A submission from the Juvenile Justice sub-group of the Committee on the Administration of Justice in response to the

Draft **Children (Northern Ireland) Order 1993**

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CAJ broadly welcomes this updating of our legislation. The proposal is very similar to the Children Act '89. In particular, we approve of A.3 - "child's welfare to be paramount consideration": We also support the principle of the child having direct access to the court; his/her own solicitor and the creation of a panel of guardians-ad-litem to "safeguard the interests of the child" in public law proceedings and would recommend guardians-ad-litem also be available for private law proceedings (see '"Parental Responsibility " below).

New Systems and Procedures

The proposed panel of Guardians-ad-litem will be new to Northern Ireland. Currently Guardians-ad-litem are drawn from Board staff e.g. for adoptions. The CAJ view is that a panel of "designated" Health & Social Services Board staff would not be sufficiently independent in situations where the child (or the guardian-ad-litem) wished to oppose the Board social workers' proposals. We believe that the independence of Guardians-ad-litem must be ensured.

Regarding the new Emergency Protection Orders, Schedule 7 para.3 states that "in such circumstances as the Lord Chancellor may by order specify, the jurisdiction of a court of summary jurisdiction to make an emergency protection order may be exercised by a resident magistrate **or** a member of a juvenile court panel." The "circumstances" in which a court panel member or magistrate will separately exercise this function have yet to be defined.

Children in Need

A. 17 provides a broad definition of children 'in need' and CAJ welcomes the inclusion of children with disability (A 17 (c)). However, A. 17(a) relating to "a reasonable standard of health or development" is open to variable interpretation. This is particularly so as elsewhere in the proposal the test of "significant harm" is a comparison of a child's health or development with "that which could reasonably be expected of a similar child" (A. 50(3) re Care Orders). Interpretations of A. 17(a) based on comparisons of "similar children" would potentially exclude definitions of "in need" due to poverty; culture and ethnicity and/or lack of resources in a particular area.

CAJ notes that, while A.19(3)(b) allows a Board to provide day care for under 5's supposedly not "in need" it places no obligation on the Board to do so. The Health and Personal Social Services (NI) Order '91 allows Health and Social Services Board Units of Management to become independent Trusts with separate policies and priorities depending on a balance of resources and demand. In CAJ's view it is unacceptable that child care provision and definitions of "in need" should vary to the detriment of those children who are already socially, culturally or economically disadvantaged.

We recommend the following:

1. A17(a) be amended to specifically include cultural needs and social and economic disadvantage. (Also see "language" below).
2. There should be a duty on DHSS (or preferably a Children's Rights Commissioner - see below.) to monitor differential impact of services geographically and in relation to gender;

social class, religion, race/ethnic origin, disability, language or other status, and ensure that corrective action is taken if discrepancies occur.
3. DHSS should be obliged to provide funding where Health and Social Service Boards/Trusts can demonstrate these (redefined) needs.
4. A report to parliament should be made annually, similar to the Lord Chancellor's report on the Children Act. To this end an Independent monitoring group would also be useful[1].

Sexism

We support A.5(3) of the proposal re parental responsibility "The rule of law that a father is the natural guardian of his legitimate child is abolished."

CAJ would also propose that the new legislation should avoid the use of sexist terminology and in particular abandon the principle of "the masculine includes the feminine unless otherwise specified".

The recent research carried out at the University of Ulster on "Domestic Violence in Northern Ireland" (93)[2] gives clear evidence of the extent of the problem of male violence towards women and children. We would endorse the recommendations of that document particularly regarding the need to monitor and deal with the problem. This is especially urgent given the new concept of "parental responsibility". (see below) CAJ would welcome comprehensive public awareness and education programmes for adults and children; dealing with the new concepts of continuing parental responsibility and the changing nature of male/female parental roles.

