

EQUALITIES AND HUMAN RIGHTS COMMITTEE

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL

SUBMISSION FROM Children 1st

Children 1st is Scotland's national children's charity. We have over 135 years of experience of working alongside families to provide relationship- based support when they need it and to help children and families to recover from the trauma associated with childhood adversity. We focus our work on three main areas: prevention, protection and recovery from trauma.

Children 1st welcomes the Bill as a first step towards ensuring that all children will be removed from the scope of the criminal justice system. Our response to the Committee's questions focus on the need for culture change alongside the implementation of the Bill, where children and families are supported to recover from trauma and where the criminal justice system moves towards a more compassionate and understanding response to recognising why some children behave and act in the way that they do. We believe that Scotland can lead the way in recognising that this more trauma-informed approach will develop more resilient children and families and will help communities to become more engaged and safe.

What are your views on the appropriate age of criminal responsibility in Scotland?

Children 1st has been a longstanding advocate of raising the age of criminal responsibility in Scotland, along with many of our colleagues and partners. We warmly welcome the introduction of this Bill, which begins to address the concerns repeatedly raised by the UN Committee on the Rights of the Child and bring this area of law in line with the current positive direction of travel in Scotland relating to respecting children's rights and more trauma- informed policy and practice.

At eight, Scotland's age of criminal responsibility is the lowest in Europe—this is unacceptable. Our experience is that children who engage in offending or harmful behaviour are often distressed: dealing with multiple adversities and finding solutions and maladaptive responses to problems in ways that are destructive or harmful, but make sense to them. Behaviour and actions tend to be proportionate to the relationships that these children have in their lives and ruptured attachment which has fundamentally altered their brain development and framed the world as a hostile place. We were pleased to see clear recognition in the Policy Memorandum that “a disproportionate number of the under 12s currently dealt with for offending concerns have faced significant prior disadvantage and multiple adversity in childhood, and that better outcomes will flow from attending to those, rather than focusing on children's deeds in isolation.” This ties in with evidence heard by the Advisory Group on Extending the Minimum Age of Criminal Responsibility that “rarely does a child harm without being harmed themselves.” Similarly, evidence from both SCRA and

the Centre for Youth and Criminal Justice indicate that the vast majority of children and young people who commit a serious offence are either a victim themselves or are already known to be vulnerable and at risk due to the impact of complex trauma.

Surely, then, armed with this knowledge, the starting point for addressing these issues must be rooted in our child protection and social work services, and in the provision of trauma-informed support for children and their families rather than labelling children as 'criminals' and limiting their future life chances before their lives have barely begun. For children who perceive the world as a hostile place, who feel disconnected and are managing internal terror or fear, a punitive response only serves to ensure further disconnection.

Recognising that children displaying distressed, hyper-aroused behaviour and their families need support and help to address the root causes behind their behaviour will bring greater benefits in the longer term for both the individual child and wider community. Such an approach is also in alignment with the Scottish Government's broader commitment to early intervention and recognises the fundamental links between recovery and prevention. Failing to acknowledge the wider context behind a child's distressed behaviour—of which a pattern of offending may be part—and what else is happening in their lives may mean that inter-generational cycles of trauma repeat themselves over and over again and children simply move to the adult criminal justice system when old enough.

The Who Cares? Scotland consultation with children and young people states "convicting children and young people with criminal acts was not seen as the best method to stop re-offending. They stressed the need for emotional support and trauma-informed practice by professionals dealing with a young person's harmful actions." Indeed, the research has demonstrated that criminalising and stigmatising children in fact can mean that distressed behaviour escalates and potential harm can increase. A compassionate system that both addresses and acknowledges the impact of children's behaviour on those it affects and that asks what is happening to cause the behaviour is much more effective than a punitive, non-trauma-informed system.

Fundamentally, we remind the Equalities and Human Rights Committee that behind the jargon and the necessary technical language contained within the Bill we are talking about **children**, many of whom have experienced events in their short lives—or even in the womb—that have changed their physiology, shaped their natural responses to stress and fundamentally altered the very fabric of their being. Many of these children are finding unhelpful coping strategies to deal with their distress, seeking support from unsuitable older role models or criminal gangs or behaving in a way that reflects their early experiences and disconnection.

Children 1st is therefore of the view that all children who display harmful behaviour should be referred through the Hearings system on non-offence grounds. We remind the Committee that General Comment No. 10 makes it clear that 12 is the absolute minimum recommendation from the UN and that in Scotland we have the scope to

be much more ambitious to realise children's rights in this area. Not all children mature at the same rate and some understand and interpret consequences and processes differently to others.

