

EQUALITIES AND HUMAN RIGHTS COMMITTEE

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL

SUBMISSION FROM COMMUNITY JUSTICE SCOTLAND

Introduction

Community Justice Scotland (CJS) welcomes the Age of Criminal Responsibility (ACR) Bill. We believe any measures which decriminalise our response to children and young people's negative behaviours, is a positive move. The raising of the ACR is long overdue in Scotland and has unintentionally contributed to intergenerational issues for society by criminalising the most vulnerable individuals in society. CJS believes that children and young people's behaviour is supported through the Children's Hearing System on wellbeing grounds and not criminalised. We believe the Scottish Parliament should take an evidence based approach to setting an ACR. CJS notes that the ambition to support Children and Young People's wellbeing can often be confused with the ACR. Whatever age is set, our response to children and young people should remain compassionate and responsive.

This response covers offences under the Criminal Procedure (Scotland) Act 1995, s 41A

- **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?**

CJS agrees with the current proposal of an ACR at age 12, as a baseline.

Children and Young People come from very diverse circumstances and are affected by poverty, inequality, trauma and Adverse Childhood Experiences (ACEs). These factors can contribute to the level of support a child and young person receives and will have an impact on an appropriate ACR. The proposed ACR is to meet the minimum acceptable international standards and reflects the current practice that a child can be prosecuted from the age of 12. The Policy Memorandum of this Bill states the ACRs for EU member countries. If the ACRs from across the UK jurisdictions are removed, the average ACR of the EU is 14.

The ACR should be subject to review by Parliament within a designated period - on the basis of evidence – to assess how appropriate the current ACR proposal is.

- **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.**
- **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?

- **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.**

In relation to the above questions:

CJS is apprehensive on the use of police powers in relation to Part 4 in the Bill. These circumstances require further clarity and judicial oversight in discharge. We are concerned about the proposed use of retrospective orders. We believe there should be a definition of 'other relevant information.' This definition should also include how relevant this information is, given specific time periods from the initial behaviour. In any case, a public interest test and the rights of a child or young person need to be taken into account when taking a decision.

CJS believes any process to remove other relevant information, should be automatic.

There is no direct impact for CJS as an organisation arising from the proposal for an advocacy worker.

CJS has concerns about the proposed definition of an "advocate" and when this might be applied. In normal circumstances, when a child is interviewed the child may be accompanied and supported by an advocate as defined in section 122 of the Children's Hearings (Scotland) Act 2011. However, in the exercise of police powers of interview proposed in Part 4 of the Bill, which could relate to an incident or incidents more than five years prior to the interview, the outcome of which could produce "other relevant information" and therefore be of considerable significance to the future of the child, CJS believes that the definition of advocate should include a legally qualified representative.

Further when a child is being interviewed this is normally conducted jointly by a suitably trained police officer and social worker with the safeguards introduced into that procedure. It is well recognised that this is the appropriate procedure. Section 32 of the Bill appears to envisage a number of possible interviewers but offers no criteria to be considered in any decision on who is to conduct the interview. CJS consider that any interview of a child should be conducted according to accepted standards, that is by way of a joint interview.

- **Raising 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.**

CJS anecdotally understands that statutory services often report back to victims and their families after a considerable amount of time, dependent on the conclusion of a Children's Hearing process. CJS believes this Bill does try to make the right balance between the need to support a child's wellbeing and the best interest of victims.

We welcome the coproduction exercise between the Scottish Government and stakeholder's on behalf of victims. CJS believes the coproduction exercise should examine concerns for victims on how information sharing and gathering can be made available more quickly for them, so that they are empowered to continue their lives.

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

The Preamble of this Bill should be amended to detail

- Children and young people's rights,
- Where these rights are discharged and by who.
- How these rights interact with the ACR and separately
- The response to the wellbeing of children and young people's behaviours which is unrelated to the ACR.

CJS believes the Parliament should in any case review the eventual ACR proposal within a designated period.