



**Response to the Northern Ireland Office's consultation on the  
Police and Criminal Evidence (NI) Order 1989 Draft Codes of  
Practice, 2006 Edition and the Draft Police and Criminal  
Evidence (Amendment) (NI) Order 2006**

**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.

## **PACE Codes for Practice**

Include Youth welcomes the opportunity to respond to the NIO Police and Criminal Evidence (Northern Ireland) Order 1989 Draft Codes of Practice 2006 Edition. In the

course of preparing our responses, we have consulted widely with young people through our Young Voices project and with professionals from across Northern Ireland working directly with challenging and vulnerable young people, through our Practitioners Forum.

While the Draft Codes 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.

A number of concerns which we raise relate specifically to the contents of the Guidelines, while others refer more generally to the PACE regime. In particular we are somewhat disappointed that the draft Codes of Practice have failed to take the opportunity to implement the recommendations flowing from recent research conducted by Quinn and Jackson, Queens University Belfast on behalf of the NIO into *'The detention and questioning of young persons by the police in Northern Ireland'* (2003). Findings included inconsistencies of practice in the way in which young people are treated across NI and even within particular police stations; unnecessary detention of young people in custody due solely to lack of alternative accommodation; length and place of detention of young person while in custody – including use of adult cells and inappropriate juvenile cells; inconsistency around use of powers to fingerprint and take DNA samples from young people; how young people were informed about their rights, including concern around whether young people understood implication of caution given to them; inconsistencies in respect of conduct of police interview; inconsistent approaches adopted by appropriate adults towards young people in custody. While we are aware that a number of steps have been taken to progress some recommendations, we are unconvinced that the current revised draft Codes of Practice go far enough to tackle the inconsistencies and irregularities identified in the Quinn and Jackson research.

### **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 Part 4 of the Introduction the document states that the Department has carried out an equality screening in line with the NIO's Equality Scheme, does not consider that this policy will have any adverse impact on any of the named groups under

Section 75 and that an EQIA is not 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. This is because the PACE Codes define ‘juveniles’ as those aged 10-16 – thus excluding all 17 year olds 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 it 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 C – Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers**

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

Include Youth is deeply concerned with the contents of Paragraph 1.5 which states that ‘if anyone appears to be under 17, they shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence that they are older.’ Currently the protections afforded to children and young people under the PACE regime – governed by the Police and Criminal Evidence (NI) Order 1989 and Codes of Practice - extend to children aged between 10-16 years, and conflict with both domestic legislation and international children’s rights standards. We are concerned and disappointed that the Northern Ireland Office has failed to take this opportunity to remedy the situation and extend these protections to all children, i.e. include 17 years olds within the PACE regime. Under the draft Revised Codes of Practice if anyone appears to be under the age of 17 then he or she is to be treated as a juvenile in the absence of clear evidence to the contrary. (Codes of Practice, Part C, paragraph 1.5)

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 PACE is an anomaly which 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. 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 Justice (NI) Act 2002 which enacted a number of the recommendations flowing from the Criminal Justice Review, brought 17 year olds within the ambit of the Youth Court, and at Schedule 11 enacted amendments to several pieces of legislation governing youth justice, extending the age of a 'juvenile' to include 17 year olds, however it did not amend the Police and Criminal Evidence (NI) Order 1989 with regards to the inclusion of 17 year olds. In particular, Schedule 11 of the 2002 Act amended the Criminal Justice (Children) (NI) Order 1998, Part III of which contains special rules relating to the arrest and detention of young people, and must be read in conjunction with PACE legislation and Codes of Practice. The arbitrary failure to include 17 year olds within the definition of 'juvenile' for the purposes of PACE is unnecessary, confusing and unwieldy, and contravenes 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.

Seventeen year old boys and girls are therefore placed in the confusing and precarious situation of being treated as children until arrest, as adult after they have been arrested by police, and during all processes and procedures which take place under PACE before a decision is taken either remand in custody or release on bail. However once the file has been sent to the Public Prosecution Service for decision with regards to the next stage they become a child again, for example if cautioned through the Youth Diversion Scheme or a diversionary conference or if prosecuted through the Youth Court. All specific processes and disposals concerning children and young people such as youth conferencing and other Youth Justice Agency are available to all children up to the age of 18 (with some exception concerning custody). This simply does not make sense and serves only to confuse some very vulnerable children and their families.

Indeed the Draft Codes of Practice themselves acknowledge that children require additional support of an appropriate adult because of the particular vulnerability which comes from their age - *'Although juveniles...are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating, Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity'* (Code C, Notes for Guidance 11C) (emphasis added) Problems arise due to the arbitrary definition which excludes an often very vulnerable group of children.

It would appear that the only reason for the continued refusal to include 17 year old children within the definition of 'juvenile' for the purposes of the PACE regime is one of resources, as it is clear that bringing 17 year olds within the PACE regime 'will involve a considerable increase in the number of young persons who will be processed through PACE with considerable resource implications as regards the provision of suitable accommodation in police stations and the number of people who will be required to act as appropriate adults.' (Quinn and Jackson, page 133)

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 PACE should be expressly extended to include ALL children – including those aged 17 years of age.