We welcomed the recommendations previously made by the Advisory Group on Extending the Minimum Age of Criminal Responsibility that would enable any procedures put in place for managing harmful behaviour of children under the age of 12 to apply to older children if the minimum age of criminal responsibility were to be further raised. We encourage the Committee to take this recommendation forward and to be courageous and consider raising the age of criminal responsibility beyond the bare minimum.

We should be aiming for a justice system that focuses on rehabilitation rather than punishment, where the best interests of children are the primary consideration. We hope that as the Bill progresses it offers the opportunity for courageous conversations about the link between trauma and childhood adversity and distressed behaviour that manifests as criminal activity/ violence and the ways in which our policies and legislation can better reflect the evidence around prevention.

Disclosure of information relating to children below the age of 12

Research from SCRA shows that in the majority of cases, when a child is the subject of a children's hearing on offence grounds, it will be their first and only offence. Likewise, evidence from Disclosure Scotland shows that the vast majority of young people "grow out of offending and desist permanently." Releasing information unnecessarily about a person's behaviour as a child can be detrimental to their individual life chances, prevent them from moving on with their lives and is out of keeping with the wider principles of Getting it Right for Every Child (GIRFEC).

Children 1st believe that significant safeguards should be put in place to ensure that disclosure of any information about incidents that occurred before a child was 12 should be necessary and proportionate. We refer to the more detailed comments contained in Together (Scottish Alliance for Children's Rights)'s response to this consultation, as a member organisation.

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?

Children 1st provide a number of advocacy services across Scotland, including a 'Child Protection Buddy' system which we have piloted in Dundee (<https://www.children1st.org.uk/blog/giving-children-a-voice/>).

Through the provision of these services we have seen first-hand the difference that an independent advocacy worker can make to help ensure children understand

decisions that are made involving their lives and are able to have their voice heard. Children 1st warmly welcomes the provisions set out in the Bill relating to ensuring that children who are subject to a police interview having access to an advocacy worker. It is essential that children and families are provided with adequate information so that they fully understand what is happening and they know their rights.

We recognise that in the Policy Memorandum there is an intention to further consult on the role of the advocacy worker and the qualifications that they will have, with the initial intention that this will be someone who is legally qualified. Children 1st are keen to hear further about how 'advocacy' is being defined and how this proposal will work in practice, including how it will be resourced (in terms of both financial and human resources) and what training will be provided. We would also welcome further information about how this provision will link to the National Practice Model currently in development for the Children's Hearings and how it will link to other ongoing commitments relating to advocacy for children.

It will also be important to ensure that children's views about how this role will operationalise are fully taken into account. Children have consistently reflected that they don't like re-telling their story numerous times to different professionals and also that relationships with trusted individuals are important to them. If the advocacy worker is a new professional in their life it will be important to ensure there is time to build a trusting relationship with the child so that they fully understand their role.

Given our experience running the Safeguarders Panel we also recognise the importance of clear standards and accountability measures for professionals in roles such as these and would be keen to see further the proposals relating to how the Scottish Government will ensure consistent high- quality of this provision across Scotland and how the individuals will be appointed and monitored against standards.

The balance between the best interests of victims (including child victims) and the best interests of the child responsible for any harm caused

The way in which a child is supported (or not) to tell their story about what happened and start to recover can have significant long-term implications that last far beyond the days and weeks of the initial incident. Being mindful of this, and the ways in which we can make compassionate and thoughtful steps to ensure both the child victim and the child responsible for any harm caused feel heard and start their journey to recovery is essential.

We know, from our experience of supporting child victims and witnesses, that information about what has happened to their case can be important to a victim's recovery. Information should be shared in a way that is helpful to the victim and fully explains their rights, but which also takes into account the privacy of both the victim and the child displaying harmful behaviour, in line with Article 8 of the European Convention on Human Rights and Article 16 of UN Convention on the Rights of the

Child. Information provided should be easily understood by children and in order to fulfil this there may be a requirement to consider what format information is communicated. We would also welcome consideration of the child's views as to whether sharing particular information is "appropriate" if information is about them, and what the child victim may wish to know (or not know).

Children 1st believes that the provisions within the Bill currently strike the right balance between the interests of both children involved, but wish to emphasise the importance of ensuring that as measures are implemented the best interests of both children concerned are taken into account. In assessing best interests, the Council of Europe Guidelines on Child Friendly Justice are clear that the best interests of the child engaging in harmful behaviour and the best interests of the child victim must be separately assessed before being balanced with a view to reconciling possible conflicting interests of the children.¹

We also welcome the ongoing changes to processes for child victims and witnesses within the criminal justice system to improve their experience and hope that the impact of the Age of Criminal Responsibility Bill will have will be fully considered within the context of these going forward.

