



Developing the Secure Estate for Children and Young People in England and Wales

Equality Impact Assessment Initial Screening – Relevance to Equality Duties

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

The Youth Justice Board (YJB) and the Ministry of Justice (MoJ) have published *Developing the Secure Estate for Children and Young People in England and Wales – Plans until 2015*.

The document reflects the YJB's proposals for the secure estate for children and young people covering the current spending review period until 2014/15. These development plans set out the principles and priorities for the secure estate during this time and will enable the YJB to deliver its objectives and to set a clear framework for the development of the under-18 secure estate. Its publication follows last summer's consultation exercise.

2. Equality duties

This assessment builds on the previous Equality Impact Assessment (EIA), which was developed to support the consultation document with particular reference to additional information that has emerged during the consultation.

Section 149 of the Equality Act 2010 sets out a legal duty for the MoJ to have 'due regard' to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010
- advance equality of opportunity between different groups (those who share a protected characteristic and those who do not), and
- foster good relations between different groups.

The relevant protected characteristics for these purposes are: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Consistent with these duties, and with the statutory objectives of section 149 of the Equality Act 2010 in mind, the following EIA considers how these policy proposals are likely to impact on people sharing protected characteristics.

Under Chapter 2 of the Equality Act 2010, several forms of **prohibited conduct** are outlined, namely:

- direct discrimination (s.13)
- discrimination arising from disability (s.15)
- pregnancy and maternity discrimination (s.17 and s.18)

- harassment (s.26)
- victimisation (s.27)
- breach of a non-discrimination clause (s.61)
- indirect discrimination (s.19)
- failure to comply with a duty to make reasonable adjustments (s.20 and s.21).

These forms of prohibited conduct are considered, where relevant, in more detail below.

Furthermore, under s.149(3) and (5), the MoJ is obliged to:

“(3) Have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to

- a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) take steps to meet the needs of persons who share a relevant protected characteristic that are connected to that characteristic;
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”

“(5) Have due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to

- a) tackle prejudice
- b) promote understanding.”

We have considered the implications of these proposals for the advancement of equality of opportunity and the need to foster good relations with the guidance in subsections 149(3) and (5) in mind.

3. Individual officer and unit responsible for completing the Equality Impact Assessment

Karl Mittelstadt, Project Manager, Secure Estate Strategy
Secure Accommodation Directorate
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4. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

The proposals outlined in the development plans aim to ensure that every child and young person accesses services that enable them to lead successful, fulfilled and crime-free lives on their return to their communities. This is best achieved in a distinct, specialist secure estate, where services are specifically designed to meet every child and young person's individual needs, in an environment that maintains their safety and maximises their potential.

The policy proposals have two main intended effects:

- to ensure the estate can operate efficiently, by reducing excess capacity, and
- to improve rehabilitation and reduce reoffending of those young people who come into contact with the secure estate.

The preparation of the development plans for the secure estate has taken account of the priorities set out in the government's Green Paper *Breaking the Cycle* and the principles that are driving reform across government, in particular: increased accountability, better value for money, and payment-by-results.

5. What existing sources of information will you use to help you identify the likely equality issues of different groups of people?

In evaluating equality impact of commitments contained in the development plans, data from a variety of sources was used, including:

- internal data sources such as Secure Accommodation Clearing House System (SACHS) and Youth Justice Management Information System (YJMIS)
- Youth Justice Statistics 2010/11¹
- HMIP and Ofsted reports including the bi-annual report into young people's views undertaken by HMIP²
- commissioned research, such as the recently published evaluation of Keppel Unit at Wetherby³
- management information collated by YJB monitors.

In addition, the YJB ran a public consultation exercise that took place between July and October 2011. We invited over 850 individual stakeholders to respond to the consultation and had a total 80 responses.

