



**Response to the Northern Ireland Office's consultation on draft Code of Practice for the detention, treatment and questioning of persons under section 41 and Schedule 8 of the Terrorism Act 2000**

**June 2006**

## **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 runs the Young Voices project, which is a participation project for young people who have been involved or are at risk of becoming involved in the criminal justice system, with the aim of supporting these young people to become involved in decision-making processes which impact upon their lives. Currently the Young Voices project supports young people in two groups – one drawing its members from the Greater Belfast area, and the second based in the Juvenile Justice Centre, Bangor.

In addition, Include Youth runs the YOYO 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, and meets on a quarterly basis.

## **Draft Codes for Practice**

Include Youth welcomes the opportunity to respond to the NIO draft Code of Practice for the detention, treatment and questioning of persons under section 41 and Schedule 8 of the Terrorism Act 2000. While the Draft Code of Practice apply to both children

and adults, Include Youth as a children's rights organisation, will confine our comments to addressing how we consider the policy will impact upon children and young people.

### **Section 75 consultation**

Include Youth is concerned that the draft policy provides very little mention of the NIO statutory duty to equality as contained in section 75 of the Northern Ireland Act 1998. We note that in Paragraph 8 of the Introduction the document states that the Department has carried out an equality screening in line with the NIO's Equality Scheme, and does not consider that an EQIA is required. However, it is clear that this draft policy stands to have a substantial direct adverse impact on children and young people, in particular those ages 17 years, because the draft Code defines 'juveniles' as anyone under the age of 17. Therefore all 17 year olds are excluded from the protections afforded to children, to which they are entitled. This policy we strongly submit should have been screened in for the purposes of conducting a full Equality Impact Assessment, and believe that the NIO is in breach of its Equality Scheme for failure to do so. We wish to request details of both the process and outcomes of any screening exercise conducted by the NIO in respect of this policy.

In addition, both section 75 of the Northern Ireland Act 1998 and Article 12 of the UNCRC, provide that children have a right to be consulted about decisions affecting them, and Include Youth submits that a version of this draft policy should have been produced in forms accessible to children and young people of different ages and abilities, telling them about the policy. We would therefore be grateful if you would forward copies of your child accessible format of this document, and if you could provide us with details of how you have consulted directly with children and young people as one of the groups likely to be most impacted upon by this policy.

Finally regarding consultation, we would be grateful if you would respond with details of the system which you intend to use to analyse responses to this consultation process including the degree of weight which will be attributed to both individual and organisational responses.

### **Human rights**

Running through every aspect of youth justice are the human rights and children's rights standards set by international agreement, which the UK government has ratified. Relevant human rights instruments include the European Convention on Human Rights incorporated by the Human Rights Act 1998 – particularly Articles 5, 6 and 14; and the United Nations Convention on the Rights of the Child – particularly Articles 1, 3, 37, 39 and 40 - which defines a child as: 'a person under the age of 18'(Article 1). The United Nations Committee on the Rights of the Child in its Concluding Observations following its Second Periodic Report into the UK in 2002, noted with concern the fact that 'young people of 17 years of age are considered as adults for the purposes of remand' and recommended that the UK government 'establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention...and other relevant international standards in this area such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for the Prevention of Juveniles Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System'.

### **Draft Code of Practice for the Detention, Treatment and Questioning of Persons under Section 41 and Schedule 8 of the Terrorism Act 2000**

#### **17 year olds treated as adults**

Include Youth is deeply concerned with the contents of Paragraph 1.1 which states that 'for the purposes of this Code, a juvenile is any person under the age of 17. If anyone appears to be under 17, and there is no clear evidence that they are 17 or over, they shall be treated as a juvenile for the purposes of this Code.' This provision conflicts with both domestic legislation and international children's rights standards.

In addition to breach of international standards, Include Youth submits that this failure to include 17 years olds within the definition of 'juvenile' for the purposes of draft Code of Practice is an anomaly which directly contradicts the Terrorism Act 2000 itself, as amended by the Justice Act (NI) 2002. Schedule 11 of the Justice (NI) Act 2002 enacted amendments to several pieces of legislation governing youth justice, extending the age of a 'juvenile' to include 17 year olds – most notably in this case,

section 70(5) and 78(3) of the Terrorism Act 2000. In addition, the draft Code of Practice runs contrary to a number of recent legislative changes in the ambit of Youth Justice in Northern Ireland, which flowed from the Review of Criminal Justice 2000, enacted by the Justice (NI) Act 2002, including the extending of the Youth Court remit to 17 year olds.

The Criminal Justice Review recommended at paragraph 10.70 that 17 year olds should be brought within the ambit of the youth justice system in Northern Ireland:

*'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.'*

The arbitrary failure to include 17 year olds within the definition of 'juvenile' for the purposes of draft Code is unnecessary, confusing and unwieldy, and contravenes both domestic legislation, including the governing primary legislation, and international children's rights standards. We submit this will continue to leave significant numbers of vulnerable young people without support and protection to which they are entitled at a particularly serious time in their lives, where the consequences can be potentially very serious and life changing.

This simply does not make sense and serves only to confuse some very vulnerable children and their families. It would appear that the primary reason for the continued refusal to include 17 year old children within the definition of 'juvenile' for the purposes of this draft Code of Practice is one of resources, as it is clear that bringing 17 year olds within the definition under the TACT regime will involve a considerable increase in the number of young persons who will be processed with clear resource implications including issues around the number of people who will be required to act as appropriate adults. There are also issues with regards to training and deliver of the appropriate adult service generally.

This position we strongly submit is untenable, and leaves government in breach of international standards together with domestic trends in the sphere of youth justice, which have seen a significant shift towards full compliance with the UNCRC, by bringing 17 year olds within the remit of the Youth Court. Include Youth strongly recommends that this anomaly should be addressed, and that the protections afforded

to children under the draft Code of Practice should be expressly extended to include ALL children – including those aged 17 years of age.

### **Conclusion**

Include Youth is grateful to have the opportunity to comment on the Northern Ireland' Office's consultation on the draft Code of Practice for the detention, treatment and questioning of persons under section 41 and Schedule 8 of the Terrorism Act 2000. We intend the above as a constructive and useful submission and would welcome the opportunity to discuss any issues raised in our response. We wish to be kept fully informed of progress in the development of this important policy initiative and look forward to the issues raised and recommendations made in this response being addressed and taken forward. We also look forward to receiving your response to the questions we have asked in the response and receiving the additional information requested including the child accessible version of this consultation document. In addition, we would grateful to receive a copy of your analysis of responses when same becomes available.

