

## SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE

### DATA PROTECTION FORM

<b>Name:</b>	Katherine Gilmour
<b>Date:</b>	7 <sup>th</sup> January 2019
<b>Organisation: (if required)</b>	Church of Scotland
<b>Topic of submission:</b>	Age of Criminal Responsibility (Scotland) Bill – Stage 2

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## **EQUALITIES AND HUMAN RIGHTS COMMITTEE**

### **AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL**

#### **SUBMISSION FROM THE CHURCH OF SCOTLAND**

### **General Comments**

The Church of Scotland welcomes the opportunity to provide further views to the Equalities and Human Rights Committee on the Age of Criminal Responsibility (Scotland) Bill at Stage 2. Our views on this topic are based on the established policy of the Church of Scotland and the operational expertise of our Social Care Council, (CrossReach). Through our work in communities and direct service provision through CrossReach, the Church of Scotland works directly with children, young people and families impacted by the youth criminal justice system.

As we stated in our original response, we are strongly supportive of the general policy intentions of the Bill, particularly:

- To ensure that children under 12 are not stigmatised by being criminalised at a young age by being labelled as offenders
- That children under 12 are not disadvantaged by having convictions for the purposes of disclosure with the lifelong impacts on education, employment and training
- Greater alignment with longstanding presumptions around maturity, rights and participation
- Improving the position of care experienced children and young people

With regard to the additional questions raised by the Committee at this stage, we wish to put forward the following views:

### **Increasing the age of criminal responsibility/prosecution to 14 or 16**

The Church of Scotland reiterates our view that the original proposal to raise the age of criminal responsibility to 12 is a necessary step in order to meet our international human rights obligations and to ensure a children's rights based approach underpins our youth criminal justice system. However, in our initial response, we questioned whether meeting the minimum age recommended by the UN Committee is enough to ensure that we can legitimately claim to be trying to make Scotland the best place in the world to grow up.

The Church of Scotland currently has no clear policy which would allow us to specify an age at which we think criminal prosecution and responsibility should be set but we would have strong reservations about simply meeting baseline standards. In our view, the

Committee should give significant weight to the following when considering the proposed amendments to the Bill.

While 12 is an important age in the development of civil legal capacity in Scotland, there are a number of decisions that remain withheld from children and young people until the age of 16, 17, 18 or 21 and the age of majority is still generally considered to be 16. Should children and young people be held criminally responsible for harmful behaviour when they are considered to lack the capacity to vote, drink, smoke or drive? We suggest there is significant inconsistency in this approach.

A children's rights based approach demands that we prioritise the best interests of the child in light of their evolving capacity to exercise their own rights. While all age limits are to some extent arbitrary, we should be working towards a more trauma informed, person centred legal and justice system that is capable of engaging with young people in a way that is appropriate to and supportive of their developmental stage, not simply their chronological age.

As stated in our original response, we agree with the Scottish Government that responding to childhood behaviour with criminalisation or stigmatisation promotes escalation and further harm. We strongly believe that a Scottish response to harmful behaviour by children should be seen in the context of GIRFEC and our responses should be rights based, child centred, focused on the best interests of the child and skewed towards early and effective intervention.

Our knowledge and understanding of human brain development and trauma informs us that children and young people need a safe and stable environment to grow and develop, and that the environment in which we grow up influences our understanding of the world in which we live. Current neuroscience research evidences that the human brain continues to develop throughout childhood and adolescence and it is generally accepted that it is not fully mature until into our early-mid 20's.

In Scotland there is a growing awareness of the strong body of international public health research on Adverse Childhood Experiences (ACEs) and the impact such trauma can, and does have, on how a child or young person, understands themselves and the world around them.

While this in itself does not mean that all children and young people who have experienced trauma, are unable to understand that their actions are unacceptable, it does mean that trauma can impact on their ability to understand the consequences of their actions and their ability to control their actions and responses.

