

**The Committee on the Administration of Justice (CAJ)**  
**45/47 Donegall Street, Belfast BT1 2FG**  
**Tel: (01232) 232394 Fax: (01232) 246706**



*CAJ Response to the*  
*Draft Juvenile Justice Centre Rules*

*August 1998*

**Submission No. S.73**  
**Price: £1.50**

**Submission No. S.73**  
**Price: £1.50**



## **CAJ's Response to the Juvenile Justice Centre Rules (NI) 1998**

CAJ wishes to take this opportunity to respond to the new Juvenile Justice Centre Rules which have recently been issued. Given the very restricted timescale suggested for comment, the following is our initial response.

The Training School Rules which are currently in operation were introduced in 1952. They are out of print and out of date; referring to processes and procedures, such as the caning of children, long since defunct. The new Juvenile Justice Centre Rules are welcome, therefore, insofar as they will at least bring the care and control of children in custody into a legal framework which reflects the current realities of their situation. In many respects, however, these Rules appear to be a direct copy of the Prison and Young Offenders Centre Rules (NI) 1995. Where the two sets of rules diverge, it seems to be to the detriment of the rights of children in custody. The principles of the United Nations Convention on the Rights of the Child and the Beijing Rules (the UN's Minimum Standards for the Administration of Juvenile Justice) do not appear to have been the basis upon which the Juvenile Justice Centre Rules were developed.

### **General Principles**

CAJ recommends that the principles of the United Nations Convention on the Rights of the Child and the Beijing Rules be incorporated into the general principles of the new rules. The statement, in Rule 2(f), that facilities will be made available to a child without discrimination is welcome. "Sexual orientation" and "disability" could usefully be added to list of categories to which the principle of non-discrimination will explicitly apply, especially given the particular difficulties which gay and disabled children may experience in closed institutions. Article 3 of the United Nations Convention on the Rights of the Child establishes the principle of acting in the child's best interests. At the very least this would require that facilities be provided to children on the basis of identified need: otherwise it may be claimed that the principle of non-discrimination has been met if all the children are treated the same regardless of their differing needs. This could have the effect of seriously disadvantaging children with special needs. We recommend that rule 2(f) be amended to read "facilities will be made available to a child on the basis of their assessed needs and without discrimination on the grounds of sexual orientation, disability, religion, race, colour, sex, language, political opinion, national or other origin, birth, economic or other status".

CAJ believes that children should at least have parity with adults in relation to being informed of the reasons for decisions taken regarding the conditions of their custody. Rule 2(g) of the Prison and Young Offenders Centre Rules states "where a decision is taken which affects the conditions of imprisonment of a prisoner, or a class of prisoners, the reasons for that decision will be made available". Children should have an equal right to information on reasons for decisions which affect the conditions in which they are held. Furthermore, decisions relating to the placement of children in a particular custodial institution will be taken by NIO rather than the courts. Currently each of the Training Schools, which will become Juvenile Justice Centres, operates a very different regime from the others. The reasons for placement decisions, therefore, should also be known and based on criteria available to the public.

Article 53 of the Criminal Justice (Children)(NI) Order 1998 gives the manager of a Juvenile Justice Centre parental responsibility for children in the custody of the Centre. Other authorities with parental responsibility are obliged to maintain appropriate contact and consult with parents and others with a view to taking decisions in the best interests of the child. For example, Regulation 19 of the Children's Homes Regulations (NI) 1996 obliges Children's Homes to notify parents or persons with parental responsibility of any significant events affecting children in care. It seems reasonable, given that the Juvenile Justice Centre managers have acquired parental responsibility that they should have a similar obligation to keep parents or guardians properly informed of the conditions in which their child is kept and the reasons for these conditions or for any changes to them. CAJ recommend that an additional point be added to the general principles with a view to:

- (a) ensuring parity between adults and children in custody on access to information;
- (b) acknowledging the child's special vulnerability;
- (c) supporting work in co-operation with parents and guardians; and
- (d) giving effect to the Centre managers parental responsibility. This principle should read "The child and his or her parent or guardian will be informed of the reasons for the child's placement in a particular Juvenile Justice Centre verbally and in writing. Where any subsequent decision is taken which affects the continuation of the child's placement or the conditions in which he or she is held, the reasons for that decision will be made available to that child and his or her parent or guardian verbally and in writing as soon as is practicable.

