



Ministry
of Justice

Government response to the Fourteenth Report of the Joint Committee on Human Rights, Session 2013/14:

Criminal Justice and Courts Bill

September 2014



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Joint Committee on Human Rights, Session 2013/14:
Criminal Justice and Courts Bill**

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

September 2014



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**Government response to the Fourteenth Report of the Joint Committee on Human Rights,
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Introduction

1. This is the Government response to the Joint Committee on Human Rights' (JCHR's) Fourteenth Report of the 2013–2014 Session, *Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill*, which was published on 11 June. The Government is grateful for the JCHR's scrutiny of this important legislation.
2. The JCHR has made recommendations in relation to the increased sentence for terrorism offences, electronic monitoring following release on licence, extreme pornography, young offenders, criminal courts charge and contempt of court. The Government's response to the JCHR's report and to each of its recommendations is set out below.
3. The Government published a European Convention of Human Rights Memorandum on the Bill's introduction in the House of Commons and an updated memorandum on introduction to the House of Lords. The ECHR Memorandum provides the Government's full analysis of the ECHR issues relating to the Bill. This can be found here:

<https://www.gov.uk/government/publications/criminal-justice-and-courts-bill-overarching-documents>
4. The JCHR Committee reported separately on the judicial review provisions contained within the Bill. Their report and the Government response can be found on the Committee's webpage: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/>
5. In writing this response, the clause numbers in the version of the Criminal Justice and Courts Bill as amended in Lords Committee on 30th July 2014 have been used. For ease of reference, and in brackets the clause numbers used by the JCHR, these are:
 - Increased sentences for terrorism offences Clauses 1–3 (Clauses 1–3)
 - Electronic monitoring following release on licence Clause 7 (Clause 6)
 - Extreme Pornography Clause 31 (Clause 18)
 - Young offenders Clauses 32–34 and Schedules 5 and 6 (Clauses 19–21 and Schedules 3 and 4)
 - Criminal Courts charge Clause 46 (Clause 31)
 - Contempt of Court – These provisions were removed from the Bill during Lords Committee.

Increased sentences for terrorism offences

6. **The Committee:** It appears from the Government's response to our question that the Government's justification for increasing the maximum sentences for certain terrorism-related offences is not based on any proven inadequacy of the current sentencing powers in cases which have been prosecuted to date, but on the Government's view that "it is important to maintain a consistent and up-to-date sentencing regime for all offences on the statute book." We agree with that proposition, and we accept the Government's justification for increasing the maximum sentences for these serious terrorism-related offences, especially in view of the courts' discretion to impose a lower sentence remaining unaffected by the provisions.
7. We note, however, that the Government has not been very clear about what has created the inconsistency or led to the sentencing powers for these offences being out of date. If the Government's reforms to sentences for Indefinite Public Protection ("IPPs") have left sentencing powers for some offences less extensive than they were previously, the Government should be prepared to say so explicitly. Significant increases in maximum sentences require clear and transparent justifications. (Paragraph 1.14 and 1.15)
8. The changes will mean that in sufficiently serious cases a life sentence can be imposed for these offences, if the court considers that the appropriate seriousness threshold is met. The Government believes that the current maxima do not allow the courts sufficient discretion given the range of possible offending that could be caught by these offences, regardless of whether or not IPP sentences would have been available to the courts.
9. In making these changes the Government is responding to increased recent concern about the prevalence and seriousness of terrorist training offences, and the need for the courts to have the widest discretion in dealing with this type of offending. Similarly, the Explosive Substances Act 1883 offence (for which an IPP sentence was never available) has remained largely unchanged for over 100 years; in recent years there have been rare but concerning cases of extremely serious behaviour charged under this offence.
10. **The Committee:** In view of the legal uncertainty that remains about the availability of a review mechanism for whole life orders, notwithstanding the clarification provided by the Court of Appeal in *McLoughlin*, we have considered carefully what would be required in order to remove that uncertainty. In our view, for the review mechanism to be sufficiently certain, more specific details need to be provided about the mechanism, including the timetable on which such a review can be sought, the grounds on which it can be sought, who should conduct such a review, and the periodic availability of further such reviews after the first review. (Paragraph 1.26)
11. **The Committee:** The current Bill provides an opportunity for Parliament to remove any legal uncertainty by specifying the details of the review mechanism. In our view, providing the requisite legal certainty could be achieved relatively simply by an amendment of the existing statutory framework in s. 30 of the