Parental Responsibility

The CAJ welcomes the move from parental rights to parental responsibility and from custody and access to residence and contact orders. However as the above will require parents to negotiate to a greater degree than before, we recommend that mediation services be made available to parents throughout Northern Ireland. In relation to the concept of continuous 'parental responsibility' we see the following problems:

a. explaining the concept of continuous parental responsibility to a child who has been abused and is fearful that the abuser will be able to "get at" her/him in exercising their "restricted" rights.
b. the real possibility that a person who WISHES to cause deliberate harm to the child and his/her family may be able to use 'consultations' and 'contacts' as a lever to do so. A11 (7)(d) allows the court to "make such incidental, supplemental or consequential provisions as the court thinks fit". If this article does not permit the courts to prevent persons who have been shown to cause deliberate harm from doing so again this issue should be addressed directly in an additional article. The physical safety of mothers (or fathers) and children should not be sacrificed when the commendable ideal of 'parental responsibility' is abused by a violent partner.

Racism

We commend the general duty of Boards in A.26(3)(c) to take into account "the child's religious persuasion, racial origin and cultural and linguistic background" in making any decision about the child.

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[1] The Children Act Advisory Committee's Annual Repo9rt 91/92 (available from Lord Chancellor's Dept.)

[2] **Bringing it out in the Open: Domestic Violence in Northern Ireland.** A report for Dept. Health & Social Services by Monica McWilliams and Joan McKiernan. Centre for Research on Women, University of Ulster, January 1993.

We also welcome the Schedule 2 para.12 "duty to consider racial groupings to which children in need belong" in relation to "the provision of day care" and to "encourage persons to act as Board foster parents." We feel this could usefully be extended to:
a) include day **or** night care given the numbers of people in minority ethnic communities who work unsocial hours and
b) to include a wider range of roles than foster parents (see language below).

Article 19 should also be amended to allow for night as well as day care.

S.27 of the Children & Young Persons Act '68 ("vagrants preventing children from receiving education") has been viewed as unnecessary and particularly stigmatising of Travellers. As such we welcome its repeal.

In general, these provisions bring our child care legislation into line with English law and provide protection for racially and culturally distinct groups for the first time. However, we are concerned that children and/or their parents or guardians may be deported in circumstances where the child's welfare was not the paramount consideration. We think that immigration and asylum law should be amended to make the child's welfare the paramount consideration in taking decisions on deportation and asylum.

Language

We are also concerned about the situation of children and parents who do not have English as their first language. We have identified the following 16 languages which we understand are currently used in Northern Ireland:
English, Cantonese, Putonghua (Mandarin), Hakka, Irish, Gammon, Vietnamese, Punjabi, Hindi, Urdu, Gujarati, Bengali, Mipuri, British Sign language, International/Irish Sign language and Makaton.
There may be others. The last 3 listed are used by children with speech and hearing impairments. To date no specific protections are offered to children whose first language is not English. We would recommend that A.17 (interpretation of children in need) be amended to include a child "(d) whose first language is not English." This would be particularly important in relation to children who are not disabled. At present these children attend (English speaking) school without any special provision being made to enable them to cope with learning in a "foreign" language. This is inevitably detrimental to their education.

CAJ recommends the Children (NI) Order should amend article 33 of the Education & Libraries (NI) Order '86 to include "children whose first language is not English" as having "special educational needs". This would enable appropriate provision of class assistants and other measures to ensure the child's proper education.

Health & Social Services Boards make considerable use of interpreters to assist social workers in communication with children and their families. At present no social work service could be delivered without the assistance of an interpreter. We commend their essential contribution to services for children and families in this jurisdiction. However the interpreter's status as a casual worker gives them no access to training in Board functions and no influence on policies.

Children's wishes and feelings are inevitably less well understood by the social worker if they are always interpreted through a third person. Personal distress would be almost impossible to disclose. We believe that Boards should have a duty to recruit or train a proportion of staff in the first languages of the population they will serve. A social worker's ability to communicate is a fundamental requirement of the post. The Boards' obligation to encourage persons to apply to become foster parents in

Schedule 2 para.12 could be extended to include such jobs as social workers, social work assistants, residential workers and play group leaders/organisers etc.