### **Classification/Reasons for Placement and Transfer**

Rule 9 of the Prison and Young Offenders Centre Rules provides for the classification of adult prisoners by age, offence, length of sentence, previous record and so on. There is no similar rule regarding classification of children and no provision for indicating how or why some children will be chosen for placement in the more austere conditions of Lisnevin, which conforms to the specifications of a Grade C prison, whereas others will be placed in St. Patrick's, St Joseph's or Rathgael which are more comfortable, open and domestically designed. Furthermore, St. Joseph's and St. Patrick's Training Schools were established specifically to care for Catholic children in custody. It is not clear whether this will continue and will be a criteria for placement or whether religion will have no bearing on placement decisions at all. Criteria for the placement and transfer of children must be included in the Juvenile Justice Centre Rules to ensure the public accountability and systematic fairness of the process. At a minimum children should be informed of the reason for their transfer and the right to legal advice.

### **Accommodation**

It is a requirement of both the Prison and Young Offenders Centre Rules and the Juvenile Justice Centre Rules that adults and children in custody be provided with accommodation of such size and be lighted, heated and ventilated in such a manner as is consistent with the maintenance of health and human dignity. Rule 11(4) of the Prison and Young Offenders Centre Rules asserts that provision of accommodation above the standard required is subject to the requirements of security and good order. Rule 12(4) of the proposed Juvenile Justice Centre Rules states that "The provision of accommodation to the standard required ... is subject to the requirements of security and good order and to the use made of the accommodation by the child". This is clearly inconsistent with the Government's obligations to treat children no less favourably than

adults. It would also appear to make the provision of accommodation to a standard needed to maintain health and human dignity conditional. This part of Rule 12 should be removed.

## **Discipline and control**

Both sets of rules also allow for the restriction of association of adults or children in custody for the maintenance of good order and discipline. Rule 70 of the United Nations Rules for the Protection of Juveniles Deprived of their liberty indicates that no juvenile should be disciplined without being informed of the charge and given an opportunity to present their defence. It should also be noted that routine restriction of a child's social contact is likely to be damaging to the health and development of that child. CAJ, therefore, believes that the period of twenty four hours during which a child's association may be restricted without the agreement of the manager is excessive. It is accepted that there may be emergencies when a child needs to be separated from his or her peers immediately. This should, however, only be for the shortest possible period of time. In our view the manager should always be informed as soon as practicable and approve restrictions of association. Furthermore all such restrictions should be recorded as is the case for the use of temporary confinement. We also recommend that information on the child's gender, religion, race and any disability should also be recorded so that routine statistical analysis can be made of the impact of restriction of association on different social groups.

CAJ is concerned that the draft Juvenile Justice Centre Rules allow for restrictions to be renewed for further periods of forty eight hours by the manager of a Centre without limit of time or reference to higher authority. Adults may not have their association restricted for "more than forty eight hours without the agreement of a member of the board of visitors or of the Secretary of State" (Rule 32(2) Prison and Young Offenders Centre Rules). Again adults have more rights and protection than children. Given the child's acknowledged vulnerability, children should have more not fewer protections. Boards of Management should oversee the use of restriction of association in any Juvenile Justice Centre and we would further advocate that consideration be given to the introduction of a statutory system of independent visitors who could make an independent assessment of the appropriateness of the use of restriction of association and its impact on the child. In relation to the use of temporary confinement CAJ would suggest that children temporarily confined should also have access to independent visitors and that detailed records and routine statistical analysis on its use and impact on different social groups should be provided to ensure public accountability and the appropriate operation of the process. The standards set under the Children (NI) Order 1995 in relation to secure accommodation could provide an appropriate base line for the use of "temporary confinement" in Juvenile Justice Centres.

As regards general discipline we are disappointed that the Rules do not provide clarity as to what will or will not be considered appropriate forms of punishment. We note that while 'temporary confinement' is explicitly excluded as a form of punishment, 'restriction of association' is not. We believe it would be appropriate to provide a more detailed breakdown of measures which may not be used to maintain discipline and control similar to that contained in regulation 8 of the Children's Homes Regulations (NI) 1996. This regulation excludes measures such as corporal punishment, deprivation of food or drink or restriction of communication with family, legal representatives or independent visitors and obliges staff to maintain records of disciplinary measures used, including the dates

used, reason for use, person by whom used and person by whom authorised. Such records should be reviewed by the Juvenile Justice Centre manager on at least a monthly basis. Patterns of disadvantage or disproportionate use of disciplinary measures could be identified and remedial action taken as necessary.

### **Education, training and other activities**

It is with some surprise that we learn that children are to be “given the opportunity to associate with other children for not less than one hour each day” for exercise and recreation (rule 36(1)). This rule appears to be directly transcribed from the Prisons and Young Offenders Centre Rules and does not reflect the importance of social contact for children. It should be an expectation that most of a child’s free time is spent in ‘association’ with other children unless there are particular reasons why this is not desirable. This section of the rules should be revised to incorporate the ‘best interests’ principle and to ensure that the child’s culture and personal preferences are taken into account in planning all aspects of his or her education, training and other activities. CAJ is concerned that some Training Schools have considerable resources available to provide appropriate activities for children while others have not. To ensure equal treatment it will be important to resource such Juvenile Justice Centres to a standard comparable with others.

