

MINISTERIAL CORRESPONDENCE WITH STAKEHOLDERS

This document contains the text of letters sent by Ministers about the provisions of the Criminal Justice and Immigration Bill to the following stakeholders and Members of Parliament:

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Our ref: 166679

20 July 2007

CRIMINAL JUSTICE AND IMMIGRATION BILL: IMPACT ON PRISON POPULATION

I have seen a copy of your press release on the Criminal Justice and Immigration Bill.

The press release contains a number of inaccuracies which your members will wish to see clarified.

Firstly, it is suggested that the provisions in the Bill will add 4,000 to the daily prison population. This is not the case. Taken as a whole, we estimate that the Bill will lead to a net reduction of some 1,380 prison places (this figure is broken down on page 109 of the Explanatory Notes to the Bill, available at the following website: <http://www.publications.parliament.uk/pa/cm200607/cmbills/130/en/2007130en.pdf>).

You suggest that Violent Offender Orders alone would add 3,000 to the prison population. Violent Offender Orders will be a preventative measure and, while breaches of the Orders will create some demand for prison places, the overall effect of the Orders should be to prevent serious further offences being committed. Although it is not possible to quantify this preventative effect, it should offset at least some of the demand for additional prison places.

In any event, the potential impact of these orders on the prison population will be relatively small. We estimate that some 100 Orders will be made each year, leading to a requirement for some additional 20 prison places as a result of breaches of the Order. This estimate is based on a breach rate of 15% which is consistent with the figure for Sexual Offences Prevention Orders on which Violent Offender Orders are modelled.

Violent Offender Orders will be targeted at the most serious violent offenders - more specifically those who have committed one of the specified offences listed in clause 83(3) of the Bill (namely, manslaughter, soliciting murder, wounding with intent to cause GBH, malicious wounding, and attempted murder) and have been sentenced to at least 12 months for the offence.

The Bill also removes the option of suspended sentences for summary offences. You suggest that the courts will simply pass immediate custodial sentences instead. We do not believe that this is likely to be the case. The evidence from our sentencing data suggests that these cases would previously have received a community sentence. We are firmly of

the view that these are cases where courts would be reluctant to give an immediate custodial sentence. We estimate that limiting the use of Suspended Sentence Orders to indictable-only and either way offences will result in a reduction in the demand for prison accommodation by about 400 places.

Finally, your press release claims that the Bill “will give power to probation staff to punish offenders for breach of orders”. I can assure you that there is no such provision in the Bill. We have no current plans to introduce such a measure, although we will keep the matter under review.

I am placing a copy of this letter on the Criminal Justice and Immigration Bill page on the Ministry of Justice website.



DAVID HANSON MP
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Our ref: 166679

24 July 2007

CRIMINAL JUSTICE AND IMMIGRATION BILL: IMPACT ON PRISON POPULATION

I am writing to you as the primary sponsor of Early Day Motion 1907 which expresses concern that the provisions of the Criminal Justice and Immigration could add 4,000 prison places.

I can assure you that this is not the case; quite the reverse. We estimate that the provisions of the Bill will lead to a net reduction of some 1,380 places (this figure is broken down on page 109 of the Explanatory Notes to the Bill, available at the following website: <http://www.publications.parliament.uk/pa/cm200607/cmbills/130/en/2007130en.pdf>).

The EDM suggested that Violent Offender Orders alone would add 3,000 to the prison population. These figures, from the National Association of Probation Officers, are based on a misunderstanding of the provisions in Part 8. Violent Offender Orders will be targeted at the most serious violent offenders. We estimate that some 100 Orders will be made each year, leading to a requirement for some additional 20 prison places as a result of breaches of the Order. This estimate is based on a breach rate of 15% which is consistent with the figure for Sexual Offences Prevention Orders on which Violent Offender Orders are modelled.

The Bill also removes the option of suspended sentences for summary offences. The National Association of Probation Officers has suggested that the courts will simply pass immediate custodial sentences instead. We do not believe that this is likely to be the case. The evidence from our sentencing data suggests these cases would previously have received a community sentence. We are firmly of the view that these are cases where courts would be reluctant to give an immediate custodial sentence. We estimate that limiting the use of Suspended Sentence Orders to indictable-only and either way offences will result in a reduction in the demand for prison accommodation by about 400 places.

I am copying this letter to John Austin, John Battle, Peter Bottomley, Karen Buck, Martin Caton, Jeremy Corbyn, David Drew, Mark Durkan, Ian Gibson, Glenda Jackson, Lynne Jones, Elfyn Llwyd, John McDonnell, Alan Simpson and Robert Wareing who have signed EDM 1907.

I am also placing a copy of this letter on the Criminal Justice and Immigration Bill page on the Ministry of Justice web site.



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Our ref: 170307

15 September 2007

CRIMINAL JUSTICE AND IMMIGRATION BILL

I have seen a copy of the Prison Reform Trust's initial briefing paper on the Criminal Justice and Immigration Bill.

The briefing expresses concern about a number of the provisions in the Bill as well as making a number of recommendations; I thought it would be helpful to the Trust if I responded to these as the Minister responsible for the Bill.

The Bill takes forward the Government's programme of reform of the criminal justice system. Amongst other things, the Bill will help build public confidence in the sentencing framework by imprisoning serious and dangerous offenders while others receive tough and effective community sentences. Moreover, the Bill will ensure that prison and probation resources are targeted at repeat, serious and violent offenders. In this regard, I would refer you to paragraph 702 of the Explanatory Notes to the Bill (available at: <http://www.publications.parliament.uk/pa/cm200607/cmbills/130/en/2007130en.pdf>) which sets out the expected impact of the Bill on the prison population. You will see from this that the provisions of the Bill, once fully implemented, are expected to lead to a net reduction of up to 1,383 in the prison population.

Part 1 – Youth rehabilitation orders

The briefing paper identified a number of concerns about the new Youth Rehabilitation Order (YRO). The paper suggested that there is no overall time limit for the duration of the Order. This is incorrect. Paragraph 31(1) of Schedule 1 to the Bill provides that a YRO must specify a date, not more than 3 years after the date on which the order takes effect, by which all the requirements in an Order must have been completed. Moreover, many of the individual requirements impose time limits specific to that requirement (for example, a curfew requirement cannot be for longer than 6 months).

There is no lower age limit for the Order. It is available for all young people between 10 (the age of criminal responsibility) and 17 years. The Order provides the flexibility to attach requirements that are appropriate to the individual. This will take account of age and maturity as well as offending behaviour and risk.

We recognise the need to ensure that the Order does not lead to any escalation in the use of custody. That is why we and the Youth Justice Board will work with courts and the Sentencing Guidelines Council on providing advice, for example on what combinations of requirements might be considered for a drug related criminal offence; and on the lengths of sentence which might be considered on successive occasions.

I also note your comment that separate disposals reduce the risk of up-tariffing by the Court. The Order is designed to be used on multiple occasions and is flexible enough to enable more onerous requirements to be imposed on second and subsequent occasions where an individual re-offends. The response to a proposed generic community sentence contained in *Youth Justice the Next Steps* was overwhelmingly positive with most organisations welcoming the proposal.

We have also provided for Intensive Supervision and Surveillance (ISS) as part of the Order and this will be recognisable as the last step before custody. ISS has been designed for those young offenders who would (if this option did not exist) be subject to a custodial sentence. There are therefore appropriate restrictions on imposing the YRO with ISS on the face of the Bill. This will ensure that the threshold is higher than that of a standard YRO.

I should add that whereas a YRO can be made on conviction for any offence, the Intensive Supervision and Surveillance or Fostering requirements can only be imposed where the court is dealing with someone for an offence which would be punishable with imprisonment.

Finally, I note your comments on breach action. Breach proceedings for the YRO have been designed to reflect current national standards for youth justice services. If the responsible officer considered there was no reasonable excuse for the breach, he or she *may* refer any breach of a YRO to the courts – even a first breach. However, if the responsible officer does not refer the matter to the courts a warning would have to be issued. Up to two warnings could be given. If following the first breach a warning was given, then, during the 12 months from that date, the offender again breached the order a further warning could be given. If the offender then breached the order a 3rd time during that period, breach action *must* be taken by the responsible officer.