Education and "Residential' Schools and Hospitals

We welcome the introduction of A.55 (Education supervision orders) which will replace the use of (custodial) Training School Orders for Truancy. We also support the requirement that courts have regard to the child's educational needs. However the Children Act and this proposal still allow distinctions in the duties imposed on hospitals, children's homes and schools providing accommodation depending on the number of pupils and the designation of the institution. We would prefer to see consistent safeguards for all children living away from home.

The longer a child lives in an institution (or with a person) the more impact that institution (or person) will have on her/his (physical, emotional, social and intellectual) development. This principle seems to be acknowledged in A.9(4) which allows that a Board foster parent may only apply for an A8 order (a residence order) if the child "has lived with him[her] for at least 3 years preceding the application." It states "The period of 3 years mentioned in paragraph (3)(c) need not be continuous but must have begun not more than 5 years before the making of the application." Here - time spent caring for the child is the criterion for acquiring rights and responsibilities for his/her care.

On the same principle CAJ believes that all institutions providing long term care should have the same duties as A.92 ("duties of a person carrying on Children's Home") regardless of their classification as school, hospital or children's home.

The general duty on schools and hospitals to "safeguard and promote the child's welfare" is insufficient and has potential to disadvantage children who are cared for in these institutions rather than those designated "children's homes".

Child Abuse

The provision of Emergency Protection Orders gives adequate powers for the removal of children who appear to be at risk of "significant harm." However the meaning of "significant" requires definition - when is harm significant?

A.50 (2) indicates that care orders will be granted in cases where:
(a) the child concerned is suffering or is likely to suffer significant harm; and
(b) that the harm, or likelihood of harm, is attributable to -
(1) the care given to the child, or likely to be given to him..."

It appears to CAJ that the test of attributability, if strictly adhered to, would be extremely difficult to prove. The new assessment order ensures that a child is not removed from home unless absolutely necessary.

CAJ accepts and endorses the principle that removal of a child may further traumatise the child and that, therefore, this should only be done when there is no other reasonable alternative.
Schedule 2 para. 6 "provision of accommodation for another person to protect child" allows the Board to accommodate persons "where
(a) it appears to a Board that a child who is living on particular premises is suffering or is likely to suffer, ill treatment at the hands of another person who is living on the premises; and
(b) that other persons propose to move".

The purpose is clearly to prevent traumatising the child. Having considered the matter carefully we feel that the above measures, while a welcome improvement, are nevertheless insufficient and prioritise the rights of the adult over those of the child.

We considered the following:

1. Both the adult and the child have a right to remain at home.
2. The child should not be removed from home and endure further distress when/if it is they who have been assaulted.
3. The person accused has the right to be presumed innocent until proven guilty (whether of physical or sexual assault)
4. Either the adult or the child must be removed from the home while the investigations are pending.
5. The Child can only remain at home if there is another suitable person there to care for them.

Without prejudice to the guilt or innocence of the adult, we believe that it is they who should be required to live in alternative accommodation where suitable care can be provided for the child at home.

The principles upon which we base our judgement are:

1. The UN Convention on the Rights of the Child require that we acknowledge and take account of the child's special vulnerability.[3]

2. What one can expect a "reasonable parent "(or Adult) to do in the circumstances.

We appreciate that if one is not guilty (and even if one is) one's initial reaction to charges of assault would be disbelief, anger and distress. However we think that reasonable caring parents would (on reflection) prefer to handle the inconvenience and distress themselves than have their child removed from friends and family and be cared for by strangers during already traumatic events. All persons having care of children should be expected to act as caring parents.

We recommend that "Alternative Residence Orders" (or Exclusion Orders) be introduced where the grounds for an Emergency Protection Order are satisfied and the child could otherwise be cared for appropriately at home.

There are circumstances where, due to environmental factors or the persistence of the abuser, it would not be advisable for the child and family to remain at home as an Exclusion Order (Alternative Residence Order) would be difficult to enforce. In this situation we believe that there should be a duty on the Social Services Department to provide temporary alternative accommodation for the family rather than the potential abuser. On confirmation by Social Services of the need to maintain the separation, the Housing Executive should be obliged to rehouse the family in permanent accommodation.