Table 1. Number and percentage of responses by type of respondent

Sector	Number of responses	Percentage
YOTs/children's services	21	27%
Government and official bodies	13	16%
Third sector	13	16%
Secure estate providers	10	12.5%
Health	7	9%
Others	7	9%
Wales	6	7.5%
General public	3	3%
Total	80	100%

Young people in the secure estate were consulted with separately. The YJB commissioned its existing advocacy providers Voice and Barnardo's to undertake this

1

http://webarchive.nationalarchives.gov.uk/20110204170815/http://www.justice.gov.uk/inspect/orates/hmi-prisons/docs/Children_report_2010_rps.pdf.

2

<http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/children-young%20people-2010-11.pdf>.

3

www.justice.gov.uk/downloads/guidance/youth-justice/specialist-resources/keppel-unit/keppel-unit-process-evaluation.pdf.

work. A summary of responses will be published alongside the final development plans and impact assessments.⁴

All responses were considered carefully and have helped shape the final development plans. During the process the YJB held a number of stakeholder engagement events around the country including a number of dedicated engagement events for third sector stakeholders and government officials in London.

Fourteen stakeholders raised specific equality issues in their responses. They included references to Black and Minority Ethnic (BME) over-representation, provision of services for young women and responding to young people's disabilities. The analysis of survey responses from children and young people in the secure estate also highlighted issues of disproportionality, for example BME groups reporting more negatively about their experiences of custody in comparison to their White counterparts.

6. Individual strands of the development plans

The proposals made in the development plans are reflective of the principles set out and include a commitment to:

- **Reconfigure the secure estate for children and young people** by:
 - i. Responding to decreased demand
 - Decommissioning excess capacity
 - ii. Geographical Distribution
 - Develop more capacity in geographical areas of high demand
 - iii. Reviewing commissioned services to better meet the needs of young people
 - Build on emerging good practice to develop smaller intensive support units
- **Effective commissioning of services to improve rehabilitation** by:
 - i. Commissioning services more effectively
 - in partnership with co-commissioning partners, undertaking a fresh analysis of need
 - understand more accurately the reasons for disproportionality in the youth justice system
 - ii. Evidence-based commissioning
 - iii. A distinctive estate for children and young people
- **Reducing reoffending by children and young people leaving custody** by:
 - i. Working effectively with inspectorates
 - ii. Working effectively with secure providers

⁴ www.justice.gov.uk/consultations/closed-with-response.htm.

The delivery of the above will enable the YJB to meet its spending review commitments, with the secure estate operating more efficiently, and will ensure the secure estate for children and young people is effective, resulting in positive outcomes for children and young people placed into and leaving custodial establishments. A separate Economic Impact Assessment has been published alongside this assessment.

The development of the plans has taken place against the backdrop of a fiscal climate which requires a particularly prudent approach to public spending. This has an impact on how we fulfil our functions as well as how we respond to operational challenges.

The YJB does not directly deliver services to young people in the secure estate. In many cases, services delivered to children and young people in custody are commissioned from other agencies. However, the development plans provide an opportunity for the government to set out its expectations of providers.

7. Assessment of impact against protected characteristics

Age

One of the specific impacts analysed in this section is the effect decommissioning decisions may have on the distance of establishments from home communities. This is an issue of particular concern for the younger age groups.

In 2010/11, the average monthly population of young people placed in custody was 2,040 in England and Wales. Around 95% of the young people held in the secure estate were aged 15–17 years.⁵

The decrease in the number of children and young people in custody over recent years has not been uniform across all age groups. Compared to 2006/07, the 10–14-year old cohort has decreased by 51% and the cohort of 15 year-olds has decreased by 41%.

The fall in demand for custody has already allowed the YJB to decommission a number of establishments. Consistently unfilled beds in the secure estate will mean further decommissioning may be required.

We recognise the impact further decommissioning may have on some 10–14 year old boys and 10–16 year old girls. Specifically, we recognise that a small number of young people will be placed further away from their home communities, which may have an impact on the ability to plan effectively for resettlement and may also have an impact on the ability of families to maintain regular, face-to-face contact with the young person. We also recognise the impact further decommissioning may have on the secure children's home and secure training centre (STC) sectors, which deliver services to this cohort of young people.