Police powers

Children 1st would highlight the Advisory Group on Extending the Minimum Age of Criminal Responsibility finding that for the vast majority of children aged between 8 and 11 police powers are not currently necessary in order to assess and meet their needs. We would consider that this should continue to be the case following an extension to the age of criminal responsibility. It is important in considering the use of police powers to balance the rights of the child implicated in an incident of harmful behaviour with the rights of other children to be protected from harmful behaviour. We also wish to emphasise to importance of ensuring that children are fully aware that they are not subject to a 'criminal' investigation and that steps are taken put in place procedures and processes that are trauma- sensitive and compassionate. Training may be required to help police and other relevant professionals in this area.

Place of Safety

Retaining police powers to investigate the circumstances of harmful behaviour; and in exceptional circumstances to take a child to safety and to interview a child is necessary. These powers are crucial to establishing the truth of the matter, informing decisions about a child's welfare and the risk they pose to themselves and others and to ensuring the rights of victims.

¹ Council of Europe (2010). Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, <https://rm.coe.int/16804b2cf3>: Part III. B, Guideline 3.

In considering where would be 'an appropriate place of safety' and venue for Joint Investigative Interviews for a child Children 1st would highlight the potential to explore whether a Scottish "Barnahus model" could provide child-centred support for children displaying harmful behaviour in addition to providing support to child victims and witnesses. Through the action set out in Equally Safe, Scotland's Strategy for Preventing Violence Against Women and Girls, the Scottish Government and Children 1st have been asked to "Consider the application of lessons from various international examples of the 'Barnahus' concept for child victims in criminal justice cases and how these could potentially apply within the Scottish context." It is important to link this ongoing work with provisions relating to the Age of Criminal Responsibility Bill. While appropriate safeguards would need to be put in place to ensure the protection of other children, supporting all children via the same model would help create the required cultural shift in how Scotland views children's behaviour.

For further detailed comments on police powers we refer to Together (Scottish Alliance for Children's Rights)'s response to this consultation, as a member organisation.

Any other comments

Training

Children 1st supports the recommendation of the Child Rights and Welfare Impact Assessment (CRWIA), which accompanies this consultation, regarding the need to consider training requirements for a range of professionals including police, teachers, social workers, residential care workers, foster carers and health professionals. An understanding of any particular skills and knowledge gaps and a training plan, accompanied by sufficient resourcing, will be crucial to ensuring professionals can best manage the support needs and risks of children demonstrating harmful behaviour as well as child victims and witnesses.

Training should aim to contextualise the behaviours that some children may display and move beyond a punitive approach to asking sensitively what may have led to a child's behaviour.

Children affected by offending behaviour

Extending the age of criminal responsibility does not diminish the impact of a child's harmful behaviour on those who are affected by it, whether they themselves are a child or an adult. Victims and witnesses may have been severely traumatised by the actions of a child and will continue to need support to recover and reassurance that harmful behaviour will not be repeated. In relation to child victims and witnesses we would refer to the research carried out in 2012 by Victim Support Scotland and the Scottish Government (as detailed in the Children's Rights and Welfare Impact

Assessment) which identified the need for: specialist professional support for traumatised children and young people, online support, one-to-one discussions with an adult supporter, group support with other children and young people and opportunities to participate in social/recreational activities with peers.

Provision of trauma-informed support for children and families

Children 1st considers it vital to highlight the importance of ensuring that alongside the implementation of the Bill there is an urgent scale up of, and investment in, trauma- sensitive support for families both to help prevent crisis (i.e. before any harmful behaviour is exhibited) and to ensure that support is available when something has happened to prevent a situation from escalating and to promote recovery.

At the heart of the trauma- informed, rights-based, relational family support Children 1st provides is an approach that asks: “what’s happened to you?” instead of “what’s wrong with you?” We believe that families (not just the child) need accessible, non-stigmatising, compassionate support that is delivered according to what they say they need rather than by separate services in silos doing ‘to them’ rather than in partnership. Support for families must address urgent needs—and primarily keep children safe—but must also recognise that in helping the child it may be important to support the parents to recover from their own trauma in a whole- family approach. We believe that there is an urgent need for a strategic and sustainable expansion of these relational family support models across Scotland—and this will be the single biggest thing that will prevent children from reaching the point where this new legislation is required.

At present, however, we are seeing significant reduction in funding for family support, despite the clear evidence that working collaboratively alongside families as early as possible, particularly during the first three years of a child’s life, is crucial. In failing to prioritise investment around the early years in order to support strong, safe families and build emotional wellbeing, we are creating a ‘ticking time bomb’ whereby children who wait for significant periods of time for help or who are permanently exposed to an internal ‘fight or flight’ scenario or who are experiencing poor attachments, will require significant support as adults, as will their own children.

We cannot ignore the fundamental links between prevention and recovery and the need for investment in the strengths of the family to prevent the need for children and young people to ever experience the measures required in this Bill.

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