Crime (Sentences) Act 1997 to provide, for example, that a prisoner who is subject to a whole life order can, after 25 years in custody, apply to the Parole Board for a review of the continued justification for the whole life order; and the Parole Board, if it is satisfied that the prisoner has made such exceptional progress towards rehabilitation that the justification for a whole life order no longer exists, can substitute a determinate tariff. (Paragraph 1.29)

12. **The Committee: We therefore recommend the following probing amendment to the Bill in order to give Parliament the opportunity to debate the desirability of amending the statutory framework to put beyond legal doubt the availability of a mechanism for the review of a whole life order:**

Page 4, line 40, after clause 4 insert new clause:

Review of whole life orders

- (1) *The Crime (Sentences) Act 1997 is amended as follows.*
- (2) *After section 30 insert—*
 - “30A (1) A prisoner who is*
 - (a) the subject of a whole life order made under*
 - (i) s. 269 Criminal Justice Act 2003 or*
 - (ii) s. 82(4) of the Powers of Criminal Courts Sentencing Act 2000*
 - (b) has been in custody for 25 years**may apply to the Parole Board for a review of the whole life order.*
 - (2) If on an application under subsection (1) the Parole Board is satisfied that the prisoner has made such exceptional progress towards rehabilitation that a whole life order is no longer justified, it shall substitute a determinate tariff for the whole life order.*
 - (3) No fresh application may be made by a prisoner under sub-section (1) before the period of 5 years has elapsed since the Parole Board’s determination of the prisoner’s previous application.”*

(Paragraph 1.30)

13. The Government considers that the Court of Appeal judgment in *Newell and others* (*R v Newell; R v McLoughlin* [2014] EWCA Crim 188, 18 February 2014) set out the operation of the power of review for life sentence prisoners under section 30 of the Crime (Sentences) Act 1997, which provides for compassionate release in exceptional circumstances which render the just punishment originally imposed no longer justifiable. The Court found that the term exceptional circumstances was sufficiently certain in itself and that decisions would need to be made on a case by case basis. It also said; *“We find it difficult to specify in advance what such circumstances might be, given that the heinous nature of the original crime justly required punishment by imprisonment for life. But circumstances can and do change in exceptional cases. The interpretation of section 30 we have set out provides for that possibility and hence gives each prisoner the possibility of exceptional release”* (paragraph 36). The Government considers that there is no need for further action to give the clarity provided by the judgment.

Electronic Monitoring following release on licence

14. **The Committee: The detailed safeguards in the Code of Practice will be crucial to ensuring that the processing of data gathered from electronic monitoring following release on licence is carried out in such a way that any interference with the right to respect for private life is necessary and proportionate to the legitimate aims pursued. It is therefore important that there is some opportunity for parliamentary scrutiny of the adequacy of those safeguards. We recommend that the Bill be amended to make the Code subject to some form of parliamentary procedure in order to ensure that Parliament has such an opportunity. (Paragraph 1.37)**
15. Section 215A of the Criminal Justice Act 2003 (as inserted by paragraph 17 of Schedule 16 to the Crime and Courts Act 2013) contains a similar provision for a Code of Practice in relation to the data gathered from electronic monitoring of persons subject to community or suspended sentence orders, which was approved without any provision for Parliamentary scrutiny. The Code of Practice relating to the retention and sharing of information collected from the electronic monitoring of offenders on licence will, of course, comply with the Data Protection Act 1998 and Human Rights Act 1998 but, in any event, the Government has also committed to consult on the document, and that will include consulting the Information Commissioner. The Code of Practice will also be published. The Code of Practice is intended to make sure that the necessary safeguards are in place for the proper management of this information. It is for operational purposes and as such it is not intended to introduce any new legal requirements. It is also important that the code can be amended promptly, if necessary, to take account of improvements in practice, or any changes necessitated (for example) by the findings of the courts or the Information Commissioner. That is why the Government does not propose to subject the code to Parliamentary procedure.