Probation Orders & Care Orders

A. 50 (8)(b)(ii) states that no care order can be made where the child is subject to a probation order (or other order in respect of a finding of guilt) there seems to be potential here for disadvantaging children who are already at risk and the advantages are not clear.

We recommend that probation orders and care orders should be available concurrently.

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[3] The UN Convention on the Rights of the Child passed UN Convention General Assembly 20th November 1989.

Homeless Young People

CAJ welcomes the new duty on Boards to provide accommodation for 16 and 17 year olds. A.21(3) obliges the Board to provide accommodation for any child who has reached 16 years whose welfare is "likely to be seriously prejudiced" if accommodation is not provided.

This suggests that the child will be in extremely difficult circumstances before s/he must be accommodated. While A.21(5) allows the Board to provide accommodation "to safeguard and promote the child's welfare" this is not an obligation.

We think that all children should have a minimum right to have their "welfare safeguarded".

We recommend that A. 21(3) be omitted and A.21 (5) be amended to read the Board "**shall** provide accommodation." These children are also likely to be isolated and unsupported. We think that they should be entitled to advice, assistance and prepared for independent living."

Aftercare

We would endorse the recommendation of the Social Services Select Committee that the local authority (in our case the Boards) should be required to act "in the manner of a good parent" in relation to care leavers. We would urge that this be included in the Children (N.I.) Order.

A.35 (2) states that "a person qualifying for advice and assistance" means a person "within the Boards area who is under 21 and who was at anytime after reaching the age of 16 but while still a child:

(a) looked after by the Board."(or (b)-(d) lists other similar institutions).

Children who have been "in and out" of care have had an unsettled and unsteady experience of later childhood and will also require "advice and assistance" in order to make a successful transition to adulthood.

Therefore, any child who has, since aged 10 years, spent a significant amount of his/her life in care should have a right to the same aftercare facilities (A.35) as those provided for children who happen to be in care on their 16th birthday.

Respite and Holiday Accommodation

A.76 (1)(c) of the Order places a duty on voluntary organisations who accommodate a child to "advise, assist and befriend [the child] with a view to promoting his welfare when he ceases to be so accommodated."

A.76 (2) and (3) impose duties of consultation with parents, the child and so on. These are equivalent to duties laid down in the Children Act. These duties have reportedly caused difficulty in England and Wales in the provision of occasional holiday and respite care for children with disabilities. We understand that case conferences are held before each admission for respite care and arrangements must be made to "promote the welfare" of children after they are accommodated even for very short periods. Parents are said to consider the system overly intrusive and bureaucratic; the voluntary organisations are finding it time consuming and expensive.

Where regular and/or prolonged care can reasonably be anticipated CAJ supports the conditions laid down in the Order. However an additional article providing for occasional and short term care would

seem to be advisable. In particular "promoting his(her) welfare' when s/he ceases to be accommodated may be excessive in some circumstances. Again the length of time spent in the institution is of crucial importance in identifying the extent of an agency's appropriate role in caring for the child. Perhaps the child and parents could be consulted as to whether the Agency should "advise, assist and befriend the child after s/he is accommodated."

Corporal punishment in Schools

CAJ would support the abolition of corporal punishment in all (including independent) schools and residential institutions. An appropriate complaints procedure should be provided for any child who wishes to make use of it. This would regularise conditions for children in all schools and residential homes.

The "Shoot Through" from Care to Justice Establishments

CAJ regards the transfer of children to Training Schools and prisons on the basis that children are "refractory" and "unruly" respectively as unjust and unsatisfactory. Training Schools are also Remand Homes. In Criminal Justice terms they are the "last resort" to contain children deemed criminally responsible who are not amenable to community based sanctions.

We appreciate that staff in Training Schools do their best to care for the children in their charge. However, the system of control centred care run by the criminal justice system is stigmatising and they are not required to meet the same standards as facilities designated as children's homes.

The government has stated that it accepts the Black report recommendations, (1979)[4], which proposed a separation of care and justice. The suggestion in the recent "Crime and the Community"[5] document that children who are institutionalised for care reasons should be housed in separate units of the same building as those deemed criminally responsible is not what Black envisaged and is not at all acceptable.