The application of these standards will depend on the nature and seriousness of the breach. No action need be taken if the offender has a reasonable excuse for the breach - for instance if the breach occurred because a young person's parents were unable to get the young person to an attendance centre or other required location. We know that many of the young people within the youth justice system lead chaotic lives which can contribute to non compliance. However, we agree that every possible option needs to be available to avoid breach action leading to custody where the breach is not serious or persistent. We believe that this process offers the necessary flexibility to encourage young people to complete their Order while also safeguarding its credibility among sentencers and the general public.

Clause 10 – Abolition of suspended sentences for summary offences

I welcome the Trust's support for this provision. As to your suggestion that there should be further restrictions on sentencing for summary offences, you will be aware that Lord Carter's Review of Prisons is examining the supply and demand for prison places. Lord Carter's

report, which is due in the autumn, is expected to cover a range of sentencing issues. We will be looking at sentencing issues across the piece in the light of the finding of the Review.

Clause 11 – Restriction on imposing community sentences

Again I welcome the Trust's support for this measure which, as you suggest is designed to encourage sentencers to consider whether a fine might be a suitable disposal in appropriate cases as an alternative to a community order.

In addition, the Trust lends its support to the introduction of a system of income related fines to encourage the greater use of financial penalties. It is important that our fine system aims to ensure that fines are set at realistic levels and have an equal impact on all offenders, but it does not necessarily require legislation to set out a framework for the detailed process of determining the amount of the fine in every individual case. The Sentencing Guidelines Council is currently reviewing the Magistrates' Court Sentencing Guidelines and the Sentencing Advisory Panel consultation paper set out two different approaches to the fixing of fines. One option was a refinement of the current approach of fixing fines based on a percentage of the offender's net weekly income, with two variants on the level of detail and guidance. The second option represented a new approach which would base fines on fixed sums, rather than a percentage of income. The Panel will consider the responses to the consultation paper when putting advice to the Council and draft guidelines will then be published, which will provide a further opportunity for comment.

Clause 12 – Indeterminate sentences: determination of tariffs

You express concern that the new arrangements provided for in this case, designed for exceptional cases, will become the default setting. We do not believe that this will be the case. Indeed, we expect the new procedure to apply to very few cases. The tariff-setting procedure can only be modified when the court gives a discretionary life sentence. Our figures indicate that there were in the region of 220 discretionary life sentences given in 2006. That is a fairly small pool to begin with. Then the court must find that the case is of exceptional seriousness, and also that the tariff resulting from the normal calculation does not reflect the seriousness of the offence.

Clause 16 – Release of prisoners after recall

I welcome the Trust's endorsement of the proposed fixed term recall provision whilst noting that you disagree with the assumption that offenders who do not meet the criteria for a fixed term recall should only be re-released when the Secretary of State (or the Parole Board) is satisfied that it is safe to do so. The test set out in this provision is designed to provide sufficient public protection safeguards. Most low risk prisoners will be recalled using the fixed term recall provisions. Many of those not deemed suitable or who are ineligible for a fixed term recall will have been assessed as presenting a potential risk of serious harm to the public. Under the circumstances it must be right that they should be required to demonstrate that they are safe to be re-released before a decision to return them to the community is made.

You suggest that new section 254B of the Criminal Justice Act 2003 (inserted by clause 16) should be restricted to offenders already assessed as dangerous by the courts. The release following recall of all such prisoners will be dependent upon up to date risk assessments. In cases where such offenders are deemed not to present a risk of serious harm there is an expectation that they will normally be re-released quickly, subject of course to the Secretary

of State being satisfied as to the adequacy of the release plans and the offender's willingness to comply. Therefore we are not convinced that it is necessary to make the changes you are recommending

Clause 17 – Further review and release of prisoners after recall

You propose that the requirement to further review cases every 12 months where the Parole Board considers release inappropriate (as provided for in new section 256A of the Criminal Justice Act 2003) should be reduced to 6 months. I am not persuaded of the case for such a reduction. The Parole Board will be able to recommend an earlier review if there is evidence to suggest that there will be sufficient progress to warrant an early review and the Secretary of State will carefully consider all such recommendations. We believe that this mechanism should provide sufficient flexibility to ensure that recalled prisoners are not held any longer than is absolutely necessary.

Clause 18 – Recall of life prisoners: abolition of requirement for recommendation by Parole Board

I have also noted your concern over the proposal to remove the requirement to consult with the Parole Board before revoking the licence of a life sentence prisoner. In practice over recent years the large majority of recall decisions in respect of life sentence prisoners have been made without prior reference to the Parole Board, due to the fact that they have been assessed as presenting an unacceptable risk to life and limb and therefore it was expedient to take immediate action. Therefore, the change will have little overall impact. More importantly, the new provisions retain an absolute right for the offender to require a review by the Parole Board of the recall, thus enabling the Board to consider whether recall was appropriate. Such a referral should safeguard against the concerns raised in your briefing.

Section 32(3) of the Crime (Sentences) Act 1997 provides a right of appeal against recall. This section is retained.

Part 4 – Her Majesty's Commissioner for Offender Management and Prisons

You suggest that the Commissioner's death remit should be expanded to include other categories. Those prisoners who were recently held in court cells were in the custody of HM Prison Service at night and escort contractors during the day. Any deaths occurring in those circumstances would fall into the Commissioner's remit under paragraph 2 of Schedule 8 to the Bill. Any deaths occurring in police cells (under similar arrangements to Operation Safeguard) would be in the remit of the Independent Police Complaints Commission as they would be in police custody. In the event of a death occurring after release from prison or immigration custody the Commissioner has discretion to investigate that death if he or she believes that the death was linked to events which occurred during that custody (see paragraphs 3 and 6 of Schedule 8). We believe that this is a more workable solution than applying some arbitrary time limit. We do not believe that the remit should be extended to include deaths in Secure Children's Homes as this form of accommodation is not provided primarily for criminal justice purposes. The statutory guidance *Working Together to Safeguard Children* already sets out a clear framework for dealing with such deaths, including through serious case reviews.

Schedule 11 – Alternatives to prosecution for persons aged under 18

You suggest that the two year bar (in new section 66F of the Crime and Disorder Act 1998) on a court sentencing a young offender to a conditional discharge where that person has previously received a youth conditional caution should be reduced to 12 months. The provision in new section 66F mirrors that in section 66(4) of the 1998 Act in respect of warnings issued under section 65 of that Act. In our view the provisions for the youth conditional caution should mirror the section 66(4) restriction as it would be difficult to see why what is, in effect, a higher tariff disposal should have a shorter time restriction. It is important to note that a young person who receives a conditional caution would, under the current legislation, have been referred to court on the basis that they had either exhausted existing out-of-court disposals or the offence was too serious to be dealt with by those disposals. If they go on to offend again within the two years referred to in new section 66F it would indicate that they have not taken advantage of any rehabilitation process and a conditional discharge would not be appropriate in those circumstances. I appreciate your point about two years being a long time in the life of a young person, but in our view that there is no good reason not to mirror the provisions of section 66(4).

Inspection of electronic monitoring of offenders

In regard to your proposal for electronic monitoring inspection arrangements, I agree that public confidence in the system is vital. It is for this reason that HM Inspectorate of Probation recently confirmed it will be leading a joint thematic inspection of electronic monitoring, early in 2008. The outcome of this will clearly be influential in the Government's approach, however I do not believe it would be appropriate to create a separate statutory requirement for independent inspection arrangements for one particular type of intervention such as electronic monitoring.

This view is reinforced by the current Home Detention Curfew assessment procedure in prisons which is already subject to scrutiny by the prisons inspectorate during its consideration of resettlement processes in each establishment. Additional scrutiny is also available when required and you may be aware of the National Audit Office report on electronic monitoring published in February 2006, and the subsequent Public Accounts Committee report in July of the same year.

Part 8 – Violent offender orders

The purpose of a Violent Offender Order (VOO) is to provide a means of continuously protecting the public from the most dangerous violent offenders who still present a high risk at the end of their sentence. The key point to note is that a VOO will take effect at the end of a person's sentence, when they are no longer on licence and there are therefore no other arrangements in place for supervising the individual or managing their risk. At present, once an offender has completed their sentence, the public protection authorities are not able to place restrictions on the individual in order to manage their risk. This gap needs to be addressed and VOOs will ensure that the public is further protected and should prevent serious further offences being committed.

You refer to an informal briefing which suggested that the orders could lead to an increase in the prison population of 3000. This is not the case. VOOs are a preventative measure and the overall effect of the orders will be to prevent serious further offences being committed. Breaching of an Order will be a criminal offence punishable by up to five years' imprisonment. This will create some demand for prison places, however, the overall preventative effect of the Orders should offset some of this demand. Therefore, we expect

the potential impact of these Orders on the prison population to be relatively small. We estimate that approximately 100 orders will be made each year, leading to a requirement for approximately 20 prison places each year to cater for those individuals sentenced to custody following a breach of the conditions of an Order.