A recent snapshot analysis of all young people in custody on 1 December 2011 reveals that four out of five (79%) of children and young people were placed within 75 miles from their home community.⁶ Although there are regional variations, the national average on 1 December 2011 is 51.7 miles.

⁵ Ministry of Justice (2012) *Youth Justice Statistics 2010/11 – England and Wales*. London: HM Government.

⁶ These figures are a monthly snapshot of the custodial population, routinely taken on the last Friday of the month or first Friday of the following month, depending on which is nearer to the actual month end. These figures do not form part of the Youth Justice Statistics published in January 2012.

This presents a slight fall since August 2009 (when 84% were placed within 75 miles of their home community) – prior to the YJB’s decommissioning activity, which started in April 2009 and has resulted in the decommissioning of about one third of all under-18 YOI provision.

Although there are regional variations, the national average distance on 1 December 2011 was 51.7 miles. Of the 21% of young people placed more than 75 miles away from their home, 68% were placed into under-18 YOIs, 13% into STCs, 9% into secure children’s homes and 10% into enhanced provision (e.g. the Keppel Unit). The young people placed in STCs, secure children’s homes and enhanced provision were not placed into under-18 YOI provision because of their particular needs. In some cases, this meant that young people had to travel further to access the most appropriate services for them.

Young people are placed into the establishment that is best able to meet their needs. In some instances, this may mean placing a young person in an establishment that is not geographically closest to their home. The YJB continues to monitor carefully distance from home when making placement decisions.

The YJB regularly reviews its current provision against possible future demand and adjusts commissioning decisions accordingly. In doing so, any negative impact on the younger cohort of young people is mitigated. The most recent secure children’s home re-contracting exercise has allowed the YJB to continue to commission from all homes it has contracted with in the past.

The YJB’s commissioning functions include the regular review of the current geographical distribution of services. We are particularly mindful of the fact that current demand outstrips supply in London and the South East. To this end, the YJB and the National Offender Management Service (NOMS) have agreed to increase provision at Cookham Wood YOI in Rochester (Kent). A new accommodation block and a separate education block will be built, increasing the maximum capacity from 131 to 208. Current plans are to gain planning permission in spring 2012 and to have completed the extension by autumn 2013.

We therefore conclude that the proposals contained in the development plans will not adversely impact on age. We will, however, continue to regularly review internal performance data to allow us to monitor placement decisions and the impact of decommissioning of services.

Sex

In 2010/11, 95% of young people held in the secure estate were male. This proportion has been broadly stable over the last decade.

Furthermore, we know that girls in custody have characteristics and needs that are different from their male peers, including higher numbers who have experienced violence or abuse, as well as displaying higher levels of depression and mental health problems.⁷ In addition, research commissioned by the YJB suggests that girls favour

⁷ Home Office (2007) *The Corston Report – A Report by Baroness Jean Corston of a Review of Women with particular vulnerabilities in the Criminal Justice System*. London: HM Government.

interventions that are different than ones for boys, preferring, for example, female-only environments and to build one-to-one relationships.⁸

The development plans recognise that equality of outcome is not achieved by equality of treatment, but by appropriate treatment according to needs and risks. Reflecting this, the YJB has in the past commissioned distinct services for young females. The government is currently in the process of introducing a new remand framework,⁹ which will remove the anomaly of 17 year-old females being treated as adults for remand purposes. This will increase the YJB's placement flexibility and the ability to better meet the needs of this cohort of young people.

This provides us with an opportunity to review services commissioned for girls to ensure these are able to meet the needs of this cohort effectively. The YJB will commence this work over the course of the spending review period as part of its regular analysis of need. More detail on the analysis of need is provided in the discussion around 'Disability and Learning Difficulties' on page 10.

It is therefore not likely that our plans will have an adverse impact on females. By better understanding the needs of female children and young people placed in custody, commissioned services will be able to better address the underlying risk factor leading to offending behaviour.