Training Schools are currently used as a sanction against and for the containment of difficult and/or disruptive children in care (Children & Young Persons Act s.108 and 143(6)(b)). As such a Training School Order is seen as punishment for "bad behaviour". We think this criminalizes children's distress without offering appropriate counselling and remedial help.

The proposal's Schedule 8 para.31 ensures that once the order is in force, such Training School Orders will become Care Orders. However the children will remain in the institution and simply have care reviews as if the "child is looked after by a Board" (see A.45).

In addition A.27(2)(e) allows the Board to provide accommodation and maintenance for any child by "maintaining him [her] in a home or institution provided by a government department or a prescribed public body." Training Schools would appear to "fit" in this category. These new arrangements do not even require the Board to present a case in court that the child was "refractory".

While some children are deemed to be criminally responsible, we believe that distressed and possibly abused children should not be placed in these institutions.

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[4] Report of the Children & Young Persons Review Group (known as the Black Report - after Chairperson Sir Harold Black) The Review Group appointed January 1976 by Mr. R Moyle MP, Minister of State for Health & Social Services and reported December 1979. H.M.S.O. Publication.

[5] "Crime and the Community": A discussion paper on criminal justice policy in N. Ireland 1993. Issued by the Northern Ireland Office, Criminal Justice Policy Division, Dundonald House, Belfast.

We recommend:

1. the deletion of A.27(2)(e) from the proposal;
2. the establishment of specialist units to provide counselling and therapeutic support for distressed children under the auspices of the Boards;
3. the complete separation of the Care and Justice Systems.

Secure Accommodation

All secure accommodation is currently provided by the Criminal Justice Services. However, for reasons outlined above CAJ think the Department should maintain its own specialist care units for children requiring such secure accommodation. While CAJ welcome the provision of criteria for the use of Secure accommodation, the terms of the article give the Department sweeping powers to regulate its use and to specify the powers of the Court regarding periods of detention. The article also allows for interim orders of indeterminate length. We suggest that the article is rewritten to at least allow the court independence from the Department and to provide specific time scales for interim orders.

Childcare Training

A.153 allows the Boards to make grants in respect of training and requires that the Boards "shall keep under review the adequacy of the provision of child care training". We regard it as essential that social work and other child care staff receive appropriate training. Every investigation into failures of social services to protect children, including our own Hughes Report[6] has identified lack of training as a significant factor. We therefore recommend that A.153 be strengthened to give Boards a duty to induct and train staff for the duties they will be required to undertake and not simply to "monitor the adequacy of provision?"

Research and Information

The proposal could usefully be amended to include a duty on Health & Social Services Boards to maintain statistical records such that any differential impact of Health or Welfare Services on children could be identified by gender, race and ethnic origin, language, disability, age, class or other social status. A.154 (3) simply requires that information be provided "in such form as the Department may direct"...

Boards should be expected to act on the information and statistical records they have to correct imbalances in service delivery having identified the special needs of disadvantaged groups of "children in need" (as per the Order Schedule 2 para 1.) Policy and procedures should be routinely monitored (by consultation with children and staff) for inadvertent negative impacts. These should be corrected where humanly possible. Help should be provided to residential or other units which have identified problems with practice.

Children's Rights Commission

The simplest way to monitor and service this would be to establish an independent Children's Rights Commission which would have access to records and statistics and a role in promoting/ensuring good

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6 Report on the Committee of Inquiry into Children's Homes and Hostels (known as the Hughes Report after the Committees Chairperson Judge William Hughes) published HMSO 1986.

practice. (The operation of the Mental Health Commission in respect of the Mental Health (NI) Order '86 may provide an example of how such a commission could function here.)

Children Order Working Group

CAJ has participated in the discussions of this working group. We wish to support and endorse the recommendations contained in its submission.

Conclusion

Overall we very much welcome the Children (N.I.) Order 1993 as improving the rights of children and young people in this jurisdiction. We hope the Government will be willing to examine proposed amendments carefully and not simply introduce the Proposal "as is" on the basis that it is broadly the same as the Children Act.