



Include Youth Response to Criminal Justice (NI) Order, 2007

Introduction

Include Youth promotes best practice with young people in need or at risk. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities aimed at influencing public policy and public awareness - locally and nationally.

Include Youth promotes the development of positive choices and opportunities for vulnerable and challenging young people in the community, residential care or custody. Include Youth promotes the use of community alternatives to care and custody for children and young people.

Amongst the young people at risk with whom, and on whose behalf, Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who have had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

Include Youth welcomes the opportunity to respond to this legislation. Our comments are brief and simply outlining area of both concern and commendation.

Part 2 Chapter 4 Curfews and Electronic Monitoring

Whilst Include Youth applauds any intervention which increases the likelihood of a young person receiving bail we do not believe that the electronic monitoring is necessarily the

most effective way of proceeding. We would argue that the reasons that children and young people are remanded in custody are different than those of adults. The measures outlined in this chapter place too high an emphasis on punishment and control and not enough of addressing the reasons why young people may be in conflict with the law – a wholly more effective way of reducing offending and protecting the public.

Often young people are remanded because of lack of appropriate accommodation or support in the community. The small pilot undertaken in Belfast (by the Youth Justice Agency, Down Lisburn Trust and Extern) indicates that in order to ensure that young people do not re-offend whilst on bail they need stable accommodation and appropriate support and supervision. It strikes Include Youth that if the resources identified for electronic monitoring were diverted to services which we know are likely to be effective in ensuring a young person complies with bail conditions and more effective in developing the personal resources and community based support to reduce the likelihood of re-offending in the future.

Additionally we have concerns with regards to the lack of suitable accommodation for children and young people under the age of 18 and therefore would question the validity of requiring young people to stay in accommodation or particular communities where they are not supported or may not even feel or be safe. Until suitable residential support can be made available to young people Include Youth would argue that both electronic monitoring and curfews are unreasonable requirements.

Part 3 Risk Assessment and Management

Include Youth applauds this government's intention to place risk assessment and management arrangements on a statutory footing placing a duty to co-operate on the relevant agencies. We welcome the introduction of Guidance as outlined in Part 3. However we are at a loss to make further comment as we are unaware of the detail of the contents of this very important guidance. Include Youth facilitates the Risky Children or Children at Risk group. This is an ad hoc interagency group which is concerned with policy and practice as it relates to children and young people who display sexually harmful behaviours. We understand that the intention of this Guidance is that children and young people from the age of 10 may, when deemed appropriate, be subject to the assessment and management arrangements.

In principle we have no objection to the inclusion of children and young people in these arrangements and are only too aware that in a very small number of young people who will benefit from being involved in these arrangements. There is extensive evidence which clearly indicates that risk management and assessment arrangements for children and young people need to quite different than those for adults requiring the new Guidance to represent major changes. Therefore in view of this significant development in arrangements Include Youth is incredulous that there appears to be no intention to consult more widely than with agencies as outlined in article 51 (2)(5), alongside Youth Justice Agency and the Prison Service.

Include Youth believes that these arrangements will impact on a much broader group than envisaged including victims and could be particularly useful in raising awareness and promoting confidence in risk assessment and management of the most dangerous of offenders.

The Equality Commission's guidance for implementing Section 75 clearly outlines the need for "public bodies" to monitor any impact of their policies. Age is specifically referenced as a group which needs to be monitored. This is endorsed by the NIO's own equality scheme where they state: *"Consultation on equality issues with groups and individuals will begin as early as possible."* It goes on further, *"In addition to consultation on equality impact assessments, the Department will also, from time to time, have a need to consult on legislation, strategies, reviews and other plans."*

We would urge the NIO to consult as widely as possible on this very important Guidance.

Part 5

Test Purchases of Alcohol

Include Youth is all too aware of the challenges with underage drinking and the need to work with the licensed premises to end the selling of alcohol to children and young people. We also take cognisance of the intention stated in Article 66 that test purchasing will only be undertaken as a last resort. Include Youth is not comfortable that children (or persons under the age of 18) should be involved with test purchasing and believe that this should be carefully reconsidered. There are substantial ethical implications to involving

young people in such processes which need to be explored fully. We would like to assured that the following questions have been addressed:

- How will young people be recruited to such a programme?
- Will they be paid – if so this will contravene child employment guidelines which clearly state that children under the age of 16 can not be employed on licensed premises
- What sort of assessment will be undertaken and how will young people be protected?
- Will young people have to act as witnesses should a prosecution be defended?

In view of the likely age of the children to involved (13 + years) and that they are able to contribute fully in the decision for them to be involvement and consideration of possible consequences a young person. Therefore the young person's informed and formal consent must be sought.

Live Link

Include Youth appreciates that for administrative and routine hearing such as adjournments live links can be both cost effective and expedient. However we believe that for substantive hearings a defendant's right to a fair trial and to participate in hearings progressed by their presence in a court room. This raises issues of informed consent to participate by way of live link. It never should occur where there is a risk of prejudicing young person's access to justice and fair trial. Also recommend monitoring progress and outcomes – sentences – in cases which are proceeded using video link to help identify whether there is any adverse impact. An efficient youth justice system is in the best interests of children and young people; however, administrative ease or financial expediency must never take precedence over the rights of these often vulnerable children and young people.

Anti-Social Behaviour Orders

Article 92 – Applications for interim order

Include Youth's objections to ASBOs are well documented and we have no intention of repeating our numerous objections to these civil orders. This provision has the effect of consolidating ASBOs position of one of the most significant breach of people's rights within NIs statutes. This provision has the effect of completely denying a person's right

to a fair trial. We would suggest that these orders can only become enforceable after service otherwise it would be unreasonable to expect a person to comply with conditions of an interim ASBO when they are unaware of its existence. We can envisage a situation where an interim ASBO may be in place and a number of groups and possibly even members of the public are aware of them and the person subject to the order is not. This will raise unreasonable expectations amongst various groups (eg community or police) that certain behaviour will desist but not in others (eg young people and their families).

Custody of children over the age of 17

Include Youth believes that custody for children and young people should only be used as a last resort. However we believe all children and young people should be accommodated, in accordance with all internationally recognised standards, in a children-only facility one which operates a child centred regime. We believe that the Secretary of State make a clear policy statement that all 17 year olds will serve their custodial sentence in JJCNI. We appreciate that an incremental approach may need to be adopted but believe that alongside this statement a precise timetable should be agreed as to when this can be achieved.

Welfare of Children

Article 98 – Include Youth welcomes this amendment to the Criminal Justice Children order and believes that it will ensure a continuum of care for young people who are subject to a care order.

We would however suggest that “welfare” be replaced with “best interests”, in order to bring the legislation in line with international children’s rights standards, notably the United Nations on the Rights of the Child. Until the best interests standard is applied equally to all children in conflict with the law across the criminal justice system, then some of our most vulnerable children continue to not have their rights adequately protected by the State. Could say something also about the need to have the paramountcy principle extended to this legislation, as it is in the Children Order – which refers to welfare?

Conclusion

Include Youth is grateful to have the opportunity to comment on the Criminal Justice (NI) Order, 2007. We intend the above as a constructive and useful submission and would welcome the opportunity to discuss any issues raised in our response.