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# Youth Crime briefing

## The relevance of age in the youth justice system

the Howard League for Penal Reform

### Contents

- Introduction *page 1*
- Age of criminal responsibility and children's human rights *page 2*
- Establishing age *page 3*
- Age and the police *page 3*
- Diversion: pre-court disposals *page 4*
- Court remands *page 4*
- Sentencing *page 5*
- Children and young people and the crown court *page 7*
- Breach proceedings *page 7*
- Parenting provisions *page 7*
- References *page 8*

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Nacro Youth Crime briefings are produced in partnership with the Howard League for Penal Reform. Contact [www.howardleague.org](http://www.howardleague.org)

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### Introduction

For children and young people, there is a host of detail regarding what they are allowed to do or what opportunities emerge according to the age they have attained. This can have to do with what they can purchase (tobacco, alcohol, for example), what they can do (watch certain films, leave school, work part or full time, gamble, claim benefits, for example), when they can withhold or give consent (for medical treatment, for example) and how they can conduct personal relationships (get married, engage in consensual sexual activities, for example). Other aspects of life are less clearly defined by age, such as the age at which a child or young person can stay alone at home or care for another child. Some things are somewhat beyond the law even though a response under law might be forthcoming (thus, it is not contrary to law for a child to run away from home but there are statutory measures that can be applied by way of remedy up to the age of 17).

Age also has a bearing on what can happen if the law is infringed or alleged to have been infringed, or if behaviour is deemed to be anti-social in nature. There are some offences that are age dependent – some behaviours, such as possession of fireworks in a public place or buying alcohol, are only illegal in the case of a child or young person below the age of 18 years.

It is in the youth justice system that some of the most important age milestones are attained. Thus, a child aged 10 is very much safeguarded and shielded from responsibilities in many ways but can be locked up away from home for long or even indeterminate periods if he or she has committed, or is accused of, a serious offence or develops a pattern of getting into trouble.

The terms 'child' and 'young person' are mainly used in this briefing although definitions are not consistent. For the purposes of the *Children Act 1989*, a child is somebody under 18 years of age. This is in line with the United Nations Convention on the Rights of the Child which defines a child as being a person under the age of 18. However, in the context of the *Children and Young Persons Acts of 1933, 1963 and 1969*, a child is a person under 14 years of age (i.e. in criminal law, someone of 10-13 years) and a young person is someone of between 14 and 17 years.

The youth justice system deals with children and young people between the ages of 10 and 17 inclusive. However, legislation relating to the youth justice system, together with other related strands of law such as mental health and looked after children, is notoriously complex and marked by anomalies. Children and young people encounter a bewildering array of arrangements according to their age, exacerbated in some instances by differences between

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the genders. Age is relevant throughout the system including at the police station, bail and remand, sentencing and within individual disposals. In addition, children and young people may be treated differently according to their stage or level of development and maturity as well as by chronological age. Thus, mental capacity, concepts of vulnerability and immaturity can and should be taken into account regarding remand and trial processes and as mitigating factors regarding choice and severity of sentence.<sup>1</sup>

In addition, children and young people may be treated differently by age within sentence types; for example, being placed in different custodial facilities or facing different minimum and maximum ranges of fines, conditions or requirements. There are also differences regarding the giving of consent and with regard to the orders and requirements on their parents or guardians.

The most fundamental factors remain the ages at which children become criminally responsible and at which young people attain adult status (or the age of majority with regards the criminal justice system) and even in this regard there is anomaly (discussed in more detail below).

It is the age at which an offence is committed, or alleged to have been committed, that determines the first stages of the process. Thus, a child should not be formally dealt with for an offence committed prior to attaining the age of ten. Nevertheless, for those in police detention or otherwise being dealt with in the police station, it is the age at that point that determines what safeguards and procedures are applied by the police under the *Police and Criminal Evidence Act 1984* (PACE) and the PACE Codes of Practice. However, for other purposes, for instance the range of disposals available, the age at which a child or young person is convicted becomes a determining point and, for others, the age at the point of sentence (such as where deportation might be under consideration).

There are several points at which the age of the young person might be critical:

- commission of the offence or offences
- first court appearance
- mode of trial decision (if relevant)
- date of conviction
- date of sentence.

This briefing considers the age of criminal responsibility, how age is determined where it is uncertain or disputed, the relevance of age in the police station, in court and after sentence or other disposal.