Sexual orientation and gender reassignment

There is little known about young people who are transgender within the secure estate, and it is difficult to know whether what is known is reliable. The YJB is aware of four young people who have described themselves as transsexual since 2010/11. This may hide a higher figure of young people who did not share this information for confidentiality reasons.

The YJB currently does not record the sexual orientation of young people in the secure estate, neither is gender re-assignment recorded.

However, where this information is made available, it will be taken into consideration by the YJB in making placement decisions. Currently, the YJB is aware of one young person who describes themselves as transgender being placed in custody. In order to better support young people who are transgender, the YJB is in the process of developing a transgender placement protocol.

The proposed changes outlined in the development plans will not impact negatively on children and young people who are transgender or who are gay, bisexual or lesbian. The YJB will continue to commission services that are flexible enough to address the individual needs of all children and young people and place young people according to their particular needs and risks.

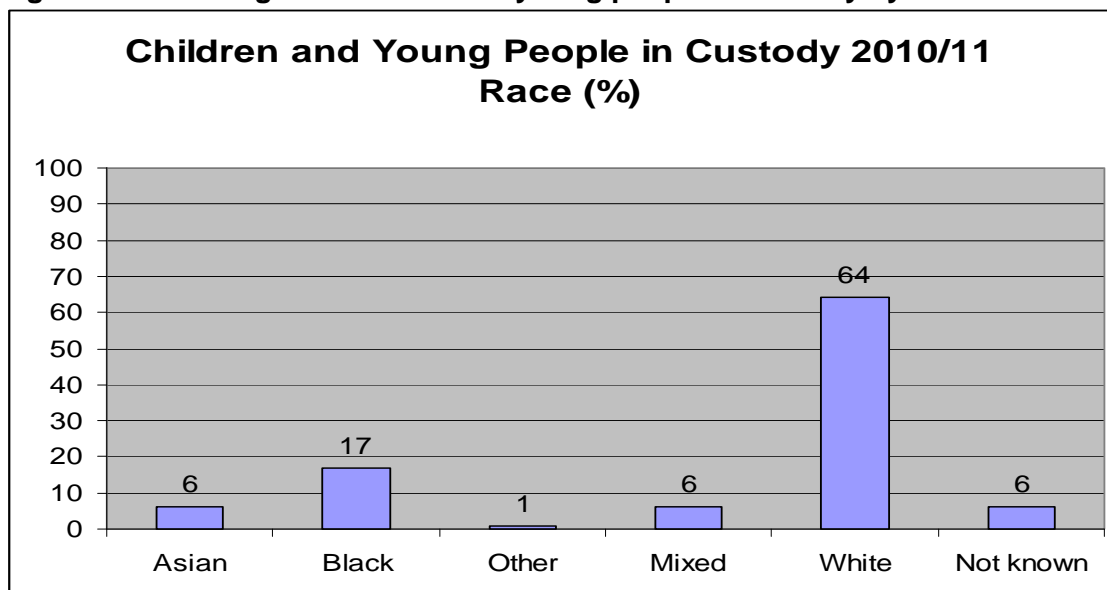
Race

Figure 1 overleaf provides an overview of the percentage by race of the under-18 secure estate population in 2010/11.

⁸ Home Office (2007) *The Corston Report – A Report by Baroness Jean Corston of a Review of Women with particular vulnerabilities in the Criminal Justice System*. London: HM Government.

⁹ Legal Aid and Sentencing Bill, clause 74 subsection (5).

Figure 1. Percentage of children and young people in custody by race 2010/11



Data source: Ministry of Justice (2012) *Youth Justice Statistics 2010/11 – England and Wales*. London: HM Government.

In 2010/11, 64% of the young people held in custody were from a White ethnic background. This compares to 86% of young people from a White ethnic background in the general 10–17 population.¹⁰ In 2010/11, young people from a Black ethnic background accounted for 17% of young people in custody, compared to 3% of the general 10–17 population.¹¹ Young Black people made up the majority of young people from ethnic minority backgrounds placed in custodial establishments.

