

# RESPONSE TO MINISTRY OF JUSTICE CONSULTATION ON PLANS FOR SECURE COLLEGE RULES

by Her Majesty's Chief Inspector of Prisons

## Introduction

1. We welcome the opportunity to submit a response to the Ministry of Justice consultation on its Plans for Secure College Rules.
2. Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a statutory duty to report on conditions for and treatment of those in prisons, young offender institutions (YOIs) and immigration detention facilities. HMI Prisons also inspects court custody, police custody and customs custody (jointly with HM Inspectorate of Constabulary), and secure training centres (STCs) (with Ofsted).
3. HMI Prisons inspects YOIs holding children and young people (aged 15 to 18) on an annual basis. Additional inspections may also be undertaken at the request of the Youth Justice Board (YJB). Inspections are conducted jointly with Ofsted, Care Quality Commission (CQC) and specialist pharmacy inspectors. We inspect STCs every year jointly with Ofsted and CQC. All inspections are carried out against our *Expectations* - independent criteria based on relevant international human rights standards and norms. HMI Prisons has developed specific criteria for its inspections of the Young Offender Institutions.<sup>1</sup> Joint inspections of STCs are carried out against a common inspection framework based on similar principles.<sup>2</sup>
4. In addition to individual inspections, we periodically carry out cross-cutting thematic reviews. In March 2013 the Justice Select Committee requested that HM Chief Inspector of Prisons review and report on the implementation and impact of the new 'Minimising and Managing Physical Restraint' (MMPR) policy. This review is currently underway. HMI Prisons publishes an annual analysis of children's perceptions of their experiences in custody, jointly with the Youth Justice Board.
5. HMI Prisons coordinates, and is a member of, the UK's National Preventive Mechanism (NPM) the body established in compliance with the UK government's obligations arising from its status as a party to the UN Optional Protocol to the Convention Against Torture (OPCAT). The NPM's primary focus is the prevention of torture and ill treatment in all places of detention. Article 19 (c) of the Protocol sets out the NPM's powers to submit proposals concerning existing or draft legislation. A sub-group on children and young people in detention, chaired by the Office of the Children's Commissioner, ensures that NPM members share experience and work consistently to strengthen its approach to preventing ill treatment across the children's estate.

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<sup>1</sup> <https://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/expectations-children-young-people.pdf>

<sup>2</sup> <http://www.ofsted.gov.uk/resources/inspections-of-secure-training-centres-framework-for-inspecting>

## General comments

1. HMI Prisons submitted comments to the Transforming Youth Custody green paper in April 2013,<sup>3</sup> acknowledging the importance of addressing the educational needs of children and young people in custody, but urging Ministers to focus attention on the safety and security of children in detention. We stated that children who find themselves in detention have been failed by the education system and expectations of the progress they can make in custody are too low, but urged greater attention to safety and security in detention as an essential prerequisite to any improvements in education or offending outcomes.
2. As we reported in April 2013, inspection evidence showed that as the number of children in custody falls, ensuring the safety and security of those that remain has become more difficult. As reported in HMI Prisons 2013/14 Annual Report, we are concerned that the government's plans do not properly take into account the changes to the population of children in custody.<sup>4</sup> HMIP will publish its 2013-14 report on the perceptions of children in custody on 10 December 2014 and we consider it essential that this analysis – which is based on the perceptions of a cohort of children similar to those who would be found in the Secure College – inform the shape and content of future policy. Children's own perceptions of their experience in custody, their hopes for the future and the challenges they face should be a significant influence on the development of new forms of custody provision such as the Secure College. We hope their views as expressed in this report will be used by policy-makers and planners to help shape any new provision.
2. If enacted, the Criminal Justice and Courts Bill would introduce into the Prison Act 1952 a duty on HMI Prisons to inspect Secure Colleges. It would also confer powers on Ofsted to inspect Secure Colleges. We welcome this duty.
3. HMI Prisons, jointly with its inspection partners, will report on what we find at the time of inspecting the Secure Colleges and nothing in this response to the consultation questions set out should be understood to prejudge that response. Nevertheless, the findings of our existing inspections of youth custody arrangements can helpfully inform the development of any new provision for children and they inform our response to the consultation. Our comments are provided in fulfillment of the responsibility we have under OPCAT to comment on draft legislation with a view to preventing future ill-treatment in detention.
4. HMI Prisons has four overarching comments about the proposals as set out.
  - a. Firstly, the proposed Rules and consultation questions suggest that the principles and approaches underpinning the Secure College proposals are based on a 'prison ethos' that existing experience indicates is inappropriate and unlikely to be effective in supporting the rehabilitation of children. The plans appear to be aimed at providing a decent prison regime run with much more education within a purpose-built building, rather than a more creative approach to improving outcomes for children in detention. If implemented as currently envisaged, we think an opportunity to take a bolder step will have been missed.
  - b. Secondly, we are concerned about the ability of a large institution such as that envisaged to address the specific needs of individual children, many of whom have very challenging behaviour and vulnerabilities. This is of particular relevance given the reduction of the number of children in custody, which while we welcome, has resulted in more concentrated, complex needs within a smaller population. Recent inspection findings illustrate the difficulty of maintaining an effective balance between

