



Child Care and Justice – Consultation on Raising the Age of Referral to the Principal Reporter

7 October 2020

Giving all children in Scotland an equal chance to flourish is at the heart of everything we do.

By bringing together a network of people working with and for children, alongside children and young people themselves, we offer a broad, balanced and independent voice. We create solutions, provide support and develop positive change across all areas affecting children in Scotland.

We do this by listening, gathering evidence, and applying and sharing our learning, while always working to uphold children's rights. Our range of knowledge and expertise means we can provide trusted support on issues as diverse as the people we work with and the varied lives of children and families in Scotland.

Children in Scotland is pleased to be able to respond to this consultation. Over the past few years, Children in Scotland has responded to a number of consultations relating to youth justice and children and young people's experiences of court and the Children's Hearing System. These include the Youth Justice Standards consultation, the Call for Views on the Children Scotland Bill and the Age of Criminal Responsibility (Scotland) Bill consultation.

Our response to this consultation focuses on children's rights and refers to evidence and recommendations from across the sector. Throughout this response we use the term 'child' to refer to those under 18 years old – this is in keeping with the consultation document and with the definition of the term child as adopted by the United Nations Convention on the Rights of the Child (UNCRC).

1) Do you agree that the maximum age of referral to the Reporter should be increased to 18?

a) Yes – All cases

Children in Scotland supports raising the maximum age of referral to the Principal Reporter and believes that this should apply in all cases including care, protection and offence cases. This will help to ensure that decisions are made that are based around the developmental stage and support needs of the individual, rather than simply using 16 years of age as an arbitrary cut-off.

Young people under the age of 18 are officially recognised as children in The Children and Young People (Scotland) Act 2014, Getting in Right for Every Child (GIRFEC) and in the UNCRC.

Raising the maximum age of referral firmly aligns with the Scottish Government's GIRFEC approach, ensuring young people receive the right help, at the right time, from the right people. The key principles of Getting it Right for Every Child are that interventions are child-focused, based on an understanding of the wellbeing of a child in their current situation, based on tackling needs early on, and that interventions require joined-up working between children, young people, parents and services. Children in Scotland believes that by raising the maximum age of referral additional support options will be made available to 16- and 17-year-olds, these options will be discussed by services, and the decisions made will take into account the best interests of the child, helping to ensure the welfare of the child is paramount.

Raising the maximum age of referral for all cases is also consistent with a child rights-based approach in line with the United Nations Convention on the Rights of the Child. Under the Children and Young People (Scotland) Act 2014, there is already a requirement on duty bearers to consider children's rights and the UNCRC in their actions, and the introduction of The UNCRC (Incorporation) (Scotland) Bill on 1 September 2020 means the rights of children up to the age of 18 may soon be enshrined in Scots law. Article 3 of the UNCRC dictates that the best interests of the child must be the primary concern when states make decisions that impact children, while Article 4 compels state parties to take all available measures to make sure children's rights are respected, protected and fulfilled.

Article 40 of the UNCRC states that children alleged as, accused of, or recognised as having infringed the law should, where possible, be dealt with without resorting to judicial proceedings. It advises that a range of alternative options should be considered including care, guidance and supervision orders, counselling and education and vocational training programmes. It also clearly states that 'children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence'¹.

Furthermore, a 2015 report by Together (Scottish Alliance for Children's Rights) exploring the implementation of the UNCRC in Scotland recommended that 'all children who commit offences should be dealt with in a non-adversarial

¹ [The United Nations Convention on the Rights of the Child, page 12](#)

system with a strong welfare orientation'². This report was endorsed by a large number of non-government children's organisations including Children in Scotland. Children in Scotland believes a change in legislation to allow all 16- and 17-years-olds to be referred to the Principal Reporter would ensure more older children are dealt with through the child-centred children's hearing system, aligning with obligations under the UNCRC.

In the paper 'Young People at Court in Scotland', Fiona Dyer of the Centre for Youth and Criminal Justice (now Children and Young People's Centre for Justice) explores government policy and legislation relating to young people appearing in adult courts. Dr Dyer recognises the inconsistency in the approach relating to 16- and 17-year-olds not subject to a Compulsory Supervision Order stating 'Currently, in practice, even when defined as a child, many young people are still being treated as adults by the criminal justice system and processes'.³

Dyer goes on to recommend that all young people under 18 who offend and cannot be diverted to non-formal measures such as Early and Effective Intervention, should be reported to the Children's Reporter.

A change in legislation would also support with the Scottish Government's Youth Justice Strategy⁴, in particular the Whole System Approach⁵ – a flexible approach to youth offending that champions Early and Effective Intervention and tackling problem behaviour before it escalates with proportionate responses aimed at supporting children and young people rather than punishing them. The Whole System Approach is person-centred and recognises children and young people's unique life experiences and backgrounds.