The House of Commons Home Affairs Committee report titled *Young Black People and the Criminal Justice System (2006–2007)*¹² considered how to tackle the over-representation of young black people in the criminal justice system. It stated that when young Black people have been charged with an offence, they are significantly less likely to be given unconditional bail and more likely to be remanded in custody compared to their White counterparts. In 2010/11, 34% of under-18 Black people were remanded in custody, compared to 22% of White people of the same age group. The government published its formal response in 2007.¹³ Detailed proposals (including an annual report of progress) for the delivery of improved outcomes for young black people was published in December 2007. The latest annual report was published in December 2009.¹⁴

Offence types

Data on offence type in Figure 2 overleaf reveals differences when compared by race. Young Asian people are more likely to be convicted of a drugs offence, while young

¹⁰ www.justice.gov.uk/publications/statistics-and-data/youth-justice/statistics.htm.

¹¹ www.justice.gov.uk/publications/statistics-and-data/youth-justice/statistics.htm.

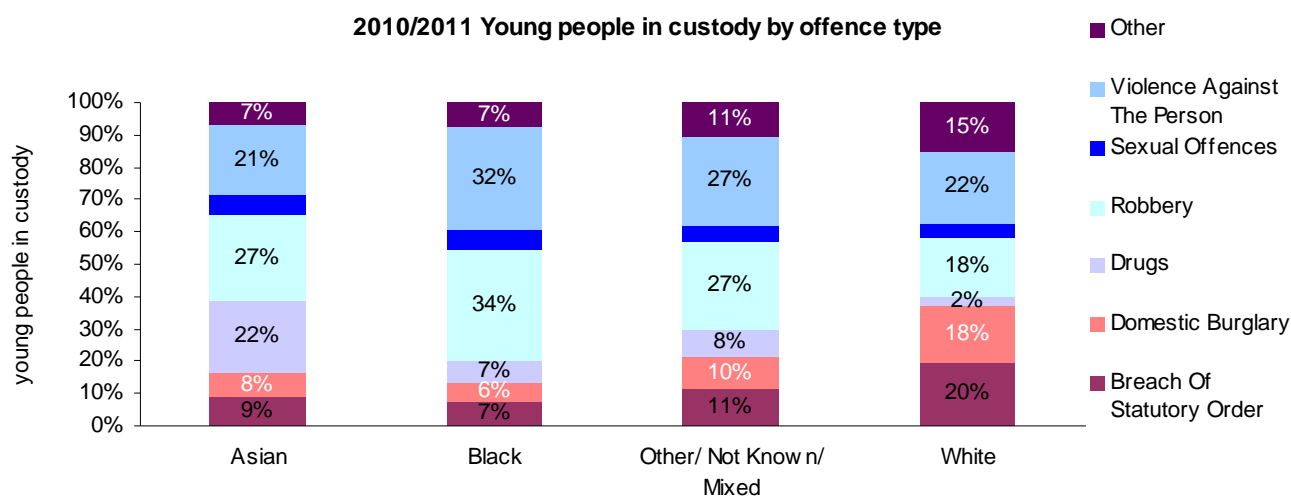
¹² www.publications.parliament.uk/pa/cm200607/cmselect/cmhaff/181/181i.pdf.

¹³ Young Black People and the Criminal Justice System: Government Response October 2007.

¹⁴ Young Black People and the Criminal Justice System: second annual report December 2009.

black people are more likely to be convicted of robbery. Young White people are more likely to be convicted of domestic burglary.

Figure 2. Young people in custody by offence type 2010/11



Data source: Ministry of Justice (2012) *Youth Justice Statistics 2010/11 – England and Wales*. London: HM Government.

Young Black and Asian people are more likely to have received a more severe custodial sentence compared to their White counterparts. It is uncertain whether more serious sentence types are linked to the type or seriousness of the index offence. The YJB is already working with the Magistrates Association to better understand sentencing trends.

