

Cross Party Group on Children and Young People
Minutes for Wednesday, 6 February
13:00 – 14:30
Committee Room 1, Scottish Parliament
Age of Criminal Responsibility (Scotland) Bill

Chair: Fulton MacGregor MSP

Fulton MacGregor MSP	Alex Cole-Hamilton MSP	Alison Johnstone MSP
Sara MacFarlane	Maria Doyle	Megan Farr
Fiona Dyer	Kirsten Shield	Paul Beaton
Emma Rogan	Juliet Harris	Sarah Paterson
Mark Ballard	Richard Cockbain	Carolyn Stephen
Amy Woodhouse	Morag Driscoll	Mark Allison
Robbie Burgess MSYP	Laura Pasternak	Bruce Adamson
Jemma Tracey	Patricia Hutchison	Susan Hunter
Steph Livingstone	Hannah Patience	Sophie Thom
Kiara Lenaghan	Alison Howells	Gemma Shearer
Mariead Corrigan	Andrea Littlefield	Jim Devoy
Liam Furby	Deva McGinty	Daniel Rutherford
Ellie Hutchison	Elaine Leith	Angus Maclean
Brian Magee		

1. Welcome from Chair and Previous Actions

The meeting was opened with a welcome from Chair, Fulton Macgregor MSP.

The previous minutes from the November meeting on grandparents' rights contact were agreed. Emma Rogan from Children in Scotland updated CPG members on progress on previous actions:

- The Children and Young People's Panel on Europe were due to meet convenors of the CPG including Alex Cole Hamilton. No meeting was achieved before the end of their funding. They will pursue this if they receive a second round of funding
- The CPG will send minutes from the November meeting to the Justice Committee.
- The CPG will encourage the Justice Committee to have an evidence session with children and young people on the Family Law Bill when appropriate.

2. Age of Criminal Responsibility (Scotland) Bill in context – Paul Beaton, Bill Team Leader, Age of Criminal Responsibility (Scotland) Bill – Scottish Government

Paul Beaton is the Bill Team Leader for the Age of Criminal Responsibility (Scotland) Bill at the Scottish Government.

The Equality and Human Rights Committee met to discuss the first parts of the Bill last week, covering the minimum age itself, disclosure and victim support. The Committee will meet again tomorrow and will be discussing Police powers.

Paul highlighted that much of the debate has been regarding the age of criminal responsibility itself, which has been known to have been out of date in Scotland for a long time. Paul credited the ongoing sustained engagement across the board and the collaborative approach that has led to this Bill.

Paul gave some background to the current Bill. Previous discussions around the turn of the century led to a recommendation of moving to an age of prosecution, rather than an age of criminal responsibility however this was not felt to be a viable.

In 2013, there was further debate alongside the Criminal Justice Bill. This led to a renewed urgency to review the age of criminal responsibility in Scotland. Following this, an advisory group was set up in 2015 which in turn led to a number of working groups who made detailed proposals on next steps.

All of this has led us to where we are today. The Bill itself has 69 sections, only 3 of which deal with the actual age of criminal responsibility itself, Paul Beaton focused on the first two sections that look at:

- Raising the age of criminal responsibility to 12
- Changing the grounds of referral to Children's Hearings

Changing the age of criminal responsibility represents a conceptual shift which brings up a range of practical issues that the Bill addresses, including:

- Detailed proposals regarding Police powers of investigation
- Victim support
- Disclosure

Paul stated that the needs of the child should be central at all times, while maintaining public confidence in the system.

Paul went on to talk about disclosure. He identified that it is important that childhood behaviour should not unnecessarily impact on later life, however there may be circumstances where information continues to be relevant. This Bill proposes an independent reviewer who can look at whether information is relevant and should be disclosed.

Paul also looked beyond this Bill asking, how do we build on this in the future? What happens next? It is important that we look at transitions for children into adult systems, which links to the Disclosure Bill.

Paul reiterated his gratitude for the authentic discussions that have focused on how to make this work to the highest standard without unnecessary oppositionalism.