### **Chaplains**

Rule 59(4) of the Prison and Young Offenders Centre Rules states that “A chaplain shall, as often as possible, visit all prisoners of his denomination who are sick, under restraint or confined to a cell”. There is no such provision for children who are sick, temporarily confined or having their association with other children restricted. The Juvenile Justice Centre Rules (39(2)) simply state that “A chaplain shall have reasonable access to children of his denomination”. We see no justification for this discrepancy and suggest that children in custody should have an equal right of access to their chaplains especially when experiencing illness, confinement or restriction.

### **Social Relations and Communications**

#### **(a) Family Contact**

The intention to encourage family and other relationships which may best promote the child’s welfare is welcome. CAJ believes, however, that this is not possible unless facilities are provided for family visits and, if necessary, family work. At a minimum this requires that a suitable room is available in which privacy can be provided to discuss family matters and that staff are trained to facilitate family discussions if necessary and appropriate. Such facilities are not routinely available currently in all Training Schools. The Rules should:

1. contain minimum accommodation requirements similar to those set out in regulation 7 of the Children’s Homes Regulations (NI) 1996 which provides that suitable rooms should be available for private family contact;
2. contain an obligation on Boards of Management to ensure that staff are provided with training to enable them to undertake the range of tasks they are required to perform.

Most children in custody have brothers and sisters with whom they should maintain contact. CAJ would, therefore, suggest that toys and other appropriate facilities should be provided so that visits can, as far as possible, be positive experiences for the whole family.

**(b) Legal Advisers**

Unlike the Prison and Young Offenders Centre Rules, the Juvenile Justice Centre Rules make little reference to facilities for legal advisers and interference with legal correspondence. CAJ is aware of a report of legal correspondence being opened in one of the Training Schools. We, therefore, suggest that the detailed regulations contained in the Prison and Young Offenders Centre Rules should also be reflected in the new Juvenile Justice Centre Rules. We would additionally propose that a rule be added to the effect that children should be automatically informed of their right to legal advice should they object to their placement in a particular institution, or their transfer from one institution to another.

**(c) Police interviews**

Rule 42 of the Juvenile Justice Centre Rules states that any child in custody may be interviewed by a police officer "in the sight of, and if the manager directs, in the hearing of staff of the Centre". This suggests that a child in custody will be provided with less protection and support than other children questioned by police. According to the PACE codes of practice, children should be interviewed in the presence of an appropriate adult, whose role is to advise the child, ensure that he or she understands the questions and that there is no oppression. Additionally children who are to be interviewed have the right to legal representation and should be informed of that right. Indeed any admissions made in circumstances where a child is interviewed by a police officer without an appropriate adult or solicitor may prove worthless evidentially. The Rules will need to be amended to clarify Government intentions in this matter. CAJ would also propose that parents should be informed that an interview is to take place and offered the opportunity to attend at their reasonable convenience. Interviews should only proceed without parents in circumstances where this is demonstrably necessary. In these circumstances an independent visitor could act as an appropriate adult. In any case, no child should be interviewed without an adult who is aware that they are acting as an appropriate adult.

**Complaints**

It is disturbing that in the Juvenile Justice Centre Rules childrens' complaints merit five lines stating that a complaints procedure will be available. This is in contrast to the ten page statutory rules and explanatory notes provided for children in care which are contained in the Representations Procedure (Children) Regulations (NI) 1996. Adults in custody have the protection of five separate rules including the right of access to see the prison governor who in turn is obliged to give information to visiting members of the board of visitors and officers of the Secretary of State. Adult prisoners may petition the Secretary of State in writing in a sealed envelope which the governor may not open unless he or she believes that other material is enclosed and the governor may not in any case read the petition. Children in care have a statutory right of access to a specially appointed independent person who may make representations on their behalf. It is unacceptable that none of these protections are explicitly available under the rules to children in custody. CAJ recommend that a statutory independent visitor scheme be

established under the Juvenile Justice Centre Rules and that the standards set in the Representations Procedure (Children) Regulations (NI) 1996 should be adapted and used as a basis for framing appropriate minimum standards for dealing with complaints. Children should also have access to complaints mechanisms beyond those internal to the Juvenile Justice Centre. The remit of the local ombudsman should be extended to cover Criminal Justice Services including the Juvenile Justice Centres. In the meantime the reports and recommendations of the Social Services Inspectorate should be made more widely available to promote public access to information on issues affecting children in custody just as the reports of the Chief Inspector of Prisons provides information on matters relating to adults and young offenders in custody. A set of Operating Standards could usefully be developed for those conducting inspections of Juvenile Justice Centres.

