



Standing Committee for Youth Justice

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Parliamentary Briefing on the Children's Rights Bill

February 2010

1. The Standing Committee for Youth Justice (SCYJ) urges support for the passing of the Children's Rights Bill to provide for the enforcement in domestic courts of the United Nations Convention on the Rights of the Child (CRC). The Bill is similar in approach and structure to the Human Rights Act 1998. That Act had the effect of incorporating the European Convention on Human Rights (ECHR) into UK domestic law and, despite fears to the contrary, this has not brought disarray to the courts or public services. There is no reason to anticipate that incorporating the CRC would do other than enhance children's development and well-being and enable a more coherent and principled approach to policy and children's services at both the national and local levels. In particular, debate about the Bill and the CRC has the potential to dispel the common perception that there is an irreconcilable tension between children's rights and their responsibilities.
2. The ECHR applies to all people but it does not provide for children specifically. In ratifying the CRC in 1991, the UK recognised that there is a need for special protection and rights for children that are not adequately contained in any other international convention or law. However, the CRC is not simply a list of the rights and freedoms of the child. More importantly, it establishes a principled framework and sets out the responsibilities of the state to its children, such as the provision of education and opportunities for play, the availability of state care and protection from abuse and exploitation.

3. Nevertheless, the domestic legal framework for the protection of human rights in the UK has neglected to make specific provision for children to an uncomfortable degree. In ratifying the CRC, the UK accepted legal obligations to act in compliance with its provisions. But whereas in some states' legal systems the process of ratification itself makes the CRC enforceable domestically, in others, including the UK, separate legislation is necessary. The Children's Rights Bill has this purpose. Few would deny the value of children having the right to a name, to education or to protection from trafficking, for example, and it is difficult to justify resistance to enshrining the Convention in law.
4. It has been argued that the UK law adequately protects children's rights. Many would cite the Children Act 1989 to illustrate that children's welfare is paramount, that they are not merely the chattels of adults and that they have the right to be heard. But those provisions do not always apply to all children in all circumstances and, taken as a whole, the statutory protection of children's rights is haphazard and piecemeal. Indeed, the periodic formal scrutiny of the UK's compliance with the CRC, by the United Nations Committee on the Rights of the Child, has resulted in repeated criticism, most recently in its concluding observations and recommendations of 2008. That criticism has shown aspects of UK law and policy which persistently stand in tension with children's rights. The UK cannot continue to select which provisions of the CRC that it complies with and those with which it does not.
5. Of the various concerns contained in the UN Committee's reports, it is those directed towards the youth justice system in England and Wales that are the main focus of SCYJ. In this respect, infringements and denials of rights have been persistent and well documented.¹ SCYJ subscribes to the view that a root cause of the tension with the CRC is the long standing tendency for the main political parties to bend to a perceived need to appear 'tough' on children in trouble and to maintain out and out punishment and restriction as a major feature of the youth justice system. The cost of this has been considerable,

¹ For a concise discussion, see Nacro Youth Crime Briefing (2008) *Children's Human Rights and the Youth Justice System* at <http://www.nacro.org.uk/data/files/nacro-2009070903-272.pdf>

not only in financial terms but in harm to children's well-being and future prospects. Moreover, the 'tough' approach has proved not to be the most effective way to reduce youth crime and anti-social behaviour. Indeed, behind tough rhetoric, there are some provisions and approaches more in line with the CRC (and related treaties, rules, regulations and guidance) that are proving to be more effective. These include measures to divert children from formal criminal proceedings and make further use of restorative approaches.

6. Related to the perceived need for a 'tough' approach is the singular issue of public attitudes to children in the UK that was stressed by the UN Committee in its report of 2008. Uniquely in its scrutiny of European states, the Committee expressed concern at:²

... the general climate of intolerance and negative public attitudes toward children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights.

7. SCYJ believes that passing the Children's Rights Bill would be a critical catalyst both to depoliticise youth justice and to increase tolerance and positive attitudes to children. It would provide a framework of principles upon which a more effective, stable and child friendly approach could be sustained.
8. In practice, a youth justice system that is compliant with the principles of the CRC would provide for the detention of children only as a genuine last resort, and would, like the current system in England and Wales, have a range of community sentences and diversionary mechanisms. It would stress the best interests of the child, diversion from formal proceedings, rehabilitation and restoration and meeting the needs of children through 'mainstream' services. It would ensure principles of proportionality, privacy, non-discrimination and participation. Children's vulnerabilities would be taken into account in all

² United Nations Committee on the Rights of the Child (2008) *Forty-ninth Session: Consideration of Reports Submitted by States Parties Under Article 44 of the Convention – Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, Geneva: United Nations.

matters, including mental health, learning disabilities and other issues of individual capacity. Those provisions that are most at odds with children's rights would be reviewed, including the types of secure facilities and the way in which children are treated in custody. The age of criminal responsibility would be reviewed with a view to it being raised, subject to the development of suitable arrangements for dealing with a small number of younger children who require supervision, care and control, including an appropriate means of detention (similar to that already provided by the Children Act 1989 and secure children's homes).

9. The interests of public safety and the needs of victims would remain a priority, assured by the concept of 'qualified rights'. This would mean that certain of an individual's rights might be limited to the extent necessary to achieve specific legitimate objectives, such as to maintain public order or to protect individuals from serious harm. Children would be encouraged to hold responsibilities, consistent with their capacity and maturity. The CRC stresses that children who break the law must be:³

...treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child assuming a constructive role in society.

10. SCYJ believes that incorporation of the CRC in the Children's Rights Bill would result in positive reform of the youth justice system of England and Wales, rendering it both more effective in changing behaviour and less damaging to children and their families. We therefore urge Parliamentarians to support the Bill.

Standing Committee for Youth Justice, February 2010.

³ Article 40, United Nations Convention on the Rights of the Child.

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The Standing Committee for Youth Justice (SCYJ) www.scyj.org.uk is a membership body which:

- Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and
- Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.

Members are: 4Children, Action for Children, Association of Panel Members, Association of YOT Managers, Barnardo's, Catch22, The Children's Society, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, TACT, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA and VOICE.

The contents of this briefing do not necessarily reflect the views of all member organisations.