



**INCLUDE YOUTH RESPONSE TO THE DRAFT CLEAN
NEIGHBOURHOODS AND ENVIRONMENT BILL
(NORTHERN IRELAND)**

APRIL 2010

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 policy awareness – both locally and nationally.

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 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.

The Give and Take Scheme aims to improve the employability and increase the self esteem of young people in need or at risk from across Northern Ireland. The Scheme works with approximately 135 young people from a care or criminal justice background. The Scheme aims to support young people to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. 75% of people on the Scheme are care experienced and we have strong partnership with all Trusts, YJA, PBNI and Careers service. The Scheme provides essential skills training (ICT, English and maths) to all of the young people.

Include Youth manages the LACE (Looked After Children in Education) Project which is a multi-agency partnership with the aim of promoting better educational outcomes for children and young people in care.

In addition, Include Youth a Practitioners Forum, which draws together professionals from a range of statutory, voluntary and community organisations working directly with young people in need or at risk.

Include Youth's Young Voices project is a way of delivering participative democracy to marginalised young people in Northern Ireland. Its main aim is to support young people at risk or with experience of the criminal justice system, as well as young people marginalised for a variety of reasons, to become involved in decision making processes which impact on their lives, particularly in social welfare, education and criminal justice matters. The project works with a range of groups of young people in the community and both juvenile and youth custody facilities in Northern Ireland.

General Comments

We apologise for sending in our response to the Draft Bill after the closing date but having spoken to Mark Allison from the Clean Neighbourhoods Team about our concerns about the content of the Bill, we agreed that our response would be accepted after the closing date. Given the gravity of our concerns we are grateful that this response will be considered.

Information about the Bill was delayed in coming to our attention as we were not one of the named organisations on the list of consultees. We would request that we are now included on the mailing list for any further consultations.

Given that we are limited by the time schedule to respond to the document we are unable in this short time to present a full and comprehensive response. However, we are familiar with the content of CiNIs response and fully endorse their position.

We would like to use this opportunity to briefly raise several aspects of the draft Bill which most concern us. We firmly believe that if implemented the Bill will lead to unnecessary criminalisation of children and young people and will act as a fast track to the juvenile justice system.

Specific Comments

FPNs

Include Youth are against the proposal to introduce Fixed Penalty Notices (FPNs) to children and young people. It is unacceptable that these penalties can be applied directly onto children under 16 years of age. We are equally opposed to the suggestion that failure to supply a name and address or to give false or inaccurate information would be an offence and could lead up to a fine of £1000.

It is our understanding that a precedent has been set under current legislation which makes the giving of fines to under 16 year olds against the law. Para 69 of the Criminal Justice (NI) Order 2008 states that:

Where a person whose age is lower than 16 is given a notice, for a parent or guardian of that person to be notified of the giving of the notice and for that parent or guardian to be liable to pay the penalty under the notice

The Criminal Justice Children order 1998 further states that:

*It shall not be lawful for a court of summary jurisdiction to impose a fine exceeding –
In the case of a child under the age of 14, level 1 on the standard scale (£200); or
In the case of any other child, level 3 on the standard scale (£1,000)*

Para 35. – (1) Where a child is found guilty of any offence for the commission of which a fine may be imposed ... shall if the child is under 16 order that the fine ... be paid by the parent or guardian of the child instead of by the child.

The Guidance on Issuing Fixed Penalty notices contained within the Clean Neighbourhoods and Environment Act 2005 from DEFRA states that authorities are recommended to adopt special procedures for issuing notices to young offenders. This is to ensure that they are acting in accordance with their duty under the Children Act 2004. Different procedures are recommended for 16 and 17 year olds, and for children between 10 and 15, in order to ensure that the welfare needs, legal issues and other concerns relevant to children and young people are adequately highlighted and observed.

Child Safety/ Child Protection Issues

We would like to know if the Department has considered any child protection issues which may arise as a result of the practice of giving FPNs to children and young people. Has the Department considered that if a child is accompanied home and their parent/ guardian is informed of the proposed fine, that a child's safety could be at risk as a result of the parents'/ carers reaction?

Human Rights

The use of FPNs for young people is in contravention of Article 6 of the European Convention on Human Rights (ECHR) – the right to a fair trial and public hearing. This is supported by Article 40 of the United Nations Convention on the Rights of the Child (UNCRC) which states that a child should be informed promptly of any charge made against him; that if appropriate this should include informing his parents or carers; and that the matter should be determined without delay by an independent and impartial authority. Include Youth are concerned that the process by which FPNs are given may not fulfil these requirements.

Contributing to Outcomes for Children and Young People

The introduction of FPNs is completely in contradiction to the Executive's commitment made in the Programme for Government to reduce child poverty. It is likely that these FPNs will be issued to children and young people living in our most financially disadvantaged and deprived areas. It also runs counter to the commitment made to children under the Children and Young People's Strategy.

Section 75

It is clear that many aspects of the Bill are going to have a differential impact on children and young people. We note the Bill suggests that the sale of aerosol spray paints to persons under the age of 16 is to be made an offence. This would suggest that there is an assumption that children in this age range are the main perpetrators of graffiti and will be directly targeted for FPNs.

We would also suggest that the introduction of Gating Orders will have a differential impact on children and young people.

We note that an equality screening exercise has been undertaken and it has been decided that the proposals do not impact on equality of opportunity for any of the nine section 75 categories. We categorically disagree with this conclusion. We have examined the Screening Paper and do not accept the basis on which decisions were taken. We would ask the Department to undertake an immediate review of its Section 75 responsibilities with regard to this draft legislation. We would concur from the evidence presented that the department is in breach of its section 75 obligations by failing to provide sufficient evidence of the grounds on which decisions were taken. We would also like to know what steps were taken to engage directly with children and young people on this consultation and screening exercise.

As part of the Partial Regulatory Impact Assessment we note that it does state that there has been "limited informal consultation with stakeholders but in the main they are based on experience and developments in England and Wales." We reject this as a justification for not conducting a full consultation here in NI. There has not been a concerted attempt to ensure that introduction of this legislation to NI is based on a full

and comprehensive body of evidence which supports it. The Partial RIA states “our evidence to date, in the absence of any formal initial policy consultation process, is that the need for change is generally supported by district councils and other key interests.” This is a far from an adequate response to the obligations under section 75.

Concluding Comments

Include Youth would strongly recommend that the legislation process be halted until such time as there is a full consultation with all affected groups.

We would welcome the opportunity to work with the Department on moving a full consultation process forward and would be able to facilitate direct engagement with children and young people.