## Age of criminal responsibility and children's human rights

Running through every aspect of youth justice are the human rights and standards set by international agreement, to which all governments and those who deal with children and young people should aspire.

The European Convention on Human Rights is now part of domestic law as a result of the Human Rights Act 1998. The convention does not distinguish children and young people from adults; the protection afforded by it applies to all. However, the United Nations Convention on the Rights of the Child (CRC) applies to children only and, in Article 1, a child is defined as a *person under the age of 18 unless a state party has lowered the age of majority*. The CRC is legally binding in the UK (even if not easily enforceable) and, thus, a person is defined as a child from birth until attaining the age of 18 in England and Wales.

The CRC requires states (the government) to establish a minimum age of criminal responsibility.<sup>2</sup> That age is currently set at 10 in England and Wales and has been so since implementation of the *Children and Young Persons Act 1963*. In subsequent years legislation was drafted to raise the age further but was never implemented. An upward trend has not been pursued thereafter and it can be argued that the abolition of *Doli Incapax*<sup>3</sup> by the *Crime and Disorder Act 1998*, and tougher sentencing available for very young children, has effectively represented a downward trend. This has raised serious concern and the United Nations Committee on the Rights of the Child has recommended that the age be raised considerably.<sup>4</sup> More recently, that Committee has indicated that setting the age of criminal responsibility below 12 (that is not to say that the Committee recommends the age of 12 specifically) is not acceptable.<sup>5</sup> The age that is set in the UK is one of the lowest in the world with some European countries having it as high as 18 and most above 14.<sup>6</sup>

With regard to the attainment of adult status, the criminal justice system sets this at 18, which is in line with the CRC. However, those aged 17 are dealt with the same as adults in police detention (under PACE) and for remand purposes. This has also been subject to adverse comment and recommendations for change.<sup>7</sup>

Although there are differences by age regarding, for example, custodial remands and sentences, with regard to criminal responsibility a child of the age of 10 is treated essentially the same as an adult.

Regarding the right to a fair trial for children in adult/crown court proceedings, following the decision in December 1999 of the European Court

of Human Rights in the case of *T and V v United Kingdom*,<sup>8</sup> a Practice Direction was published (February 2000) which seeks to ensure that future trials reflect the findings contained in the European judgment. Amongst other provisions, children and young persons are to be known as ‘young defendants’. The document acknowledged the welfare needs of young defendants and laid down guidelines to meet those needs, thereby helping to create the conditions necessary to their having a fair trial. The age of a ‘young defendant’ as well as his or her other characteristics may well be relevant to the steps necessary to adapt normal crown court appearance and procedure to meet his/her particular needs. The Practice Direction has subsequently been replaced (with extra safeguards) into a consolidated direction.<sup>9</sup>

## Establishing age

In order that questions of jurisdiction and powers can be dealt with, a person’s age needs to be established. Sometimes proof relating to it is not to hand when it first becomes a relevant factor. Reliable and sufficient evidence about age may become available, or, in some cases conclusive evidence may never become available. This can result in a number of problems that are beyond the scope of this paper to examine. Suffice it to say here, that where there is an absence of firm evidence on the point, what matters is the age that a person *appears to be* to the police or the courts.

The following legislative provisions deal with the issue so far as courts are concerned:

Section 150(4) *Magistrates’ Courts Act 1980* provides:

*Where the age of any person at any time is material for the purposes of this Act regulating the powers of a magistrates’ court ... (it) shall be deemed to be or have been that which appears to the court after considering any available evidence to be or to have been his age at that time.*

Section 99 *Children and Young Persons Act 1933* (CYPA 1933) provides:

*... the court shall make due enquiry as to the age ... and for that purpose shall take such evidence as may be forthcoming at the hearing of the case but an order or judgment of the court shall not be invalidated by any subsequent proof that the age has not been correctly stated ... and the age presumed or so declared by the court...shall be deemed to be the true age of that person ...*

In court proceedings, therefore, the court determines age after consideration of available evidence. Where the age is of crucial concern, perhaps with regard to custodial sentencing, adjournment is possible for assessment or production of evidence.

