

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Public Protection Committee
<b>DATE</b>	4 July 2018
<b>REPORT TITLE</b>	Call for Evidence - The Age of Criminal Responsibility (Scotland) Bill
<b>REPORT NUMBER</b>	OPE/18/043
<b>DIRECTOR</b>	Rob Polkinghorne
<b>REPORT AUTHOR</b>	Graeme Simpson
<b>TERMS OF REFERENCE</b>	1.1

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### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek Committee approval to submit the proposed Aberdeen City Council response to the Scottish Government Equality and Human Rights Committee's call for Evidence by 6<sup>th</sup> July 2018.

### 2. RECOMMENDATION

It is recommended that Committee:

- 2.1 Instruct the Chief Operating Officer to submit the Response contained in the the Appendix to the Report to the Scottish Government by the 9<sup>th</sup> July 2018.

### 3. BACKGROUND

#### 3.1.1 The Age of Criminal Responsibility (Scotland) Bill

At present the age of criminal responsibility in Scotland is 8 years of age. Following a review by the Scottish Law Commission between 2000 – 2002 the Age of Criminal Responsibility (Scotland) Bill aims to amend legislation to reflect the recommendations of the Scottish Law Commission.

- 3.1.2 The Bill aims to better protect children from the harmful effects of early criminalisation, while ensuring that incidents of harmful behaviour by those aged under 12 can continue to be effectively investigated and responded to.

- 3.1.3 In planning and conducting interviews with children under the age of criminal responsibility in connection with their involvement in harmful behaviour, Police Scotland and local authority social work services will require to have regard to statutory guidance which will be produced in conjunction with the wider review of the approach to Joint Investigative Interviews for child victims and witnesses.

**3.1.4** The Bill will end the automatic disclosure of information relating to behaviour which took place when an individual was under the age of 12, which was previously regarded as a conviction.

## **3.2 Current Context**

**3.2.1** Scotland's current age of criminal responsibility (ACR), at age eight, is the lowest in Europe. Nationally the number of incidents involving under-12s currently reported as offending is small and reducing. A disproportionate number of these under-12s have faced significant prior disadvantage and multiple adversity in early childhood. Research shows that better outcomes will flow from attending to those, rather than focussing on children's deeds in isolation. Responding to childhood behaviour in a criminalising, stigmatising manner can promote escalation and further harm.

**3.2.2** The ACR in Scotland is the age at which a child can be charged with having committed an offence. Children are thereafter referred to the Principal Reporter (SCRA), and potentially to a children's hearing.

**3.2.3** Young people and children aged eight and older who are involved in offending behaviour will still be referred to the Principal Reporter where it is considered they are in need of protection, guidance, treatment or control, and where compulsory measures might be necessary. Where the Principal Reporter considers that the child may require to be made subject to a compulsory supervision order and one of the grounds for referring a child applies, the Principal Reporter will arrange a children's hearing. This will remain unchanged.

### **3.3.1 A Whole System Approach to supporting children and young people**

The response in Scotland to harmful behaviour of children should be seen in the context of Getting it Right for Every Child (GIRFEC) – including the Whole System Approach (WSA) to youth justice, which encompasses early and effective intervention.

**3.3.2** GIRFEC is the national approach in Scotland to improving outcomes and supporting the wellbeing of children and young people by offering the right help at the right time from the right people. It supports them and their parents and carers to work together with the services that can help them. It puts the rights and wellbeing of children and young people at the heart of the services that support them.

**3.3.3** Adopting an Early Intervention approach can reduce offending by young people and addresses their needs by emphasising a multi-agency approach to provide tailored support and management of the child. This ensures that practitioners work together to support families and take action at the first signs of difficulty reducing the need for referral to the children's hearings system.

### **3.4.1 Key Changes being Proposed by the Bill**

The policy of the Bill is focussed on protecting children, reducing stigma and ensuring better future life chances, rather than reflecting a particular

understanding of when an individual child has the capacity to understand their actions, or the consequences that could result from those actions.

