons for the offence, and will therefore be able more easily to come to terms with it. Reparation to the victim will also help the offender to realise the distress and inconvenience that his or her actions have caused, to accept responsibility for those actions, and to have the opportunity to make some amends either directly to the victim, or to the community as a whole. We believe that reparation orders would provide the courts with an additional community-based disposal while addressing the needs of victims. **We recommend the introduction of reparation orders in Northern Ireland.** We believe that the introduction of reparation orders and the new form of community service for those under 16 years of age will provide useful additions to youth conference co-ordinators and sentencers in creating imaginative, appropriate and proportionate youth conference plans. We considered whether there was a need to introduce “action plan” or “referral to a youth offender panel” orders but concluded that the types of activities that are envisaged as part of those orders would be encompassed within our proposals for youth conferencing and youth conference orders in Chapter 9.

**10.76** We were asked to consider the use of the sentence of detention at the Secretary of State’s pleasure for grave crimes. We have considered the international instruments which bear upon the issue and can find no reason why the courts should not have the ability to commit a juvenile to custody for an indeterminate period where that is a proportionate response to the nature and circumstances of the crime. There are mechanisms for review and release for those detained at the Secretary of State’s pleasure, as there are for adults detained under mandatory or discretionary life sentences. As a result the current arrangements do not appear to contravene Article 37 of the UNCRC which requires that “neither capital punishment nor life imprisonment *without possibility of release* shall be imposed for offences committed by persons”, or Rule 19.1 of the Beijing Rules. We do, however, consider the adequacy of current release mechanisms for such sentences at Chapter 12.

## BAIL AND REMANDS

**10.77** We note the concerns about the use of bail and remands in Northern Ireland. In considering the issues raised, we were mindful of international instruments, most notably Rules 13.1 to 13.5 of the Beijing Rules, particularly Rule 13.1, which states that “detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time”. Rule 13.2 states that “whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”. However, we are also aware of concerns that some juveniles who should be remanded in custody are being freed, and that they continue to commit offences while on bail. In addition we are aware of the risk, and the perception, that the juvenile justice system may be used by other agencies to “offload” their difficult cases. These are difficult and complex issues which merit close attention.

**10.78** We recommend:

- (i) the piloting and evaluation of bail information and support schemes to provide the courts with information and advice to assist them with making bail and remand decisions in respect of individual juveniles;**
- (ii) the development of bail hostel accommodation specifically for juveniles, particularly within Belfast;**
- (iii) that those remanded in custody should be assessed as quickly as possible to determine the nature of the regime required, including the degree of supervision; and**
- (iv) that remands in custody should be for the shortest period of time possible.**

## JUVENILE CUSTODY

**10.79** We visited Lisnevin Juvenile Justice Centre to see for ourselves what it was like and to hear of the facilities and programmes that it provides. We agree with the views expressed by some that it is unsuitable as a facility for holding juveniles, and we feel that its remote location makes it very difficult for families to maintain contact with those held there. However, we were impressed by some of the programmes which it offers to those on remand and those held under a juvenile justice centre order, and by the dedication and professionalism of the staff we met. We would not wish to see these positive features lost. We believe that the retention of the current arrangements is neither feasible nor desirable. Lisnevin is not suitable for holding juveniles; there are no secure facilities for girls (which has necessitated the holding of a young girl in Maghaberry young offenders centre in recent times); and the falling population of the centres has made the provision of the full range of facilities difficult. That

is not to say that each of the current centres is not doing good work at present; rather their work is hampered by the fractured nature of custodial provision. **We recommend that Lisnevin Juvenile Justice Centre be closed.**

**10.80** We have considered a number of options for the future of juvenile custodial facilities, including:

- the creation of a single juvenile justice centre, providing both secure and open facilities for girls and boys of all denominations;
- the creation of a number of small, locally-based custodial units across Northern Ireland; and
- the retention of the current arrangements.

**10.81** The creation of a number of small custodial units across Northern Ireland, each providing five or six places, would enable juveniles to be placed closer to their families than is currently the case. But it would create difficulties in a number of respects, such as providing the necessary individual assistance which Rule 13.5 of the Beijing Rules calls for, including social, educational, vocational, psychological and medical, and physical facilities. It would also be difficult to provide secure facilities with such an arrangement, and it might necessitate in addition the creation of a single secure unit for Northern Ireland.