Extreme pornography

16. **The Committee:** We welcome, as a human rights enhancing measure, the provision in the Bill to extend the current offence of possession of extreme pornography to include possession of pornographic images depicting rape and other non-consensual sexual penetration. We consider that the cultural harm of extreme pornography, as set out in the evidence provided to us by the Government and others, provides a strong justification for legislative action, and for the proportionate restriction of individual rights to private life (Article 8 ECHR) and freely to receive and impart information (Article 10 ECHR). (Paragraph 1.50)
17. The Government thanks the Committee for their detailed consideration and scrutiny of this clause and acknowledges their agreement of our assessment of the provisions.

Young offenders

18. **The Committee: The international standards also include a number of other provisions and principles which are highly relevant to Part 2 of the Bill: for example, that the State should set up small open facilities where children can be tended to on an individual basis and so avoid the additional negative effects of deprivation of liberty; and that institutions should be decentralised to allow for children to continue having access to their families and their communities. We emphasise the importance of these international standards to Parliament's scrutiny of this part of the Bill. (Paragraph 1.53)**
19. The Government recognises the UK's international obligations in relation to children and young people. It notes that international standards do not preclude the use of larger establishments but advocate the provision of custodial services which respond to the individual needs of detained young people. It is for this reason that the youth custodial estate in England and Wales consists of both larger and smaller establishments – Young Offender Institutions, Secure Training Centres, Secure Children's Homes and, in future, Secure Colleges – offering different services and environments to detained young people.
20. In developing proposals for Secure Colleges the Government considered the principle of establishing small facilities. The shape of the youth custodial estate is of course significantly influenced by the size of the demand for custody, and where geographically in England and Wales this demand comes from. It is for this reason the Government intends to open the pathfinder Secure College in Leicestershire in order to serve demand from the Midlands and East of England. In addition, establishments must be of a certain size to achieve economies of scale and enable a breadth of services to be provided. The Government believes that the size of the pathfinder Secure College will enable us to meet these aims of serving regional demand and providing services including education, health and sports facilities which will provide both value for money and improved outcomes for young people. It would not be possible to match the quality of these services in a smaller institution whilst remaining economically viable.
21. The youth custodial estate currently includes 138 places in nine Secure Children's Homes. These are small establishments offering a specialist service for the youngest and most vulnerable. In addition, there are also 301 places available in four Secure Training Centres. Places in both Secure Children's Homes and Secure Training Centres will continue to be available once the pathfinder Secure College opens in 2017. It will be for the Youth Justice Board, with proper consideration of the individual needs and characteristics of young people and advice from Youth Offending Teams, to decide upon the most appropriate establishment in which to place individual young people remanded or sentenced to custody.
22. The Government does not accept that tending to detained young people on an individual basis is only a function of smaller facilities, nor that it is not achievable in larger establishments. Individually tailored support is created by the culture of an establishment, the services that it provides and the staff who deliver them. We believe that the pathfinder Secure College, an establishment comprised of distinct

accommodation units and capable of supporting different regimes for the various groups of young offenders, will provide such an individualised service.

23. The Government agrees that access to families is vital to helping young people maintain or strengthen their closest relationships, and that contact with community services is important in supporting effective resettlement after release. Secure College Rules will include provisions in respect of visits. The Government intends to consult on its approach to the Rules during the passage of the Bill. In addition, the Government is exploring whether technology may provide further opportunities for contact with families that would supplement face-to-face visits. Youth Offending Team workers currently provide a link between detained young people and services in the community. It is intended that they will work together with Secure College operators and young people and be responsible for building these links and facilitating successful resettlement and ongoing reintegration. This transition between custody and release into the community can be eased and planned through the use of release on temporary licence in appropriate circumstances.
24. **The Committee: We note that the Government does not appear to have carried out any equality impact assessment of the proposed secure colleges policy, and we recommend that such assessments should be carried out and made available to Parliament at the earliest opportunity, assessing in particular the impact on girls and younger children of detaining them in large mixed institutions holding up to 320 young people including older children up to the age of 18. We also call on the Government to provide further information in relation to SEN provision in secure colleges (Paragraph 1.57)**
25. In accordance with its obligations under the Equality Act 2010, the Government considered the equality impacts of the proposals contained in its response to the *Transforming Youth Custody* Consultation. It considers that the creation of Secure Colleges will not have any adverse impact on any group for a reason related to a protected characteristic, and believes that this new form of youth custodial provision has the potential to deliver improved educational and rehabilitative outcomes for the young people it accommodates. The Government will consider equalities impacts further as part of the consultation on the approach to Secure College Rules during the passage of the Bill, and also throughout the development of the pathfinder Secure College.
26. No decisions have yet been taken on whether girls or under 15s will be accommodated in the pathfinder Secure College, or any potential further Secure College. A decision on accommodating girls and under 15s in the pathfinder Secure College will be taken as plans for the pathfinder are developed and in light of careful analysis of the needs of the youth custodial population and the impacts on different groups. It could be detrimental to equalities considerations to legislate to exclude these groups from the pathfinder Secure College.
27. The Government's plans for Secure Colleges recognise that a significant proportion of young people in custody have special educational needs and that their progression is dependent on their needs being identified and on receiving the right support while detained.
28. The Secure College will undertake a comprehensive assessment of all young people on entry to inform the development of an individual learning plan. This assessment will take account of any existing Education, Health and Care plan to address special

