Note on the Age of Criminal Responsibility (Scotland) Bill and a consultation by the United Nations Committee on the Rights of the Child

Background

1. At its meeting on 15 November 2018, the Committee discussed a work programme paper. During that discussion reference was made to correspondence from Bruce Adamson, the Children and Young People’s Commissioner, circulated to members by the Commissioner concerning the Age of Criminal Responsibility (Scotland) Bill dated 14 November 2018 (attached Annex).

2. The letter drew members’ attention to a consultation by the United Nations Committee on the Rights of the Child, General Comment No.10 (2007) and the impact this potential revision might have on the international recommended minimum age of criminal responsibility.

3. The draft revised General Comment on juvenile justice in respect of the minimum age of criminal responsibility states at paragraph 33—

“In the original general comment No. 10 (2007), the Committee had considered 12 years as the absolute minimum age. However, the Committee finds that this age indication is still low. States parties are encouraged to increase their minimum age to at least 14 years of age. At the same time, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age. The Committee recommends that State parties should under no circumstances reduce the minimum age of criminal responsibility, if its current penal law sets the minimum age of criminal responsibility at an age higher than 14 years.”

4. The Committee agreed to seek further information on the timescales on the UN Committee’s process, given Stage 1 of the Age of Criminal Responsibility (Scotland) Bill was completed on 13 November 2018. Stage 2 of the Bill commenced directly afterwards and Members are now able to lodge amendments. Stage 2 consideration of the Bill by the Committee is timetabled to take place on 17 January (Day 1), 24 January (Day 2) and, if needed, 31 January (Day 3).

UN Committee on the Rights of the Child consideration

5. On behalf of the Committee, the Clerks wrote to the Committee on the Rights of the Child Secretariat to ask:
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Thursday 29 November 2018

(a) when the Committee on the Rights of the Child would be in a position to provide a final version of the revised General Comment,

(b) when and how the final revised General Comment would be agreed by the Committee, and

(c) an indication of when this would be communicated to States.

6. In response to these questions Nikolaus Schultz, Human Rights Officer in the Human Rights Treaties Branch, Human Rights Council and Treaty Mechanisms Division, provided the following information—

(a) The Committee will hold deliberations on a final version of the General Comments during its 80th session, taking place from 14 January to 1 February 2019 in Geneva, Switzerland.

(b) There is no strict timeframe applicable for the adoption of a (revised) General Comment, however, the Committee envisages to adopt a final version at its 80th session or at the latest at its 81st session, taking place 13-31 May 2019, as the Committee has to be in session for formal adoption.

(c) Soon after adoption the General Comment will be published as an advanced unedited version in English as the language in which it is drafted. The formal, edited version in all official UN languages will take several months.

7. In addition, Mr Schultz invited the Committee to provide its comments on the draft General Comment by 8 January 2019.

Summary

8. Stage 2 of the Age of Criminal Responsibility (Scotland) Bill is anticipated to be completed by 1 February (although could be earlier depending on the number and range of amendments received), the earliest the UN Committee could deliberate and adopt the revised draft comment would be during its 80th session, taking place from 14 January to 1 February 2019.

9. To help inform Stage 2 consideration this paper could be made public and the associated documents referred to placed on the Committee’s Age of Criminal Responsibility webpage.

Claire Menzies
Clerk
22 November 2018
Ruth Maguire MSP  
Convener  
Equality and Human Rights Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

14 November 2018

Dear Convener,

Draft Revised United Nations Committee on the Rights of the Child 
General Comment - Children’s rights in juvenile justice

In evidence to the Equality and Human Rights Committee on the Age of Criminal 
Responsibility (Scotland) Bill I referred to the United Nations Committee on the Rights of 
the Child (CRC) General Comment No.10 (2007).

As I have previously intimated, the CRC is revising this General Comment. It has now 
issued a public consultation on a draft revision which seeks to provide clarity on the 
setting of a minimum age of criminal responsibility. I attach the revised draft for your 
reference.

At paragraph 33 of the draft the CRC states:
    In the original general comment No. 10 (2007), the Committee had considered 12 
    years as the absolute minimum age. However, the Committee finds that this age 
    indication is still low. States parties are encouraged to increase their minimum 
    age to at least 14 years of age. At the same time, the Committee commends 
    States parties that have a higher minimum age, for instance 15 or 16 years of 
    age. The Committee recommends that State parties should under no 
    circumstances reduce the minimum age of criminal responsibility, if its current 
    penal law sets the minimum age of criminal responsibility at an age higher than 
    14 years.

The CRC is likely to adopt its revised general comment as new General Comment 24 in 
2019.

Yours sincerely,

Bruce Adamson