Clause 104 – offence of causing nuisance or disturbance on NHS premises

You suggest that clause 104(1)(c) of the Bill is poorly worded as it would render a wide range of law abiding persons liable to the offence. This is not the case. To commit the offence in clause 104, a person would have to fulfil each of the criteria in clause 104(1)(a), (b) and (c). If a person is not on NHS premises for the purpose obtaining medical advice, treatment or care for himself or herself, then this alone is not enough for such a person to have committed the offence. It would also be necessary to show that the person has caused, without reasonable excuse, a nuisance or disturbance to an NHS staff member on the premises and that the person had refused to leave the premises when asked to do so by a police constable or NHS staff member.

I am copying this letter to your President, Lord Hurd, and to Chris Mullin MP (one of your trustees).

I am also placing a copy of this letter on the Criminal Justice and Immigration Bill page on the Ministry of Justice website.

A handwritten signature in black ink, appearing to read 'David Hanson', is centered on the page.

**DAVID HANSON MP
MINISTER OF STATE**

2 October 2007

Jo Williams
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Dear Jo,

CRIMINAL JUSTICE AND IMMIGRATION BILL – NUISANCE AND DISTURBANCE BEHAVIOUR ON NHS HOSPITAL PREMISES

I have had the opportunity to read the recent joint briefing from Mencap, The Mental Health Foundation and Foundation for People with Learning Disabilities, Mind, The National Autistic Society, Rethink and Turning Point on clauses 104-106 of the Criminal Justice and Immigration Bill.

The briefing expresses concern about the proposed measures to tackle nuisance and disturbance behaviour on NHS premises as well as making a number of recommendations. I thought it would be helpful if I responded to these points as the Minister responsible for these clauses in the Bill. Please find attached my response.

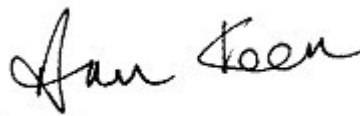
The potential benefits of the legislation are considerable. The initiative aims to take forward the Government's commitment to tackle the human and financial impact that anti-social behaviour has on the NHS and to prevent more serious offences occurring. The aim of the new offence of refusing to leave NHS premises having caused a nuisance or disturbance is to create an environment where it is safe for staff to work and patients to be treated. Removal from NHS premises will be a last resort if an offender refuses to leave.

I welcome your agreement that nuisance or disturbance behaviour on NHS premises is a problem that needs to be tackled and appreciate the valuable work you do and your expert opinion on these proposals. I would therefore like NHS Security Management Service colleagues to meet with each of you before a full draft of the guidance issued under clause 106 of the Bill is released for public consultation. This will ensure the safeguards you speak of in your joint briefing paper have been effectively conveyed

I am copying this letter to Dr Andrew McCulloch (Chief Executive of the Mental Health Foundation), Paul Farmer (Chief Executive of MIND), Vernon Beauchamp (Chief Executive of the National Autistic Society), Paul Jenkins (Chief Executive of Rethink) and Lord Victor Adebawale (Chief Executive of Turning Point). I am also copying this to Lord Rix (President of Mencap), Mary McAleese (President of the Mental Health Foundation), Melvyn Bragg (President of MIND), Jane Asher (President of the National Autistic Society), Tom Clarke MP (All Party Parliamentary Group on Learning Disability) and David Hanson MP (Criminal Justice and Immigration Bill Minister).

I am also placing a copy of this letter on the Criminal Justice and Immigration Bill page on the Ministry of Justice website.

Yours sincerely,

A handwritten signature in black ink that reads "Ann Keen". The signature is written in a cursive, flowing style.

ANN KEEN

GOVERNMENT RESPONSE TO THE CRIMINAL JUSTICE AND IMMIGRATION BILL – NUISANCE AND DISTURBANCE BEHAVIOUR ON NHS HOSPITAL PREMISES

JOINT BRIEFING.

This response addresses the issues raised in the joint briefing from Mencap, The Mental Health Foundation and Foundation for People with Learning Disabilities, Mind, The National Autistic Society, Rethink and Turning Point on clauses 104-106 of the Criminal Justice and Immigration Bill, under the headings in which they were raised.

1) The Government's case does not stack up

The Government is committed to reducing the number of assaults on NHS staff and a key aim of the new legislation is to prevent assaults from occurring in the first place by tackling non-physical nuisance and disturbance behaviour before it escalates. Assault can be prevented if initial low-level nuisance behaviour is tackled so whilst assault is indeed already a crime, there is no criminal offence for nuisance behaviour which can sometimes escalate to assault.

Prevention and deterrence of assaults on NHS staff is a key driver in these proposals, but low-level nuisance and disturbance behaviour is a problem in its own right. This type of incident may not be as immediately damaging as other more serious incidents, but the impact in terms of low staff morale and recruitment and retention is significant. These provisions intend to deal with incidents of nuisance and disturbance to reduce their impact on the delivery of healthcare and prevent distress to staff, patients or the public who fear hostile situations may result in assault.

Whilst there are no official statistics on nuisance behaviour, the Government has a better picture of the scale of the problem from responses to the 2006 Department of Health consultation where NHS staff spoke of cases of nuisance or disturbance in their own Trusts similar to examples given in the consultation. Of respondents, 78% were in favour of creating a new criminal offence and giving NHS staff the power to remove persons from their premises if they commit the offence.

Without official statistics, it is difficult to assert that most people responsible for assaults on NHS staff are patients. What is crucial is the safeguard of excluding patients from these proposals and those seeking medical advice, treatment or care as it would be irresponsible to deny a person medical treatment if they were causing a nuisance or disturbance. The public consultation showed that this type of behaviour is often displayed to a greater extent by those accompanying patients to hospital and not in need of treatment themselves. Examples were:

- A member of the public, under the influence of alcohol, accompanying patients to A&E, generally disturbing other patients and staff.
- A member of the public not requiring medical treatment, but pestering staff and causing a nuisance and disturbance to patients and staff.
- A member of the public not requiring medical treatment, but making loud and abusive comments.

- A friend or relative visiting a patient on a ward and then refusing to leave after visiting hours have ended, causing a nuisance and disturbance to patients and staff.

Therefore this is a targeted response to a specific problem.

Whilst the offence is only directed at non-patients, its introduction will still convey a message about what is considered to be acceptable behaviour on NHS premises. Staff will still be able to tell a patient that their behaviour is unacceptable and should try to manage the situation in the most appropriate way. All frontline staff are being trained in conflict resolution skills to help them deal with these situations. If they continue to cause a nuisance or disturbance once they have received treatment, the offence will apply and they can be removed. If a patient's behaviour becomes more serious and they become violent, the police should be called.

By creating an offence of causing a nuisance or disturbance, removing offenders from NHS premises and then prosecuting them, this legislation will work in conjunction with other health policy to deter people from assaulting NHS staff. The Government is committed to providing an environment that is safe for staff to work in and patients to be treated in.

2) The proposals would create new risks to staff and patients

I appreciate the fact that some medical conditions, both physical and mental, can deteriorate rapidly. It is important that those who are genuinely in need of treatment are not turned away by force and this will be detailed in guidance issued under clause 106. Your assistance in shaping this part of the guidance to ensure safeguards of this nature are robust is welcomed.

You say that some conditions may not be identified by a medical practitioner on first examination and there exists a risk of misdiagnosis amongst mental health patients. I believe this legislation will help prospective mental health patients in this respect as they will be noticed for causing a nuisance or disturbance and be assessed by a properly trained authorised officer. The authorised officer will then be able to alert a mental health professional who will be able to carry out a full assessment. These measures will help to ensure such persons are recognised and not turned away when they should be properly assessed and treated.

Whilst there is no explicit mention of exclusions for persons who are accompanying a child, I appreciate it would be irresponsible to remove a person if their dependent is receiving treatment and would therefore be left alone, so this will be considered a safeguard and detailed in the guidance.

Exclusions for persons accompanying an adult who is receiving medical advice, treatment or care will not necessarily be addressed in the same way as those accompanying children. Respondents to the consultation gave examples of nuisance and disturbance behaviour caused by friends and family members of those receiving treatment. Therefore a person accompanying an adult cannot be automatically excluded, but would need to be assessed objectively as to whether they have committed or are committing an offence. Details on the assessment process will be in the guidance.