We believe that maximum age of referral to the Reporter should be increased to 18 for all cases not just care and protection cases. As highlighted in the consultation document, we know that many children and young people become involved in crime and harmful behaviour because of challenging family circumstances and the impact of childhood trauma. The complexity of youth offending and its link to children's upbringing was first highlighted in Lord Kilbrandon's 1964 landmark report which led to the creation of the Children's Hearing System. There is now a growing body of evidence⁶ that children involved in offending behaviour are some of the most vulnerable in our society and have often experienced adversity or victimisation in their lives. This includes exposure to abuse, neglect, and

² [Implementation of the UNCRC in Scotland – NGO Alternative Report \(2015\)](#)

³ [Young People at Court in Scotland \(2016\)](#)

⁴ [Preventing offending: getting it right for children and young people \(2015\)](#)

⁵ [Scottish Government - Whole System Approach](#)

⁶ [The Links Between Victimization and Offending \(2004\);](#)

[Youth Crime and Justice \(2010\);](#)

[Backgrounds and outcomes for children aged 8 to 11 years old who have been referred to the Children's Reporter for offending \(2016\);](#)

[Looking Behind the Data \(2018\);](#)

[Understanding childhood adversity, resilience and crime \(2018\)](#)

parental substance misuse. Research also shows a strong link between living in deprivation and violence by young people.⁷ Children in Scotland believes that raising the maximum age of referral will mean all children – including vulnerable 16- and 17-year-olds involved in offending behaviour – have the potential to benefit from the support of the Children’s Hearing System.

We agree with the assessment of the Children’s Hearings Improvement Partnership working group that young people aged between 16 and 18 can present with similar vulnerabilities to those of younger children. Raising the maximum age of referral will help ensure older vulnerable children do not fall through the gaps of adult-focused system. Children in Scotland has significant concerns about the anomalies identified in the consultation document. These cases highlight the weaknesses of the current system and identify scenarios in which vulnerable 16- and 17-year-old children would not receive child-centred interventions and the support they are legally and morally entitled to.

We believe that only the most serious offences (those prosecuted under solemn procedures) should be reported to the Procurator Fiscal but, even in these cases, remittal to the children’s hearing system should always be considered.

2. If the age of referral is increased to 18, are the existing grounds of referral to a Children’s Hearing sufficient (see pages 11-12 for existing grounds)?

a) Yes

We believe that the existing grounds for referral are comprehensive and would not need to change if the maximum age of referral was increased to 18.

3. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for local authorities, Police and other service providers/organisations?

4. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for SCRA (the public body which operates the Reporter service)?

5. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for Children’s Hearings Scotland (the body which operates the national children’s panel)?

Raising the maximum age of referral may have resource implications for local authorities, Police, SCRA and Children’s Hearings Scotland however, Children

⁷ [Scottish Justice Matters \(2015\)](#)

in Scotland is not best placed to comment on this impact. As indicated above, we believe adjustments to legislation should be made in the best interests of the child, rather than viewed from a resource base. It is worth noting the considerable impact of the COVID-19 pandemic on the organisations listed above. This disruption is expected to last for some time and will be an important factor in how any changes in legislation and practice are implemented.

Increasing the maximum age of referral may lead to a significant increase in the number of children aged 16 and 17 being referred to children's panels. The children's hearings system needs to be a robust alternative to court and as such it is worth considering what options and resources are available to children hearings, especially when dealing with 16- and 17-year olds referred for offending behaviour. The change in legislation will also have implications for the 3,000 children's panel volunteers across Scotland. Children in Scotland recommends additional training for Children's Hearing Scotland volunteers to ensure panel members are informed and best placed to identify and respond to the needs of these older children.

6. If the age of referral to the Reporter was increased, are amendments required to ensure sufficient access to information and support for victims harmed by children?

b) No

Children in Scotland recognises that the emotional impact of crime for victims can be significant. However, it is very important to balance the rights of victims and the rights of children who have committed offences and caused harm.

As highlighted in question one, the rights of children under the age of 18 are enshrined in the UNCRC, and the introduction of The UNCRC (Incorporation) (Scotland) Bill means that these rights may soon be incorporated into Scots Law. Decisions made regarding access to information must be compatible with the UNCRC to ensure any proposed changes do not fall short of future legislation.

SCRA currently provide victims with:

- information about the children's hearings system;
- details of the outcome of the referral;
- and information about how Scotland treats children who do things which are against the law.

SCRA also helps victims access organisations that can provide emotional and practical support.

Under Article 40 of the UNCRC, every child alleged as or accused of having committed an offence has the right to have 'his or her privacy fully respected at all stages of the proceedings'⁸. Children in Scotland believes that the current provisions protect children and the rules regarding access to information should not change if the maximum age of referral were to increase.

Children in Scotland has previously shown support for the principles behind Restorative Justice in recognition of the benefits it can bring for both victims and offenders. Children in Scotland would welcome the development of new victims' code or set of principles that apply to instances where children who offend and are dealt with through the children's hearings system or through Early and Effective Intervention (EEI). A new code or set of principles would support victims to have their voices heard but also help children who offend to understand the impact of their actions. Any such principles must take a child-centred approach, be fully compliant with the UNCRC and ensure welfare of the child is paramount, whilst recognising the confidentiality of the children's hearings system. Children in Scotland understands that this is a complex area and recommends that a multi-agency working group should be established to progress this issue.

7. If there are any further comments you would like to make, which have not been addressed in the questions above, please use the space below to provide more detail.

No.

For more information please contact;

Amy Woodhouse,
Head of Policy, Projects and Participation
Children in Scotland
awoodhouse@childreninscotland.org.uk
0131 313 8810

⁸ [The United Nations Convention on the Rights of the Child, page 11](#)