Such procedures are more common with regard to refugee or asylum seeking children and young people who may lack reliable evidence of age. In some cases, there may be actual dispute regarding age. Such disputes are far from uncommon and many children and young people have been detained in reception centres after being wrongly deemed to be adults. Assessment of age is normally carried out by local authority social services and protocols and templates have been designed to assist with the process. These should be compliant with international standards including the 2005 European Union *Directive on minimum standards on procedures in member states for granting and withdrawing refugee status*. This includes rules for age determination. It allows for the use of medical examinations which, crucially, require consent from the child and/or his or her representative who both must receive information about the methods and consequences of refusal.<sup>10</sup>

The importance of not making assumptions about age based only on appearance or behaviour should be stressed. To illustrate, *Save the Children* points out that experiences in other countries can result in adopting more adult behaviour and that boys from some countries may grow beards by the age of 13 or 14.<sup>11</sup> In general, therefore, good practice and common sense suggest it is better to be cautious in such matters and treat someone as a young person if there is uncertainty on the point.

On occasion, proceedings may commence in the adult magistrates’ court on the grounds that a young person who is subsequently discovered to be below the age of 18 years is an adult. In that event, section 46(1)(c) CYPA 1933 provides that the court may proceed with the case.

In this situation, the adult court can remit the case to the youth court. If it elects not to do so, its powers of sentencing are limited to a fine, discharge or referral order.

## Age and the police

Given the age of criminal responsibility in England and Wales, a child below the age of 10 years cannot commit a crime and there is therefore no power of arrest below that age.<sup>12</sup>

Where a child or young person, under the age of 17, has been arrested, the custody officer must apply special provisions under PACE and the related Codes of Practice<sup>13</sup> in which those within this age range are referred to as juveniles.

Young people aged 17 are dealt with as adults (unless the custody officer considers an individual to be a ‘vulnerable’ person in which case similar provisions apply as to juveniles).<sup>14</sup>

The details of the Codes of Practice are such as to demand full description.<sup>15</sup> However, there are some

important aspects where age, within the juvenile range, is particularly relevant. Most significantly, juveniles are entitled to an appropriate adult and it is the responsibility of the custody officer to ask the appropriate adult to attend the police station to be present, and play an active role in ensuring fairness and good communication, not only in interviews but other key procedures.

Perhaps most difficult in practice in the context of age are issues relating to the giving of consent where that is required (mainly for identification purposes and the taking of samples) when children and young people fall into 3 groups as shown in the table below:<sup>16</sup>

**Age and the provision of consent**

Age	Provision of consent
Under 14 years	Parent or guardian
14–16 years	Young person and the parent or guardian
17 years	Young person

Where a child or young person is in the care of a local authority or other agency a representative of that authority or agency may provide the consent instead of a parent or guardian.

That special consideration and care should be given when interviewing a juvenile is recognised as a general principle in Codes of Practice, in addition to specific safeguards such as the presence and activity of an appropriate adult. Code C guidance at 11C states that:

*Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.*

The other significant difference by age within the juvenile range occurs where the police decide to detain the juvenile after charge to be brought before the next available court – commonly known as transfer of detention after charge. In these circumstances, the custody officer should seek to arrange for the juvenile's detention to be transferred to the local authority. The provisions apply to all juveniles, but where they are 12 years or over, the custody officer can decide that only secure accommodation is sufficient. Code C 16.7 states that:

*When a juvenile is charged with an offence and the custody officer authorises their continued detention after charge, the custody officer must try to make arrangements for the juvenile to be taken into the care of a local authority to be detained pending appearance in court unless the custody officer certifies it is impracticable to do so or, in the case of a juvenile of at least 12 years old, no secure accommodation is available and there is a risk to the public of serious harm from that juvenile, in accordance with PACE, section 38(6).<sup>17</sup>*

**Diversion: pre-court disposals**

Reprimands and warnings are available for all between the ages of 10 and 17 years. In addition, the *Criminal Justice and Immigration Act 2008*, which received Royal Assent in May 2008, introduces a new pre-court disposal for all young people aged 10–17 years. The youth conditional caution will however be subject to staged implementation and will be made available in the first instance for 16–17 year olds.

**Court remands**

**Bail**

A court can remand a child or young person on bail, which may or may not have conditions attached to it. Conditions – such as a curfew – may be electronically monitored subject to certain criteria. Electronic monitoring is not however available where the child is below the age of 12 years.<sup>18</sup>

**Refusal of bail**

Where bail is refused, the court may, remand to:

- local authority accommodation with or without conditions
- local authority accommodation with a 'secure requirement' (commonly known as a court ordered secure remand (COSR))
- custody.