**3.4.2** The main purpose of the Bill is to raise the ACR in Scotland from 8 to 12, to align it with the current minimum age of criminal prosecution, and reflect Scotland's progressive commitment to international human rights standards so that:

- children under the ACR are not stigmatised by being criminalised at a young age due to being labelled an offender;
- children under the ACR are not disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life;
- the new ACR aligns with longstanding presumptions around maturity, rights, and participation. The age of 12 also has other existing significance in Scots law; and
- the Bill aims to improve the position of children with care experience (especially children looked after away from home) whose behaviours are more likely to have been reported to police – and therefore to attract a criminalising state response – than Scotland's child population in general

**3.4.3** The Bill recognises that children under 12 can be involved in behaviour which causes harm. For the most harmful cases, the Bill ensures the police can fully investigate what happened, protect others, help victims and consider the disclosure of information about a child's behaviour at a later date, where that is justified in an individual case. For all children under 12 who would currently be charged with an offence, this Bill will not impact on the current ability of services to address both the child's behaviour and the needs underlying it, or on the children's hearings system's wide powers to put in place compulsory measures of supervision where required.

### **3.5 Why the Age of 12?**

The age of 12 already has significance in Scots law. Children aged 12 and over can make a will and consent or veto their own adoption. Children aged twelve or over are also presumed to have sufficient understanding to express views on the future arrangements for their own care, to form a view to express at a children's hearing, and to instruct a solicitor. It is considered that reform to raise the age to 12 is the most appropriate at this stage.

### **3.6.1 Disclosing Information on the Harmful Behaviour of Children and Young People**

If the ACR changes to 12 any conduct by a child below this age which would previously have been recorded as a conviction will no longer be recorded as such. The ACR Bill does not interfere with the retention of information on harmful behaviour for police purposes but it does mean that such matters, when they occurred under age 12, can never be disclosed automatically on any form of state disclosure.

**3.6.2** It may prove vital for public protection reasons, following review of the information by an independent reviewer, to disclose information about behaviour that occurred while an individual was below the ACR. The ACR Bill does allow for the disclosure of information held by the police about pre-12

behaviour, subject to an independent review. If disclosure is to occur it can appear only on an enhanced disclosure or PVG scheme record.

### **3.7 What Information will 'Victims' be Given from the Reporter?**

The Victim Information Service currently shares information on the specific ground used to raise the particular concern to the Children's Hearing. For example, if the Reporter brings the child to a hearing on multiple offence grounds, the victim would only be told the decision in relation to their ground.

#### **3.8.1 The Role of the Police**

The number of children under 12 who carry out the most serious acts is very small. Where such incidents do occur the police, who have a statutory duty to maintain order, protect life and property and detect and prevent investigate them. Many existing police powers can only be used when the person being investigated is suspected of committing an offence. This means that they currently may not be used to investigate behaviour by children under eight (because these children are not legally capable of committing an offence).

**3.8.2** Seriously harmful behaviour by children under eight is exceptionally rare and is otherwise handled on a welfare basis, but the fact that new powers could theoretically be used to investigate very young children emphasises the importance of ensuring powers are proportionate, justifiable, and rooted in safeguarding the child's welfare, while avoiding processes and experiences that look, feel and sound to the child and others like a criminal investigation.

**3.8.3** Part 4 of the Bill creates a package of powers designed to ensure that serious behaviour by any child under the age of 12 can be investigated, but that such investigations are carried out in a child-centred way that is in keeping with the ethos of removing young children from criminal justice processes.

**3.8.4** Section 59 of the Bill requires all persons carrying out powers or duties under these provisions in this Part – including the police, sheriffs, social workers and advocacy workers – to treat the need to safeguard and promote the child's wellbeing as a primary consideration.

**3.8.5** Section 23 of the Bill gives the police a power that will allow them to take a child to a safe place, where they believe that is necessary to manage an immediate risk of significant harm. This could arise if, for example, the police encounter a child who appears intent on harming another person, and it is not possible to arrange with the child's parents or carers for the child to be safely returned to their home.

**3.8.6** The duration of a place of safety is set at an absolute maximum of 24 hours. If it becomes apparent that the child needs to be kept in a safe place for longer (for instance, because they would not be safe at home), then that would need to be taken forward through existing child protection measures.

#### **3.9.1 Interviewing Children and Young People**

The Bill only creates the power for the police and social work to interview children in the most serious cases. They may only do so if:

- they have obtained a child interview order from a sheriff, or
- the situation is so urgent (because life is at risk) that there is not time to obtain the interview order before asking the child questions.