educational needs. Where the assessment reveals a previously undiagnosed special educational need, this will also be reflected in the individual learning plan to ensure that appropriate support can be provided. The provision of support in the Secure College will be overseen by a Special Educational Needs Co-ordinator (SENCo).

29. Under the Children and Families Act 2014, home local authorities maintaining an Education Health and Care Plan will be required to arrange the special educational provision set out in the Plan for the young person while they are detained in a Secure College. The principal of a Secure College and the youth offending team will be required by the Act to co-operate with a local authority to ensure that these duties are fulfilled. They will also be required to have regard to the Special Educational Needs Code of Practice which underpins the new statutory framework.
30. **The Committee: In our view, the Government's distinction between the provision in the Bill itself and the secure college rules which are yet to be made does not avoid the underlying human right compatibility problem with the substance of the policy: it is clear from the reason of the Court of Appeal in the case of *C v Secretary of State for Justice* that it is incompatible with Articles 3 and 8 ECHR for any law, whether primary or secondary legislation, to authorise the use of force on children and young people for the purposes of good order and discipline. (Paragraph 1.66)**
31. The Government does not consider that the Court of Appeal in the case of *C v Secretary of State for Justice* found that all use of force to ensure good order and discipline (GOAD) in all situations where children are involved necessarily engages or infringes Articles 3 and 8 ECHR. The Court of Appeal found that the system of restraint being used in Secure Training Centres to ensure GOAD at the time was unlawful in light of the restraint techniques used, the way they were applied, and the lack of evidence and justification as to why their use to ensure GOAD was strictly necessary.
32. **The Committee: In light of the human rights compatibility issues explained above, we recommend that the relevant provision in Schedule 4 of the Bill should be deleted, and the Bill should be amended to make explicit that secure college rules can only authorise the use of reasonable force on children as a last resort; only for the purposes of preventing harm to the child or others; and that only the minimum force necessary should be used. (Paragraph 1.68)**
33. The Government agrees with the committee that in all cases force should only be used as a last resort, and only the minimum necessary and for the shortest time possible, and subject to strict conditions and safeguards. Only approved restraint techniques may be used and they may only be used by custody officers who have received training in those techniques.
34. The Government does not consider that it is necessary or appropriate to set out on the face of the Bill the circumstances in which custody officers are authorised to use force in Secure Colleges. It is the Government's view that the Secure College Rules are the correct place to be setting out the boundaries on the use of force. The provision in the Bill is clear on this point: a custody officer must be authorised by the Rules to use force.
35. As regards the use of force to ensure good order and discipline (GOAD), the Government is of the view that there may be limited situations where all attempts at

resolving and de-escalating an incident have failed, and where a young person's behaviour is such that it is impacting on his or her own safety and welfare or that of others. In those limited situations, and then only as a last resort, we believe that some force – the minimum necessary and for the shortest time possible and subject to strict conditions and safeguards – may be necessary. Any use of force must be carried out in such a way as to respect the young person's dignity and physical integrity at all times. Force may only be used as part of ensuring GOAD where there are clear risks to maintaining a safe and stable environment for young people, and where the use of force is a necessary and proportionate response in order to protect the safety and welfare of the individual or others.

36. Ahead of the Bill's Second Reading in the House of Lords, Lord Faulks circulated to all Peers a briefing document which set out some key principles that would apply to the use of force to ensure GOAD. A copy of the document is available at Annex A. Ahead of Lords Report, the Government will be launching a consultation on our approach to the Secure College Rules, which will include proposals relating to the use of force in Secure Colleges.