Arrangements are complex and there are anomalies by age and gender that can impact, unfairly, on whether the child or young person gains looked after status under the *Children Act 1989* and leaving care status under the *Children (Leaving Care) Act 2000*.<sup>19</sup>

Which of the above options is available depends crucially on the age and gender of the young person concerned as indicated below.

**All 10–11 years olds**

Where bail is refused in relation to a 10–11 year old, he or she can only be remanded to (non-secure) local authority accommodation although, if

necessary, stringent conditions, such as a curfew, can be attached. As indicated above, electronic monitoring is not available for this age group. The choice of accommodation is at the discretion of the local authority, which, if circumstances so justify, can apply to the court for a secure accommodation order.<sup>20</sup>

#### **All 12–14 year olds and girls aged 15 or 16**

By default, a refusal of bail in relation to a young person in these groups leads to a remand to (non secure) local authority accommodation. In addition however the court may impose a COSR where certain additional criteria are met. Alternatively, the local authority may apply for a secure accommodation order, as with 10–11 year olds above. A remand to custody is not available.

#### **Boys aged 15–16 years**

By default, a refusal of bail leads to a remand to (non secure) local authority accommodation. Where the criteria for a COSR are satisfied, a boy aged 15 or 16 years can be remanded to custody. He will only be remanded to secure local authority accommodation where a court declares that it would be undesirable to send him into prison accommodation because of his physical or emotional immaturity or his propensity to harm himself (generally referred to as being ‘vulnerable’) AND that a place in secure accommodation is available for him.<sup>21</sup>

#### **All young people aged 17 years**

Young people aged 17 years are treated as adults for remand purposes and are remanded to prison custody where bail is refused.

## **Sentencing**

Courts have a wide range of options open to them and again the position varies with the age of the young person. For most purposes, it is the age at the time of conviction that is relevant.<sup>22</sup>

The immaturity that is often relevant to the level of culpability when committing an offence will usually be taken into account by sentencing courts along with other mitigating and aggravating factors. The sentencing structure broadly reflects the significance of age and maturity.

### **First tier penalties**

First tier penalties consist of: discharges, financial penalties, reparation orders and referral orders. All such disposals are available to any child or young person aged 10–17 years. However, there are age related distinctions in relation to financial penalties.

### **Fines**

A fine imposed by the youth court on a child aged 10–13 years is subject to a maximum of £250.

Where the defendant is aged 14–17 years, the equivalent maximum penalty is £1000 (the crown court is not subject to the limits and may impose a fine of up to £5,000). In the case of a child or young person under the age of 16, the order will be against the parent or guardian unless the court considers this would be unreasonable.<sup>23</sup> The court also has discretion to make the order against the parent or guardian where the young is aged 16–17 but there is no presumption that it should do so.

### **Compensation order**

For compensation orders, there is no age related difference in terms of the maximum that a young person can be ordered to pay. The presumption that the order should be made against the parent or guardian in relation to a young person below the age of 16 years is the same as that in relation to fines.

### **Community orders**

The court can only impose a community order where it considers that the offence, or the combination of the offence and ‘associated’ offences, is serious enough to warrant such a penalty. At the time of writing, the following youth community orders are available for all young people aged 10–17 years: action plan order, attendance centre order, supervision order, curfew order and exclusion order.<sup>24</sup> The age related differences in relation to each of these orders are described below.

### **Action plan order**

Action plan orders can impose a range of requirements on a child or young person as specified by the court. All requirements can be made against any child or young person irrespective of age with the exception of drug treatment and testing requirements introduced by s279 of *Criminal Justice Act 2003* (CJA). Drug treatment is available for those aged 10–17 but requires consent from those aged 14 or over. Drug testing is not available for those below the age of 14 and requires consent.<sup>25</sup>

### **Supervision order**

The supervision order is the most flexible of the youth community orders, and provides the court with a wide array of requirements, most of which are available irrespective of the age of the young person. However, drug treatment and testing requirements are subject to the same age restrictions as those attached to action plan orders. Where a supervision order has a requirement to attend an intensive supervision and surveillance programme, the relevant guidance provides for less intensive activities in relation to children aged 13 and below.