3. Panel Contributions

Alex Cole-Hamilton MSP and Fulton MacGregor MSP began the discussions, each giving their own perspective as members of the Committee discussing the Bill.

Alex Cole-Hamilton MSP

Alex began by saying all members of the Committee have approached the work with good will.

Alex stated that Scotland's age of criminal responsibility has been an anomaly in the international context. There were attempts to raise the age in the last Parliament which set the framework for this Bill.

Alex stated that there have been 2 international interventions on the matter. The first from Dunja Mijatović, the Council of Europe's Commissioner for Human Rights, who has advised that the age should be raised to 14. The second being the revised UN General Comment number 10 which encourages state parties to raise the minimum age to 14.

Alex believes that there is unanimity in the sector for the age to be raised to 14, although he personally would like to see it raised to 16. Alex informed the CPG that he had tabled a range of amendments that covered different circumstances.

Alex said that a key piece of evidence for him was the testimony of a young woman named Linsey who spoke about her own experience. Linsey is care experienced and when she was taken into care, she kicked off which resulted in her being arrested. Alex stated that in the middle of one adverse childhood experience, the State handed her another. If the age of criminal responsibility is raised to 12, this would still have had no impact on Linsey, who was 13 at the time.

Alex is committed to continuing to seek uplift beyond 12 years old.

Fulton MacGregor MSP

Fulton shared that his personal view would be to increase the age to 14 or 16 however it has become clear to him that this is a process. He credited the evidence and work that has been done to this point but stated that there is a risk that if we went for 14 or 16 years old, there would be a risk of not achieving 12.

Fulton stated that he sees this as a journey, a process and encourages services in the country to hold on.

Megan Farr, CYPCS

The CYPCS continues to state that the age of criminal responsibility should be raised to 16 with being the minimum international acceptable standard. The UN Committee has advised that it should be higher than 12 since 2003.

Scotland has stated its commitment to Human Rights Standards however raising the age to 12 would be at odds with this.

Megan stated her belief that most of the work to raise the age to 14 has been covered in the work exploring raising the age to 12.

Megan referred to Professor Anne Skelton's statement that we should be confident in the Children's Hearing's ability to deal with a range of issues and ultimately, it has the same range of powers to deal with matters that come before it. Megan highlighted that in South Africa, they are in the process of raising their minimum age of criminal responsibility to 14 but have had to pause to implement a children's hearing system to accommodate this; Scotland already has the system in place.

Juliet Harris, Together

Juliet offered her congratulations to the Minimum Age of Criminal Responsibility Advisory Group and those involved in the campaign.

Juliet highlighted that the Scottish Government action plan that previously committed to raising the age of criminal responsibility is now 10 years old; old enough to have criminal responsibility.

The Do the Right Thing progress report from 2012 gave a commitment that the age of criminal responsibility would be raised during that Parliament, which did not happen.

Juliet stated that the advisory group worked effectively, meeting 4 times in 5 months and making a range of recommendations. The terms of reference for that group did not include exploring raising the age above 12 but the group would have happily done so if the terms of reference had been different. Juliet reiterated Megan's view that much of the learning regarding raising the age to 12 would apply to raising it to 14.

Juliet also referred to the UN General Comment that has stated that 12 years old is not high enough since 2007. Juliet informed the CPG that the Philippines is currently experiencing a human rights crisis and are looking at lowering the age of criminal responsibility to 12, to outrage. Juliet stated that Scotland should not be celebrating raising the age to 12.

Juliet indicated that the First Minister has suggested that the age would be up for review in the future. Juliet referred to Prof Skelton's view that a commitment to reviewing the age should be written into the legislation to ensure that it happens.

Fiona Dyer, CYCJ

The CYCJ supports raising the age of criminal responsibility to 16. A study in Edinburgh on youth transitions and crime identified 14-16 years old as being a key age. Fiona stated that bringing children and young people into the criminal justice system is the biggest factor in them continuing to be in the system and reoffending. The emphasis should be on support, care and protection.