Criminal courts charge

37. **The Committee: We have considered the extent to which, in the absence of a means test at the point of imposition of the charge (as opposed to later at the stage of enforcement), the proposed criminal courts charge is likely to influence impecunious defendants' decisions about whether to plead guilty, whether to elect summary or jury trial, and whether to appeal against conviction or sentence. We have found it difficult to assess this risk in the absence of clear evidence about the impact of court charges in practice. We recommend that the Government monitor carefully the impact of the criminal courts charge on the right of defendants to a fair trial of the criminal charge against them, and make available to Parliament the results of that monitoring. In the meantime we ask that there be made available to Parliament any other evidence that already exists about the impact of other, existing, charges and fees on criminal defendants' decisions about plea, mode of trial and appeals. (Paragraph 1.72)**
38. The Government is currently developing plans as to how we will meet the requirement to review the policy after three years. Although we will be able to monitor any changes in the volumes of different types of proceedings (e.g. where the case is heard and whether proceedings relate to summary, either way or indictable offences), guilty pleas and appeals, it will not be possible to determine if there is a causal link between criminal courts charging and any changes in offenders' decisions regarding pleas, trial venues or appeals. This is because there are a wide range of factors which could impact on these numbers.
39. We are not aware that any data exists about the impact of other existing charges and fees on criminal defendants' decisions about plea, mode of trial and appeals.

Contempt of Court

40. **The Committee:** We recognise that the Bill's provision of a new defence to the strict liability rule for contempt of court, where proceedings become active after matter has been published on the internet, is in principle an improvement on the position under the current law. Currently, publishers who make material continuously available are exposed to the risk of becoming liable for contempt of court where proceedings subsequently become active, unless they monitor their archives to see if any such material has become contemptuous in the light of subsequent proceedings. However, we are concerned about the lack of safeguards on the face of the Bill against the arbitrary or disproportionate exercise of the Attorney General's power to, in effect, require material to be taken down on pain of losing the new defence. For example, the Government says that the Attorney General will only issue such a notice where the high threshold statutory test of "substantial risk of serious prejudice" is satisfied, but this is not stated anywhere in the legislation itself. Nor is it clear from the Bill what role the "public interest" defence in s. 5 of the Contempt of Court Act 1981 should play in the Attorney General's decision whether or not to issue a notice. (Paragraph 1.75)
41. **The Committee:** The Government may intend to provide for such safeguards in the regulations which the Bill envisages will be made about the giving of an Attorney General's notice, and the information to be contained in the notice. We asked the Government whether it would make available a draft copy of those regulations during the passage of the Bill to enable Parliament to scrutinise fully the implications for freedom of expression. The Government replied that it does not expect to do so. To our surprise, it said "we do not view these arrangements as having any implications for freedom of expression." We disagree. The compatibility of the new Attorney General's notice procedure with the right to freedom of expression in Article 10 ECHR will depend to a large extent on the detailed provision to be contained in the proposed regulations and we cannot reach a view on that question without seeing them. We recommend that the Government publish a draft of the regulations at the earliest opportunity to enable such scrutiny to be carried out. (Paragraph 1.76)
42. The Government has noted this recommendation and has considered the concerns put forward by the Committee along with others received from media organisations. The former Attorney General made a Statement on 30 June announcing the Government's intention to table amendments to remove the strict liability contempt provisions from the Bill during Lords Committee. The House subsequently agreed to removal of the clauses in Committee on 28 July. Although the Government remains of the view that this was a balanced and measured proposal, it recognises the disquiet surrounding the proposal. The Government's decision was on the basis that this measure was designed to assist the media but they do not want it and that the Government is satisfied that the existing law will continue to provide satisfactory protection to the integrity of legal proceedings.

Annex A – Secure Colleges – a new approach to youth custody

Ahead of Second Reading, this document sets out the Government's approach to introducing Secure Colleges, and responds to the issues which were raised during the Criminal Justice and Courts Bill's passage through the House of Commons.

Why Secure Colleges?

Much has been achieved by the youth justice system: overall crime and proven offending by young people are down, and fewer young people are entering the criminal justice system and ending up in custody. However, for those who end up in custody, we are not achieving good enough outcomes.

