



JUDICIAL REVIEW AND COURTS BILL

JOINT BRIEFING FOR PARLIAMENTARIANS ON THE PROPOSED INTRODUCTION OF ONLINE AND WRITTEN PLEA PROCEDURES FOR CHILD DEFENDANTS

- Part 2 Chapter 1 of the Judicial Review and Courts Bill would introduce changes to our criminal justice system to make it possible for defendants, including children, to plead guilty to criminal offences online or in writing rather than appearing in court.
- We recognise that the Bill aims to address inefficiencies and delays in the court process,¹ which we agree can seriously undermine the effectiveness of our criminal justice system. We welcome the Government's recognition of the need to address these challenges. However, the Bill prioritises speed over fundamental rights, eliminating safeguards and oversight mechanisms. By expanding the use of online and written procedures to children, the Bill fails to recognise the increased vulnerability and additional requirements they have.
- For more information on Part 2 and other measures in the Bill, see the briefing footnoted below.² We have concerns about four clauses in the Bill which seriously undermine children's right to a fair trial:

¹ Ministry of Justice, '[Judicial Review and Courts Bill: Increasing efficiency and accessibility in the criminal courts](#)', June 2021.

² JUSTICE, '[Briefings on Parts 1 and 2 of the Judicial Review and Courts Bill](#)'.

1. **Clause 4 allows children aged 16 and above to plead guilty in writing, after they have been charged at a police station and bailed to appear at the Magistrates Court for a first hearing. We urge Parliament to raise the age of eligibility for written procedures for entering guilty pleas from 16 to 18.**³

1.1 Clause 4 assumes that children aged between 16 and 18 have sufficient capacity to make crucial, life-changing decisions about their criminal cases by themselves, overlooking the fact that psychologically, children (including those aged over 16) are not considered to have full autonomy, and fully-developed decision-making capabilities. Dr Rebecca K Helm explains that “Ensuring that decisions of children to plead guilty are sufficiently consensual to validate the waiver of the right to a fair trial under the European Convention on Human Rights (which requires trial waivers to be made on the basis of informed consent, and without constraint, see *Deweere v Belgium*, 1980) is a complex and delicate task. A defendant can’t give meaningful consent if they don’t understand, don’t appreciate consequences, or are facing considerable external pressure.”⁴

1.2 Clause 4 is inconsistent with the existing Single Justice Procedure and the Bill’s proposed ‘Automatic Online Conviction and Standard Statutory Penalty’ (AOCSSP) procedure (Clause 3), which both only apply to defendants aged 18 and over. The clause is also inconsistent with other legal provisions relating to child defendants in criminal proceedings. In particular, with recent changes to the law regarding the treatment of children over the age of 16 under arrest. Prior to 2015, 17 year olds were excluded from the Police and Criminal Evidence Act 1984’s (‘PACE’) definition of an ‘arrested juvenile’. This was an anomaly that resulted in children aged over 16 being treated as adults at police stations. However, following a 2013 High Court judgment,⁵ PACE was amended, and as of 2015 the definition of ‘arrested juvenile’ was

³ The current procedure for pleading in writing away from a police station also applies for defendants’ aged 16 and above. We consider that this too should be harmonised to age 18, in line with the Single Justice Procedure and the proposed AOCSSP procedure.

⁴ R K Helm, Senior Lecturer in Law and Clinic Solicitor, University of Exeter Director of University of Exeter Evidence-Based Justice Lab, Submission to the Public Bill Committee Considering the Judicial Review and Courts Bill, 2021; R K Helm, ‘Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection. *Journal of Law and Society*’, 48(2), 179-201, 2021; [Deweere v Belgium, App. No. 6903/75, 27 February 1980.](#)

⁵ [R \(HC\) v \(1\) SSHD and \(2\) Comr of Police of the Metropolis](#) [2013] EWHC 982, [2014] 1 WLR 1234.

extended so as to include 17 year olds.⁶ As currently drafted, Clause 4 would be regressive, and mean that those 16 years old and above are denied basic rights enjoyed by other children.