### **17 year olds – a vulnerable group**

The following illustrate that seventeen year old young people are a particularly vulnerable group and both need and have a right to special protection under PACE. For many it is a time of transition, especially those from a care background and others who have been receiving support services, from social services for a range of issues, including mental health problems. As services end, or the young people move from child to adult

service provision, on occasion this transition does not flow smoothly, with the result that sometimes vulnerable young people slip through the net and do not receive the support to which they are entitled. In addition, in the area mental health, many young people simply do not receive appropriate or at times any care at all, and it is well documented that Child and Adolescent Mental Health provision in Northern Ireland is in a very poor state of repair. Connected to this are issues around diagnosis. These factors combine to mean that on many occasions children with significant mental health problems are entering the criminal justice system. In addition, significant numbers of children who enter the criminal justice system have poor outcomes and experiences of education, with problems in literacy and numeracy and on occasion mild to moderate learning disability, which may or may not have been detected within the school setting. Homelessness and difficulties around finding suitable accommodation for children aged seventeen is a particular problem, with many young people finding themselves placed in Bed and Breakfast accommodation or some hostels housing both adolescents and adults and which may be very unsafe places for vulnerable young people.

### **Appropriate adults**

One of the key protections afforded to children under the PACE regime is the fact that they may not be interviewed in the absence of an appropriate adult. Include Youth respectfully submits that this key protection must be extended to include 17 year olds. However, more generally Include Youth wishes to raise a number of matters which are not directly relevant to the text of the revised Codes, but rather concern how the role of appropriate adult is discharged in respect of children and young people under PACE. Include Youth suggests that measures need to be taken to fully implement the Criminal Justice Review recommendation as outlined below.

*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. (Recommendation 181 Criminal Justice Review 2000)*

In relation to implementation of the CJR recommendation, Lord Clyde, the Justice Oversight Commissioner has criticised progress as being ‘exceptionally slow’. (Fourth Report of the Justice Oversight Commissioner, June 2005, page 106) There is no doubt that this is a ‘complex and difficult area’, and considerable difficulties exist in securing prompt attendance of an appropriate adult, the competence and impartiality of those performing the role and the role of the appropriate adult if any in the release of the young person after their detention at the police station.

These important overarching issues which have organisation, policy and resource implications, have been taken on board by an NIO-led Steering Group, must we submit be considered alongside the more immediate problems which exist in respect of training of all existing and potential appropriate adults.

In the area of training, specific problems arise in relation to the whether the role of appropriate adult is taken by parent, relative or friend or by a professional person, usually form Social Services. We welcome the introduction of formal guidance by the PSNI in 2005 which will be readily accessible to those who attend police stations in the role of appropriate adult, in line with recommendations from the Justice Oversight Commissioner. However, in the case of parents, Include Youth are unsure that this alone can deal with the concerns around the role of parents as appropriate adults. For example, parents may have literacy problems or encounter difficulties understanding the nuances of what is happening sufficiently which will prevent them from effectively supporting and protecting the interests of their child. On some occasions parents may themselves be intimidated by their presence in a police station, may be very angry with or embarrassed by their children, or may simply wish to ‘get out of there as soon as possible’ and as a consequence may encourage the child to make an admission of guilt.

One member of our Practitioner’s Forum recounted her first experience of being called to act as an appropriate adult:

*‘I was called by the police and told that the young boy had been arrested and needed someone to sit in on the interview – his parents had been called, had gone down but had washed their hands of him and he was on his own. However, when*

*I arrived at the station, and spoke to the parents it became very clear that far from washing their hands of their son, they were deeply concerned for his well-being, felt completely out of their depth and were paralysed with fear that they would simply make things worse for their son. It was this lack of knowledge, experience, fear and wanting the best for their son that they declined to take on the role of appropriate adult. When I went into the interview room, before we started, as this was my first time, I asked the police officers what my role was, what I could and couldn't do. That boy was in a very difficult situation and he needed someone in his corner that was well trained, experienced and knew what they were doing - I did the best I could – but it wasn't ideal.' (YOYO Practitioner's Forum participant)*

Other problems include significant inconsistencies in the length of time that young people are held in custody, despite international standards being very clear that custody should be a measure of last resort for the shortest period of time possible, and at times children are detained unnecessarily due to problems in accessing appropriate adults, which tended to arise in the case of social workers etc than in the case of parents or other relatives.

Moreover, at times there is a huge conflict of interest for staff working in a children's home, when a child has been arrested for behaviour which has occurred in the residential setting, perhaps an allegation of assault against another member of staff or young person, and in such cases, we believe that someone from a bank of designated appropriate adults should be provided to support the child in the role of appropriate adult.

