



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response to Proposals for the Juvenile Justice Centre
(Northern Ireland) Rules 2007 and the Juvenile Justice
Centre Order (Supervision) Rules (Northern Ireland) 2007**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or “soft law” standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to comment on the new rules and is very pleased that views of children are being considered as part of this consultation exercise.
3. The Commission has recently published the report of its investigation into the care of children in custody *Still in Our Care* (2006, Convery and Moore). Before commenting directly on the rules the Commission wishes to restate some fundamental issues raised in this and previous reports.

¹ Northern Ireland Act 1998, s.69 (1).

² *Ibid*, s.69(3).

³ *Ibid*, s.69(4).

⁴ *Ibid*, s.69(6).

4. First, the Commission considers that the age of criminal responsibility at 10 years of age is too low and should be significantly raised (as has been consistently urged by the UN Committee on the Rights of the Child in its recommendations to the United Kingdom).
5. Second, the Commission would remind the NIO and YJA of the requirements of the UN Rules for the Protection of Juveniles Deprived of their Liberty. These require the state to provide open detention facilities for children and young people so that the deprivation of liberty is restricted to a minimum:

Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualised treatment. Detention facilities for juveniles should be decentralised and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community. (Rule 30)

6. The Commission has previously expressed concerns about the appropriateness of the Juvenile Justice Centre for the accommodation of girls, given that the population of the JJC is overwhelmingly male. We recommended that a strategy be developed for the care of girls in custody, based on independent research. An equality impact assessment should be carried out on the rules to look, for example, at the specific issues affecting girls in the centre.
7. The Commission's main comment in relation to the JJC (Supervision) Rules is that it welcomes the emphasis on reintegration but that adequate resources for appropriate services will be necessary to enable this to be achieved. The 'best interests' principle should be incorporated at paragraph 2(2).
8. The draft JJC Rules are a positive development on the previous Rules particularly in their inclusion of references to children's rights, children's participation and family involvement. The emphasis on children's rights in Section 4 is particularly positive, especially the reference to the child's best interests. However, the Commission is concerned with the provision in Section 5 allowing the Secretary of State to restrict the rules in an emergency. Children's rights must be upheld even in cases of emergency and this section should be

redrafted to ensure that in dealing with emergency situations, children's rights will not be breached.

9. The Commission welcomes Rules 6–12. It is, however, concerned that Rules 13 and 14 regarding monitoring visits raise issues in relation to the need for independence of monitoring bodies. It is particularly worrying that Rule 13 states that inspection reports 'shall be published in such manner that the Secretary of State may direct'. It is vital for the protection of children in custody that inspection mechanisms are genuinely independent, so that the Secretary of State should not have the power to prevent any inspection body from publishing reports of its inspections or any parts of them. Rule 14 also affords too much control to the Secretary of State in determining how and when monitoring visits will be carried out. This runs contrary to best practice in monitoring places of detention indicating the importance of independence of monitoring bodies from the statutory criminal justice bodies. The UN Special Rapporteur on Torture has commented on the importance of independent monitoring:

The very fact that national or international experts have the power to inspect every place of detention at any time without prior announcement, have access to prison registers and other documents, are entitled to speak with every detainee in private ... has a strong deterrent effect. (August 2006)

Rules 13 and 14 should be revisited in the light of the UK's ratification of the Optional Protocol to the Convention against Torture (OPCAT).

10. The Commission's research found, not unexpectedly, that children are especially vulnerable to anxiety in their first night in custody. While Rule 15, regarding initial interview and assessment, requires a range of assessments within the first 24 hours, we would wish the rules to include a requirement for children to be risk assessed and seen by a health professional prior to being locked in their room on the first night in custody.
11. The UN Rules for the Protection of Juveniles Deprived of their Liberty state that:

Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention. (Rule 50)

This provision should be incorporated within the JJC Rules.