These proposals are not intended to discriminate against the disabled and other vulnerable people and the guidance will emphasise the need to be objective in assessing whether a person may be committing an offence. The Government has taken on board concerns previously raised by your organisations regarding invisible conditions that may be linked to unusual behaviour and could be characteristic of mental health conditions, learning difficulties and autistic spectrum disorders. Guidance will detail attributes relating to these types of behaviour in order to safeguard potential patients and your input on this section of the guidance would be welcomed.

The removal of persons by force will be a last resort if a person persistently refuses to leave NHS premises. Guidance will clearly state that this is the last action NHS staff should take if non-physical attempts to remove the person have proved unsuccessful. We agree that there is a level of risk involved with removing a person by force but trust that this risk will be minimised through correct training and the safeguard of assessing whether removing the person would harm their physical health.

I accept that the NHS is at risk of prosecution should the power of removal be used incorrectly or inappropriately, but believe by correctly following procedures outlined in the guidance and receiving proper training, these measures will safeguard against wrongful removal from NHS premises.

3) Safeguards suggested in the consultation paper appear to have been removed

I can assure you that safeguards in the consultation paper remain and have not been removed. Clause 105(4)(b) states that a person cannot be removed from NHS premises if removal would endanger their physical or mental health. Paragraph 570 in the Explanatory Notes further explains that the opinion of a medical practitioner should be sought should the authorised officer believe that the person may need medical help or may be vulnerable, with paragraph 571 stating that guidance will advise on a suitable grade and role of the authorised officer. To ensure safeguards are maintained, the guidance will recommend that the authorised officer is a medical practitioner themselves.

We acknowledge that persons with an autistic spectrum disorder should be considered as would persons with any other disability.

4) The model for the proposal is unsuitable for the NHS

Whilst the consultation drew comparisons between Section 547 of the Education Act 1996, responses to the consultation indicated the scale of the problem for the NHS in its own right. The policy has since been approached focusing solely on its applicability to the NHS and its services.

5) Better alternatives exist

As you state, nuisance and disturbance behaviour on NHS premises is a problem and the NHS Security Management Service is committed to reducing the impact this behaviour has on the NHS. Conflict Resolution Training is available to all frontline NHS staff and more than 250,000 have completed this course to date. It is hoped

the specialist training programme for mental health and learning disability staff reduces the number of assaults on mental health staff by patients and consideration will be given as to whether to extend this particular training programme as you suggest.

Authorised officers will receive specialist training, with a prerequisite to have completed conflict resolution training and the specialist mental health training. Training combined with the powers created in this Bill will give NHS staff the power to take immediate action against offenders and allow them to work in the safe environment they deserve.

The Government is committed to minimising stress amongst NHS staff and continues to invest in reducing waiting times and improving hospital premises to make them comfortable for all. Conflict Resolution Training encourages courteousness and respect when dealing with potentially hostile situations. Whilst these issues may have an impact on reducing nuisance and disturbance behaviour, the unique nature of the hospital environment means reduced wait times, comfortable premises and courteous staff are not always enough to prevent such behaviour.

More than three quarters (78%) of respondents to the public consultation agreed that a new offence was needed. This type of behaviour is not comprehensively covered by the existing legislation that you refer to, e.g. Public Order or Anti-Social Behaviour legislation, meaning that a police response is not always forthcoming as the behaviour falls below the threshold. Therefore NHS staff have no power to act immediately and remove a person causing a nuisance or disturbance from the premises. This creates an atmosphere which makes the occurrence of a more serious incident more likely and gives the misleading impression that the NHS tolerates such bad behaviour.

Alternatively, NHS health bodies can resort to the use of the civil law to obtain injunctions against individuals, but this can often be time-consuming slow and costly and again, is more appropriate to persistent offenders. Health bodies are therefore left without a satisfactory solution. We need to legislate now to improve this situation and give NHS staff the power to take action immediately and prosecute offenders for this specific offence. This in turn will send a clear deterrence message to those that have no regard for NHS services and staff.



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13th October 2007

CRIMINAL JUSTICE AND IMMIGRATION BILL

Thank you for your letter of 8 October to Jack Straw enclosing a copy of your response to the Criminal Justice and Immigration Bill. I am replying as the lead Minister for the Bill.

I welcome your support for many of the clauses in the Bill.

Part 1: Youth Rehabilitation Orders (YRO)

You expressed concern that the Reparation Order has been retained as a separate order. We believe that making reparation to the victim of crime can assist with the rehabilitation of the offender and help the victim. The Reparation Order helps to bring home to offenders the damage that their actions have caused and can be effective in dealing with offending behaviour before it escalates. That is why we are retaining it as a separate order below the YRO. Having said this, we believe that reparation should be a consistent theme throughout the youth justice system. That is why reparative elements can also be included within the YRO, for example as part of the activities or programme requirements or unpaid work. For this reason we do not think it appropriate to have a separate reparation requirement for the YRO.

The Youth Rehabilitation Order combines existing community sentences for juveniles into one generic sentence, simplifying the sentencing structure. We do not believe that substantial additional resources will be needed to make this change.

Turning to drug treatment and testing issues more specifically. All Youth Offending Teams (YOTs) are funded to provide substance misuse workers to support screening, early intervention and referral to specialist services. Most young offenders with identified substance misuse treatment needs receive treatment on a voluntary basis, supported by substance misuse workers in YOTs. Substance misuse treatment should only be included as part of a court order:

- when a young person has previously failed to engage with treatment services; and,
- when substance misuse has been identified as a factor in offending behaviour such as committing crime in order to support drug use or committing crime whilst under the influence of drugs.

Therefore, there is only a very small number of young offenders with identified treatment needs who need further intervention and support to achieve attendance at specialist substance misuse treatment services. We believe that YOTs are equipped to deal with this.

Clause 10: Abolition of suspended sentences for summary offences

We do not believe that this will lead to an increase of the numbers in custody. The sentencing figures suggest these cases would previously have received a community sentence. We are firmly of the view that these are cases where courts would be reluctant to give an immediate custodial sentence.

Clause 11: Restriction on imposing community sentences

While it may already be evident from existing provisions that courts are free to impose less severe sentences than allowed by statute, re-stating the position explicitly in this way has the advantage of making the courts' powers absolutely clear.

Clause 16: Release of Prisoners after recall

The fixed term recall relates to executive recall decisions taken by the Secretary of State and not the judiciary. Executive recall is intended to be a preventative and not a punitive measure. The fixed term recall is intended to be applied to prisoners who do not present a risk of harm. It removes them from the community (and often a rapidly deteriorating situation) and gives the Probation Service time to review their supervision arrangements and consider whether additional licence conditions are required. If the offender's conduct once re-released gives further cause for concern they are liable to be recalled under the standard recall provisions.

Clause 21: Referral Orders

We do not believe that there should be a flexibility *not* to use referral orders at the high end. We believe that the referral order should be the primary disposal for first time offenders who plead guilty. The current arrangements have ensured that the sentence has become the most frequently used community order and we wish to maintain this. We would have concerns that relaxing the restrictions on alternatives would undermine its usage. As the referral order enjoys the lowest recidivism rate of all juvenile sentences we consider it important to restrict courts' abilities to use alternatives when it has a proven record of effectiveness.

Clause 23: Youth Default Orders

You asked about the effect on the resources of YOTS and the Probation Service of requirements in lieu of a fine. The provision of the fine default alternatives under Youth Default Orders (YDOs) will be subject to resources being available. Currently the only fine alternative in use is for the offender to be sent to an attendance centre and this will continue to be provided from within existing resources. Funding decisions for the other measures have yet to be made, but we would expect relevant budgets to be supplemented to take into account the need to provide electronic monitoring or unpaid work.

Clause 26: Appeals against conviction

You express concern about the term "plainly guilty". This term, which does not appear on the face of the Bill, refers not to the (self-evident) fact that the appellant has been convicted, but to circumstances where the Court of Appeal is satisfied that the appellant committed the offence of which he was convicted.

I should also add that Jack Straw announced on 8 October at Second Reading of the Bill that the Government will revise Clause 26 of the Bill to ensure that it is open to the Court of Appeal in exceptionally serious cases of abuse of process to quash the conviction even where the court is satisfied as to the appellant's guilt or their guilt is not an issue in the appeal.