**10.82** The creation of a custodial complex on a single site, with a mix of both secure and open facilities, might not ease the difficulties of maintaining ties between juveniles and their families: no single site will be readily accessible for all of the families of juvenile offenders. A site in the Greater Belfast area would be most likely to ease the difficulties of family visits, since the majority of the population of juvenile justice centres come from the Greater Belfast area; but it would also be necessary to take account of accessibility of transport links from other parts of Northern Ireland. In addition, and bearing in mind that the custodial population is likely to settle to a total of less than 40 remand and committed juveniles, the development of a single centre would enable the full range of facilities to be provided, and for secure and open facilities to be provided for both girls and boys on a single site. We note, however, that there are likely to be difficulties in finding a suitable green-field site in the Greater Belfast area and that it might be necessary to develop the new centre on an existing site.

**10.83** We understand that work is currently being undertaken by the Government on the future of the juvenile justice custodial estate. This will, of course, require detailed consultation before final decisions are made. From our consideration of the issues we think that the balance of argument points towards a single site solution. We wish to stress the importance of the diversity of needs of juvenile offenders being met by juvenile justice centre staff whose competence and expertise is based on professional education and training, in-service training and on the job instruction and development. Whatever the outcome of the review of the juvenile justice centre estate, it would make sense to draw on suitably qualified staff from, and the expertise developed at, existing juvenile justice centres.

**10.84** We wish to stress the importance of ensuring that there is good liaison between the juvenile justice centres and community-based agencies. Co-operation and co-ordination are necessary if programmes are to be planned in order to secure an effective transition from the custodial to the community setting, which is a feature of the juvenile justice centre order. Such an approach is also required if the educational, care, welfare and housing needs of the juveniles are to be properly catered for when they are released back into the community. Accordingly, we wish to emphasise the importance of the Probation and Social Services ensuring good liaison arrangements with the juvenile justice centres, for example, by way of allocation of staff to the centres to help prepare for release and ensure that the care needs of those held on remand or on foot of a juvenile justice centre order are met.

## DIVERSION AND PARTNERSHIP APPROACHES

**10.85** Rules 11.1 to 11.4 of the Beijing Rules and Article 40(3)(b) of the *United Nations Convention on the Rights of the Child* encourage states to promote diversion from judicial proceedings, providing that human rights and legal safeguards are respected. Rule 25.1 of the Beijing Rules also calls for “volunteers, voluntary organisations, local institutions and other community resources... to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit”.

**10.86** We note that there is already a range of diversionary and partnership activity. Police diversion by informal advice and warning and formal cautions is already well established. “Caution-plus”, Juvenile Liaison Bureaux, children’s panels, and other inter-agency approaches are also developing. Whitefield House provides a number of community-based projects, developed in partnership with other statutory, voluntary and community organisations. A wide range of voluntary and community resources already contributes to dealing with juvenile offenders in the community. All of this is to be welcomed and endorsed.

**10.87** We agree, however, that there are opportunities to further develop diversion at all stages of the process. Other changes that we recommend in this report in respect of the role of prosecutors (who will have a significant role to play in inter-agency work on juveniles, including Juvenile Liaison Bureaux in future), the application of restorative justice, and community safety will help in that context. We agree also that more resources will be necessary to develop these approaches. **We endorse the development of further diversionary mechanisms based on a partnership approach and recommend that any savings arising from the rationalisation of the juvenile justice estate should be reallocated to diversionary programmes and other community-based sanctions for juveniles. We recommend also the development of prosecutor-driven diversionary schemes for juveniles, including the power to refer back for a police caution and the development of agreed guidelines on good practice in diversion at police and prosecutor level.**