12. Rule 16(1)(c) provides that “as far as possible” children will be given food that satisfies their religious and cultural requirements. There should be no “as far as possible” about this; no child should be obliged to eat food that contravenes such requirements. To suggest otherwise runs counter to Rule 22.1 which states that “[a] child shall be supported in his right to observe the regulations of his religion and spiritual life”.
13. We would take the opportunity of the preceding citation to draw attention to the use of the male pronoun. This may be a matter of convention, but it is an offensive anachronism that ought to be avoided in drafting, and requires to be challenged. Nowadays women and girls have legal standing in their own right. The terms ‘he’ and ‘his’ do not refer to everyone, and inclusive (‘he/she’) or neutral terminology (‘they’) could easily be substituted.
14. Rule 19 on privileges raises concerns relating to children with special educational needs. The Commission research reported staff concerns that the current system of privileges and incentives is not appropriate for some children with specific learning needs and also those with mental health problems. The term ‘character’ used in the rule is rather vague and it is not clear. We suggest this is redrafted to ensure that the system is appropriate for the individual needs and abilities of each child.
15. Rule 20 on personal hygiene should make specific reference to issues for girls. Children should be ‘encouraged’ and not ‘required’ to maintain an acceptable standard of personal hygiene. Issues with hygiene may be associated with other problems such as depression. The requirement should be on the centre to provide facilities and opportunities to maintain hygiene.
16. The opportunity for children to attend recreation facilities outside of the centre is welcome (Rule 21). A similar provision could be included in Rule 22 with regard to observance of religious and spiritual life.
17. The Rule on supervision (23) should have more regard to issues of gender. It should be possible for girls to be supervised entirely by female members of staff if this is in the individual girl’s best interests. Rule 23(3) should include reference to the child’s best interests, and should be redrafted

to take account of Rule 27 of the UN Rules for the Protection of Children Deprived of their Liberty. This states that

As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued.

18. Rule 25 on untried children gives too little guidance on the rights of these children.
19. It is good to note that the needs of girls are referred to in Rule 26 but the Rule as it stands is entirely inadequate and does not safeguard the particular needs of girls. As noted at paragraph 6 above, the Commission considers that the Rules ought to be equality impact assessed for every section 75 category, including girls; girls' needs should be considered in relation to recreation, privacy, healthcare, education and so on. The consultation document (at 4.4) states that a screening has taken place and invites respondents to put forward any concerns that the proposals if implemented could have an adverse effect, together with any supporting evidence. The results of this screening exercise should be set out to show the basis on which it is believed that there are no differential impacts. The Equality Commission's *Guide to the Statutory Duties* requires consultation on the screening exercise, but the document does not say who was consulted or how.
20. The Commission maintains its position that responsibility for the healthcare of children in custody should be transferred to the Department of Health, Social Services and Public Safety (DHSSPS). It would be useful to stipulate in the Rules the minimum qualifications for the healthcare officer (Rule 28).
21. The reference to help with addiction (Rule 27(3)) could be strengthened in line with the UN Rules for the Protection of Children Deprived of their Liberty, which state that

Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

(Rule 54)

22. Regarding mental health, the UN Rules state that “a juvenile who is suffering from mental illness should be treated in a specialised institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.” (Rule 53) The draft JJC Rule 30 allows for the Director to *make recommendations* to the Secretary of State if there is concern that detention is endangering a child’s mental health, but the Commission maintains that children suffering from mental illness *must* be treated in a specialised institution.
23. With regard to pregnant girls in custody, the Council of Europe Parliamentary Assembly, recently recommended that states develop and use community-based penalties for mothers of young children; avoid the use of prison custody; and ensure that custody for pregnant women and mothers of young children is a last resort for those who have committed the most serious offences and who represent a danger to the community. Where women are in custody with babies, the detention centre must provide special accommodation for pre and post-natal care and treatment. There should be a nursery available run by fully trained staff (see the United Nations Standard Minimum Rules for the Treatment of Prisoners 23(1) and (2), and Revised European Prison Rules 28, 2). The Revised European Prison Rules (2006) state that infants may stay in prison with their parents only when it is in the child’s best interests. Use of custody for pregnant girls must therefore be a last resort. The Commission does not consider that the JJC provides an appropriate placement for pregnant girls or for babies, being a predominantly male environment. The Commission urges the NIO and YJA to urgently consider the provision of alternatives (JJC Rule 32).
24. With regard to education provision, the Commission maintains that responsibility for education of children in custody should be transferred to the Department of Education (Rules 43–45). There should be equal access to education and vocational training for boys and girls, without gender stereotyping.
25. In *Still in Our Care* the Commission expressed concerns about the use of physical restraint on children in custody. In the Commission’s view physical restraint should only be used to prevent injury to the child or others. Rule 51(2)(c), (d) and (e) should be deleted. Physical restraint to prevent children escaping (2b) should only be used if the child is going to be in

danger on leaving the centre. Rule 51(4) should also note that physical restraint should not be used for compliance. Reports on the use of restraint should include the child's view of the incident (51(5)).

26. The Commission submits that Rule 53(3) regarding prohibited articles and substances is too vague in stating that the director may take 'reasonable' steps to prevent prohibited articles coming into the centre. Guidance is needed to ensure that children are not forcibly searched or restrained as part of searches.
27. Lastly, we submit that Rule 60 on conduct of staff could usefully refer to other codes of ethics by which professionals, such as social workers or health care professionals are bound.

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