

## **EQUALITIES AND HUMAN RIGHTS COMMITTEE**

### **AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL**

#### **SUBMISSION FROM THE SCOTTISH CHILD LAW CENTRE**

Please do not add any organisation logos

Please insert your response below

1. The UN Committee on the Rights of the Child recommends that the age of criminal responsibility is a minimum of 12 years old, which the Bill adheres to. What are your views on the appropriate age of criminal responsibility in Scotland?

We welcome the increase in the age of criminal responsibility in Scotland. However, the proposed minimum age of criminal responsibility is still one of the lowest in Western Europe. The European average is 14 though we appreciate that direct comparison with other jurisdictions may not always be helpful as it does not take account of the provisions of the Children's Hearing System and early intervention procedures and policies. However, under the proposed legislation, a child over 12 years of age referred to the Scottish Children's Reporter's Administration under section 67 (2) (j), is still criminalised and in danger of acquiring a criminal conviction should such ground be established or agreed to. This may affect the child's education and job opportunities and may have long lasting negative consequences on the course of his/her life.

We strongly recommend that the legislation is kept under review, with the aim of further increasing that age in line with the recommendation of the "Beijing Rules". We also note that the UN Committee on the Rights of the Child is set to issue a further comment on this issue and is likely to make clear its view that 12 is an absolute bare minimum, rather than a recommended age.

2. The Bill makes a number of changes relating to the disclosure of offences and provides that any conduct by a child below the age of 12 (should the ACR be increased) that would previously have been recorded as a conviction will no longer be recorded as such. The Bill does however, allow for disclosure of 'other relevant information' held by the police about pre-12 behaviour. The Committee would welcome views on whether the Bill strikes the right balance in terms of addressing offending behaviour by young children under 12 and the disclosure of such information.

We believe it is important to observe the right of an individual to privacy and give the child an opportunity to recover from adverse circumstances and events. It is a legitimate aim of a disclosure system to balance public protection with the right of a child to change their circumstances and have those events put behind him/her.

We also appreciate that in exceptional circumstances it might be important to notify those assisting the child in further recovery and in cases of further child protection concerns involving other children, to share some of the information from the time when the child was under the 12 years of age.

However, this should only be done in exceptional circumstances. We should have confidence in the ability of professionals to intervene through the children's hearings system to address risk and promote rehabilitation. It may be that the disclosure system is not the best way of assessing and managing risk in these cases, which will be extremely rare. We do not yet have enough information about the proposed independent reviewer to be able to comment on whether this will meet our concerns, but they will need to be genuinely independent and operate via a robust procedure based on statutory guidance, with clear and accessible information in relation to appeal in cases of disagreement with their decision making.

We also respectfully submit that the current disclosure procedure is very hard to navigate and understand. The current disclosure regime is essentially impossible to explain to the child and it is most certainly impossible for a child to navigate him/herself. This process is in urgent need of overhaul.

We especially would call for clear guidance on the time frame within which any "other relevant information" in respect of the child under 12 would and should be stored on Police systems. We note that in 2012 ACPOS had agreed guidance which would have resulted in children's hearings disposals being weeded after 3 years. This guidance was never implemented and should be revisited as a matter of urgency.

3. The Bill provides that children under 12 who are subject to a police interview will have the right to have an advocacy worker present during the interview. What will the impact be on your organisation or on the children you work with who might access the advocacy service?

Impact on our services will not be significant; we anticipate that there may be an increase in number of queries originated from advocacy workers at the first stages of the Bill becoming the law. This is usual when legislation affecting children in Scotland is introduced in to law. We anticipate that we will be in a position to meet an increase in demand for legal information via our advice line.

This provision is inextricably linked to the provisions on disclosure and forensic samples (see our comments elsewhere in this response). While we are enthusiastic supporters of advocacy and the importance of providing mechanisms to enable the child to express a view, these are not direct replacements for legal advice and representation in situations where children's human rights are at issue in legal processes. The extent to which such representation is necessary will depend on the final shape of the legislation.

4. Rising the age of criminal responsibility would necessitate a number of changes in relation to information which can be provided to victims. The Bill seeks to balance the best interests of victims (including child victims) and the best interests of the child responsible for any harm caused. Again, the Committee would welcome views on whether an appropriate balance in this area has been achieved.