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<sup>3</sup> <https://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/green-paper-youth-estate.pdf>

<sup>4</sup> HM Chief Inspector of Prisons, *Annual Report 2013-14*, p66.

- care and control within existing settings, all of which are smaller than the proposed Secure College.
- c. Thirdly, the inevitable result of holding children in fewer, larger institutions is that they will be further away from home. We are concerned that this makes family contact harder, and therefore effective resettlement more difficult, which is of particular concern for children.
  - d. Fourthly, however effective Secure Colleges are in the longer term, it is essential that sufficient attention is given to the difficulty in establishing any new detention establishment. This is particularly relevant to an institution that will hold such a vulnerable group of detainees. Our inspection findings consistently demonstrate the poor initial outcomes in all new establishments as staff gain experience and systems take time to bed in. These development difficulties sometimes last for a sustained period. If this happens with an establishment holding children, the consequences are likely to be very serious.
5. Furthermore, we are aware that we are commenting on possible Rules that will govern the Secure College, when the legislation establishing this new form of detention – and setting out the basis for developing these rules – is still being debated by Parliament. Amendments introduced to the Criminal Justice and Courts Bill may affect the scope of the Secure College and would therefore affect the scope of Rules to govern it.

## Specific comments

6. While HMI Prisons broadly supports the identification of areas on which Rules are proposed, we urge caution in relation to the actual wording or content of any such Rule. As currently set out, some of the Rules could have the effect of limiting actual provision and/or the flexibility of those running the Secure College to provide the services they consider necessary and in an appropriate manner. For this reason we urge that Rules be framed so as to afford an appropriate level of discretion to those who will implement them.
7. During its inspections of Young Offender Institutions, HMI Prisons relies on the principles it has set out in *Expectations: Criteria for assessing the treatment of children and young people and conditions in prisons*. Inspections of STCs are based on the joint evaluation schedule and framework for inspection of secure training centres. These standards, which were the subject of extensive consultation and are consistent with international human rights standards, describe in detail the outcomes we would expect to find for children in detention and serve as a transparent basis for the evidence-based judgements we make during inspections. Although these standards would need to be reviewed in the light of a new institution such as the Secure College being established, the standards as they currently stand should inform the plans from the outset.
8. Rather than reiterate its existing Expectations and the evaluation schedule and framework in relation to all areas of the consultation, HMI Prisons has focussed its specific comments on key areas of the consultation.
9. **Purpose and ethos of a Secure College** (Question I). HMI Prisons considers that a Rule on the purpose and ethos of a Secure College is necessary, but that this should explicitly set out the need to keep the children it holds safe with respect for their rights and entitlements as children, with their best interests as a primary consideration.<sup>5</sup> As currently envisaged, the purpose and ethos to ‘equip young offenders with the skills they need to stop offending and to become law-abiding members of society’ is too narrow. Detention of children should be a measure of last resort and used for the minimum time necessary. As set out in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty:

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<sup>5</sup> United Nations Convention on the Rights of the Child, Article 3 (1)