Across the secure estate, the percentage of Restrictive Physical Interventions (RPIs)¹⁵ involving BME young people is proportionate to their percentage in the population. However, the different sectors of the secure estate show different patterns:

- in the secure children’s home sector, the percentage of RPIs involving BME young people is largely proportionate to the BME percentage of the secure children’s home population (although there have been some wide fluctuations)
- in the STC sector the percentage of RPIs involving BME young people is lower than the BME percentage of the STC population
- in the under-18 YOI sector, which held on average 81% of our custodial population over the period studied, the percentage of RPIs involving BME young people is higher than the BME percentage within the under-18 YOI population; i.e. BME young people are restrained disproportionately highly.

The proposals outlined in the development plans will have a positive impact on BME young people. Under-18 YOIs already have in place systems for monitoring issues of disproportionality which arise in relation to adjudications, separation, the use of force and the complaints system. The YJB is currently working with its providers to ensure that best practice is shared across each sector of the estate.

¹⁵ RPI is defined as ‘Any occasion when force is used with the intention of overpowering or to overpower a young person. Overpower is defined as ‘restricting movement or mobility’.

The YJB continues to monitor data centrally and regularly feeds information back to establishments. In addition, the YJB intends to undertake further work into understanding why BME children and young people continue to have less favourable experiences in custody compared to their White peers. Once completed, this will enable us to better support our providers to develop effective structures and practices to promote equality and actively address discrimination.

Disability and learning difficulties

The Joint Inspection of Youth Offending Teams Annual Report 2006/07¹⁶ found that 62% of young people in contact with youth offending teams (YOTs) had 'schooling difficulties' and, in some cases, were unable to access services in the same way as other children in the locality.

Other research suggests that prevalence of mental health problems for young people in contact with the criminal justice system are at least three times as high for those in the criminal justice system compared to the general population.¹⁷ The most common disorders were conduct disorders, emotional disorders and attention disorders. Substance misuse is also a particular problem¹⁸.

The placement of a young person takes into account individual needs – including disability. The proposed plans outlined will have a positive impact on young people with learning disabilities. In partnership with co-commissioners the YJB will undertake a fresh analysis of need, drawing together multiple sources of evidence to fully understand the holistic needs of children and young people placed in custody, including specifically facilitating local and national partners to review:

- health needs (including mental health)
- substance misuse
- attachment orders
- speech and language needs, and
- learning difficulties.

Based on this assessment of need, the YJB will develop enhanced provision which will better enable the YJB to meet the needs of all young people, especially the minority of those who have very complex physical and mental health needs.

The recently published 'Keppel Unit Process Evaluation 2011'¹⁹ suggests that the unique environment provided in enhanced units is more likely to contribute to a positive reduction in risk factors than had the young person been placed elsewhere.

Religion or belief

While in most cases recorded locally, the religious affiliation of young people in the criminal justice system (in particular those in the secure estate) is not collated

¹⁶ HM Inspectorate of Probation (2007) *HM Inspectorate of Probation Annual Report 2006/07 – Independent Inspection of Probation Services and Youth Offending Teams*. London: HMIP.

¹⁷ Youth Justice Board (2005) *Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody and in the Community*. London: YJB.

¹⁸ Jacobson J., Talbot J. *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children*, 2009 (p37).

¹⁹ See <http://www.justice.gov.uk/guidance/youth-justice/specialist-resources/keppel-unit/index.htm>.

nationally. Services delivered to young people in custody are responsive to the religious needs of young people. The need to meet these religious needs has been outlined in the legal frameworks outlining how under-18 YOIs, STCs and secure children's homes operate.²⁰

There is a question about the relationship between religious discrimination and discrimination which is connected with other protected characteristics. It is really important to bear in mind that religious discrimination can overlap with racial discrimination. Within the social sciences, religious identity is regarded as a dependent variable of ethnicity and/or culture.²¹

It is not envisaged that the proposals contained within the strategy will have an impact on this protected characteristic.

Marriage and civil partnership

This information is not specifically recorded by the YJB. However, the placement of all young people into custody is primarily based on individual need. Services delivered to young people in custody are responsive to family needs and the rights of young people. In addition, the YJB has an assisted visits scheme in operation for families.