**3.9.2** Whenever a child is interviewed under a child interview order, the Bill gives the child the following rights:

- the right to have a supporter. (i.e. a responsible adult who can help reassure the child.)
- the right to support and assistance from a suitably qualified and experienced advocacy worker independent of the local authority.

**3.9.3** Work is already underway to review Joint Investigative Interview (JII) procedures, which are used for obtaining evidence from child victims and witnesses, where there are also welfare concerns. Guidance is expected to cover key principles of the ACR investigative interview process including the planning, content, structure and delivery of the interview, as well as the roles of supporters and advocacy workers.

#### **3.9.4 Interviewing a child in urgent situations**

In exceptional circumstances, the police may need to ask a child questions about a serious incident more urgently than the procedures explained above would allow for. This could arise if, for example, another young child had been abducted and was believed to be in danger, and the police needed to ask questions to establish their location. They provide that the police may interview a child they have reasonable grounds to suspect has carried out a very serious act without first obtaining a child interview order, if delay could put someone's life at risk. The decision to interview must be authorised by a Superintendent (or more senior officer), and that officer must satisfy themselves that the same criteria that a sheriff would need to satisfy himself of if an order had been applied for had been met.

## **4. FINANCIAL IMPLICATIONS**

4.1. The consultation paper notes that it is anticipated one off additional funding will be made provided by the Scottish Government to cover the cost of training children and families social work staff on the proposed changes. The figure noted is £170,000 of which Aberdeen City Council will receive a proportion of around 3% i.e. approximately £5,100. It is anticipated this will cover the costs of delivering the necessary training.

4.2 In addition online learning will be made available for other professionals working with children to access to ensure that have an appropriate awareness of the change in legislation.

4.3 Separately there is an ongoing review of the requirements for the Joint Investigative Interviewing of children undertaken by police and local authority social work staff. It is anticipated this review will lead to changes in practice and will also incur some additional costs. How these costs will be met will be detailed once the review is concluded.

## 5. LEGAL IMPLICATIONS

- 5.1 The training noted in 4.1 will ensure staff across the Council are fully aware of the change in legislation and its implications for social work practice.

## 6. MANAGEMENT OF RISK

	<b>Risk</b>	<b>Low (L), Medium (M), High (H)</b>	<b>Mitigation</b>
<b>Financial</b>	That the Local Authority has sufficient funding to provide for the training of social work staff in the Integrated Children & Family Service	<b>L</b>	The Scottish Government has intimated they will provide funding to cover the costs of training relevant social work staff.
<b>Legal</b>	There are no legal implications		
<b>Employee</b>	Social work and other staff are not aware of the change in legislation.	<b>L</b>	Appropriate training will be identified for all staff working with children and their family.
<b>Customer</b>	No risks identified		
<b>Environment</b>	No risks identified		
<b>Technology</b>	No risks identified.		
<b>Reputational</b>	No risks identified.		

## 7. OUTCOMES

<b>Local Outcome Improvement Plan Themes</b>	
	<b>Impact of Report</b>
<b>Prosperous Economy</b>	The Policy will ensure that children and young people are fully accessing services and able to access employment in later life, this will contribute to the economy.
<b>Prosperous People</b>	<p>The Bill will impact positively on all children and young people and ensure that any immediate difficulties do not impact negatively on long term outcomes.</p> <p>The Bill promotes a GIRFEC approach to ensuring the welfare of all children is considered including those under 12 who commit a criminal offence.</p>

<b>Design Principles of Target Operating Model</b>	
	<b>Impact of Report</b>
<b>Customer Service Design</b>	The Policy ensures early intervention to safeguard our children and young people.
<b>Organisational Design</b>	The Policy ensures the best use of resource in the system to guide safe and efficient practice.
<b>Workforce</b>	Social work staff will need to be supported to understand the implications of this legislation change.
<b>Partnerships and Alliances</b>	This change will have an impact on how Police Scotland and children's social work investigate criminal behaviours for children under the age of 12.

## 8. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Equality &amp; Human Rights Impact Assessment</b>	Not applicable
<b>Privacy Impact Assessment</b>	Not applicable
Children's Rights Impact Assessment/Duty of Due Regard	Not applicable

## 9. BACKGROUND PAPERS

None

## 10. APPENDICES

Draft submission from Aberdeen City Council to Scottish Parliamentary Committee – The Age of Criminal Responsibility (Scotland) Bill

## 11. REPORT AUTHOR CONTACT DETAILS

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