

## EQUALITIES AND HUMAN RIGHTS COMMITTEE

### AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL

#### Additional Submission from the Scottish Youth Parliament

##### Introduction

The Scottish Youth Parliament represents Scotland's young people. Our vision for Scotland is of a nation that actively listens to and values the meaningful participation of its children and young people. Our goal is to make this vision a reality, in order to ensure Scotland is the best place in the world to grow up.

We are a fundamentally rights-based organisation, and our mission, vision and values are grounded in the United Nations Convention on the Rights of the Child (UNCRC). In particular, our purpose embodies Article 12: that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As a completely youth-led organisation, the words and sentiment of Article 12 have a profound importance for our work.

Our democratically elected members listen to and recognise the issues that are most important to young people, ensuring that their voices are heard by decision-makers. We exist to provide a national platform for young people to discuss the issues that are important to them, and campaign to effect the change they wish to see.

SYP's Values are:

**Democracy** – We are youth-led and accountable to young people aged 12 to 25. Our democratic structure, and the scale of our engagement across Scotland, gives us a mandate that sets us apart from other organisations.

**Rights** – We are a fundamentally rights-based organisation. We are passionate about making young people aware of their rights, and ensuring that local and national government deliver policies that allow those rights to be upheld.

**Inclusion** – We are committed to being truly inclusive and work tirelessly to ensure the voices of every young person from every community and background in Scotland are heard.

**Political Impartiality** – We are independent from all political parties. By working with all stakeholders, groups, and individuals who share our values, we can deliver the policies that are most important to young people.

##### Summary of SYP's additional recommendations

1) We warmly welcome the commitment in the Programme for Government from the First Minister to 'incorporate the principles of the UN Convention on the Rights of the Child into domestic law.' We now need to see a clear timetable for how this will happen (including when a draft Bill will be introduced to Parliament) that ensures the legislation is able to receive Royal Assent in advance of the next Scottish Parliament election in 2021. This will

ensure children and young people's rights in this context are binding, not guiding – and properly respected, protected and fulfilled.

2) We note our partner organisations' responses to Stage 1 from the Children and Young People's Commissioner Scotland ([EHRiC/S5/18/ACR/9](#)) as well as Who Cares? Scotland ([EHRiC/S5/18/ACR/41](#)). In particular, their calls for the age of criminal responsibility to be 12 years old as an absolute minimum, as per the United Nations Committee on the Rights of the Child (2007) General Comment No 10 (2007) *Children's rights in juvenile justice*. Geneva: United Nations, para 32. This may be something that the membership raises for discussion and debate at some point in the near future.

3) Children and young people should be provided with information about their rights all the time (through human rights education), in case they are ever interviewed by the police, as well as before any police interview begins, and during, especially if the interview spans multiple sessions.

This includes rights information adults receive, but including UNCRC rights and in a more accessible way, and with information on how to use their rights, and what to do if they are not being upheld.

- Specific rights included: the right to legal help and fair treatment (Article 40), to remain silent (and what that means in practice, that they cannot be forced to talk) be protected and safe from harm and ill treatment (Article 36 and 19), to privacy (Article 16), to be protected from sexual abuse (Article 34), to know about their rights (Article 42), to help in cases of neglect or ill treatment (Article 40), to be listened to, and taken seriously (Article 12) of the UNCRC.
- *'Substantial additional efforts need to be made to ensure that all of Scotland's young people have a good understanding of their rights as set out in the UNCRC.'*

SYP recommendation in response to a 2012 consultation on the Children and Young People Bill, extended by the Conveners Group on 25<sup>th</sup> August 2018.

Whereas the UNCRC outlines the rights of young people under the age of 18 (or 21 for young people who have experience of care in Scotland), there are, of course, a number of other instruments which lay out the rights of all people, including children and young people (and the 18/21-25 age-range of our membership and the young people we represent) in Scotland, the UK and internationally. These include the Human Rights Act 1998, the Scotland Act 1998, the European Convention on Human Rights (ECHR) and the other UN treaties the UK has signed up to.

- *‘The Scottish Youth Parliament believes that young people should be taught about, and empowered to stand up for, their human rights through Personal, Social and Health Education (PSHE) or its equivalent in the curriculum.’*

Policy statement passed with 92% agreement on 14<sup>th</sup> April 2018, Joint Committee Motion by the Education and Lifelong Learning (ELL) Committee & the Equality and Human Rights (EQU) Committee.