### Attendance centre order

The ethos of attendance centres revolves around discipline, physical activities and social skills. The usual minimum duration is 12 hours and the maximum varies from 24 hours for those aged from 10–15 to 36 hours for those aged 16 or over. However, where the person is under the age of 14 the order should not be for more than 12 hours unless the court considers that period to be inadequate and, on the other hand, can be for less than 12 hours if the court considers that to be excessive having regard to age and circumstances.

### Curfew order

Courts may impose curfew orders for up to three months in length for those aged 10–15 and for six months for those aged 16 and above and for periods of no less than two hours and not more than 12 hours in any one day. The courts are also empowered to stipulate that such orders be monitored by electronic means popularly known as ‘tagging’.<sup>26</sup>

Schedule 2 paragraph 2(2) of the *Anti-social Behaviour Act 2003* (ABA) increases the maximum length to six months for all ages but has yet to be implemented.

### Other community orders for those aged 16–17 years

At the time of writing, the following community orders are also available for young people aged 16–17 years (in addition to the youth community orders described above): community rehabilitation order, community punishment order, community rehabilitation and punishment order and drug treatment and testing order. Prior to the implementation of the relevant sections of the CJA that introduced a generic community order for adults, each of these disposals was primarily an adult penalty that was also available for ‘*near adults*’ above the age of 16 years. Since implementation of the Act, such orders are only available for defendants aged 16–17 years at the point of conviction.

#### Youth rehabilitation order

The *Criminal Justice and Immigration Act 2008* introduces a new generic (menu-based) community order for children and young people. It is not anticipated that this will be brought into force before October 2009. It will replace all existing community sentences – both youth community orders and those additional disposals available for young people aged 16–17 years.

The Act provides a large number of potential requirements (the main menu) that can be attached to the core order. The order will be available for all age groups but some elements are restricted by age. These will include:

- Unpaid work requirements for those aged 16 and 17 years only
- Residence requirements for those aged 16 and 17 years only
- Drug testing requirements for those aged 14 and over
- Extended activities requirements (to include the current intensive supervision and surveillance programmes and intensive fostering) will be available according to criteria including that custody would otherwise be imposed. For those aged under 15, the child must also be defined as a ‘persistent offender’.

### Custodial orders

#### Detention and training orders

Detention and training orders (DTOs) are the main custodial sentence available in the youth court for those aged 12 years or more. The order can only be made where the child or young person is convicted of an offence punishable with imprisonment in the case of an adult and the seriousness of the offence justifies a custodial sentence, or such a sentence is necessary to protect the public (in the case of a violent or sexual offence), or there is a failure to consent to a community sentence (where that consent is required). Further, in the case of a young person under the age of 15, at the point of conviction, the court must also consider that it is dealing with a ‘persistent offender’.<sup>27</sup>

Under this order, which is made for a specified period of 4, 6, 8, 10, 12, 18 or 24 months, detention within the ‘secure estate’ is followed by a period of supervision in the community. Under s298 CJA, the term may not exceed 6 months in the case of a child or young person convicted of a summary offence where the maximum sentence for an adult is 51 weeks.

The legislation provides for DTOs to be available for those aged 10 and 11 but this is not in force at present.

#### Long term detention

As has been described above, a youth court may only pass one type of custodial sentence, a DTO. The crown court may additionally pass a sentence of detention under s90 or s91 of the *Powers of Criminal Courts (Sentencing) Act 2000* (PCCSA).<sup>28</sup> These are available for all children and young people. In the case of sentencing under s90 for murder (detention ‘during Her Majesty’s pleasure’ – an indeterminate sentence) the relevant age is that of the young person at the time of the commission of the offence, rather than at the time of conviction which is normally the crucial date regarding sentencing provisions. Detention under s91 is available for three types of offences. These are

offences that are punishable in the case of an adult with 14 years or more, certain sexual offences punishable by less than 14 years in the case of an adult and, for those aged 16 or 17, certain firearm offences attracting a minimum of three years detention (unless exceptional circumstances justify an alternative sentence).<sup>29</sup> Because the firearms offences described have a maximum sentence of 10 years, children aged from 10–15 must be dealt with in the youth court.

