**SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE**

**DATA PROTECTION FORM**

|  |  |
| --- | --- |
| **Name:** | **Social Work Scotland** |
| **Date:** | **5th July 2018** |
| **Organisation: (if required)** | **Social Work Scotland** |
| **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you would like someone from the clerking team to get in touch with you about submitting anonymously or confidentially (not for publication).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**

Please do not add any organisation logos

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?**

Social Work Scotland welcomes the intention of the Bill to raise the age of criminal responsibility to 12. However, we feel that this should be seen as an incremental step towards fully recognising the need to afford children of all ages particular protections, including the opportunity to learn and move on from rather than be hindered by mistakes made in childhood.

It is our view that there should be a clause inserted into the Bill which would require a review of the legislation within 3 years with a view to incrementally raising the age until all children are afforded protected status in the criminal justice system. Alongside any legislative change, a review of youth justice resourcing should take place with a view to strengthening and pivoting services away from youth “justice” towards youth “support”. This should include a recognition of the success already achieved in Scotland in reducing the overall number of young people being admitted to secure care and criminal justice facilities and a commitment to investment in early help for children and young people to avoid the development of problematic or harmful behaviour and/or provide community based voluntary supports where required to address this. We note the “Edinburgh Study”[[1]](#footnote-1) in support of our views which unequivocally makes the links between childhood offending behaviour and the wider needs of the child.

* **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, it is right that a significant portion of the Bill addresses this area. Social Work Scotland welcomes the introduction of the role of the Independent Reviewer which should provide an additional protection to children under the age of 12. We note that, in developing this role, guidance will be critical in ensuring that decisions are made which balance the potential need for public protection with the rights of the child and fairness. We feel that of particular importance is the intention for this specific aspect of the Bill to apply to all previous convictions incurred under the age of 12 and see this as critical to addressing the difficulties faced by some young adults today.

* **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?**

Social Work Scotland generally welcomes any action which has the potential to provide an additional support for children and young people. Advocacy support has grown exponentially in recent years, with many social work services commissioning specific advocacy supports, most notably for children who are looked after and accommodated or subject to child protection processes. Our understanding is that the proposal would be for advocacy to be delivered on a national basis and therefore this should be centrally funded by government. As the Bill moves through Parliament we would expect to see more detail within the relevant documents attached to the Bill, including the Financial Memorandum, as to the proposed skills and qualifications of the advocacy worker and the costing of such a scheme

We would hope in particular that the inclusion of advocacy support in this Bill also hastens the implementation of Section 122 of the Children’s Hearings (Scotland) Act 2011 in terms of provision of advocacy services for children and young people involved in the Hearings process. It is concerning that individual social work services have had to continue to fund this type of support where possible for the hearings system.

We would caution however in making any assumption that the provision of an advocacy service alone will protect a child’s rights. A social workers’ training and role is steeped in providing rights based support and to this end they play an equally critical role – we would point out that whilst the questions from the Committee are referring to a “police interview”, our reading of the Bill is that the intention is for these interviews, when required, to be at least jointly planned between police and social work. Our view is that the social work role will be important and care will need to be taken in drafting the role of the advocacy support provision to ensure that it complements rather than competes with the social work role in any planning or interview.

We would also note that, given the spirit of the Bill is to deliberately move away from any recognisable criminal process, care needs to be taken to ensure that the advocacy role does not by default replicate the role of the duty solicitor. Thought needs 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.

* **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.**

Social Work Scotland recognises the need to balance the best interests of the child with the needs of victims for appropriate relevant and proportionate information. The Bill appears to continue the victim information scheme that the Scottish Children’s Reporter’s Administration already has in place. This will we believe offer assurances to victims. As it focuses on process information ie 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 will need to 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.**

We note that with regard to specific details in provisions and restrictions on police powers that it will be for Police Scotland/ other criminal justice/ legal colleagues to comment on the functionality of the proposals. However, we would flag that the sections of the Bill which relate to interviews and examinations/taking of samples highlight the wider implications for us on ensuring that there are child appropriate facilities in order to undertake these functions. We are aware that, even in the case of child protection, we do not currently always have accessible child friendly facilities.

We consider that the majority of children who are affected by this Bill are unlikely to ever require a formal interview. This is supported by the Scottish Children’s Reporter’s Administration review of information in cases where under 12s have been referred to the Children’s Hearing on offence grounds. Where a child has displayed harmful behaviour in the circumstances identified in the Bill which would require a formal interview, Social Work Scotland welcomes the intention to design any investigative interview process with reference to existing child protection arrangements. This has the potential to be far less traumatising for a child and far more likely to be able to establish the truth of what has happened and support an assessment of the child’s circumstances. Guidance will be critical in developing the approach.

It is likely that in the majority of circumstances, those children who will require to be formally interviewed will already be known or should be referred to social work services. However, there is the possibility that the specific identification of social work involvement in at least the planning of any such interview process could see an increased burden being placed on the social work service and include children who would not otherwise be known to the service. Our understanding at this time is that the anticipated numbers remain low but robust dialogue and support will be needed as any new arrangements bed in. Given the current pressures within the system with reference to austerity and continued welfare reform, there is little flexibility should costs to social work services increase. On this basis, we would welcome a commitment to undertake a review of the revised arrangements under the Bill, once enacted, to determine the impact on key services and need for further resource.

We note that support may also be necessary in determining what the collective multi-agency response should be in situations where a formal interview is not required and the circumstances are not at the child protection threshold, but where specific needs may be identified. Whilst in many ways the obvious response to this is support provided within the wider Getting It Right For Every Child arrangements, recent difficulties and debate about legislation has contributed to significant confusion around information sharing. We would be concerned if new legislation such as this Bill, intended to strengthen the recognition of needs, is affected by the information sharing debate and has the effect of children not being referred for support.

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

Social Work Scotland welcomes the intentions of the Bill and would agree with other commentary elsewhere that the change in the age of criminal responsibility is long overdue. However, as has been highlighted in the aforementioned Edinburgh Study, robust investment is also needed in the provision of early help for children and young people to give effect to meaningful changes in their circumstances.

1. http://www.esytc.ed.ac.uk/ [↑](#footnote-ref-1)