

Children 1st is Scotland's National Children's Charity. We help Scotland's families to put children first, with practical advice and support in difficult times. And when the worst happens, we support survivors of abuse, neglect, and other traumatic events in childhood, to recover. We help Scotland's communities to play their part in looking out for and protecting children. We listen to Scotland's children and families and when government or society fails to hear them or fails to respect their rights, we speak out.

Children 1st welcomes the opportunity to brief Members ahead of Stage 3 of the Criminal Justice (Scotland) Bill. We are pleased to have been engaged the legislative process of this Bill stretching back to 2013, raising issues that are pertinent to the vulnerable children and families that we work with.

The Bill contains a significant package of wide-ranging reforms to the criminal justice system. We warmly welcome the intention of Bill to improve and enhance the rights and protection of those who are suspected or accused of criminal offences, particularly those under 18, as well as the commitment to ensuring the justice system is as efficient and effective as possible.

Children 1st have indicated below the particular areas that remain of interest to the children and families that we work with, and have highlighted the amendments that we are particularly supportive of at Stage 3.

Rights and protection for 16 and 17 year olds

We warmly welcome the Bill's definition of a child as anyone under the age of 18. This definition ensures this legislation is in line with other recent legislation such as the Victims and Witnesses (Scotland) Act 2014, the Children and Young People (Scotland) Act 2014, and the Human Trafficking Bill. However, as we have previously highlighted, the Bill is inconsistent in its approach to children.

Children 1st supported a number of amendments at Stage 2 aimed at extending the rights and protections of children in the criminal justice system. Although we are pleased with the progress that some amendments have made we remain concerned that there is a need to better consider the rights and vulnerability of 16 and 17 year olds, in particular, in the criminal justice system.

It is not always immediately possible to tell who is and isn't vulnerable, and we know that children who commit crimes very often have complex and difficult childhoods, increasing their vulnerability, even though it may not always seem so at first.

The Bill provides that a parent or another adult named by the child would count as a 'relevant person' and could therefore agree to a child being interviewed without a solicitor present. We have a number of concerns with this; the child could name anybody over the age of 18; friend, boyfriend or girlfriend, perhaps even someone who is exploiting them. Even if the relevant person is a parent, there is no guarantee that they will understand the implications of agreeing to be interviewed without a solicitor, of admitting to a crime, or of any of the decisions that may be taken throughout the interview. We know from our services that children, even if they have legal capacity, do not always make decisions in their own best interests. We therefore look forward to continuing to discuss with the Scottish Government how the guidance can ensure that appropriate safeguards are in place whereby the vulnerability of children, and the particular rights of 16 and 17 year olds are taken into account.

Use of "Wellbeing" in the context of the Bill

We highlighted concerns at Stage 2 around use of the term 'wellbeing' in the context of children in the criminal justice system, and suggested the use of 'best interests' as an alternative that

would be consistent with national and international legislation. Although we recognise that the use of the term 'wellbeing' is in order to provide consistency with the Children and Young People (Scotland) Act 2014 we remain concerned that the term is not yet clearly defined and wellbeing assessments may be inconsistently carried out across Scotland. We therefore look forward to continuing to discuss with the Scottish Government how these concerns can be addressed through guidance and training.

Stop and Search (amendments 1, 2 and 84 in the name of Alison McInnes)

At Stage 2 we highlighted concerns about amendments relating to a statutory power to search children for alcohol. We remain concerned about the possibility that such a power could lead to unintended consequences for children, for example criminalisation and a higher rate of the statutory stopping and searching of young people.

We urge Members to consider the unintended consequences of stopping and searching children for alcohol and whether the public consultation will, as pointed out by the Children and Young People's Commissioner, Scotland, allow room for there to be a discussion over whether there is a need to legislate at all.

Age of criminal responsibility (amendments 86 and 91 in the name of Alison McInnes)

In line with recommendations from the United Nations Committee on the Rights of the Child Children 1st continues to support the principle of raising the age of criminal responsibility from eight to 12 years old in Scotland. At eight years old, the age of criminal responsibility in Scotland is the lowest in Europe and one of the lowest worldwide. This is entirely unacceptable and we firmly believe that children and young people who have not attained the age of 12 should be treated differently by the criminal justice system. Children who commit crimes very often have complex and difficult childhoods, and instead of being labelled as criminals they and their families need support to address the causes of their behaviour and prevent further offending.

Children 1st recognises that the Scottish Government is undertaking measures to address the issue following their initial commitment in 2012¹ and welcomes the establishment of an advisory group on the age of criminal responsibility. We look forward to hearing further the outcomes of the group's discussions.

Children affected by parental imprisonment (amendments 87-89 in the name of Mary Fee)

We welcome these amendments and urge Members to fully support their intention to ensure that where the parent of a child is imprisoned or detained in a penal institution, the wellbeing of any dependant children is taken into consideration and information is shared with the Named Person accordingly. This will help to ensure the Police fully consider the impact of parental imprisonment on any dependent children an offender might have. This is necessary because the child or children will not always be present or known about at the point of arrest.

The amendment is a welcome step forward but it is important that an appropriate framework is established and robust guidance developed in order to support effective implementation of the duty. Additional resources should be made available to support these provisions. We would welcome assurances from the Scottish Government that this process will include an assessment of the impact of parental imprisonment on any dependant children.

¹ [Scottish Government \(2012\). Do the Right Thing: Progress Report 2012, p. 55.](#)

Physical punishment and equal protection from assault

Children 1st are disappointed that the Criminal Justice Bill was not deemed to be an appropriate place to discuss the equal protection of children from assault. Findings from a joint literature review, published last month by Children 1st, NSPCC Scotland, Barnardo's Scotland and the Children and Young People's Commissioner Scotland, emphasised that the evidence for harmful effects of physical punishment is strong and consistent, and that 'the declines in the use of physical punishment in countries where it is prohibited make a compelling case for such legislation'².

Scotland is now one of only a few countries in Europe to have not committed to law reform on this issue; Ireland is the latest to have adopted a repeal of common law on the "physical chastisement" of children. We look forward to engaging with the Scottish Government relating to an appropriate opportunity to follow Ireland's lead and legislate on this important issue.

For more information please contact Jonathan Hancock, Policy Assistant, in the first instance: jonathan.hancock@children1st.org.uk.

² [A. Heilmann, Y. Kelly and R. G. Watt \(2015\) Equally Protected? A review of the evidence on the physical punishment of children. London: UCL.](#)