Research shows that 71% of children in the criminal justice system are care experienced; 61% have witnessed domestic violence and a high majority have experienced abuse and neglect. Fiona does not believe that actions should be ignored or excused and that victims should be ignored, but that children should be treated as children. Megan agreed with this point, that there is evidence that this approach works and is safer for everyone.

Fulton interjected at this point. He said that much of the evidence that the Committee heard was similar to what has been discussed so far today, so why are they not suggesting raising the age to 14?

Fulton said that it is important to see the whole evidence in context. Discussions can get caught up on focussing on the age and not looking at the whole system around it.

Fulton stated that it is hard to make comparisons with other systems. As part of his work with the Committee, Fulton visited Norway to see their Barnahus model. In Norway the age of criminal responsibility is 15 however he was told they can go below this in serious cases; all systems manage things differently.

Fulton emphasised the importance of taking the systems and processes with us and drew on his own experience as a social worker in the child justice team. As an SNP politician, Fulton stated that he is not opposed to raising the age beyond 12, he just has a different view about how we get there.

Alex said that it has taken 80 years to raise the age to 12, he does not believe that the age will be reviewed again this session.

Alex said that the response to Mijatović's comments suggested that our system couldn't manage, that the volume of cases would be this prohibitive. However, only 11 12-14 year olds went to trial last year.

Bruce Adamson sought to clarify that any prosecutions under the age of 14 are condemned by the UN, even if these are exceptions to the age of criminal responsibility. The standard across the board is 14 and all of the evidence suggests it should be 16 or higher. The Council of Europe has stated that it is not acceptable for it to be lower than 14 in Europe, including exceptions to prosecute under 14.

Robbie Burgess, MSYP

Robbie is also the convenor of the EHRC for SYP.

At this time, SYP does not have an official stance on the age of criminal responsibility.

SYP gave recommendations regarding Police interviews, which centred on ensuring that the young person understands the circumstance and what is happening.

The SYP will have its next sitting in March and there is a committee motion on the age of criminal responsibility. The motion proposed is:

SYP believes that the age of criminal responsibility should be raised to 16 in line with UN recommendations.

If this motion is passed, it will become SYP policy. At that point the Committee will be a Stage 3 with the Bill.

Robbie advised to follow the SYP twitter for updates on their position.

Richard Cockbain – Police Scotland

Richard leads the Police Scotland age of criminal responsibility team. Police Scotland are in support of raising the age and have dedicated resources and a commitment to working with partners to work with a new age.

However, as an apolitical organisation, Police Scotland do not have a view on what the age should be raised to. Whatever the age is raised to, Police Scotland is fully committed to ensure:

- A child centred process
- A balance with statutory duties to investigate crime
- Support for victims

Morag Driscoll and Mark Allison – The Law Society

Morag stated that the process would not be greatly different if the age were to be raised higher than 12 and there would be no legal impediment to doing this.

Children accused of more serious crimes are supported.

The only issue for consideration is regarding appeal to the Independent Reviewer and the Impact on Disclosure. In the Children's Hearing system, an assessment is made on the balance of probability, rather than by the criminal standard of proof beyond reasonable doubt. This could lead to more matters being Disclosed. Matters remain on your record for Disclosure for 20 years or until you are 40, whichever is longer.

Morag highlighted the need to ensure that children comprehend the system and what is going on. She raised that if an adult had a mental age of a 14 year old, there would be questions raised about whether or not they were fit to stand trial.

Mark stated that the majority of children go through the Children's Hearing system and the powers are largely the same. He feels it becomes a labelling issues – do we want to label them as criminals or a child in need of support?

The Children's Hearing system is designed to have additional safeguards for children however Mark reiterated that it is a concern for the Law Society that an unintended consequence could be the presumption of an offence that could later come up in Disclosure.

Alison Johnstone – MSP

Alison said that this had been an interesting debate, and one long overdue. Alison reiterated that the UN calls for a minimum of 14, although personally she would be in favour of 16. Alison said if we want to be an internationally progressive country we can and should do better.

