
To: Education and Children's Services Policy Board

On: 23 August 2018

Report by: Director of Children's Services

Heading: Age of Criminal Responsibility Bill Consultation

1. Summary

- 1.1 Following a period of intensive work across the Scottish Government, supported by contributions from key professional stakeholders, the Age of Criminal Responsibility (Scotland) Bill was introduced to Parliament on 13 March 2018.
- 1.2 The Bill reflects the authentic decriminalisation of children under 12, but also recognises that protection of the child is not the sole consideration when they have harmed others. The Bill will mean that the age of criminal responsibility will increase from 8 to 12 years old, and no child under 12 will accrue a criminal record for their behaviour. Harmful behaviour by children aged eight to 11 will never, following the Bill's implementation, be treated as commission of an offence, but will be responded to in a different way. This is already the case in relation to behaviour by children under the age of eight.
- 1.3 In addition, the Bill makes provision in connection with this change in the areas of: disclosure of conviction and other information; provision of information to persons affected by harmful behaviour by children; and the powers of police to deal with harmful behaviour by children.
- 1.4 The draft response to the consultation is attached as appendix 1. In the draft response we welcome the raising the age of criminal responsibility in line with recommendation from the UN Committee on the Rights of the Child of a minimum age of 12 years old. We support the intention of the Bill to better protect children from the harmful effects of early criminalisation, while ensuring that incidents of harmful behaviour by those aged under 12 can continue to be effectively investigated and responded to appropriately.

- 1.5 The consultation process closed on 6 July 2018. The draft response (appendix 1) was submitted, in order to meet the timescale of the consultation, noting that approval will be sought at the Education and Children's Services Policy Board on 23 August 2018.
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2. Recommendations

- 2.1 The Education and Children's Services Policy Board is asked to homologate the draft response, as detailed in Appendix 1.
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3. Background

- 3.1 The Age of Criminal Responsibility Bill was introduced to Parliament on 13 March 2018 by the Deputy First Minister and Cabinet Secretary for Education and Skills, John Swinney, MSP¹. It is a Scottish Government Bill for an Act of the Scottish Parliament to raise the age of criminal responsibility to 12 years and to make consequential changes to the law on the disclosure of criminal records and other information. Provisions are also made in relation to the powers of police to deal with harmful behaviour by children and provision of information to persons affected by harmful behaviour by children.
- 3.2 The main purpose of the Bill is to raise the age of criminal responsibility (ACR) in Scotland from eight to 12 to align it with the current age of criminal prosecution and reflect Scotland's commitment to further realisation of international human rights standards so that:
- Children are not stigmatised by being criminalised at a young age due to being labelled an "offender".
 - Children are not disadvantaged by having convictions for the purposes of disclosure, which can affect them later in life.
- 3.3 The Bill proposes to further enable practitioners to turn around the lives of troubled, primary school age children, who are often vulnerable themselves. There is recognition that the harmful behaviour of children is often a symptom of deeper welfare concerns and trauma in their lives. Treating them as criminals does not help. Understanding this, and responding with compassion and the willingness to work with these children, will ensure that fewer go on to enter the criminal justice system as they grow into adulthood, and will help make Scotland a safer place for all.

¹ <http://www.parliament.scot/parliamentarybusiness/Bills/107986.aspx>

Current law

- 3.4 The current position, as set out in Section 41A of the Criminal Procedure (Scotland) Act 1995 states that “it shall be conclusively presumed that no child under the age of eight years old can be guilty of any offence.” This is understood to mean that a child aged under eight cannot commit an offence and therefore cannot be prosecuted. A child aged under eight who does something which would, if the child was aged eight or over, be an offence may be referred to the Principal Reporter for consideration of whether to arrange a children’s hearing in relation to the child. But the child cannot be dealt with on the ground that they have committed an offence.
- 3.5 Currently a child under the age of 12 years may not be prosecuted for an offence. This means that, while a child aged eight to 11 is considered capable of committing an offence, an offence committed by a child of this age is not dealt with through the criminal courts. Instead, the child may be referred to the children’s hearing system, where he or she may be dealt with using the offence ground or, depending on the circumstances, another ground. Children aged eight to 11 can acquire convictions currently, as the offence ground being accepted or established in or for the purposes of children’s hearings proceedings counts as a conviction. The offence has the potential to stay on a young person’s record for the rest of their lives. For young people, and specifically those who move between victimisation and offending, this may harm their future prospects and limit future life chances.
- 3.6 Article 40(3) of the United Nations Convention on the Rights of the Child sets out the requirement to set a minimum age of criminal responsibility. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”) ² Rule 4.1 requires that “the age shall not be set at too low an age level.” The United Nations Committee on the Rights of the Child has been consistently critical of Scotland’s low age of criminal responsibility and states that setting the age below 12 is not internationally acceptable.
- 3.7 In 2016 the Report of the Advisory Group on the Minimum Age of Criminal Responsibility³ recommended increasing the minimum age to 12. The public consultation which followed saw widespread support for increasing the age to 12 or older. The Age of Criminal Responsibility (Scotland) Bill was subsequently introduced in the Scottish Parliament on 13 March 2018.