Clause 53: Youth Conditional Caution

The involvement of Youth Offending Teams whilst preferable in many cases, should not be mandatory, in deciding whether a youth conditional caution should be given. There may be cases where it is immediately clear what the conditions should be, for example it may be that the only condition needed is the payment of compensation and it is clear that the young offender has no underlying issues that would benefit from further assessment. A YOT assessment may also not be necessary where one has recently been carried out in connection with an earlier offence (this will commonly be the case where the offender has recently been given a warning). However, where there are alcohol or substance misuse issues it will generally be desirable that an assessment be carried out by a YOT before a final decision is made by the prosecutor.

Clause 54: The Rehabilitation of Offenders Act

I welcome your support for this clause but you also call for a complete review of the Rehabilitation of Offenders Act. The Government undertook a review of the Rehabilitation of Offenders Act in 2002 and published the document *Breaking the Circle* which set out proposals for reform of the Act.

This paper made proposals for modifying disclosure periods for offences, and other changes to the operation of the Act. In 2003 the Government agreed that the proposals had merit and proposed to legislate when Parliamentary time allowed. This remains the position.

However, it is clear that the disclosure landscape has changed to some extent since 2003. The Safeguarding Vulnerable Groups Act 2006, which followed in the wake of the Bichard report, changes the situation for ex-offenders in many areas of employment. Consideration is required as to whether the *Breaking the Circle* proposals need updating in the light of these new arrangements. The Government will consider this in due course.

Clause 56: Allocation of offences triable either way

Your understanding of the effect of the amendment to Schedule 3 of the 2003 Act is correct. There is no reason why amending an unimplemented provision should result in confusion.

Clause 57: Trial or sentencing in absence of the accused

It is true that a defendant who is sentenced to custody in absence must be brought to court before he goes to prison. The purpose is to give him the opportunity to show why the court should not have proceeded as it did. That is not at all the same thing as appearing in order to be sentenced - the default position is that he will go to prison.

Clause 58: Designated Caseworkers

I understand that the Director of Public Prosecutions wrote to you on 4 October stating that the CPS does support this proposal.

It will not be the case that no qualified lawyer is involved with a case in the magistrates' court. The defendant will still have access to legal advice. However, competent, trained designated caseworkers are well placed to represent the Crown in appropriate cases in the magistrates' court. Designated caseworkers will continue to act on the instructions and under the supervision of Crown Prosecutors.

We do not believe that this provision will lead to delay. The CPS intends to put in place a robust training package in order to equip Designated Caseworkers with the necessary skills and knowledge to undertake a wider range of prosecutorial responsibilities. The CPS would also ensure that designated caseworkers are properly supervised by experienced Crown Prosecutors who would be able to assist with unexpectedly complex points of law.

Clause 59: Criminal Legal Aid

Regarding Clauses 59 to 61, I have noted the Association's comments about the criminal legal aid application process. I should stress that the means test, introduced in magistrates' courts in October 2006, ensures that defendants who are unable to pay for their defence costs do qualify for publicly funded representation, provided they satisfy the 'Interests of Justice' test. The three provisions included in the Bill will help to ensure that the risk of potential delay associated with the application process is minimised: the statutory gateway with the Department for Work and Pensions (DWP) will allow for the swift verification of an applicant's benefit status for those defendants seeking exemption from the means test; the granting of a representation order pre-charge can mitigate the possible tension in cases where legal aid applications are not processed ahead of the first hearing; whilst the general power to pilot legal aid initiatives will mean that the impact of future policy proposals can be fully evaluated before wider implementation.

Clause 72: Orders to promote rehabilitation

The requirements of the order are relatively light, reflecting the low level nature of the offence, but they will nevertheless provide an opportunity for services to engage with the individual to assess how best to address the issues that underpin their involvement in street prostitution. We hope the meetings will be used as an opportunity to build a foundation to enable the individual to continue to access support and advice to exit prostitution.

You asked who will supervise these orders. The supervisor will normally be based in a dedicated support project for those involved in prostitution, where such a project exists in a local area.

It is not the intention that the role of the supervisor should be defined so as to limit it to a project worker from a dedicated support service. In practice, supervisors may be based in a women's resource centre or a drug rehabilitation organisation. This flexibility increases the potential availability of the order and also means that an appropriate supervisor can be identified to deliver the order in cases involving male prostitutes, transgender prostitutes or children and young people involved in prostitution.

The key factor is that the supervisor should appear to the court to have the skills to address the factors and circumstances that underpin the individual's involvement in street prostitution.

Where an individual fails to comply with the order and the supervisor considers that this amounts to significant non-compliance with the terms of the order with no acceptable reason for the failure to comply, the supervisor will be required to make a short report to the court. On receipt of that report, the court will issue a summons for the offender to attend court for the breach to be considered, and, where appropriate, for re-sentencing.

Following wilful and persistent non-compliance, sentencers may consider that the circumstances of the breach are so serious as to meet the threshold for a community sentence.

The Government's strategy recognises that those involved in street-based prostitution often live chaotic lives. It is not our intention to set women up to fail – we do not want to introduce an order with terms that will be difficult to meet. We have ensured that failure to attend one of the meetings will not automatically trigger further action. The courts will not become involved if the supervisor is satisfied that the offender had a reasonable excuse for not attending.

We fully recognise that issuing fines for loitering or soliciting can act as an incentive for offenders to remain involved in prostitution and that is exactly why we are introducing the new orders. Rather than encouraging offenders to return to the streets, the new orders will require them to engage with services and begin to address the reasons behind their involvement in prostitution. In some cases, offenders may be subject to an order whilst they still have outstanding fines, and these will still need to be paid. However, in the longer-term, as sentencers move away from issuing fines and increasingly use the new orders, this problem should disappear.

The new penalty will be available as an alternative to a fine, so the courts will still have the option of a fine available to them.

Part 8 - Violent Offender Orders

You ask why the Crown Court does not have the power to make a Violent Offender Order (VOO). The rationale for application for a VOO to be made to the magistrates' court is that this is in line with other civil orders already in place such as Sexual Offences Prevention Orders and Anti-Social Behaviour Orders and is considered most appropriate given the nature of the proceedings (akin to a civil injunctive process). This will also separate the granting of a VOO from the process for sentencing for the specified offence, in order to emphasise that a VOO is a preventative order and not an extension of the punishment for that offence. The Home Office are considering the issue further.

Clause 108 - ASBOs

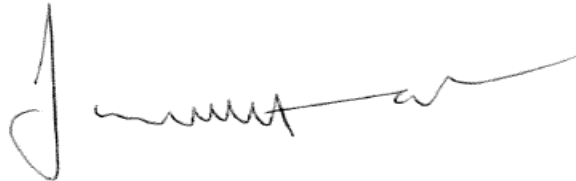
You suggest that the minimum period of an ASBO should be reduced from 2 years. This would be counter productive, and might lead to more ASBOs being made. The purpose in setting a two year minimum was to signal that the behaviour has to be serious enough to warrant an order lasting that long, and that ASBOs are not to be sought lightly. However, the individual terms of the order can be set to last for shorter periods than two years, and can be removed or varied at any time. Finally, the Order can be discharged before two years, with the consent of both parties.

We accept that a year is a long time in the life of a young person and that their needs and behaviour are more prone to change than those of adults. For this reason ASBOs issued to

young people need to be monitored and reassessed more closely. Clause 108 will ensure that this is done.

Finally, you have concerned about some of the delegated powers in the Bill. We have published a delegated powers memorandum which explains each order and regulation-making power and why we consider the level of parliamentary scrutiny set out in the Bill is appropriate. We will, however, consider very carefully any recommendations that may be made by the Lords Delegated Powers and Regulatory Reform Committee when it comes to examine the Bill.

I am copying this letter to members of the Criminal Justice and Immigration Bill Committee and placing a copy on the Ministry of Justice website.

A handwritten signature in black ink, appearing to read 'David Hanson', written in a cursive style.

DAVID HANSON MP
MINISTER OF STATE



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13th October 2007

CRIMINAL JUSTICE AND IMMIGRATION BILL

I have seen a copy of your Parliamentary Brief on the Criminal Justice and Immigration Bill. I thought it might be helpful to write to set out the Government's position in more detail.

Appeals

Jack Straw announced on 8 October at Second Reading of the Bill that the Government will revise Clause 26 of the Bill to ensure that it is open to the Court of Appeal in exceptionally serious cases of abuse of process to quash the conviction even where the court is satisfied as to the appellant's guilt or his or her guilt is not an issue in the appeal.