## THE RIGHT OF SILENCE AND EMERGENCY LEGISLATION

- 10.88** Concerns about the application of emergency legislation to juveniles were drawn to our attention. Our terms of reference explicitly excluded us from considering emergency legislation, which was the subject of a parallel review. We felt that it was right, however, for us to draw to the attention of those reviewing the law on terrorism the concerns that have been raised with us, and we have done so.
- 10.89** As for the law on the right of silence, we note that there has been little research into the effects of the Criminal Evidence (Northern Ireland) Order 1988, and none on its specific effects on juveniles. The law on silence is considered in more detail in Chapter 3. **In respect of juveniles, we recommend that the Government should commission independent research into the effects of the Criminal Evidence (Northern Ireland) Order 1988 on juvenile defendants as a matter of urgency, and that the findings of that research should be published.**
- 10.90** We have also considered the training needs of “appropriate adults”, who play an important part in facilitating communication and ensuring fair procedure whilst a juvenile is in police detention. **We recommend that those who volunteer to act as appropriate adults should receive training by a wide range of agencies, to include training on the needs of those who have learning or other disabilities, or who are suffering from a mental disorder, and children’s rights and broad human rights awareness.**

## COURTS ISSUES, CHILDREN’S EVIDENCE AND DELAY

- 10.91** Article 40(2)(b)(iii) of the *United Nations Convention on the Rights of the Child* guarantees the right “to have the matter determined without delay by a competent, independent and impartial authority and judicial body in a fair hearing according to law”. Article 12(2) also guarantees the right of the child to be heard in any judicial or administrative proceedings affecting him or her. Rule 14.1 of the Beijing Rules provides a similar guarantee, and Rule 14.2 adds that “the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely”.
- 10.92** No-one has argued that the youth court is not an “independent and impartial judicial body”, but concerns have been raised about the way in which the youth court operates, and about the length of time it takes for cases to be disposed of (we recognise, however, that delays are not caused solely by the youth court: other agencies and procedural requirements contribute to the time taken to deal with criminal cases involving juveniles). It is possible that in some

locations relatively infrequent sittings of youth courts might contribute to delay. We have heard some suggestions put forward for developing the court as a more child-friendly venue, whilst retaining a measure of dignity and authority to bring home the gravity of the proceedings.

**10.93**

We have also visited a youth court while it was in session, and have observed the proceedings. We were impressed by the way in which the court operated, and by the professional and understanding way in which the panel handled the cases before them. We also noted that the court itself was much less formal than its adult equivalent, and that the magistrates and advocates wore no wigs or gowns. We were less impressed by the way in which the prosecution and defence advocates handled the cases, and noted the limited opportunities afforded to the defendant to participate and for his or her parents to participate and express themselves freely. We also noted that there were audibility problems in court, and that it was apparent that the defendant and his or her parents could not always hear what was being said. We are conscious of the development of the Child Witness Service in Belfast and the Child Witness Pack by the NSPCC, which we welcome and endorse. We have a number of recommendations to make that we believe will enhance the effectiveness of the youth court and make it a more user-friendly venue.

**10.94**

**In respect of the operation of the youth court we recommend that:**

- (i) Guidelines should be developed for the layout and operation of the youth court, emphasising the need for all the participants in court to sit at the same level, the need for all participants to be able to hear what is being said in court, the need for simple and plain language to be used during the proceedings, and the need for the defendant and his or her parents to be given opportunities to participate and express themselves freely.**
- (ii) Defence and prosecution advocates should be encouraged, through professional education and development, to enhance their expertise in respect of handling juvenile cases and their awareness of the human rights instruments and jurisprudence as they relate to juveniles. This should not interfere with the juvenile's right to the lawyer of his or her choice. Professional and lay members of the bench should receive similar training under the auspices of the Judicial Studies Board.**
- (iii) In the light of the outcome of evaluation, the child witness scheme should be made available at all criminal court venues in Northern Ireland, including youth courts.**
- (iv) Efforts to deal with delays in cases being brought before the youth court should continue.**

- (v) Given the need to tackle delay and the impact of extending the jurisdiction of youth courts to include 17 year olds, there should be an examination of youth court sittings and consequential implications for magistrates' courts.

**10.95** The judgments of the European Court in the cases of *T & Vv United Kingdom*<sup>10</sup> emerged as we were finalising this report. They raise important issues in relation to juvenile justice. We have not had an opportunity to consider fully the implications of the judgments for juvenile justice in Northern Ireland. Therefore, we recommend that the Government should consider carefully the implications of judgments of *T & Vv United Kingdom* for the operation of the juvenile justice system in Northern Ireland.