The crown court also has custodial sentences available associated with the assessment of future dangerousness. These are detention for public protection (indeterminate in length) and extended sentences (with extended periods of supervision in the community following release).<sup>30</sup> These sentences are available for all children and young people and are similar to sentences for adults under the same legislation. However, in the case of adults, a previous conviction for one of a small number of offences can allow the imposition a sentence for public protection in circumstances where it would not be available in the case of a child.<sup>31</sup>

## Children and young people and the crown court

The decision as to mode of trial has become notoriously complex for the youth court and committal to crown court can be for sentence or for trial under different circumstances. The detail of this complexity is beyond the scope of this paper but is available in a separate briefing.<sup>32</sup> In summary, some cases must be tried in a crown court (including murder and other homicide offences). Rape cases are normally tried in the crown court but in the case of very young children the youth court can accept jurisdiction. Those firearm offences that attract a minimum three year sentence for those aged 16 and 17 cannot be dealt with in the youth court and must be dealt with at crown court.

Specified violent and sexual offences that can attract detention for public protection or an extended sentence must be sentenced in crown court if one of those sentences is to be imposed.

For other grave offences that can attract long term detention (under s91 of PCCSA) the position has been subject to numerous judgements over the years, including the issues that arise from restrictions on making DTOs according to age (those who are not defined as persistent offenders under the age of 15 in particular). The current mode of trial decision is informed by three principles in which age is a particular consideration:

1. *The general policy of the legislature is that those who are under 18 years of age, and in particular*

*children of under 15 years of age, should wherever possible be tried in the youth court ... A trial in the Crown Court ... should be reserved for the most serious cases.*

2. *It is a further policy of the legislature that, generally speaking, first-time offenders aged 12–14, and all offenders under 12, should not be detained in custody and decisions as to jurisdiction should have regard to the fact that the exceptional [Emphasis in the original] power to detain for grave crimes should not be used to water down that principle ....*
3. *In each case, the court should ask itself whether there is a real prospect, having regard to his or her age, that this defendant whose case they are considering might require a sentence of, or in excess of, two years, or alternatively whether, although the sentence might be less than two years, there is some unusual feature of the case which justifies declining jurisdiction, bearing in mind that the absence of a power to impose a detention and training order because the defendant is under 15 is not an unusual feature.<sup>33</sup>*

## Breach proceedings

With regard to breaches generally, if the court elects to revoke the order and resentence the young person for the original offence, the powers of the court are those at the time of the original sentencing hearing. Where a person has obtained his or her majority since the relevant order was made, it is the adult magistrates' court for the area where the defendant lives, which will deal with the case and will pass a sentence which nearest approximates to that he/she would have received on a re-sentencing exercise in the youth court.<sup>34</sup>

## Parenting provisions<sup>35</sup>

Parenting orders can be made in a wide range of circumstances. They may, for example, follow a conviction for an offence or the making of an anti-social behaviour order. In either case, where the child or young person is under 16 at the date of conviction or the making of the order, there is a presumption in favour of making a parenting order. Once a young person has attained the age of 16 the power to make such an order is discretionary. Additionally, a parenting order may now be made by the magistrates' court as a free standing order under s26 ABA on the application by a youth offending team if a child or young person has 'engaged' in criminal conduct or anti-social behaviour and a parenting order would be 'desirable' to prevent a repetition of that conduct.

In concept, parenting orders are designed to promote good and conscientious parenting skills and may require a parent or guardian to comply for

period not exceeding twelve months with certain requirements and to attend counselling or guidance programmes for a period up to three months.

Parental bind orders are made under s150 PCCSA and require parents to exercise proper care over their children, with a view to their not re-offending. The amount of the parental recognisance must not exceed £1000 and the order cannot take effect for a period of more than three years. Where the young offender is aged 10–15, the court has a duty to make such an order if it considers it desirable so to do and must give reasons if it decides not to make an order. This duty becomes a discretionary power if the young offender is aged 16–17.