Trials in absence

The Government hopes that the provision will encourage further use of the power that magistrates' courts already have, and thus encourage defendants to appear at trial. Where the existing power is used, the courts are already accustomed to resolving the position of the defendant's legal representatives, including any conflict which might be considered to arise in the circumstances of the case. This provision does not alter the options that are available to the courts if they proceed with a trial in the defendant's absence.

Designated Caseworkers

I can assure you that the type of cases and the nature of the hearings that designated caseworkers will be able to undertake as a result of the changes made by clause 58 will be subject to internal restrictions imposed by the CPS through the exercise of the Director's "General Instructions" issued under section 7A (3) and (4) of the Prosecution of Offences Act 1985. The CPS will ensure that those exercising extended powers are trained, competent and properly supervised by experienced Crown Prosecutors.

Compensation for Miscarriages of Justice

We recognise that those who suffer miscarriages of justice are also victims, although the miscarriage is not always the result of mistakes by the prosecuting authorities. Compensation will still be payable in line with our international obligations. It cannot be right, however, that those who suffer miscarriages of justice should receive huge payouts compared to victims of crime. We want to achieve a better balance between the two

schemes, and capping compensation for miscarriages of justice to the same level as for victims of violent crime helps to achieve this.

Violent Offender Orders

We believe that it is appropriate for applications for a Violent Offender Order (VOO) to be made to the magistrates' court, in line with other civil orders already in place such as Sexual Offences Prevention Orders and Anti-Social Behaviour Orders. We are keen to separate the granting of a VOO from the process for sentencing for the specified offence, in order to emphasise that a VOO is a preventative order and not an extension of the punishment for that offence.

You ask about the legal aid impact of the proposals. We estimate that the legal aid costs will be £860,000 over the first three years.

Special Immigration Status

I note the Law Society's view that the new provision is unnecessary, given the existing power to grant short periods of Discretionary Leave and the provisions in the UK Borders Bill which will allow reporting and residence conditions to be attached to such leave.

I am afraid that I do not agree that this is an adequate means of dealing with those to whom the new status is intended to apply. The Court of Appeal made it clear last year in *S and others v the Secretary of State for the Home Department* that it was open to the Home Secretary to legislate to be able to deny leave in these circumstances, and the then Home Secretary made clear his intention of doing so.

We do not consider that people who are excluded from the protection of the Refugee Convention or who have committed serious offences should be granted leave simply because they cannot be removed from this country. This applies whether or not they represent a continuing risk to the UK.

The provision relating to spouses and minor dependent children is intended to cover applications for leave "in line" as dependents of the principal applicant. There is nothing to prevent their applying for leave in their own right.

We consider it entirely appropriate that Special Immigration Status should be open-ended, given the impossibility of forecasting when the barriers to removal can be overcome, but the status will be subject to regular reviews. Given that it is intended not to be leave under the Immigration acts, the idea of granting it for set periods and then requiring the person concerned to apply for an extension did not seem an appropriate model.

We do not agree that the provision risks either arbitrary or politically-motivated decision making. The criteria are clearly set out in the legislation, and the intention is that a principal applicant who meets those criteria will normally be designated. Staff will, of course, be given instructions about reviewing cases.

Finally, given the numbers we estimate are likely to be affected, we do not consider the provision will result in increased level of social tension.

I am copying this letter to members of the Criminal Justice and Immigration Bill Committee and placing a copy on the Ministry of Justice website.



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13th October 2007

CRIMINAL JUSTICE AND IMMIGRATION BILL

I have seen a copy of the Standing Committee on Youth Justice's (SCYJ) briefing on the Criminal Justice and Immigration Bill.

While welcoming the youth justice provisions in the Bill, the briefing raises a number of detailed points and identified additional issues which could be tackled in the Bill. I thought it would be helpful to your member organisations if I responded to the points raised in the briefing.

Youth Rehabilitation Orders

Proportionality

The briefing suggests that there should be an express duty on sentencers to ensure that the requirements attached to a Youth Rehabilitation Order (YRO) are proportionate. The Bill already provides adequate safeguards to ensure that each sentence is tailored to the needs and maturity of the young person as well as the seriousness of the crime. Taking a more risk based approach to interventions will be the cornerstone of the YRO and will ensure that courts are using those requirements which can really benefit the needs of the young person and can help to prevent re-offending and also that young people who are assessed as presenting a low risk do not receive inappropriately onerous requirements. Sentencers will be required (by virtue of section 148(2) of the Criminal Justice Act 2003) to ensure that the particular requirements attached to a YRO are the most suitable for the offender and commensurate with the seriousness of the offence. They will, in addition, also have to have regard to the purposes of sentencing set out in clause 9 of the Bill. We are confident that this framework, coupled with the training that both practitioners and sentencers will receive, will ensure that sentences are suitably tailored to the needs of the individual.

Local authority residence requirement

The local authority residence requirement is not a new requirement; it is already available as part of the existing Supervision Order. We believe that it should be replicated within the YRO as it offers a further useful disposal to the courts in certain circumstances. It allows the court to place a young person into local authority accommodation where the behaviour leading to

an offence is due to a significant extent to the young person's domestic circumstances. We have ensured that the legislation stipulates that the court must consult with the relevant local authority and the parents/guardian of the young person. In our view, this will ensure that this disposal will only be used after proper consideration of the offender's circumstances.

Prohibitive requirements

We expect there to be strong links between the courts and Youth Offending Teams (YOTs). The court will, in practice, consult the YOT before sentencing given the requirement (in section 156 of the Criminal Justice Act 2003) to obtain a pre-sentence report. Given that general duty on the court, we consider that a requirement for the court to receive a recommendation from the YOT should only operate in the case of the most intrusive requirements, such as the drug treatment requirement.

Attendance Centre Requirement

We are currently reviewing the operation of Attendance Centres and will, as part of this review, consider where responsibility for their management should best lie.

Mental health and drug treatment requirements

We have looked again at the provisions requiring young persons aged 14 and over to indicate their willingness to comply with a mental health, drug treatment or drug testing requirement. We agree that this requirement should operate whatever age of the child or young person and will be introducing appropriate amendments to the Bill to this end. Guidance will be provided on the approach to be taken where a child or young person is not competent (for example, because of learning difficulties) to express willingness one way or the other.

Access to justice

There is no blanket requirement for children to have legal representation in all criminal proceedings. In accordance with the Access to Justice Act 1999, the Interests of Justice test determines whether a defendant should receive publicly funded representation depending on the merits of the case. In applying for publicly funded representation, the defendant must demonstrate that he or she satisfies the interests of justice test. In deciding this, the court will take into account, among other factors, whether the charge is so serious that the defendant may be imprisoned or lose his/her job if convicted, or suffer serious damage to his/her reputation. The criteria necessary to meet the interests of justice test are available on the Legal Services Commission (LSC) website.

From 2 October 2006, following the implementation of provisions within the Criminal Defence Service Act 2006, defendants who will have their cases heard in the magistrates' courts must also pass a means test to be eligible for publicly funded legal representation. The means test establishes whether an applicant is financially eligible for legal aid. It considers income and expenses. As it currently stands all children under the age of 16 and young people in full time education under the age of 18 are passported through the means test. From 1 November 2007, all defendants who appear in the Youth Courts and any under 18 year old appearing in the adult courts will be passported through the means test. All cases will continue to need to satisfy the Interests of Justice test.

Intensive Supervision and Surveillance (ISS)

I share your view that the YRO with ISS should be the most robust alternative to custody and should ensure that only the most dangerous or persistent offenders are sentenced to custody. I am not persuaded that ISS must be a distinct sentence from the YRO to achieve this end. The Bill draws a clear distinction between ISS and other, lesser, requirements by

incorporating a distinct threshold which must be crossed before a YRO with ISS may be imposed. This approach will ensure that ISS is recognisable as the last step before custody.

Breach

The breach arrangements as provided for in the Bill are based on the current National Standards for Youth Justice Services which set out the standards that need to be followed by Youth Offending Teams when dealing with unacceptable failures to comply with the requirements of an Order. The current standards provide that a young person can receive two formal warnings before breach action should be taken.

We believe that these arrangements allow sufficient flexibility to offer young people the maximum chance of successfully completing their Order while also allowing youth justice practitioners to use their professional judgement. Clearly we need to strike a balance between appropriate discretion and the need to maintain public and judicial confidence in the YRO and we believe the breach arrangements will achieve that.