### **Physical Welfare, Medical Officers, Medical Records and Statistics**

There are twice as many rules relating to assuring the physical welfare of adults in custody as there are in these new Rules for children in custody. There is no reason why the Rule 82 relating to food prepared and supplied to adults should not also be the minimum standard for children. CAJ believes that the standards set in rule 82 of the Prison and Young Offenders Centre Rules should be adapted and included in the new Juvenile Justice Centre Rules.

The omissions regarding the duties of the medical officer are more serious. The Rules should make clear that any child has a right to be seen and examined by a doctor if they feel that they are ill. The Prison and Young Offenders Centre Rules detail the duties of the medical officer, including consideration of treatment for prisoners thought to be "a possible suicide risk". There are no explicit duties in the Juvenile Justice Centre Rules relating to the assessment of children for physical or learning disability or to prescription or referral for treatment of children who are distressed, disturbed or suicidal. This is clearly unacceptable and should be rectified with rules providing for clear lines of responsibility for staff, managers, medical officers and others in ensuring the physical care and mental health of children in custody. The obligations of medical officers in prisons to keep statistical records and provide statistical returns to the Secretary of State should also be extended to the medical officers of Juvenile Justice Centres. This is particularly important as recent National Children's Bureau research shows that a disproportionate number of the Training School population have a physical or learning disability and a very high percentage of the children are said to have emotional and behavioural problems, some necessitating the implementation of anger management and other programmes. There should also be explicit rules in relation to the provision of specialist psychological paramedical and other services which may be required to promote and ensure the proper development, health and welfare of children in custody.

### **Gender and Race**

There are special rules dealing with matters specific to the care and treatment of women and people whose first language is not English in the Prison and Young Offenders Centre Rules. There is no provision in the Juvenile Justice Centre Rules to ensure that the special needs of girls are taken into account or that they are not disadvantaged in the provision of facilities or protection. This omission should be rectified. CAJ believes that there should be explicit provision in the Juvenile Justice Centre Rules for the promotion of the welfare of children from minority ethnic groups. In particular, a



translator and other services necessary to children whose first language is not English should be provided as a right. The cultural and ethnic background of the children should be recognised and taken into account in decisions relating to their care and treatment.

### **Managers, Staff and Board of Management**

The Juvenile Justice Centre Rules are written in such broad terms as to allow maximum flexibility and control for managers, boards of management and the NIO with the minimum of regulation. There is little in the Rules which deals with how the manager of a Juvenile Justice Centre shall give effect to his or her duties as a person with parental responsibility for the children in the custody of the Centre. No explicit reference is made to the managers' parental responsibility in the Rules. While the manager of a Centre must provide information to the Board and Secretary of State as they direct, there is little specific statutory regulation as to the nature and type of information to be collated. It is not even clear what, if any, statistical information will be made available to the public. There is no obligation on boards of management or the NIO to undertake, fund or facilitate appropriate research into the operation of Juvenile Justice Centres. There is no obligation on the Boards of Management to visit monthly although this was a requirement under the Training School Rules. Under the new Rules they need visit 'regularly' and have no obligation to see children who wish to make complaints. All of these deficiencies should be rectified.

Children in custody are known to be disproportionately likely to have experienced family breakdowns, to have emotional and behavioural problems and possibly to have been subjected to physical, sexual and/or emotional abuse. Nevertheless, there is no obligation to ensure staff are trained to be able to cope with the complex and distressing problems which the children may have experienced. Boards of Management should have an obligation under the Rules to ensure that staff are trained for the duties they are required to undertake. Furthermore, staff composition should comply with the Beijing Rules in reflecting the diversity of the children in the care of the Juvenile Justice Centre and explicit obligations to promote and ensure equal opportunity for all in recruitment selection and training should also be included in the Juvenile Justice Centre Rules.

### **Conclusion**

The Juvenile Justice Centre Rules require considerable amendment

- to incorporate the principles contained in the United Nations Convention on the Rights of the Child;
- to ensure at a minimum the same rights and protections for children as are available to adults;
- to acknowledge the child's special vulnerability and need to maintain contact with family;
- to give full effect to the principle of non-discrimination;
- to ensure the introduction of an appropriate statutory procedure for children to make complaints; and
- to provide for the independent monitoring of the operation of Juvenile Justice Centres.

**Committee on the Administration of Justice  
45-47 Donegall Street  
Belfast BT1 2FG**

*Extra copies of this document can be obtained from the above address  
A publications catalogue and details of CAJ membership  
are also available on request from the above address*