At present we pay around £100,000 a year for a place in youth custody, and yet almost 70% go on to reoffend within 12 months of release. In the case of Secure Children's Homes, the cost rises beyond £200,000 a place but the reoffending outcomes are no different.

Secure Colleges will take a fresh approach to youth custody – one that will put education at its centre and ensure young offenders are given the support and skills they need to turn their lives around.

The Criminal Justice and Courts Bill establishes the statutory framework for Secure Colleges, with further detail being set out in the Secure College Rules.

Putting education at the heart of youth custody

High quality education will be at the heart of Secure Colleges and the hallmark of this new approach to youth custody, providing young offenders with the skills, motivation and self-confidence they need to lead law-abiding lives in the community. We will challenge providers to deliver a broad, intensive and engaging curriculum to support and motivate the full range of ages and abilities of the young people in Secure Colleges, including those with special educational needs.

The Government's approach to Secure Colleges will reflect our approach to mainstream education in England. We want education providers to determine how best the educational engagement and attainment of young people in a Secure College can be raised. We want Secure College providers to have the freedom to deliver innovative education that is imaginative, and for them to determine the staff they will need to achieve this. In some cases, engaging and effective education may be best delivered by individuals without a teaching qualification.

While Secure College providers will be able to tailor provision to the needs of the young people in their care, we will ensure standards by making Secure Colleges subject to an inspection framework involving both HM Inspectorate of Prisons and Ofsted. Inspections will assess the quality and effectiveness of the teaching, support and care provided, including to those with special educational needs.

Supporting those with special educational needs

Support for young people with special educational needs is integral to our plans for Secure Colleges. We will require Secure Colleges, as part of our contractual arrangements with operators, to have appropriate arrangements and experienced staff in place including a Special Educational Needs Co-ordinator (SENCo), to identify and support young people with special educational needs.

These arrangements will be reinforced by the comprehensive framework of statutory duties introduced by the Children and Families Act 2014. The Act requires that a home local authority holding an Education Health and Care Plan for a young person must arrange the special educational provision set out in the Plan for the young person while they are detained. The local authority must maintain and review the plan on the young person's release. Secure Colleges will be able to request the local authority to undertake an Education, Health and Care assessment where a detained young person is identified in custody to have a previously undiagnosed special educational need.

The Principal of a Secure College will be required to co-operate with local authorities to ensure that these duties are fulfilled and also have regard to the Code of Practice underpinning the 2014 Act. The Principal will have overall operational responsibility for how a Secure College meets the needs of those with special educational needs.

Meeting healthcare needs in Secure Colleges

NHS England will assess the healthcare needs of young people in Secure Colleges and will commission services, including specialist provision, appropriate to meet the assessed needs. NHS England already has responsibility for commissioning health services in the existing youth secure estate and applies the Healthcare Standards for Children and Young People in Secure Settings which were developed by the Royal Medical Colleges at the invitation of the Youth Justice Board. The healthcare standards follow the pathway of a young person in custody from entry and assessment to transfer to the community. The standards will enable young people to understand the range and quality of healthcare they should be receiving.

A pathfinder Secure College

On 17 January 2014 the Lord Chancellor and Secretary of State for Justice announced plans for a pathfinder Secure College in the East Midlands to open in 2017. On 8 June the Ministry of Justice announced that it had selected a preferred provider to design and build the pathfinder Secure College. A competition has taken place under the Ministry of Justice's strategic alliance agreement framework and Wates has been selected as the preferred bidder. The Ministry of Justice will enter into a project partnering agreement with Wates and work with them to develop the design for the pathfinder. Construction will not start until the Bill receives Royal Assent. A commencement agreement is required before construction starts.

A 320-place pathfinder Secure College will allow us to meet regional demand for youth custody and provide a broad curriculum and range of services to young people. The capacity of the pathfinder Secure College is informed by the Youth Justice Board's experience of commissioning youth custodial services. The pathfinder will have units designed specifically for the needs of different groups of young people.

Secure College Rules

Ahead of Report Stage, we will be consulting on our plans for Secure College Rules. These will set out the core requirements which operators of Secure Colleges will need to meet to ensure the establishment operates safely and securely. We will welcome the views of peers and others on our proposed approach to Secure College Rules.

Girls and under-15s

The Government wants girls and younger children to be able to access the superior facilities and opportunities which will be provided in Secure Colleges to tackle young people's offending. We do not think it is right to exclude these groups from Secure Colleges.