- 4) It is just as important for the police to know about children’s rights as it is for children to know about them.
- 5) Children need to know why they are being interviewed, and that it’s a ‘safe space’ – ‘maybe not in a police station.’
- 6) Young people should be made aware that they have the right to have a parent / carer / appropriate adult with them, as well as access to independent advocates and legal representation (in turn, these rights must be secured).
- 7) They need to know about the age of criminal responsibility, and what that means for them.
- 8) Giving ‘too much’ information should be avoided as it could be ‘confusing and intimidating in an already stressful situation’.
- 9) As with our previous response, the police officer should ask the child to repeat the given purpose of the interview and rights (and other guidance) back to them in their own words, to ensure the child has a good understand before any questions are asked.

### **Summary of SYP’s previous recommendations**

When the police are called to an incident where a child under 12 has done something harmful, they should do the following things. The Age of Criminal Responsibility (Scotland) Bill must ensure that these steps take place, and the Committee should recommend that any gaps identified are filled accordingly:

- Keep the child safe.
- Keep other people safe.
- Call the child’s parents/carers.
- Call social workers/independent advocates if needed.
- Find out from parents/carers if the child has any difficulties which require additional emotional, behavioural or learning support (e.g. learning difficulties).
- Use a way to communicate with the child that suits their age and ability to understand.
- Ensure an adult trusted by the child, who demonstrates an understanding of children's rights, is there to help them.

- Tell the child about their rights (e.g. their rights when being questioned, their rights to a lawyer, privacy), and ask them to repeat these in their own words to show they understand.
- Ask the child and their parents/carers if they want to have a lawyer present before any questioning.
- Take statements and look for evidence.
- Ask the child questions about their behaviour, using short and simple sentences.

Advocacy services should be well-funded, accessible, and suitably tailored to young people, especially for those with experience of care.

Most young people asked believe that the more serious the harmful behaviour, the longer it should be disclosed for.

Young people called for a proportionate, non-intimidating and child-friendly approach by the police, informed by child psychologists, to response and investigation, where evidence is only sought where deemed to be in the best interests of the child's wellbeing based on such an assessment.

The list above identifies key adults young people believe should be present at interviews, and legal and psychological expertise and a comfortable environment are essential.

For accountability and consequences, young people believe that the answer lies in child-friendly, interactive education as a form of early prevention of harmful behaviour, that accountability is directly proportional to age, and some considered that an independent body or specialist may be best-placed to review children's accountability. The children's hearings system should have a greater focus on rehabilitation through education. The idea of having a 'clean slate' at the age of 18 also resonated with the workshop group, as well as using visits, engaging images, social media and apps to educate children about the concepts of harmful behaviour.

Young people believe that decision-makers and public bodies implementing this legislation, and duty-bearers of children's rights, must take a human rights-based approach to all policy-making and service provision around criminal responsibility; ensuring that:

- All children and young people's legal rights, especially those in vulnerable situations and with 'protected characteristics' are upheld according to international law;
- They are participating meaningfully in decisions affecting their lives;
- They are empowered to do so in an accessible, non-discriminatory way; and
- They able to hold duty-bearers to account through processes of review and appeal.

Last but not least, SYP would like to reiterate its call to the Committee, the Scottish Parliament and the Scottish Government, for a statement of intent during the Year of Young People 2018 around incorporation of the United Nations Convention on the Rights of the Child, as supported by our *Right Here, Right Now* campaign and *Lead the Way* Manifesto Commitment passed on 12th March 2016 with 79% agreement.

This would make children and young people's rights binding and not guiding, which would ensure that children's rights are protected early on in policy-making, to prevent rights abuses (and the need to go to court) in the first place.

## **Our approach**

SYP wishes to update you on the views of young people on the content of the Age of Criminal Responsibility (Scotland) Bill. We would be grateful if your Committee could take account of these views in your consideration of the Bill, and would, of course, be delighted to meet with you and your Committee to discuss them further.

This additional submission links to our previous *Right Here, Right Now* national campaign on young people's rights October 2017-18. For more information about this campaign, please see our Stage 1 response dated July 2018.

This letter conveys findings from a consultation workshop attended by young people called 'Non-Conviction Info: Coming Back to Haunt You?' at our 67<sup>th</sup> National Sitting on 21<sup>st</sup> October in Kilmarnock, co-produced by your Committee including Fulton MacGregor MSP, Ryan McShane MSYP and the Scottish Parliament's Community Outreach Team.

It also includes findings from co-designed questions in our #WhatsYourTake online survey which was open from 21<sup>st</sup> September until 29<sup>th</sup> October, gathering 546 responses from young people aged 12-25 across Scotland, from all 32 local authorities and 10 of our national voluntary organisations.