1.3 We agree with Sir Robert Neill MP, Chair of the Justice Committee, who in the Second Reading of the House of Commons debate commented *“What is the logic in using the age of 18 in one provision and 16 in a provision that covers broadly similar grounds? We need particular safeguards for dealing with young offenders, to ensure that they do not enter a plea that is not fully informed, either through immaturity or a lack of good advice, as that could have permanent consequences for their future”*.⁷

1.4 We recommend that Parliament vote in favour of the removal of children from the scope of Clause 4.

2. Clause 8 will allow child defendants to indicate their pleas online, and to have their mode of trial determined online via the Common Platform.⁸ Clause 9(5) provides the power for the court to proceed with allocation proceedings in the absence of child defendants. We oppose the application of these procedures to children.

2.1 Children face significant barriers to effective participation in criminal proceedings, and they possess a well-evidenced propensity to plead guilty, notwithstanding the evidence or potential defences.⁹ We share concerns raised by the Equality and Human Rights Commission (‘EHRC’) that the Bill extends the option to enter a plea in writing to children, without the need

⁶ Strategic litigation brought by Just for Kids Law, known as ‘Kesia’s Law’ changed this; [Section 42 Criminal Justice and Courts Act 2015](#) amends section 37(15) of the [Police and Criminal Evidence Act 1984 \(PACE 1984\)](#), and the amendment affects 17 year olds arrested on, or after 26 October 2015; Youth Justice Legal Centre, [‘17-year olds to be treated as children at police stations’](#), undated; This amendment to PACE is known as ‘Kesia’s Law’ and followed a successful campaign, ‘Still a child at 17’, led by Just for Kids Law. In 2013, PACE Code C was amended to reflect the entitlement of 17 year olds to an appropriate adult following the case of R (on the application of HC v the Secretary of State for the Home Department [2013] EWHC 982 (Admin).

⁷ Sir Robert Neill MP, in [HC Deb \(26 October 2021\). Vol 702. Col 206](#).

⁸ The Common Platform is HM Courts and Tribunal Service’s digital case management system. It allows those involved in criminal proceedings (judges, barristers, prosecutors, and court staff) to access case information. It is currently in the process of being rolled out across England and Wales. For more information, see – UK Government, [‘HMCTS services: Common Platform’](#), 14 May 2021.

⁹ See R K Helm, [‘Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection’](#), *Journal of Law and Society*, Volume 48, Issue 2, pp.179-201, 2021; R K Helm, V F Reyna, A A Franz, and Z R Novick, [‘Too young to plead? Risk, rationality, and plea bargaining’s innocence problem in adolescents’](#), *Psychology, Public Policy, and Law*, 24(2), 180-191, 2018.

for a youth court hearing.¹⁰ We agree with the EHRC which “recommends children be excluded from provision allowing for plea and allocation decisions to be made without a hearing”.¹¹

2.2 The Bar Council also opposes the provisions explaining that “[w]e do not accept that a written procedure for indicating plea or determining mode of trial in the case of children will do anything other than impede access to justice for the most vulnerable cohort of defendants within the criminal justice system. It has long been the position of the Criminal Bar Association and the Bar Council that the prosecution of children and young people requires wholesale overhaul to ensure that they only enter into the criminal justice system as a very last resort...” The Bar Council explains that “moving to a written procedure will compound the situation, limiting the opportunities for lawyers working under a legal aid system to meet with vulnerable defendants and their families, signpost interventions by other appropriate agencies and identifying children and youths with additional needs. It will also impede the child and youth’s understanding of the seriousness of the process into which they have entered.”¹²

2.3 This concern is heightened by the fact that the Bill does not explicitly state that the new procedure can only be utilised through the Common Platform, and therefore *a lawyer*. At a minimum, access to legal representation should be provisioned on the face of the Bill. Nevertheless, even with the assistance of a lawyer, defendants will inevitably lose a wide range of important informal assistance that is available to help to explain relevant procedure and guide defendants towards legal assistance where necessary – from the usher to the justice's clerk, to the barrister waiting for their case to be called to the magistrate that the case appears before.