In conclusion, our established policy is that at the very minimum, the age of criminal responsibility should be raised to 12. However, taking into account the above points, while we cannot suggest a specific age to the Committee, the Church of Scotland **welcomes their exploration of this topic and would be generally supportive of a higher age of criminal responsibility and prosecution for children and young people in Scotland.**

However while the Church as a whole cannot suggest a specific age, from their direct service base, our social care arm, CrossReach, would support an increase in the age of criminal responsibility and prosecution to 16 years based on their service experience and the most recent research around ACEs, trauma and brain development. In CrossReach's view, such a change would be supportive of the ongoing Independent Care Review and would be **a driver for improving practice and legislation in relation to both care system and youth justice system.**

## **Required service changes or additional services**

The Children's Hearing system is already set up and equipped to deal with young people's offending behaviour and already recognises the strong link between young people who offend being those who have been known to agencies at a much younger age with care and protection issues. The Church of Scotland believes that young people who offend are also young people in need of support and protection.

The Church of Scotland believes that there is a clear need for a 'whole system approach' where early intervention with families is high on the agenda for all universal and specialist services with the ultimate aim of reducing further offending by young people. In order to fully adopt this approach, there is a need for more restorative approaches to youth justice so that young people can learn from experience and make amends for hurt or damage caused in a constructive, not punitive, way. Often there can be a societal expectation that young people's behaviour should be 'punished' and that this is the only appropriate response to harmful behaviour. Shifting to a restoration model would also convey an important message for wider society about the value of holistic, community based, preventative and early intervention approaches to youth justice.

## **The impact on young people**

The Church of Scotland believes that evidence, both from our services and from best practice, would tend to support the view that there would be a positive impact of raising the age of criminal responsibility and prosecution.

- There would be a reduction in young people feeling stigmatised and labelled due to past behaviour
- Current, often less effective interventions which focus solely on the offending behaviour would become less relevant
- Young people would not gather a criminal record for behaviour which was as the result of a challenging childhood or family environment and therefore would not be stigmatised into adulthood
- There would be a positive impact on children who are looked after away from home as they often end up with charges related to behaviour in the care environment, something which their peers do not have to contend with

## **The potential cost and time implications for your organisation**

Raising the age of criminal responsibility and prosecution as envisaged above would require a greater focus on prevention and early intervention with families and funding would be required for this. A move towards a whole systems approach to youth justice would also require training and facilitation of the necessary restorative approaches which would satisfy the victim of any offence but also reduce the likelihood of further offending. Additional funding would be required to implement these approaches. As with all prevention and early intervention models, the increase in funding in the short term would be offset by long term savings due to improved outcomes including decreased offending and reoffending and decreased detention and policing costs.

## **Tying Scots Law in this area to the United Nations minimums**

As stated above and in our initial response to the Committee, the General Assembly of the Church of Scotland has repeatedly reaffirmed the support of the Church for the United Nations Convention on the Rights of the Child. In 2009, the General Assembly expressed their support for the recommendations of the Committee on the Rights of the Child, which included a recommendation to increase the age of criminal responsibility from the current age of 8. The Church of Scotland was also supportive of the age of criminal prosecution being raised to 12 in 2010. As we stated in our previous evidence:

**“The Church strongly believes that all States have a responsibility to ensure that they meet international minimum human rights standards. However, **meeting minimum standards is a baseline aspiration and should not be taken as the final goal in the realisation of human rights.**”**

Therefore, while we would argue that it is vital for Scots Law to be compliant with the UN minimum standards, we would be reluctant to support a move to tie us to internationally negotiated minimums. If Scotland aspires to be the best place in the world to grow up, we need to ensure that we are leaders in promoting children’s rights, not simply following international baselines.

## **Any other impacts in relation to...victims**

The Church of Scotland is mindful of the impact on victims of criminal behaviour, and recognises that the behaviour of children can still cause harm under the age of criminal responsibility. We acknowledge that the Bill does not diminish the current rights of victims of criminal behaviour and in fact allows for more information to be shared with victims of seriously harmful behaviour when the child is under the age of criminal responsibility than

the current system. We recognise that there will always be a need to balance the rights of victims of criminal behaviour and the rights of the child believed to have carried out the harmful behaviour and we welcome the explicit acknowledgement of this. As discussed above, we believe that service responses could be shaped to provide a clearer focus on restorative justice and that this would also support victims.

**For Further Information, please contact:**

Katherine Gilmour

Church and Society Council

[Kgilmour@churchofscotland.org.uk](mailto:Kgilmour@churchofscotland.org.uk)

0131 240 3006