Changes made by the Bill

- 3.8 The Bill will mean:
- The age of criminal responsibility will increase from 8 to 12 years old, and no child under 12 will accrue a criminal record for their behaviour.

² <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

³ <http://www.gov.scot/Resource/0049/00497071.pdf>

- Children aged 8-11 can no longer be referred to a children's hearing on the ground that they have committed an offence. They can be referred to the Reporter on one of the sixteen existing 'care and protection' referral grounds or effectively dealt with under the Whole System Approach. If necessary, a hearing will be able to make appropriate disposals to address their needs, and the causes of their behaviour.
- Victims of harmful behaviour by children under 12 may receive information about any reporter decision or children's hearing disposal connected to that behaviour.
- Victims of harmful behaviour by children under 12 will still be eligible for compensation under additional eligibility criteria.
- Where it is necessary to manage an immediate risk to the child or to others, the police will have the power to take a child to a place of safety. This is a short term measure to allow them to determine appropriate next steps for the care and protection of the child. Existing child protection procedures remain the most appropriate longer term measures.
- In connection with very serious incidents, the police will have the power to apply for a court order to interview or take forensic samples from a child under 12. Judicial oversight will ensure that these powers will only be used when it is necessary and proportionate.
- Police and social work will collaborate to plan and potentially carry out investigative interviews, with social work involvement being proportionate to the nature of the case and the extent and acuteness of the child's individual needs.
- Children under 12 will have access to additional support before, during and after any formal investigative interview. This will include a legally qualified advocacy worker.
- Anyone who was under the age of 12 when they received a conviction (including a conviction resulting from a referral to the children's hearing on the offence ground) will no longer have that disclosed.
- Non-conviction information relating to behaviour that occurred when an individual was under the ACR may be disclosed, but only following an independent review. This information can only be included on an Enhanced Disclosure Certificate or a Protecting Vulnerable Groups Scheme Record.

Consultation Response

- 3.9 In the draft consultation response we welcome the raising of the age of criminal responsibility in line with the recommendation from the UN Committee on the Rights of the Child of a minimum age of 12 years old. We support the intention of the Bill to better protect children from the harmful effects of early criminalisation, while ensuring that incidents of harmful behaviour by those aged under 12 can continue to be effectively investigated and responded to appropriately. Responding to childhood behaviour in a criminalising, stigmatising manner serves only to promote escalation and

further harm. We would therefore be supportive of future consideration of further incremental increase of the age of criminal responsibility.

- 3.10 Given the potential lifelong implications of the disclosure of information, we welcome the intention of the Bill to afford children the opportunity to learn and move on from rather than be hindered by mistakes made in childhood. However we recognise that there are some rare circumstances where, for the protection of vulnerable people, information may require to be disclosed. The role of the Independent Reviewer will be key and it's important therefore that guidance is developed to assist in ensuring decisions are made which balance the potential need for public protection with the rights of the child and fairness.
- 3.11 The Bill makes provision for child interview orders which authorise an investigative interview of a child in certain circumstances. Our reading of the Bill is that the intention is for these interviews, when required, to be jointly planned between police and social work and in the main jointly carried out. Although there may be only a small number of cases, there could be resource implications for local authorities of social workers being involved in carrying out interviews that would previously have been a police only role. We support the decision not to legislate for all interviews of children carried out under ACR and recognise this is proportionate and in line with GIRFEC principles.

Implications of the Report

1. **Financial** – There is no indication of financial implications. The provision of the Bill in relation to child interview orders and investigative interviews may lead to social workers being involved in interviews that are currently carried out on a single agency basis by police. However the volume of such interviews is expected to be very low.
2. **HR & Organisational Development** – None.
3. **Community/Council Planning** –
 - Our Renfrewshire is fair - The Bill aims to better protect children from the harmful effects of early criminalisation, while ensuring that incidents of harmful behaviour by those aged under 12 can continue to be effectively investigated and responded to appropriately.
 - Our Renfrewshire is safe – The policy of the Bill is to better protect children from the harmful effects of early criminalisation, while ensuring that incidents of harmful behaviour by those aged under 12 can continue to be effectively investigated and responded to appropriately. Action to address the child's behaviour will remain based on what is needed, commensurate with their age and stage of development, notwithstanding the removal of the criminal label.

- Building strong, safe and resilient communities - Raising the ACR seeks to make it explicit to children that while any behaviour under the age of 12 will be fully investigated, they will not be responded to by providing a stigmatising label or involving them in a process which re-creates adversarial criminal procedure. Rather, if the concerns about harmful behaviour are accepted or established, support will be provided in order to help the child understand and acknowledge the harm they have done, and to attend to their wider individual and environmental welfare needs, before supporting them to move on and rehabilitate from an incident in childhood.
 - Tackling inequality, ensuring opportunities for all - Given the potential lifelong implications of the disclosure of information, the intention of the Bill to afford children the opportunity to learn and move on from rather than be hindered by mistakes made in childhood supports the aim of ensuring opportunities for all. The Bill aims to improve the position of children with care experience (especially children looked after away from home) whose behaviours are more likely to have been reported to police, and therefore to attract a criminalising state response, than Scotland's child population in general.
4. **Legal** – The Bill changes the age of criminal responsibility in Scotland from eight to 12.
 5. **Property/Assets** – None.
 6. **Information Technology** - None.
 7. **Equality & Human Rights** – The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
 8. **Health & Safety** – None.
 9. **Procurement** – None.
 10. **Risk** - None.
 11. **Privacy Impact** – None.
 12. **Cosla Policy Position** – None.