We recognise that girls in custody often have a range of complex needs which are different from those of boys, and it will be important that Secure Colleges meet these needs fully.

We believe that these risks can be safely and appropriately managed in Secure Colleges. We envisage Secure Colleges having separate living accommodation for the younger and more vulnerable children, and for girls, and that through careful management of the daily regime and the establishment's facilities, this group and all young people in Secure Colleges will be appropriately safeguarded. It is worth noting that this principle has been proven by the ability of Secure Training Centres and Secure Children's Homes, both of which house girls and boys of a wide range of ages, to keep young people safe. These establishments demonstrate that the risks can be appropriately managed and that services can be tailored to meet the needs of both boys and girls in custody. This learning will be built upon in Secure Colleges.

In terms of the pathfinder Secure College in the East Midlands, no final decisions have been made on which young people will be accommodated there. These decisions will be taken further into the development of the pathfinder and in light of careful analysis of the needs of the youth custodial population and the implications on the different groups who may be accommodated. Nevertheless, we will be sharing our early designs for the pathfinder Secure College with interested peers to demonstrate the care that is being taken to provide a modern custodial establishment appropriate to the young people it will accommodate.

When the pathfinder opens, there will continue to be a range of other custodial establishments available for young people. It will ultimately be for the Youth Justice Board, with proper consideration of the individual needs and characteristics of young people and advice from Youth Offending Teams, to decide upon the most appropriate establishment in which to place individual young people remanded or sentenced to custody. We have committed to continue providing separate specialist accommodation for those who require it, and the YJB will be able to place a young person there when they feel a Secure College placement would not be right.

Secure Children's Homes

No current model of youth custody is delivering the types of outcome we all want to see, nor providing sufficient value for money for the taxpayer. In the case of Secure Children's Homes, we pay over £200,000 a year for a place and yet the reoffending outcomes are no different to other establishments.

In its response to the *Transforming Youth Custody* consultation, the Government made clear that there are likely to be some detained young people who will continue to require separate specialist accommodation on the grounds of their age (10 and 11-year-olds will not be accommodated in Secure Colleges), or their acute needs or vulnerability.

We are committed to continuing to provide separate specialist accommodation for this small group of young offenders. We have therefore recently entered into new contracts with nine secure children's homes to continue delivering this provision for those who require it.

The Bill does not seek to make changes to the existing legislative framework for Secure Children's Homes, as these establishments also provide for young people outside the justice system. It is for local authorities, rather than the Secretary of State for Justice, to provide Secure Children's Homes and ensure there are sufficient places available for those who require them. The Government thinks it is right that local authorities retain this responsibility.

Use of force – Good Order and Discipline

What do we mean by Good Order and Discipline?

Good order and discipline (GOAD) as a concept covers those aspects of running institutions which relate to maintaining a stable and focussed environment. This has an obvious importance in terms of security, but has an additional relevance when we consider educational provision – put simply, good order enables the institutions to operate to the benefit of everyone involved, including, in particular, young people. GOAD is also a term that is used in the school setting, for example.

The Bill provides for the use of force by a custody officer in discharging his or her duties, but only in circumstances authorised by Secure College rules. A custody officer's duties include maintaining good order and discipline. However the provisions in the Bill will not, by themselves, allow custody officers to use force for that purpose. That will not be possible unless specific provision is made in Secure College rules.

Use of reasonable force (and within that, restraint) is most obviously necessary in cases where there is a risk of harm to the young person or others, or to prevent escape. But there may be circumstances where a young person is not being violent or attempting to escape, but the young person's actions are detrimental to the safety and welfare of both themselves and others, and therefore impact on the 'good order' of a secure setting.

We recognise though that the reference to 'discipline' in this context may be unhelpful as it could imply that force may be used as a means of punishment. We are clear that any use of force for the purposes of disciplining and punishing is prohibited.

It is worth noting that use of reasonable force to ensure GOAD is provided for elsewhere in legislation – for example, although a different setting to custody and covered by specific guidance, use of reasonable force for maintaining good order and discipline is permitted in schools.

Why do we think force to ensure GOAD is necessary?