We recognise the need to strike the correct balance between the right of the victim to know about the outcome of their complaint and the right of the child to privacy. We would expect that information would be provided to victims only in exceptional circumstances and in a way that respects the rights of the child whose behaviour is of concern.

We believe that the Bill strikes the right level of balance between these two important considerations. The Bill allows for the use of discretion by the Principal Reporter for the disclosure of information about the child to the victim of crime like event in Part 3 of the proposed Bill. We are particularly encouraged by the provision of the Section 179C (3). Our position would be that no identifiable information about the child should be disclosed to the victim and believe that s.179C (3) expresses the right restrictions to the disclosure of the information in that regard.

However, we must also add that it is out position that the disclosure of the information has to be subject to clear list of publicly available criteria which is explained to children at a children's hearing and before they are asked to accept the grounds for referral. This will provide clarity in respect of the process of the disclosure of information both to the victim and the child involved in the crime like event. We suggest an addition to that criteria – that the Reporter, if considering releasing information to a victim, must consult the child subject of the referral, and any Relevant Person as part of the process of establishing whether releasing information is in the child's best interests.

5. Part 4 of the Bill relates to police powers and provides a package of powers designed to ensure that serious behaviour by any child under the age of 12 can be investigated but that such investigations are carried out in a child-centred way. Those powers include, amongst other things, the taking of forensic samples, removing a child to a place of safety and the power to search children. The Bill restricts the application of most of these powers so that they are only available to the police in the most serious of cases. The Committee would welcome views on the approach taken to police powers in the Bill.

It is important that the police have an opportunity to investigate incident involving children and young people with a view of establishing the truth in respect of the events that have occurred. However, we are not aware of the Police experiencing any problems responding to crime like behaviour carried out by 7 year olds at present. We are not therefore convinced of the need for additional powers at this stage. We believe the Committee should require both Police Scotland and the Scottish Government to set out the ways in which a response to an 8 year old, post-implementation of this Bill, would differ from how they respond to a 7 year old currently. We do not wish to inhibit the Police in the performance of their duty to protect and safeguard children, but the case for additional powers needs to be properly made and tested.

In any event, retention of samples and their future use in other incidents involving a child could not be justified. Any other events involving a child when he/she becomes an adult must be dealt with on its own merits based on evidence lawfully collected at the time of each incident. Should the Bill be introduced in its current form, the retention of the forensic samples obtained from a child age 8 to 12 would be dealt with under the same procedure that currently applies to children under the age of 8. Police Scotland is best placed to comment further on this procedure and we would encourage the Equalities and Human Rights Committee to clarify the position directly.

We believe there is a need for the information on any police power to collect forensic sample(s) from a child under the age of 12 to be clearly explained and made publicly available to both children and adults.

In respect of provisions related to the removal of a child to a place of safety we understand that a child protection order would be sought as soon as it is practicably possible. No child should be kept in a police station for any longer than necessary and only as a last resort where no other suitable place of safety is available.

In respects of the interviewing of a child under the age of 12, the need for additional safeguards for the child would depend on the final shape of the legislation. The child may require further legal assistance after the interview with police (or during) if it transpired that as a result of the interview disclosure of “other relevant information” about a child may be made during the course of the child’s life (see our response to Q3 above). The greater a potential impact on the child’s rights of the information they may disclose in an interview with Police, the greater the need for safeguards such as legal representation rather than advocacy. If sufficient safeguards are put in place to ensure a robust and highly limited approach to disclosure of such information, our position would be to have children in such circumstances interviewed on a basis of being a child (vulnerable) witness as opposed to a perpetrator of a crime like event, without the need for involvement of solicitors to ensure that the process does not become adversarial.

6. Please tell us about any other comments you feel are relevant to the Bill.

The Scottish Child Law Centre has been engaged with the question of the age of criminal responsibility for some time. In 2015 the Centre’s Annual Conference took this as its keynote topic, with speakers from Police Scotland, Universities of Edinburgh and Glasgow, Together Scotland, SCRA, the judiciary and chaired by The Rt. Hon. Dame Elish Angiolini. The conference was significant and influential in that it made clear the level of support for a higher MACR from statutory bodies, rather than just the children’s rights sector. We are pleased therefore to see this debate moving into the Parliament at last. We firmly believe that children with adverse childhood experiences should be treated in a way that respects their rights, have the opportunity and time to recover lost ground, to change their perception of themselves and change the perception of others about them.