The questions asked only further questions in relation to the Bill beyond those asked May – June 2018, which would resonate most with our members and link to our campaign. However, given time and capacity restraints, some questions would benefit from further discussion with our members.

## **Our additional findings**

### **'When a child under 12 is being interviewed by the Police, what information do they need about their rights?'**

The young people we consulted gave responses across the following themes on what they need to know:

- About '**all their rights**', and secondly, how to use them before a police interview starts and during if necessary.
- '**Who they can speak to if they are not getting their rights.**'
- This information should be the same as for adults, but given in a more accessible way (see below), and including UNCRC rights.

- Specific rights included: the right to legal help and fair treatment (Article 40), to remain silent (and what that means in practice, that they cannot be forced to talk) be protected and safe from harm and ill treatment (Article 36 and 19), to privacy (Article 16), to be protected from sexual abuse (Article 34), to know their rights (Article 42), to help in cases of neglect or ill treatment (Article 40), to be listened to, and taken seriously (Article 12) of the UNCRC.
- Why they are being interviewed.
- That it's a **'safe space' – 'maybe not in a police station.'**
- That they have the right to have a parent / carer / appropriate adult with them, as well as access to independent advocates and legal representation (in turn, these rights must be secured).
- About the age of criminal responsibility, and what that means for them.
- Rights information needs to happen for all children and young people through human rights education from a young age. Many reported that this was not covered in school and that they had to do their own research on the topic – **'it feels like some of our rights are hidden or kept secret'**.
- Many young people responded that they simply do not know what rights information they would need, and others gave incorrect suggestions (e.g. that you do not have the right to remain silent) – which leads us to the recommendation that **'[the right to human rights education](#)'** needs to be respected, protected and fulfilled better in Scotland (Article 42 UNCRC).
- It is just as important for the police to know about (and be trained on) children's rights as it is for children to know about them (Article 7 of the UN Declaration on Human Rights Education and Training, see [here](#)).
- The information given needs to be accessible for all, including those with additional support needs, with suggestions including **'a series of simple statements both written down and explained to them verbally'**.
- The information needs to be clear, concise, easy to understand and 'simplified.'
- A copy of the UNCRC should be provided.
- Giving 'too much' information should be avoided as it could be 'confusing and intimidating in an already stressful situation'.
- As with our previous response, the police officer should ask the child to repeat the given purpose of the interview and rights (and other guidance) back to them in their own words, to ensure the child has a good understand before any questions are asked.

If the above rights-based approach is taken, ensuring Participation, Accountability, Non-Discrimination and Equality and Legality – the child will be Empowered as a result:

**‘Children often feel that they are out of control when faced with somebody older, so it needs to be clear that this is not the case.’**

**When information about rights should be provided?**

The following table illustrates young people’s preference for the options given, with the top two receiving over 50% agreement:

When should that information be provided? Please choose as many options as you want.					Response Percent	Response Total		
1	All the time - all children should know about their rights in case they are ever interviewed by the police.		79.30%	406				
2	Before a police interview begins.		52.15%	267				
3	During a police interview.		24.80%	127				
4	After a police interview.		15.43%	79				
5	Continuously as the child grows up.		46.68%	239				
6	Once the child becomes an adult.		14.84%	76				
7	Other (please specify):		1.95%	10				
<b>Analysis</b>	Mean:	6.56	Std. Deviation:	6.38	Satisfaction Rate:	70.12	answered	512
	Variance:	40.67	Std. Error:	0.28			skipped	34

Some other suggestions / comments included:

- **'Information should be provided at the time in question, not in retrospect.'**
- **'There shouldn't have to be a reason why a child should know their rights. Also right number 42 clearly states that all children should know about their rights.'**
- 'Information should be available at all times and taught to CYP [children and young people]. However, it should again be highlighted to ensure that the child knows and understands it before the police interview, and during it (particularly if it is a long interview that spans multiple sessions).'

- **‘Update the child on their rights as when you get older, you have different/more rights.’**
- ‘It is important to be educated on all our rights so we have the knowledge to call out negligence on them.’

### **Information sharing / disclosure**

This was also discussed at the workshop alongside case studies but the members needed more time to discuss the case studies in more depth. However, the following initial recommendations were formed:

- There should be an independent body to decide which information should be disclosed to whom and how long it should be retained for – keeping investigating and review separated.
- Stringent rules on disclosure do not allow for the consideration of individual circumstances on a case-by-case basis.
- There should be an independent complaints procedure.

9 November 2018