2.4 The procedures provided for under Clause 8 and Clause 9(5) undermine children’s right to a fair trial under Article 6 of the European Convention on Human Rights by hampering a child defendant’s ability to participate effectively in their criminal trial.¹³ They create a barrier to children’s direct engagement with court proceedings, and in doing so, they could prevent children from appreciating the full gravity of the criminal justice process and the importance of their decisions. Clause 8 also fails to comply with the European Court of Human Rights’

¹⁰ Save for offences covered by s51A(12) [Crime and Disorder Act 1998](#); EHRC, ‘[Equality and Human Rights Commission briefing: Judicial Review and Courts Bill](#)’, October 2021.

¹¹ EHRC, ‘[Equality and Human Rights Commission briefing: Judicial Review and Courts Bill](#)’, October 2021.

¹² The Bar Council, as cited in [HC Deb \(16 November 2021\). Vol 703. Col 258](#).

¹³ *S.C. v the United Kingdom*, App. no. 60958/00, (15 June 2004).

standards on trial-waivers and plea-bargaining processes by failing to sufficiently ensure that children are able to indicate their pleas in full awareness of the facts, and in a genuinely voluntary manner.¹⁴

2.5 We recommend that Parliament vote in favour of the removal Clause 8. Should Clause 9 remain in the Bill, we urge parliamentarians to vote for the removal of children from the scope of this clause.

3. Clause 14 enables application of the above provisions to children where a parent or guardian is made aware that written proceedings are taking place. This safeguard is insufficient.

3.1 The law currently provides that, where a child under 16 is charged with a criminal offence, a parent or guardian must *attend* all proceedings save where it would be unreasonable to require them to do so.¹⁵ However, where a plea is entered by a child under sixteen in online or in writing or any part of the proceedings is to be conducted on the papers, the Bill only requires the court to ascertain whether a parent or guardian is *aware* that proceedings are taking place.¹⁶ The Bill does not suggest that there should be active involvement of parent/guardian to a child defendant at any stage, or that they should even be in a position to support or inform the child's decision-making.

3.2 This clause also risks violating the UK's obligations under the UN Convention on the Rights of the Child, according to which proceedings involving child defendants must, as a general rule take place in the presence of their parents or guardian.¹⁷ Further, the UN Committee on the Rights of the Child has expressed "that States parties explicitly legislate for the maximum possible involvement of parents or legal guardians in the proceedings".¹⁸ As currently drafted, the Bill does not make adequate provision to protect the rights of children in our criminal justice system.

¹⁴ ECtHR, *Natsvlshvili and Togonidze v. Georgia* App. no. 9043/05 (Apr. 29, 2014).

¹⁵ Section 34A of the Children and Young Persons Act 1933. For seventeen year old children the court may include that requirement.

¹⁶ New Section 34A(1B) and (1C) of the Children and Young Persons Act 1933. The court may take this step for 17 year old children.

¹⁷ [Convention on the Rights of the Child](#), article 40 (2)(b).

¹⁸ [Convention on the Rights of the Child, Committee on the Rights of the Child, General comment No. 24 \(2019\) on children's rights in the child justice system](#), para 57.

3.3 Clause 14 does not provide meaningful safeguards for child defendants. As The Children’s Society has pointed out, the above provisions “will lead more children being criminalised for crimes committed as a result of exploitation as the processes would make it easier for them to plead guilty, will provide less human interaction with the law enforcement personnel trained to spot signs of exploitation and potentially more opportunities for coercion to plead guilty from those who exploit them and are interested divert attention from themselves.”¹⁹

We urge parliamentarians to protect the rights of child defendants and vote in support of the amendments above so as to remove application of Part 2 Chapter 1 of the Judicial Review and Courts Bill to children.

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¹⁹ The Children’s Society, 2022.