## COMPLAINTS AND INSPECTION ISSUES

**10.96** The main international instrument that deals with the administration of juvenile facilities is the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. Rules 24-25 and 72-78 relate to the information that should be provided to juveniles when they arrive in custodial facilities, inspection arrangements for juvenile custodial facilities, and the nature of complaints mechanisms that should be made available to the juvenile.

**10.97** Concerns were raised with us about the adequacy of the complaints and inspection arrangements for the juvenile justice system, particularly within juvenile justice centres. We discuss in Chapter 3 the principles that should apply to complaints mechanisms throughout the criminal justice system. Mechanisms for inspecting the elements of the criminal justice system are considered in Chapter 15. These apply equally to the juvenile justice system.

**10.98** We make the following recommendations in respect of the complaints mechanisms and inspection arrangements:

- (i) Complaints mechanisms should be reviewed as a matter of urgency to ensure that they conform to the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, and to ensure that they include an independent element.
- (ii) On admission to a juvenile justice centre, all juveniles should, as now, be given a copy of the rules governing the juvenile justice centre and a written description of their rights and obligations in a language they can understand, together with a description of the ways in which they can make complaints, as well as the address of public or private agencies and organisations which provide legal assistance.

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<sup>10</sup> *Cases of T & Vv United Kingdom*, at the European Court of Human Rights (App. Nos. 24724/94 and 24888/94), judgments 16 December 1999.

- (iii) For those juveniles who have difficulty in understanding the written guidance, the guidance should, as now, be explained to them.
- (iv) All agencies providing facilities and services for juvenile offenders, including juvenile justice centres, should come within the remit of the Criminal Justice Inspectorate, in respect of those services or facilities.
- (v) Each juvenile justice centre should have a local advisory committee that brings in local professional and community representatives, including representatives of nearby residents.

## THE MANAGEMENT OF THE JUVENILE JUSTICE SYSTEM

### 10.99

We have considered how the juvenile justice system should be managed at the operational level, and where policy responsibility for juvenile justice issues should lie. We note that the current arrangements for managing the juvenile justice system are intended to be temporary and do not believe that they represent a satisfactory long-term solution, given the mix of policy and direct management responsibility associated with the Juvenile Justice Board as constituted at the time of writing. In considering how best to structure and manage responsibility for juvenile justice services, we considered the following issues:

- whether and how operational management responsibility for juvenile justice custodial and community services could be brought together;
- how policy responsibility for juvenile justice could be separated from service delivery, and where political responsibility for the juvenile justice system should lie, both before devolution of criminal justice issues and after;
- how co-operation and co-ordination between the agencies responsible for children's services, including juvenile justice services, could be encouraged;
- whether there was a case for combining responsibility for the delivery of juvenile justice and probation services; and
- whether there should be a Minister responsible for the co-ordination of all policy on children.

### 10.100

We considered a number of options for the delivery of juvenile justice services, including: the creation of a non-departmental public body; a government department purchasing services from statutory agencies and the voluntary sector; the incorporation of juvenile justice in the Probation Service; and the creation of a next steps agency within a government department. On balance, we are not convinced that non-departmental bodies are the ideal vehicles for securing effective management, accountability and co-operative working between agencies in this environment. The purchaser/provider model has its attractions, but does not necessarily

make for co-operative working between service providers. As for incorporation in the Probation Service, we have some reservations about whether it would be appropriate for juvenile justice to be located within an organisation that has as its primary focus adult offenders, although we should stress that we see a continuing role for Probation in working with juveniles.

**10.101** On balance we favour the next steps agency option. This would facilitate the development of a strong professional management team responsible for the provision of juvenile justice services in the custodial and community settings. They would act in accordance with a framework document that would make the clear distinction between their responsibility for services and the sponsor department's responsibility for policy development. We should stress that this would still allow for purchaser/provider arrangements. The agency would have responsibility for direct service provision but would also be required to consider buying in services from the voluntary sector. It would be subject to the full range of accountability mechanisms that apply to next steps agencies, and to the accountability mechanisms that we set out in Chapters 3 and 15 of this report. Accordingly, **we recommend the creation of a next steps agency which would take on responsibility for the range of responsibilities which fall to the current Juvenile Justice Board as are set out in Article 56(5) of the Criminal Justice (Children) (Northern Ireland) Order 1998.** These responsibilities include:

- (i) making and giving effect to schemes for children who are subject to attendance centre orders or juvenile justice centre orders and schemes for the prevention of crime by children; and
- (ii) entering into arrangements with voluntary organisations or any other persons (including government departments and public bodies), or providing voluntary organisations or any other persons with facilities for the purposes of, and to give effect to, the schemes at (i) above.