We therefore envisage that the proposals contained within the development plans will not have an adverse impact on this protected characteristic.

Pregnancy and maternity

The YJB started to collate information on the number of pregnant young girls in July 2011.²² Since July 2011, the YJB has placed 12 girls confirmed as either pregnant or a mother. Since January 2010, 16 girls were admitted to the Mother and Baby Unit at Rainsbrook STC – a 3-bed specialist resource catering for the specific needs of this cohort.

The issue of pregnancy and maternity will be considered alongside the review of female service provision mentioned above. The current plans do not envisage making any changes to current commissioned services. The impact of proposals contained within the development plans are not deemed to be significant. As part of the wider review of female service provision, the YJB will continue to consider the specific characteristics and needs of young people in custody and continue to provide appropriate services for young mothers and babies and expectant young girls.

8. Are there any gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people?

Some gaps in information have already been highlighted in previous sections, for example sexual orientation and religion. Internal data supports the development of the commitments outlined in the development plans. Information broken down by age,

²⁰ See rules 30-36 of Young Offender Institution Rules 2000.

²¹ Paul Weller. *Religious discrimination in Britain: A review of research evidence, 2000-10*, 2011 (pp 9).

²² The YJB's in-house data system captures 'live data'. If a girl was labelled as pregnant on this system at the time of booking her into custody it would be closed down once she leaves the estate or has the baby.

gender and ethnicity is readily available and allows reasonable assessments to be made.

There is currently a gap in recording disability. This is largely due to issues around clearly defining and recording disabilities in existing case management tools. Plans are already in place to redress this inconsistency as part of the introduction of a new assessment and sentence planning system eAsset. As part of these developments, young people's health and medical conditions will be recorded and reports will be available. A separate EIA was completed during the feasibility and consultation stage of this project. A statement of intent on the Assessment Framework is available on the Ministry of Justice website.

The Department of Health is developing a Comprehensive Health Assessment Tool (CHAT) for introduction in both custodial establishments and the community in England. The screening tool will address the gaps in health information resulting from current health screening and assessment, including physical health, learning disabilities, neuro-developmental disorders (e.g. autistic spectrum disorders, acquired and traumatic brain injury, and speech, language and communication needs).

Finally, in partnership with its co-commissioning partners, the YJB will undertake a fresh analysis of need with a particular focus on those with complex needs.

9. Next steps

The development plans will be published on the Youth Justice page of the Ministry of Justice website. A Welsh version of the document will also be made available. The document will be disseminated directly to stakeholders by the usual means of communication.

The target audience will be:

- existing secure estate providers
- youth justice practitioners and service providers
- children's charities and related third sector pressure groups
- co-commissioners in health and education
- local authority children services managers
- forum groups for different diversity groups
- parliamentarians, and
- young people.

Please direct any comments you may have to secureestatestrategy@yjb.gov.uk.

10. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place

The majority of commitments contained within the document are subject to individual assessment and full equality impact assessments, which will be developed as appropriate.

The YJB continues to monitor and evaluate practice as part of its monitoring function. As part of its commissioning function, existing data is reviewed and analysed – including for any evidence of equality impact.

11. Summary

The *Developing the Secure Estate for Children and Young People in England and Wales – Plans until 2015* document outlines proposals for the secure estate for children and young people in England and Wales until 2014/15. These plans will enable the YJB to deliver its priorities and to set a clear framework for the development of the under-18 secure estate. Its main aim is to ensure that the YJB meets its overall objectives of:

- reconfiguring the secure estate to align with falling demand
- continuing to improve outcomes for young people, and
- ensuring spending review commitments are met.

Promoting equality, working in a non-discriminatory way and valuing diversity are fundamental. The government will continue to collect relevant data and will review qualitative information in order to promote effective practice.

Name of Senior Manager: Ray Hill, Director (Secure Accommodation)

Department: Youth Justice Board for England and Wales

Date: March 2012