In summary our view is that there may be limited situations where all attempts at resolving and de-escalating an incident have failed, and where a young person's behaviour is such

that it is impacting on their own safety and welfare or that of others. In those limited situations, and then only as a last resort, we believe that some force – the minimum necessary and for the shortest time possible and subject to strict conditions and safeguards designed to ensure respect for the young person’s dignity and physical integrity – may be necessary. Any use of force must be carried out in such a way as to respect the young person’s dignity and physical integrity at all times. Force may only be used as part of ensuring good order and discipline where there are clear risks to maintaining a safe and stable environment for young people and that the use of force is a necessary and proportionate response in order to protect the safety and welfare of the individual or of others.

What does this mean in practice?

It is difficult to provide specific examples as decisions on whether it is strictly necessary to use force will be dependent on a number of factors, unique to that situation at that time. However, drawing from operational experience a scenario that commonly occurs in custody is below:

A young person attending a visiting session notices a visitor that they have problems with from outside custody. They start to threaten the visitor verbally. The young person is using abusive language and they are refusing to move from the visits room. There are children and families who are now having their visits interrupted. The visitor who the abuse is being directed at, is becoming agitated as are their family and the young person they are visiting. The young person who is being abusive is also receiving threats of reprisals from other young people who are having their visits interrupted. The situation threatens to escalate.

In this example, staff would first talk to the young person and consider all possible means of de-escalating the situation. But as a last resort, if it was strictly necessary this may be a situation where use of force to ensure GOAD, where that use of force is carried out in such a way as to respect the young person’s dignity and physical integrity at all times, may be justified. This would be on the basis that, by disrupting the visiting session in this way, the behaviour of the young person is presenting clear risks to the safety and stability of the secure setting and the use of force is a necessary and proportionate response in order to protect the safety and welfare of the individual and others.

Isn't this just restraint for not complying with orders?

Force would not be used purely to secure compliance with an order; and we are clear that force must not be used for reasons of punishment. Force may only be used as part of ensuring GOAD where there are clear risks to maintaining a safe and stable environment for young people and that the use of force is a necessary and proportionate response in order to protect the safety and welfare of the individual or of others.

How is this compatible given the ‘C’ judgment in respect of Secure Training Centres?

We do not consider that the Court of Appeal in the ‘C’ case found that all use of force to ensure GOAD in all situations where children are involved necessarily engages or infringes Articles 3 and 8 ECHR. The court found that the system of restraint being used in Secure Training Centres for GOAD at the time was unlawful, in light of the restraint techniques used, the way they were applied, and the lack of evidence and justification as to why their use to ensure GOAD was strictly necessary.

What safeguards will be in place?

Considerable improvements have been made to restraint practice in recent years, including the introduction of a new system of restraint called Minimising and Managing Physical Restraint (MMPR). MMPR has been independently assessed by a panel of medical and child welfare experts. MMPR is currently being rolled out to under-18 Young Offenders Institutions and Secure Training Centres.

The fundamental principle of MMPR is to minimise (and, wherever possible, avoid) the use of physical restraint. Staff working with young people in STCs and under-18 YOIs receive a comprehensive programme of training that puts considerable emphasis on using appropriate de-escalation and deceleration techniques (non-physical interventions) to ensure that restraint is only ever used as a last resort, when no other intervention is possible or appropriate. We will build on these improvements with our approach in Secure Colleges.

We intend to consult on the detail of the policy, but there are some key principles that will apply to any use of force to ensure GOAD.

- Use of force for reasons of punishment would continue to be prohibited
- Use of force intended to cause pain would not be permitted. The use of pain-inducing restraint techniques as part of a system of restraint must be restricted exclusively to circumstances where it is necessary to protect a child or others from an immediate risk of serious physical harm.
- Force would only be used where it is strictly necessary, as set out above
- Only the minimum amount of force for the minimum time necessary would be used
- Any use of force must respect and not diminish the young person's dignity and physical integrity
- Any use of force must be carried out in a manner which takes account of the particular needs of the young person
- The young person's best interests must be a primary consideration
- Use of force would only proceed when staff are satisfied they have assembled the resources to ensure the safest use of force [and a full risk assessment has been conducted]. This includes the attendance of healthcare staff.
- Use of force would have to be authorised by a senior member of staff
- Use of force would only be carried out by staff who have completed approved training
- Use of force will be closely monitored by the Youth Justice Board and Secretary of State, with debriefings on all uses of force with young people and staff.

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