## References

- 1 For further detail, see Nacro (2007) *Mental capacity and related issues in the youth court*, Youth crime briefing, June 2007, Nacro
- 2 Article 40 United Nations Convention on the Rights of the Child. The full text of the convention is available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>
- 3 *Doli Incapax* – the long established rebuttable presumption that a child is incapable of serious wrongdoing (related closely to notions, and definitions, of the age of criminal responsibility) which was abolished by the *Crime and Disorder Act 1998*. The presumption previously applied to those under the age of 14.
- 4 UN Committee on the Rights of the Child, 31st Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*. United Nations (CRC/C/15/Add.188), 4 October 2002. The report, together with the UK report and additional material, is available on [www.unhcr.org](http://www.unhcr.org)
- 5 United Nations Committee on the Rights of the Child (2007) *General Comment No 10: Children's Rights in Juvenile Justice*. Geneva: United Nations Committee on the Rights of the Child. Note that the term 'juvenile' is commonly used in respect of criminal justice for children internationally
- 6 See for example, Muncie, J and Goldson, B (2006) *Comparative Youth Justice: Critical Issues*. Sage
- 7 See reference 4 above
- 8 See the European Court of Human Rights website: [www.dcour.coe.fr](http://www.dcour.coe.fr) for this and other judgments
- 9 The Consolidated Criminal Practice Direction is available at [http://www.justice.gov.uk/criminal/procrules\\_fin/contents/practice\\_direction/pd\\_consolidated.htm](http://www.justice.gov.uk/criminal/procrules_fin/contents/practice_direction/pd_consolidated.htm)
- 10 Council Directive 2005/85/EC. For further reference of disputed age, see Nacro (2006) *Refugee and Asylum Seeking Children*, Youth crime briefing, December 2006, Nacro
- 11 See for example, Save the Children *Young Refugees* at [http://www.savethechildren.org.uk/scuk\\_cache/scuk/cache/cmsattach/45\\_youngref1.pdf](http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/45_youngref1.pdf)
- 12 Note the provisions for dealing with under 10s in the little used child safety orders introduced by s11 *Crime and Disorder Act 1998*
- 13 PACE Codes of Practice have been amended on numerous occasions and the latest version of the Codes has been in force since February 2008. They are available in amended form at <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/>
- 14 It should be noted that in a recent review of PACE, the Government has proposed that 17 year olds in police detention should be afforded the same protections as younger children. At the time of writing, the proposals are for consultation
- 15 See Nacro (2003) *Acting as an appropriate adult: a good practice guide* (2nd edition), Nacro
- 16 See PACE Codes of Practice Code D 2.12.
- 17 See Nacro (2008) *Police bail, detention after charge, and the duty to transfer to local authority accommodation*, Youth crime briefing, July 2008, Nacro
- 18 See Nacro (2005) *Court bail in the youth justice system following implementation of the Criminal Justice Act 2003*, Youth crime briefing, December 2005, Nacro
- 19 For detail, see Nacro (2002) *Looked after children and youth justice: anomalies in the law*, Youth crime briefing, March 2002, Nacro
- 20 s25 Children Act 1989
- 21 Problems may arise where the vulnerability criteria are met but the appropriate accommodation is not available – which is most commonly the case. The solution of sending such boys into prison accommodation in such circumstances has met with tragic consequences
- 22 *R v Danga* [1992] 13 Cr Appeal R (S) 408 CA
- 23 See s55 Children and Young Person Act 1933
- 24 These five orders are youth community orders as defined by s147(2) CJA
- 25 See Schedule 24 CJA
- 26 See s215 CJA
- 27 There is no statutory definition of this term and a court is able to make its own finding. For a discussion on persistence see Nacro (2006) *Appeals against conviction and sentence within the youth justice system*, Youth crime briefing, December 2006, Nacro
- 28 Note that courts may also make a custodial order, a hospital order, under the *Mental Health Act 1983*, and a crown court may make a restriction order (a hospital order with restrictions – indeterminate in length) on all age groups. See Nacro (2005) *Mental health legislation and the youth justice system*, Youth crime briefing, September 2005
- 29 For more detail, see Nacro (2007) *'Grave crimes': mode of trial and long term detention*, Youth crime briefing, December 2007, Nacro
- 30 Ss 226 and 228 CJA
- 31 For details, see Nacro (2008) *The dangerousness provisions for children and young people following implementation of the Criminal Justice and Immigration Act 2008*, Youth crime briefing, September 2008, Nacro
- 32 Nacro (2007) *op cit*
- 33 Summarised in *R (on the application of H, A, and O) v Southampton Youth Court* [2004] EWHC 2912 (Admin) at paragraphs 33–35
- 34 *R v Ghafour* [2002] EWCA Crime 1875
- 35 See Nacro (2004) *Parenting provision in a youth justice context*, Youth crime briefing, June 2004