



Age of Criminal Responsibility (Scotland) Bill – Call for Evidence

Response from Includem

Background to Includem

Includem is a specialist charity supporting some of the most vulnerable, troubled and difficult to engage young people in Scotland. We believe that no young person is beyond help and that with a responsive, consistent service at the time of most need we can rebuild relationships, deliver positive, sustainable outcomes and unlock each young person's full potential.

Our work is focused on prevention – prevention of offending or reoffending, prevention of unnecessary accommodation away from home and prevention of exclusion from school. In all cases our framework of support consists of professional one to one relationships with focused work to deal with the underlying needs and challenges in order to develop hope, aspiration, resilience and improved family relationships.

Overview of our evidence

Includem welcomes the opportunity to participate in the Ministerial Advisory Group on the Age of Criminal Responsibility and to contribute our experience to the initial stages of this process.

We welcome the Bill overall and recognise a lot of work has gone into understanding the complexities involved in raising the age of criminal responsibility. We feel that overall a good balance has been struck, although we do not think 12 should be the settled age for criminal responsibility in Scotland.

We recognise from our experience working with young people that there is a clear link between the underlying complexity of their needs and their vulnerability and risk taking, harmful and offending behaviour. For many of the young people we support their past histories of abuse, neglect, trauma and loss have directly impacted on the behaviour which led us to working with them.

We would agree fully with the conclusion of the Advisory Group:

“rarely does a child demonstrate harmful behaviour without first having been harmed themselves”.

We therefore fully support the intention that the focus for children under 12 years of age should be on the welfare and wellbeing needs which need to be addressed in order to turn around the negative behaviours. In our view, this is a more appropriate and effective method of managing their risk to the wider community.

The Committee's specific questions

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 support this Bill, including raising the age to 12, recognising it is a step in the right direction. However our view is the same as the UN Committee on the Rights of Child – 12 is the absolute minimum states should set the age of criminal responsibility. The implicit expectation in that statement is that the age should be higher than 12, such as in the majority of European countries. Indeed only four other countries in the European Union have an age of criminal responsibility set at 12.

We would echo the comments of the Children's Commissioner:

"If Scotland is to be the best country to grow up in, we need to raise the age of criminal responsibility beyond 12 to make sure we support children rather than treat them as criminals."

There is a range of evidence which would point to 14 or 16 being a more appropriate age. We don't have a fixed view on this but would hope that once the age is raised to 12, the Scottish Government would keep an open mind on raising it further, in line with evidence.

The evidence is particularly clear on the impact that early criminalisation has on later criminal behaviour. The Edinburgh Study of Youth Transitions finds that contact with the justice system in early years is one of the key factors in further offending behaviour later in life. This would suggest that the less intervention from criminal justice processes the better if our aim is to reduce overall offending.

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.

This is one of a number of very complex areas which we think the Bill reaches a good balance between the young person being able to move on from behaviour at a young age and maintaining the safety of communities.

The design of the disclosure process envisaged in the Bill – with an independent review which will decide whether information should be disclosed – is good. However the detail on who will be part of this review is to follow in statutory guidance, and this is crucial to understanding how common disclosure will be. A presumption *against* disclosure, unless the independent review rules disclosure is required, could be a better way of looking at this issue.

Notwithstanding this, we would suggest a review mechanism of the decision to disclose is also required. If the independent review decides pre-12 behaviour should be disclosed, there should be a time limit

placed on that disclosure, after which the review should look again at whether disclosure of that pre-12 behaviour is necessary for public protection. This is an area the Committee may wish to explore further.

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 do not provide advocacy services, although our workers provide one to one support for young people in preparation for situations like a police interview. We may also accompany them to the interview or provide other support to their family.

Section 39 of the Bill provides for ‘the right to have a supporter’ in police interviews, and it is possible Includem’s staff may fulfil this role, as adults who have a strong personal relationship with the young person. If this was a role our staff were to take on we would need to consider our own training and support and ensure staff knew what the child’s rights were in this setting.

Section 40 of the Bill focuses on advocacy workers. We know from our experience supporting children and young people to attend Children’s Hearings that advocacy workers can play a key role in making sure the young person’s voice is heard, often in a room full of adults which can be extremely intimidating for young people.

Our only query with regard to Section 40 is the requirement for advocacy workers to be legally qualified. We can fully understand why this would be useful, however we note that the implementation of the advocacy service in the Children’s Hearings (Scotland) Act 2011 hasn’t happened yet – so there may be underlying issues around implementation that will have to be seriously considered before we can rely on this level of support being universally accessible for children across Scotland.

Sections 44-46 of the Bill, which focuses on interviewing a child in urgent situations, is also relevant in this regard. The proposed Scottish Government guidance on this will be crucial.

Finally, Sections 41, 38 and 42 outline a number of rights children have in a police interview setting. We would encourage the Committee to think about how communication of these rights can be strengthened in the Bill so that young people know about their rights, are confident enough to make use of them and are able to challenge professionals when those rights are infringed.

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.

This is another very complex area, and one which we recognise has an emotional connection regarding the impact of any changes on victims. We would start by pointing out that the young people we support are rarely perpetrators of crime in isolation – they are almost always victims too. Victims require support to manage their emotional responses and recover from any harm done, however we don’t see how this support would in any way change by the introduction of this Bill. The opportunities for aspects

of restorative justice should also remain, especially as restorative practice is becoming much more common in school settings for dealing with behaviour below the level of criminality.

The current approach to informing victims of the outcome of proceedings will, in our view, continue to work – with the Victim Information Service operated by SCRA providing useful information. The Bill makes a welcome suggestion that this approach should be maintained after the age is raised, and that the Principal Reporter should have the discretion to disclose or not disclose information to victims, balancing the rights and wellbeing of both victim and the young person who caused the harm.

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.

Again, we welcome the balance which has been struck in this section of the Bill. We appreciate the need for the police to have a range of powers to investigate and prevent crime, but equally know that these powers must be weighed against the rights of the child not to be questioned or have samples taken without a stringent legal process. Underlying these powers is the recognition that there are only a very small number of cases of serious crime where these powers will be required.

The sections relating to place of safety build on good practice from the Children’s Hearing system. We particularly welcome the statement that a police station would not be considered the most appropriate place of safety and that a more child friendly environment would be considered in all cases. We have some questions about the section on stop and search. While we fully recognise the need for police to have the power in a very limited set of circumstances to stop and search young people (e.g. to detect offensive weapons) it is not clear how this power will be applied when the legal basis (i.e. suspicion of having committed a criminal offence) no longer exists.

Indeed in the policy memorandum, the Government acknowledges that they currently have no robust evidence to show which stop and search powers are used and which are redundant. In our view it is the wrong way round to extend a power of stop and search to all under 12s without any suspicion of having committed a criminal offence before any evidence exists that those blanket provisions are required. The Committee could look at specific conditions on stop and search as an interim measure until such evidence is available.