The Quinn and Jackson research also identified that one tenth of those children arrested had some form of physical or mental health difficulty or learning difficulty. High levels of mental health difficulties have been identified among children in the criminal justice system and in custody in particular. Include Youth recommends that the PACE Codes of Practice should make special provision to ensure that custody officers, interviewing officers and appropriate adults receive appropriate training with regards to identifying and communicating with children and young people with a mental health problems and/or learning difficulty.

Clearly children and young people require an appropriate adult who is well trained, competent and available without delay. Whilst parents and other relatives and friends have a role to play in delivering this service, we would suggest that the Steering Group chaired by the NIO which last met in autumn 2005, and which was attended by Include Youth should be re-convened as a matter of urgency to address issues of delivery of the appropriate adult service. In particular attention should be paid to suggestions that a consistent, professional and fully resourced 24 hour appropriate adult / advocacy service be developed with well trained volunteers managed by either social services or an independent voluntary organisation.

### **Inappropriate use of police custody under PACE regime**

As earlier mentioned, on a significant number of occasions young people were kept in detention longer than was necessary due to difficulties in getting appropriate adults to attend police stations, in contravention of both domestic and international standards. *‘[On the issue of releasing young people from custody] – custody sergeants experienced difficulties when there was no available adult into whose care the young person could be released. The result was that custody sergeants could be placed in the position of having to charge and detain young persons who could otherwise have been released if an adult had been available to take care of them. Particular difficulties arise when parents or relatives of the young person are not available and Social Services are unable to provide accommodation for the young person.’* (Quinn and Jackson, page 129)

Other inconsistencies were identified by practitioners who attended our Practitioner’s Forum, and included the fact that on some occasions treatment of a young person who is arrested under PACE will depend on the custody officer on duty. On some occasions detained children were released at beginning of shift change by custody officer.

*I was 13 when I first went into custody, and have been in four times since. Three of these was directly from the children’s home – all incidents because of my reaction to being restrained where either common assault or criminal damage.* Young Voices participant

There are particular concerns with regards to the use of PACE in respect of children within the care system. It is well recognized that there is an over-representation of care

experienced children in the criminal justice system, and this problem manifests under the PACE regime with 73% of all care-custody admissions to the Juvenile Justice Centre in 2003 made under PACE legislation. The issue of PACE referrals to the JJC, which sees children removed from the care home by police officers and placed in custody for a relatively short period of time, often one night or a weekend, has been described by staff of the JJC as ‘a traumatic experience for the child and difficult to manage in the Centre’. Statutory and voluntary sector practitioners reported that “children who were disruptive in care homes were too easily moved, via PACE, to the JJC. The suggestion being that they were ‘management problems’ rather than ‘offenders’.” This matter came to a head in the summer 2004, when, after taking legal advice, the management of the JJC refused to accept some referrals from the police and did not admit a number of young people under PACE legislation because it considered them to be inappropriate. This begs the question as to whether the reduction in numbers of children entering the JJC under PACE has resulted in an increase in the number of children being detained in police custody? We would be grateful if you could provide us with statistics on this matter.

The absence of appropriate placements/accommodation providing specialist care and support would appear to be a significant causative factor explaining why young people without parental care are ending up in custody in such significant numbers – put simply, there is nowhere else for them to go. This is an unacceptable and inappropriate use of custody, which breaches international standards.

Unfortunately it is not uncommon, and quite often young people who have displayed disruptive and challenging behaviour are removed from residential care homes by police, charged with minor offences and then refused to be placed elsewhere by the relevant Trust. As they are effectively homeless, many are deemed by the magistracy to meet the requirements of Article 12 (1) and (3) of the Criminal Justice (Children) (NI) Order 1998. Include Youth is strongly of the view that interpreting the legislation in this way is at odds with parliamentary intention which saw the ’98 Order introduced to set out the limited circumstances in which custody would be used as a measure of last resort.

*'Sometimes it is just chaos in the police station, especially if it is 9 o'clock and the child is about to be let out and they [police] are frantically ringing the duty team [social services] to find a place of safety.'* (YOYO Practitioner's Forum participant)

*'We gets lots of calls from duty social work team looking for placements for children about to be released – in desperation, just trying to get them placed anywhere – some of our hostels are suitable, some are not. But at least if they are put in a hostel there will be a member of staff on 24 hours – if you put them in a B&B they are totally on their own – it doesn't bear thinking about'.* (YOYO Practitioner's Forum participant)

Therefore Include Youth recommends that more resources be made available to social services to enable young people to be placed in appropriate accommodation thus ending the need to detain them unnecessarily either in police custody or the Juvenile Justice Centre.

## **Conclusion**

Include Youth is grateful to have the opportunity to comment on the Northern Ireland's Office's consultation on the Police and Criminal Evidence (NI) Order 1989 Draft Codes of Practice, 2006 Edition and the Draft Police and Criminal Evidence (Amendment) (NI) Order 2006. 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 be grateful to receive a copy of your analysis of responses when same becomes available.