*The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.<sup>6</sup>*

10. **Separate accommodation for girls and boys** (Question 2). As a general rule, we consider that girls and boys should be detained separately. This would ensure greater attention to their specific needs, and mitigate risks of abuse that might result from mixing. We know that it is likely that many girls in custody will have suffered abuse from boys and men in the past. Boys in custody may also have been abused but may also have offences or behaviours that may make them a continuing risk of abusing others. Nevertheless, some evidence from our inspections of STCs suggest that mixing girls and boys – with appropriate risk assessment – can be acceptable in some circumstances, though safeguarding should be paramount. We would have concerns if there were a very small population of girls in a predominantly male, very large environment that failed to address their specific needs.
11. **Educational activity** (Question 3). Given the welcome focus on improving purposeful activity for children in detention, we urge caution as to any Rules set out to govern such provision within the Secure College. Although we would expect children normally to undertake 30 hours a week of education, providers should have discretion to tailor provision to meet the needs of individual children. Provision must meet the assessed needs of the individual and efforts should be focused on quality over quantity. Some children with learning or communication difficulties or those who have not attended formal education for a long time will struggle to undertake 30 hours of activity.
12. **Room sharing** (Question 14). Children should be allowed to have their own room. In some individual circumstances, room sharing can have benefits, but the decision to place two children in one room should be motivated by the potential positive outcomes for the wellbeing of both, rather than pressure on space. In such instances, there should be some choice of roommate alongside a robust, multidisciplinary risk assessment (as in CSRA). We are concerned that the presumption of ‘no detriment’ is too low a bar to set. If any room sharing is envisaged, rooms within the residential accommodation should be designed to afford sufficient space, furniture and privacy to each child.
13. **Visits** (Question 17). We agree with the principle that at least one visit per week be guaranteed, but also that for those on remand, a higher number of visits are necessary. The timings, duration and frequency of visits should be flexible and reflect the likely long distances that many families will have to travel. There should be no upper limit to the number of visits a remanded child can have. There should be a rule that children’s families or guardians have a designated point of contact in the establishment and that they are involved in all relevant decisions relating to the child’s welfare, safety and rehabilitation.
14. **Grievance procedures, sanctions and adjudications** (Questions 22-31). We are concerned that adult-oriented systems for addressing problems and disciplinary issues are wholly inappropriate for use with children. The adjudication system is a formal and legalistic process designed to be used in adult settings. It does not provide a suitable mechanism to deal with children in custody who have complex needs, where their behaviour is unacceptable. It is of course essential that a transparent process ensure concerns raised by children are addressed in a timely manner by the most appropriate person, with clearly publicised arrangements for the young person to follow if he or she is unhappy with the outcome. This should include any allegations of abuse or victimisation or accusations against staff being addressed at a sufficiently senior level. The role of advocates is key and instead of appointing an independent person to investigate matters of concern, further consideration

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<sup>6</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, A/RES/45/113, paragraph 12

should be given to developing the role of advocates or the YJB monitor for this purpose. Existing methods of managing behaviour and discipline used in STCs and SCHs, which have been designed to be used for children, provide much more relevant models on which to base practice.

15. With respect to sanctions and rewards, an agreed transparent rewards and sanction scheme that has inbuilt effective governance processes to ensure rewards and sanctions are applied consistently and fairly should be applied. It should include any minor sanctions or rapid rewards that have been developed based on an in-depth understanding of adolescent behaviour and patterns of learning. Sanctions should never result in reduced contact with family, and long periods of isolation locked up with no stimulation or social contact are potentially harmful to adolescent mental health.
16. **Use of force and restraint** (Questions 33-37). As mentioned above, HMI Prisons is currently conducting a review of MMPR at the request of the Justice Select Committee. The findings of this work will be made public in the summer of 2015. Given this current review, which allows us to examine the implementation of this new system used in STCs, we suggest that rules relating to use of force and restraint should not be determined until after our findings are public, otherwise the potential to learn from this new system will be lost. In the interim, HMI Prisons evaluates use of force and restraint according to its Expectations, and remains of the view that “pain compliance” techniques should never be used on children.

**Nick Hardwick**  
HM Chief Inspector of Prisons

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