Prison Reform Trust evidence for the JCHR scrutiny of review proposals for the Sex Offenders Register

The Prison Reform Trust is a registered charity that works to create a just, humane and effective justice system. It aims to improve prison regimes and conditions, defend and promote prisoners' human rights, address the needs of prisoners' families, and promote alternatives to custody. The charity conducts a widespread programme of applied research, runs an advice and information service that responds to around 6,000 prisoners and their families each year and provides the secretariat to the All Party Parliamentary Penal Affairs Group.

We welcome the opportunity to make a submission to the committee.
This submission outlines our main areas of concern in relation to the government proposals on the sex offenders register.

Background

We have practical concerns about how many people currently have access to the information on the sex offenders register and how many people are on the register. Currently, an enhanced Criminal Records Bureau check, required for anyone who works with children or vulnerable people, would flag up someone's presence on the register. A system that could differentiate between relevant offences in light of jobs applied for would be preferable. In addition, as sentencing has become harsher, anyone with a sentence over 30 months is on the register for life. This is disproportionate in many cases, a significant infringement of individual liberty for those who do not need to be registered and an administrative burden on police forces.

We have responded to the committee questions below.

Are there compelling reasons for the government to introduce the change by remedial order?

The judgment was handed down in early 2010 and any further delay in implementation should be minimised. The remedial order process should minimise further delay.

Does review by a Chief Police Officer satisfy the requirement for independent review by an appropriate tribunal required by article 8 of the ECHR?

No. This is particularly concerning in light of the government plans to introduce elected police and crime commissioners in England and Wales. We understand they will have responsibility for appointing chief constables. The review system needs to be independent, robust and non partisan. An elected official is not the right avenue for reviews of sex offender registration, nor is any member of a state organ that has played a part in the investigation and law enforcement process. We note that following the 2010 Supreme Court Thompson judgment, Home Secretary Theresa May commented that the government would make the "minimum possible changes" to comply. She said ministers were "appalled" by the ruling and the bar for appeals would be set as "high as possible". This does not suggest that elected officials are in a position to review applications in an unbiased and balanced manner.

Does the possibility of judicial review of the Chief Police Officers decision satisfy the requirement for an independent review?

The judicial review process would provide an avenue for independent review and should be available to unsuccessful review applicants – although, particularly given increasing legal aid restrictions, this avenue may become insufficiently accessible.

The initial review process should be independent also (see concerns above) and not conducted by a Chief Police Officer. This would be more likely to avoid the need to resort to costly court proceedings. In addition, we are concerned that reviews and appeals should be carried out in a timely manner, particularly for children on the register.

Are the time scales for the review appropriate?

We would like an explanation for the rationale behind the 8 and 15 year review periods. We would prefer a sliding scale that would take more account of the vast difference in the nature of offences that currently lead to registration for life.

We are concerned that imposing a blanket minimum period of 8 or 15 years from the date of release, before review applications may be made, will result in a continuing violation of article 8 of the European Convention on Human Rights. We have the same concern about the imposition of a further qualifying period of between 8 and 15 years upon an unsuccessful review application. The government will need to explain on what basis it considers these time periods to be proportionate and, in the case of children, how they meet requirements under the UNCRC (see below). However, in any event we would question whether a blanket approach, without any flexibility for individual cases, can be shown to be justified and proportionate in any circumstances.

Three examples of groups of people who may currently be unfairly on the sex offenders register are:

1) People who are no longer a risk of harm through illness or disability
2) People with a learning difficulty who have committed low level offending
3) Children engaged in consensual sexual behaviour
4) People who were very young or very immature at the time of the offence

This is a non-exhaustive list. The review process needs to provide sufficient flexibility to allow for applicants to come off the register in a balanced way, based on a transparent set of principles meeting human rights requirements.

Should any review be conducted by a judicial body or tribunal, or should a statutory right to appeal to a judicial body or tribunal be provided?

We would ask the committee to consider whether the Parole Board (with adequate resourcing) might be the appropriate body for this for the following reasons

1) They are expert at assessing risk
2) They are independent of prison, police and probation

However, we note that the parole board is currently under-resourced and would need further resources to be able to fulfil this function in a timely fashion.

Do the government's proposals adequately accommodate the needs for the recognition of the rights of child offenders under the UN convention on the Rights of the Child?

We are concerned that imposing a blanket review period of 8 years from the date of the first notification after release does not reflect the requirement under article 3 of the CRC to make the best interests of the child a primary consideration in all matters affecting them. This is of particular concern given the very low minimum age of criminal responsibility in England and Wales, namely 10 years old (see further below).

We would propose instead that all those who are convicted when under 18 of a sexual offence and entered onto the register, should have the right to apply for removal from the register at any time following completion of their sentence, and that consideration should be given to imposing a shorter further qualifying period than currently proposed, following any unsuccessful application. We would draw the Committee's attention to the following requirements in particular:

- Article 16(1) – Every child's right not to be subjected to arbitrary or unlawful interference with his or her privacy
- Article 16(2) – Every child's right to the protection of the law against such interference or attacks

- Article 37(a) – No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment
- Article 40(1) – Right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society
- Article 40(2)(b)(iii) - Every child alleged as or accused of having infringed the penal law to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians
- Article 40(2)(b)(v) - If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law
- Article 40(2)(b)(vii) - To have his or her privacy fully respected at all stages of the proceedings

We would also draw the Committee's attention to the UN Committee's General Comment No. 10 on juvenile justice, published in 2007. In particular, the following statement at paragraph 10 in relation to the best interests of the child:

> *In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.*

Finally, we would note the UN Committee's most recent Concluding Observations on the UK (2008), in which the UN Committee gave the following recommendation at paragraph 78:

> *78. The Committee recommends that the State party fully implement international standards of juvenile justice, in particular articles 37, 39 and 40 of the Convention, as well as general comment No. 10 on 'Children's rights in juvenile justice', the United Nations Standard Minimum Rules for the Administration of Juvenile justice ('the Beijing Rules'), the United Nations Guidelines for the Prevention of Juvenile Delinquency ('the Riyadh*

Guidelines') and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ('the Havana Rules'). It also recommends that the State party:

(a) Raise the minimum age of criminal responsibility in accordance with the Committee's general comment No. 10, and notably its paragraphs 32 and 33;

...

(c) Children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with...