4. Open Floor Discussion

Additional comments regarding Disclosure

Megan Farr, CYPCS –The draft revised General Comment has a presumption against Disclosure on children under the age of 18. The case should be made at the time if the matter should be disclosed, rather than the child having to apply to have something removed.

Morag Driscoll, Law Society - highlighted the unintended consequences of Disclosure and told the CPG about a student nurse whose Disclosure revealed that she had a conviction for stealing. In order to continue with her studies, she had to

share that she had been stealing food due to an abusive childhood. Morag highlighted that people don't always know about the protections in place.

Morag also raised the need for care to be taken when disclosing to victims in small communities. Megan shared this concern and flagged that if the victim was a child and disclosed to, they could risk committing an offence by sharing the information.

Alex Cole-Hamilton, MSP - returned to Alison Johnstone's point about Scotland's standing in the international community. He is concerned that it impacts on Scotland's ability to take a stance on the world stage and criticise other countries. Alex stated that Russia and China have higher ages of criminal responsibility than Scotland. We cannot be a human rights leader with this age.

Fulton MacGregor, MSP - disagreed and said that Scotland will still be able to criticise international wrongs.

Juliet Harris, Together - asked what we can do as a CPG. It was agreed that the CPG would write to the Minister with a summary of the discussion today and to ask them to articulate a timescale where the age of 14 or 16 could be considered.

Fulton said that there has been some discussion of this at Stage 2. The committee weren't keen to put a clause regarding timescales in the Bill as it is not known who the government would be.

Juliet suggested that the previous advisory group completed their work in 5 months so additional work to explore 14/16 could be done in the next 12 months which would be within this Parliament. Juliet felt that this is a smaller task which would not require long.

Paul Beaton, Scottish Government - said that he feels optimistic. However, there is still work to be done to explore raising the age to 14. There is a good amount of overlap but the issues are not the same. He would be wary of committing to an uncertain timeframe. Paul highlighted that the number of cases for consideration before the crown office is not as low as the numbers that end up in court.

Paul also raised that comparisons on an international level can be flimsy. For example, in the Philippines, UNICEF has intervened as while the age of criminal responsibility is set at 15, this is not meaningful and not adhered to. The same goes in China. The number might be higher but it is about what you do. Paul said that the decision to raise the age to 12 is not a final decision and praised the swift response of the working group. He believes that a timescale for reviewing the age would be helpful.

Amy Woodhouse, Children in Scotland - Children in Scotland support raising the age to 14 and come to the debate from a lay perspective. Amy asked, given that there is such a wide range of support to raise the age to 14, and Police Scotland say that they will support whatever age, and the Law Society say that there is no legal barrier to raising the age; what are the challenges of raising the age to 14?

Paul replied that part of the reason is to do with cultural practices and norms, we don't want to lose public confidence. Reassurance is needed with regards to victim support. The jurisdiction of the Children's Hearing system will also have to change.

Paul highlighted additional work required as not all 16-17-year olds are in the Children's Hearing system, which is problematic. Interventions that go beyond 18 also need to be looked at and how the transitions between systems works.

With regards to raising the age, the work to raise it to 12 made the big cultural argument and is the first step. However, we want to make sure everyone comes with us and we don't lose the sense of collaboration.

Fulton reiterated that there is not a reason to not move to 14 or 16. However, at this stage there is at least one political party unwilling to go above 12 and risk losing the collaborative aspect of the debate so far. Do we want to have the argument now, lose and risk losing even raising the age to 12?

Richard said that it is not just those who end up in court we need to consider. The number of people whose lives can be changed and who could be supported, and the number of investigations is higher than the number that ends up in court.

Police Scotland want a legal framework that:

- Deals with children and young people with harmful behaviour
- Protects the public
- Investigates crime

We need the tools to do what's right.

Fulton wanted to give the last word to a young person and asked Robbie for his final remarks. Robbie said that SYP are hoping to have an official stance soon and encouraged people to watch what happens.

5. Agreed Actions and Close

- CPG to write to the Minister with a summary of the discussion today and to ask them to articulate a timescale where the age of 14 or 16 could be considered.

Next meeting date

24/4/2019 – 13:00 – 14:30