However, there will be instances of breach that are so serious that they should be brought back to court immediately and paragraph 4(2) of Schedule 2 covers such an eventuality. Penalties for breaching the YRO will depend on the individual circumstances of the case but in practice we believe that the non-custodial options available, with the existing emphasis that custody should only be used for the most serious cases, will offer sufficient flexibility without the need for a specified presumption against custody for breach. But we also have a duty to ensure that young people understand the seriousness of the Order and the consequences of their behaviour. Ultimately if a young person is originally sentenced to a YRO with ISS they will be subject to the most stringent community sentence available. If they choose to wilfully and persistently breach the terms of the Order, in spite of the support of the Youth Offending Team, it must be open to the court to impose a custodial sentence in such circumstances.

Purposes of sentencing

Clause 9 provides that when dealing with an offender aged under 18 in respect of an offence the court must have regard primarily to the principal aim of the youth justice system as set out in the Crime and Disorder Act, namely the 'prevention of offending by children and young people'. Courts will also, as at present, be required to have regard to the welfare of the young person and these issues will be considered as a supporting factor, but we remain convinced that work to prevent offending is also likely to operate in their interest.

As you know we do not agree that the welfare reference should reflect the Children Acts of 1989 and 2004 instead of the Children and Young Person Act 1933. Neither the 1989 Children Act, nor that of 2004, was ever intended to apply to a criminal court when sentencing a young offender. These provisions are not appropriate for a criminal court sentencing a young person because the court has other competing interests to consider, such as the protection of the public.

Referral Orders

The intention is to allow for a referral order to be given, following a guilty plea, in circumstances where the offender had one previous conviction, or convictions for a number of connected offences tried on one only one previous occasion, and had not previously been referred to a youth panel; we intend to amend the Bill to make this clear. However, we believe that it is right to limit the extension to these circumstances alone. We consider that any further extension may undermine the targeted use of the Order which has proved more successful compared with other disposals in reducing re-offending rates.

Our view is that we have developed a number of new out-of-court disposals in recent years. The proposed mixture of out-of-court disposals, coupled with the new Referral Order provisions, provides the flexibility and the opportunity for young people to be diverted away from the higher level disposals if they cease to offend.

The briefing also suggested that the youth offending panel should have the option of extending a referral order where its terms have been breached. The panel has never had any jurisdiction to extend a referral order; only the court has such power. A similar proposal in respect of probation officer powers was contained in the 'Making Sentencing Clearer' consultation, but did not find favour with most respondents.

Youth Default Orders

These provisions are similar to the default orders available to the courts for dealing with adult fine defaulters and so will ensure that children and young persons can receive similar alternatives as adults in the interest of fair treatment. We do not consider that they will promote inequality within the system. A YDO will only be available to a child or young person who is unable to pay a fine that they have been made directly liable for. Where a parent has been made liable for a fine imposed on a child or young person, the child or young person cannot subsequently be held responsible for their parent's default. There are separate provisions for adult fine defaulters. We do not expect YDOs to be widely used for under 16 year olds because parents are usually made liable for these fines.

Youth Conditional Caution

Use of the term 'youth conditional caution' in the legislation does not preclude the adoption of an alternative name for day to day use, although any name must avoid confusion with other pre-court disposals. I can assure you that in constructing the youth conditional caution scheme we are not simply replicating the provisions of the adult scheme. We would expect the code of practice for youth conditional cautions to pay particular attention to the needs of young offenders and address, amongst other things, issues around the proportionality of the conditions attached to a conditional caution.

Extending youth conditional cautions below the 16-17 year old age group potentially raises significant additional practical issues in terms of the administration of the scheme. The Government will listen to the arguments for extending the scheme during the passage of the Bill and is open to suggestions as to how the practical issues might best be resolved.

The legislation does not expressly preclude the possibility that a youth conditional caution may be given where a young person has previously been convicted. However, the aim of these and other pre-court disposals is to address offending behaviour before it gets out of hand. If a young person's offending behaviour has been such as to justify earlier court proceedings, it is doubtful that a conditional caution would be the appropriate response to a later offence. This will be an area covered in the code of practice; we will consult on a draft code in due course.

While we would expect most youth conditional cautions to include rehabilitative and/or reparative conditions, we do not want to preclude the option of punitive conditions. There may be circumstances, for example, where the offender had committed criminal damage, but because the particular damage had already been made good the option of imposing a reparative condition was no longer available. In such a case, it ought to be possible to impose an equivalent punitive condition which required the offender to make good other damage, perhaps in a local park or open space, caused by some other unknown offender.

Rehabilitation of Offenders Act

As you say, the Government undertook a review of the Rehabilitation of Offenders Act in 2002 and published the document *Breaking the Circle* which set out proposals for reform of the Act.

This paper made proposals for modifying disclosure periods for offences, and other changes to the operation of the Act. However, it is clear the disclosure landscape has changed to some extent since 2003. The Safeguarding Vulnerable Groups Act 2006, which followed in the wake of the Bichard report, changes the situation for ex-offenders in many areas of employment. Before legislating for wider reforms of the Rehabilitation of Offenders Act, we need to look again at the *Breaking the Circle* proposals to see if they need updating in the light of these new arrangements.

Street Offences

You suggest that the reforms to the Street Offences Act 1959 should be extended to ensure that under-18s are not criminalised for loitering or soliciting for the purposes of prostitution. We do not want to see children and young people under the age of 18 criminalised in this way, and in practice it happens very rarely. Home Office Circular 20/2000 and the Safeguarding Children involved in Prostitution guidance set out how local agencies should respond to those under 18 who are found persistently to be loitering or soliciting. Both are clear that the police should not normally proceed with criminal justice action without prior inter-agency discussion to consider the young person's needs and circumstances.

This guidance is intended to enable all agencies to work with and divert children from prostitution, and to ensure that criminal justice action is taken only when it is necessary to do so, and in the full knowledge of the circumstances of the individual young person. In practice, the prosecution route has been pursued only very exceptionally since the guidance was launched in 2000, but retaining the offence means local agencies can respond effectively to this form of abuse. Where young people, for whatever reason, spurn offers of support and protection, bringing them within the Criminal Justice System enables relevant agencies to remove them to a place of safety and may offer the intervention that actually makes a difference.

Violent Offender Orders

The briefing argued that Violent Offender Orders (VOO) would be disproportionate and inappropriate for use on children and young people. VOOs will take effect at the end of a subject's sentence for a specified violent offence, when they are no longer on licence and there are no other arrangements in place for supervising the individual or managing their risk. The existing powers of the courts are not sufficient in managing this risk and this gap therefore needs to be addressed.

The issue of whether or not VOOs should apply to young persons is one which we have considered in detail and which was specifically raised as part of the Government consultation on the orders earlier this year. We do not wish to apply new interventions such as this one to young people without due thought and consideration as to their appropriateness. However, it can not be ignored that VOOs are intended to protect the public from the most serious violent offenders, a small number of which will inevitably be under the age of 18. Over seventy percent of respondents to the consultation felt that VOOs should be applied to young people in some way. This included many key stakeholders including the CPS, ACPO, the Police Federation of England and Wales, HMI Probation and the Council of District Judges. We therefore believe that VOOs should apply to both adults and young people.

However, in recognition of the aim of the youth justice system and the dynamic nature of risk and risk management in young people, we have been working closely with the Youth Justice

Board to develop appropriate procedures and practices for the application of VOOs to offenders below the age of 18. Firstly, we will be introducing annual reviews for those under the age of 18 that are subject to a VOO. These reviews will ensure that VOOs only continue to be applied for as long as the risk posed by the young person is assessed as sufficiently high to warrant it. They will be used to assess the ongoing need for an Order and its effectiveness, examine whether the subject of the Order has complied with its terms and consider whether there needs to be a variation to or discharge of the Order. Secondly, we will be providing for the involvement of Youth Offending Teams (YOTs) at various stages of the VOO process. YOTs will be consulted prior to a decision being made on whether or not to apply for a VOO and will also be able to provide support to the young person throughout the period of them being subject to a VOO. In particular, YOTS will help the young offender to address the causes of their violent behaviour and support them in understanding and meeting the conditions of the Order thereby minimising the likelihood of a breach.

We feel that these measures, taken together, will ensure that VOOs are used sensibly and appropriately with respect to children and young people whilst continuing to protect the public from the most serious violent offenders.

