

**Barnardo's Scotland briefing:
Stage 1 debate of the Criminal Justice (Scotland) Bill
27th February 2014**

Key Points

- **We welcome Section 42 of the Bill which represents an important step towards bringing the criminal justice system in Scotland fully into line with the UN Convention on the Rights of the Child.**
- **The Bill provides an opportunity for the Scottish Government to fulfil its commitment to consider raising the age of criminal responsibility.**
- **The Bill should ensure that the best interests of the child are also taken into consideration when holding, arresting, interviewing or charging a parent or carer.**

We welcome Section 42 of the Bill which puts a duty on constables to take into account the best interests of the child when they are arrested, held, interviewed or charged. However there are other areas of the Bill which we believe represent missed opportunities.

Raising the age of criminal responsibility from 8 to 12 in line with prosecution

We believe, as do other children's charities and experts in the field, that this Bill presents an excellent opportunity to close the loophole which leaves children as young as 8 still at risk of receiving a criminal record. While the Criminal Justice and Licensing (Scotland) Act 2010 raised the age of criminal *prosecution* to 12, the age of criminal *responsibility* stayed at 8.

The Children and Young People (Scotland) Act was passed by Parliament last week, and was underpinned by the Scottish Government's commitment to Get It Right For Every Child and make Scotland "the best place in the world to grow up". Unfortunately, this is hard to reconcile with an age of criminal responsibility in Scotland which is one of the lowest in Europe. To ignore the chance to raise the age of criminal responsibility in this Bill would be a missed opportunity to further these commitments, and we do not believe that enough of an explanation has been given to its omission.

Our services often work with children who have been referred to children's hearings on offence grounds, and who simply accept the grounds in order to save time or because they do not understand the process. This can result in children as young as 8 inadvertently ending up with a criminal record, something which may have consequences for them for the rest of their lives. Despite the fact that this situation is relatively infrequent, it is always unacceptable and we believe this is a loophole that needs to be closed.

The Convenor of the Justice Committee said 'the case [for including raising the age of criminal responsibility in this Bill] had been made powerfully' by Morag Driscoll ¹ yet the Stage 1 report only states that '*The Committee welcomes the Cabinet Secretary's undertaking to give consideration to raising the age of criminal responsibility and would welcome regular updates on this work*'² We do not believe this goes far enough. We hope the Justice Committee will continue to press this issue as the Bill progresses, and we would urge both the Committee and the Scottish Government to re-consider raising the age of criminal responsibility through this Bill.

The best interests of the child

We were pleased to note the Committee's recommendations for consistency in language throughout Part 42 of the Bill. We voiced concerns in both our written and oral evidence at stage one about the use of the term 'wellbeing' within the Bill. We would welcome further explanation of the use of 'wellbeing' as opposed to 'welfare' and seek assurance that if used, the term 'wellbeing' would achieve the policy intention of considering the 'best interests' of the child, in accordance with Article 3 of the United Nations Convention of the Rights of the Child (UNCRC).

We welcome the policy intention in this section to place a duty on constables to consider the best interests of the child when holding, arresting, interviewing or charging a child. However we would also like to highlight that the best interests of the child in relation to the holding, arresting, interviewing or charging of **a parent or carer should also be taken into account** . Article 3 of the UNCRC states that '*the best interests of the child shall be a primary consideration in all actions affecting children*'³. We would therefore like to see consideration of the best interests of the child run throughout this Bill and not just in Section 42. When a parent or carer gets arrested and taken into custody, the impact on the child is likely to be huge; this is a decision which will certainly affect them. Amongst other things, children affected by parental imprisonment are three times more likely to suffer from mental health issues than other children and are more likely to end up in prison themselves.

We would like to see acknowledgement within the Bill of this vulnerable group of children. As a wide reaching justice bill this legislation has the scope to look at all areas of the justice system. The needs of dependent children should be considered at all points of a parent or carer's journey through the justice system.

Barnardo's Scotland is currently working with Families Outside and other organisations to promote the use of Child and Family Impact Assessments. As proposed, these assessments would be used after the sentencing of an offender to establish the welfare needs of any dependent children. The assessment would ensure that children receive an appropriate, tailored level of support whilst their parent or carer is incarcerated. We believe these assessments would be an important step in highlighting and supporting this vulnerable and often hidden cohort of children.

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¹ Scottish Parliament Justice Committee. Official Report, 8 October 2013, Col 3382.

² http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/juR-14-03w.pdf (pg 40)

³ United Nations (1989). Convention on the Rights of the Child. Article 3.