List of Background Papers

(a) Background Paper 1

<http://www.parliament.scot/parliamentarybusiness/Bills/107986.aspx>

The foregoing background papers will be retained within Children's Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is Laura McLean, Child Protection Advisor, Children's Services. 0141 6186697, laura.mclean@renfrewshire.gov.uk .

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SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE

DATA PROTECTION FORM

Name:	Laura McLean
Date:	2/7/18
Organisation: (if required)	Renfrewshire Council Children's Services
Topic of submission:	Age of Criminal Responsibility Bill

☒ I have read and understood the privacy notice about submitting evidence to a Committee.

☒ I am happy for my name, or that of my organisation, to be on the submission, for it to be published on the Scottish Parliament website, mentioned in any Committee report and form part of the public record.

☐ I would like to be added to the contact list to receive updates from the Committee on this and other pieces of work. I understand I can unsubscribe at any time.

Non-standard submissions

Occasionally, the Committee may agree to accept submissions in a non-standard format. Tick the box below if you would like someone from the clerking team to get in touch with you about submitting anonymously or confidentially (not for publication). It is for the Committee to take the final decision on whether you can submit in this way.

☐ I would like to request that my submission be processed in a non-standard way.

EQUALITIES AND HUMAN RIGHTS COMMITTEE

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL

SUBMISSION FROM

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Please insert your response below

- 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 raising of the age of criminal responsibility in line with the recommendation from the UN Committee on the Rights of the Child of a minimum age of 12 years old. We support the intention of the Bill to better protect children from the harmful effects of early criminalisation, while ensuring that incidents of harmful behaviour by those aged under 12 can continue to be effectively investigated and responded to appropriately.

Responding to childhood behaviour in a criminalising, stigmatising manner serves only to promote escalation and further harm. As noted in the policy memorandum, Scotland has proven approaches to confronting and correcting this childhood behaviour that do not need a criminal justice response. We would therefore be supportive of future consideration of further incremental increase in the age of criminal responsibility, recognising the current framework of Getting Right for Every Child, including the Whole System Approach which encompasses early and effective intervention.

- 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.

Given the potential lifelong implications of the disclosure of information, we welcome the intention of the Bill to afford children the opportunity to learn and move on from rather than be hindered by mistakes made in childhood. However we recognise that there are some rare circumstances where, for the protection of vulnerable people, information may require to be disclosed. The role of the Independent Reviewer will be key and it's important therefore that guidance is developed to assist in ensuring decisions are made which balance the potential need for public protection with the rights of the child and fairness.

- 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?

We support any action which has the potential to provide additional support to children and young people. We welcome the intention for advocacy workers to be suitably qualified and experienced, however note the later proposal that the advocacy worker should be legally qualified. Caution is required to ensure that the advocacy role does not solely replicate the role of the duty solicitor. Consideration requires to be given as to how this role will engage with the child and key services and the role that they should play before and after any interview.

The Bill states the right of the child to have a supporter and the right to support and assistance from a suitably qualified and experienced advocacy worker independent of the local authority. Further clarification and guidance would be welcomed in relation to the appropriateness of both being present during the interview. The Bill indicates that an interview may not begin unless the supporter is on the premises. It is later noted that an interview may not begin unless the advocacy worker is on the premises. Does this mean that both supporter and advocacy worker must be on the premises for an interview to begin?

- 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.

The need to balance the best interests of the child with the needs of victims for appropriate relevant and proportionate information is recognised. The Bill appears to continue the victim information scheme that the Scottish Children's Reporter Administration already has in place which will, we believe, offer assurances to victims. Given the focus is on process information, such as decisions to convene a hearing and the determination of any such hearing, and remains at the discretion of the Reporter (within the legislative guidance), we do not see this as significantly impacting on the child. In practice, we anticipate that the potential for any disclosed information to be used against a child should be kept in mind in any decision making.

- 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 terms of the sections of the Bill relating to the taking of forensic samples, we would highlight the importance of appropriate child friendly facilities to undertake this task.

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

One of the earlier questions refers to a police interview. Our reading of the Bill is that the intention is for these interviews, when required, to be jointly planned between police and social work and in the main jointly carried out. Although there may be only a small number of cases, there could be resource implications for local authorities of social workers being involved in carrying out interviews that would previously have been a police only role. We support the decision not to legislate for all interviews of children carried out under ACR and recognise this is proportionate and in line with GIRFEC principles.