Anti-social behaviour

I must challenge the assertion here that anti-social behaviour measures have come about as a reaction to a general fear of young people within society and that this has drawn a large number of young people in to the youth justice system. This is certainly not the case. Anti-social behaviour is not about young people and the response to tackle it is regardless of the age of the perpetrator. In fact, we know that young people are more often the victims of anti-social behaviour (and crime). This, along with the recent findings of the *Make Space 4 Children* review that more than 70% of 11-16 year olds they questioned said they had witnessed anti-social behaviour over the past year, means that it is especially important for them that the bad behaviour of the minority is addressed.

You state that you do not support the introduction of further enforcement measures as you believe that they are counter-productive. However, the National Audit Office review of anti-social behaviour which was published in December last year found that such interventions were especially effective in curbing anti-social behaviour with 9 out of 10 people desisting from further anti-social behaviour after up to three interventions.

I must also challenge your claim that these measures are bringing more young people into the youth justice system and point you to the report commissioned by the Youth Justice Board last year which found that those young people issued with ASBOs are already very well known to the youth justice system and are the subjects of a whole host of varying interventions. The report also found that only one of the 137 study showed that only one of the 137 juveniles in the study was given a custodial sentence for breach of the ASBO alone.

Turning to premises closure orders, I stress that this measure is intended to be a tool of last resort. Where children are involved it's likely that they will already be at risk from what is happening in such a highly anti-social household. We believe that the closure can work as part of the process to bring that to an end and act as a further opportunity through which to engage the household in support, therefore providing protection and improving the well-being of any children. Safeguards will be in place to ensure the well-being of any children and, of course, local authorities remain under their homelessness legislation duties.

I should also add that the Respect Task Force, as part of the Machinery of Government change announced in June, has moved to sit within the new Department for Children, Schools and Families. This move means that the Task Force will be working even more closely with colleagues in this new Department to get to the root causes of anti-social behaviour and in particular by broadening and strengthening its approach to young people.

You also mentioned ASBOs. They were not introduced “allegedly for adults” – the legislation specifically states that the minimum age is 10. It may be regrettable that many of the orders are applied to those aged 10 to 17, but that is a reflection of their behaviour and the justice of this approach is beyond question since the case must be proven in court. 41%, not 46%, of ASBOs apply to the under 18s. However, of those, 26% are for those aged 16, and 24% for 17 year olds. Less than 5% apply in the 10-12 age bracket.

You also say “Reviews of ASBOs need to be taken further, by enabling them at any stage, not just after 12 months”. You may be interested to learn that an ASBO can indeed be reviewed at any time; and can be taken back to court by either party at any time for a hearing to vary its terms. What this new provision does is oblige statutory agencies to participate in a periodic, annual review as a minimum. Further reviews, as part of the active management of the order, should also be undertaken as the circumstances of each case dictate. Our guidance will stipulate the agencies we expect to participate in a review in addition to the applicant/sponsoring agency. This will include YOTs and LA social service.

On your other suggestions:

- **Remove the option of custodial sentence for breach of an ASBO by a child** – we cannot agree with this. An ASBO is neither sought nor granted lightly and in those circumstances the courts must treat breach as a serious matter. As the YJB study showed, practically no one under 18 received custody for ASBO breach alone, and we made clear in our guidance that custody is a last resort for juveniles. Where courts do impose custody, they are right to do so, reflecting the gravity of the offence;
- **Ending the policy of ‘naming and shaming’ children who receive ASBOs** – this is neither policy nor practice. The courts have laid down the rules around publicity, which is that it should be proportionate to the legitimate aims of the order, including community reassurance and effective monitoring. So called ‘naming and shaming’ simply does not happen;
- **Reduce the minimum length of a child ASBO from two years to three months** – this would be counter productive, and might lead to more ASBOs being made. The purpose in setting a two year minimum was to signal that the behaviour has to be serious enough to warrant an order lasting that long, and that ASBOs are not to be sought lightly. However, the individual terms of the order can be set to last for shorter periods than two years, and can be removed or varied at any time. Finally, the Order can be discharged before two years, with the consent of both parties.
- **Require an assessment under the Common Assessment Framework** – the courts have held that the juvenile’s interests are a primary consideration but not *the* primary consideration: the interests of the public being themselves also a primary consideration. Thus the question for the court is one of balancing the one against the other, which they are uniquely positioned within the system to carry out. Furthermore, our guidance states that when a relevant authority applies for an order against a child or young person, there should also be an assessment of his circumstances and needs; and a recent practice direction stipulates that the justices constituting the court hearing the ASBO application against a juvenile should normally be qualified to sit in the youth court. There are thus additional safeguards built into the system;
- **Government should guarantee to offer targeted youth support and, where an ASBO accompanies a conviction, support through the youth justice system** – the unpublished results of a recent survey show that 80-90% of young people with ASBOs are in touch with their local YOT, a minority under the auspices of an ISO. Clearly, some more work needs to be done in defining the extent of the problems facing the remainder, and we are working with the YJB on that.

Treatment of 17 year olds

The Government recognises that the status of 17 year olds for the purpose of remand is an anomaly and we have been working on this issue since the consultation. However, it has proved to be an extremely complicated issue as we cannot simply replicate the bail and remand system that applies to under 16s. This is because the remand system that is in place for under 16s is interwoven with the placement of these young people into local authority care which is not suitable for 17 year olds. This means that we would have to put in place a whole new bail and remand system for 17 year olds, the feasibility of which needs to be investigated thoroughly to ensure that it would be a satisfactory outcome. We acknowledge the position of the SCYJ and we will review this situation and consider how we can take this forward.

Turning to the issue of Appropriate Adults - the Police and Criminal Evidence Act (PACE) 1984 treats a juvenile as a person being under the age of 17 years old. The Government announced a Review of PACE in March 2007. Whilst the programme of public consultation sought to promote ground level suggestions on areas for change, the consultation paper did identify the treatment of 17 years old under PACE as a specific issue. The responses to the consultation have clearly identified the concerns over the treatment of a 17-year old under PACE compared to other parts of the Criminal Justice System. The next stage of the consultation programme is working with stakeholders and practitioners on considering the practical and operational impact of extending the definition of a juvenile under PACE to those detainees aged under 18 years old. This will include the need for additional access to the appropriate adult provision; suitable accommodation in custody suites; and access to secure local authority accommodation in cases where the detainee has not been granted bail. Final proposals on the PACE Review are due to be published in spring 2008. The views of the Standing Committee will be added to the PACE consultation.

Custodial issues

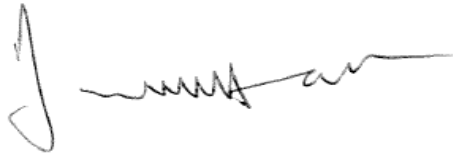
We believe that the Bill provides adequate safeguards to ensure that ISS is used as a direct alternative to custody and that therefore a custodial sentence will only be passed where it is necessary to protect the public or prevent persistent offending. We do not believe that there needs to be explicit reference to a custody threshold on the face of the Bill because (by virtue of section 152(2) of the Criminal Justice Act 2003) the courts already have to have regard to whether such a sentence is justified.

Since it assumed responsibility for oversight of the under-18 secure estate in April 2000, the Youth Justice Board has done a great deal to make custody for under-18s more child-focused. It currently commissions 235 places for more vulnerable children in secure children's homes and 301 in secure training centres. Both these types of establishment have very high staff-child ratios and are able to work individually with children to address their educational and personal needs. The Youth Justice Board is constantly seeking to develop that capability.

The Standing Committee's proposal perhaps implies that a single type of establishment and a single type of regime could be devised that would be appropriate to all under-18 year olds in custody. The Government does not share that view; on the contrary, we see value in diversity of provision in the secure estate. Most 17 year olds are very different from most 12 year olds: regimes need to take account of that and to be adapted to the age, needs and vulnerability of the young people concerned. Where we do agree with the Standing Committee is on the importance of rehabilitation. That is an enormously difficult area: the transition back into the community is never going to be an easy one and a great deal of inter-agency co-operation is needed if positive outcomes are to be achieved. The Youth Justice Board, the Ministry of Justice, the Department for Children, Schools and Families and the

Department of Health are working together to overcome the difficulties, so that young people returning to the community can make a fresh start in life.

I am copying this letter to members of the Criminal Justice and Immigration Bill Committee and placing a copy on the Ministry of Justice website.

A handwritten signature in black ink, appearing to read 'David Hanson', written in a cursive style.

**DAVID HANSON MP
MINISTER OF STATE**