In effect this would mean that the agency would be responsible for the provision of custodial and community facilities for juvenile justice orders, attendance centre orders, and schemes of the type provided by Whitefield. Other agencies would continue to provide services for juveniles. For example, the Probation Service would be responsible for securing compliance with probation orders and community service orders.

**10.102** **We recommend that the development of juvenile justice policy should be separate from the functions of the juvenile justice agency and should be a matter for a separate unit in the department within which the agency is placed. That unit should be responsible for advising the Minister in relation to policy and legislative proposals. The unit should also be responsible for developing a strategy for the delivery of juvenile justice services, and should develop and publish aims, standards and**

**performance indicators.** In doing so it would work in partnership with the Juvenile Justice Agency we propose at paragraph 10.101 and the advisory board we propose at paragraph 10.103 below.

**10.103** We do see value in having a broader input into the work of the agency and juvenile justice matters generally through drawing on expertise from outside the sponsor department. This could be achieved through the establishment of an advisory board bringing together senior professional and administrative representatives from the other agencies and departments with a stake in providing services for children, such as probation, education, health and social services, together with representatives of some of the major community and voluntary organisations with an interest in juvenile justice issues. The head of the Juvenile Justice Agency would attend the board, together with his or her senior managers and representation from the sponsor department. The board would have a consultative and advisory role in relation to the Minister on matters relating to policy and service delivery. However, we believe that additional benefits would be secured, in terms of encouraging co-operative working and consideration of best practice across agency boundaries, if this juvenile justice advisory function were combined with that proposed for probation and prisons in Chapter 12. Accordingly, **we recommend that an overarching Probation, Prisons and Juvenile Justice Advisory Board be adopted.** It would of course always be possible for specific juvenile justice issues to be addressed by a sub-committee of such a board.

**10.104** We also considered where political responsibility for the juvenile justice system should lie, and whether there should be a Minister for all services relating to children (as there is for women's issues, for example). **We recommend that, pending devolution, political responsibility for the juvenile justice system should remain with the Secretary of State for Northern Ireland and that policy and legislative advice should continue to be provided by the Northern Ireland Office. After devolution, we believe that ministerial responsibility should lie with whichever Minister is responsible for prisons and probation.** We make no recommendation in respect of whether there should be a Minister responsible for all children's issues, and suggest that the Northern Ireland Executive Committee might consider this after devolution of responsibility for criminal justice issues.

## THE ROLE OF RESEARCH, CONSULTATION AND COMMUNICATION IN POLICY FORMULATION AND EVALUATION

**10.105** We endorse Rules 30.1 to 31.4 of the Beijing Rules, and **we recommend the use of research as a basis for developing an informed juvenile justice policy. We recommend that all new initiatives and legislation should be routinely monitored and subject to rigorous and independent evaluation.**

**10.106** We found in the course of our consultation process that there was considerable ignorance of juvenile justice policy and practice in Northern Ireland, and that much effort was required to tease out people’s views on current juvenile justice institutions. That people knew very little about juvenile justice practice was not surprising, since juvenile justice policy has received little attention in the media in Northern Ireland, and because the Government has not sought to raise the awareness of the public about juvenile justice issues. We believe this has contributed to the widespread belief that the juvenile justice system doesn’t work, a belief that has, in part, led to support for and acceptance of so-called “alternative justice”. As a result, **we recommend that in developing policy and practice the views of the public and of young people in particular should be taken into account. To achieve this, innovative approaches to consultation should be developed, and consideration should be given to how best to seek out the views of young people. We also recommend that, to enhance public confidence in the juvenile justice system, a communication strategy be developed to advertise successes, develop public awareness of existing practice and new initiatives, and to provide information to sentencers on the availability of programmes and other community disposals.**