



# Age of Criminal Responsibility (Scotland) Bill

## Evidence to Equalities and Human Rights Committee by Barnardo's Scotland

July 2018

### Key points

- **Barnardo's Scotland is supportive of this Bill, which will improve the lives and life chances of children under 12 who are involved in harmful behaviour.**
- **We would welcome further dialogue, outside of the Bill process, around a further increase in the age of criminal responsibility in future.**
- **The appointment of an independent reviewer for the disclosure of information about harmful behaviour that occurred under the age of 12 is to be welcomed, but it will be important to have opportunities to influence the ministerial guidance around this post.**

### Introduction

Barnardo's is the UK's largest children's charity. We support thousands of children, young people and families every year in over 130 services across Scotland.

Barnardo's Scotland has campaigned for many years to see the minimum age of criminal responsibility (MACR) in Scotland increased, and we welcome the introduction of this Bill, which we recognised as the culmination of many years' work and consultation.

We work with some of our most vulnerable young people, many of whom have experienced significant trauma, adversity and multiple disadvantages throughout their childhood. The extensive research on Adverse Childhood Experiences (ACEs) and the continually emerging research on neuroscience show that these early experiences can result in increased likelihood of risk taking behaviours such as offending. The Welsh ACE study found a strong positive relationship between the number of ACEs an individual had experienced and the risk of imprisonment, with the odds of imprisonment



being 20.4X higher for those who had experienced 4+ ACEs when compared to those with none.<sup>1</sup>

We must ensure our responses to the behaviour of children in distress, when this behaviour brings them into contact with the law, is dealt with in a way that is trauma-informed and does not cause more harm to that child.

## Age of criminal responsibility

Our starting point in campaigning for an increase in the MACR has always been that it must be raised to an internationally acceptable level, in line with the United Nations Convention on the Rights of the Child (UNCRC). We believe that raising the MACR from 8 to 12 gives a signal that Scotland has recognised the concerns raised in relation to our adherence with the UNCRC. We are therefore supportive of the Bill at this time.

However we have also recognised that raising the MACR to 12 would meet no more than our minimum obligations, and we would encourage the Scottish Government and others to view this Bill as a staging post or a starting point. The Policy Memorandum accompanying the Bill sets out the intention to “reflect Scotland’s progressive commitment to international human rights standards”, and with this in mind we would hope that discussion on the possibility of further raising the MACR (to bring us more into line with the international examples given at paragraph 18 of the Policy Memorandum) would continue.

Recognising that it has taken three years to get from the setting up of the Advisory Group to the laying of this Bill, we would not wish the Bill to be delayed or jeopardised; it provides significant possibilities to improve the lives and life chances of children under 12 who are involved in harmful behaviour. However we would welcome the opportunity to continue the dialogue on the MACR in Scotland, to consider whether or not a further increase is supported, and what would need to change if this were brought into law.

## Disclosure of information

The raising of the MACR ensures that information on harmful behaviour that occurs under the age of 12 is not automatically included in state disclosures, and this is to be welcomed.

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[http://www2.nphs.wales.nhs.uk:8080/PRIDDocs.nsf/7c21215d6d0c613e80256f490030c05a/d488a3852491bc1d80257f370038919e/\\$FILE/ACE%20Report%20FINAL%20\(E\).pdf](http://www2.nphs.wales.nhs.uk:8080/PRIDDocs.nsf/7c21215d6d0c613e80256f490030c05a/d488a3852491bc1d80257f370038919e/$FILE/ACE%20Report%20FINAL%20(E).pdf)

2

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Under the Bill as drafted, the police could still make information about harmful behaviour that occurred under the age of 12 available to Disclosure Scotland, if this is deemed to be appropriate by an independent reviewer. While the safeguard of an independent reviewer is to be welcomed, the detail of how this reviewer will make their decisions will be crucial, and we hope that there will be opportunities to influence the Ministerial guidance as it is developed. We have called in previous responses for a presumption against disclosure, and we would hope to see this included in the guidance. We also note that the independent reviewer has the ability to seek further information, including from the applicant, and we would like to see a presumption that they would do so.

## Right to advocacy

Access to advocacy is a crucial aspect of enabling children and young people to understand and claim their rights, and we are supportive of the inclusion in the Bill of a right to advocacy for those subject to a police interview. It is worth noting that in other contexts a right to advocacy support is curtailed by the availability of advocates on the ground; to make this commitment meaningful, advocacy services will need to be properly resourced.

## Police powers

We do not have detailed comments on the police powers laid down in the Bill. Viewing these powers through a lens of children's rights, we would hope that a process could be set up to monitor how and how often these powers are used by police, so that over time we can be sure that the needs of the police to gather relevant information are being balanced against the rights of children; this seems to us to be particularly relevant in relation to the powers to stop and search young people, and to compel a child to comply through use of restraint or force.

### For any queries or further information, please contact:

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