



## Criminal Justice (Scotland) Bill

February 2014

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### 1. About Together

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 250 members ranging from large international and national non-governmental organisations (NGOs) including UNICEF UK, Save the Children, Barnardo's and CHILDREN 1st through to small volunteer-led after school clubs. Our activities include collating an annual *State of Children's Rights* report to set out the progress made to implement the UNCRC in Scotland. Together was actively involved in the development of the Children and Young People (Scotland) Bill and was invited to give oral evidence on its child-rights provisions at Stage 1 to the Education and Culture Committee.

### 2. Introduction

This briefing specifically focuses on the Justice Committee's Stage 1 report of the Criminal Justice (Scotland) Bill and reflects on Together's written submission to the Stage 1 call for evidence. It provides a response to the conclusions reached in the report specifically relating to children's rights ahead of the Stage 1 debate to be held on 27<sup>th</sup> February 2014.

### 3. Overview

Together welcomes Criminal Justice (Scotland) Bill's policy objective to include provisions on child suspects in the Bill to *'enhance safeguards in the criminal justice system to protect the rights of children and young people, whilst recognising the differing levels of support and autonomy required according to maturity.'*<sup>1</sup> Together further welcomes the key principle to consider the best interests of the child as a primary consideration regarding the arrest, detention, interview and charging of a child by the police.<sup>2</sup>

Together remains strong in its assertion that the Bill provides the appropriate vehicle through which to raise the age of criminal responsibility, and provide children with equal protection from assault. Together is disappointed that the Committee has not committed to raise the age of criminal responsibility within this Bill and has not considered the issue of equal protection from assault in its Stage 1 report. The Committee's conclusions help to highlight that the Bill does not fully succeed in its ambition to enhance safeguards and protect the rights of children and young people.

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<sup>1</sup> Scottish Parliament (2013). *Criminal Justice (Scotland) Bill: Policy Memorandum* (pg 49).

<sup>2</sup> Scottish Parliament (2013). *Criminal Justice (Scotland) Bill (As Introduced)* (pg 35, Section 42 (2) )

## 4. Key points

### 4.1. Age of criminal responsibility

The age of criminal responsibility in Scotland currently remains one of the lowest in Europe. The UN Committee on the Rights of the Child has recommended that age of criminal responsibility is raised in line with international best practice.<sup>3</sup> This recommendation has been strongly supported by children's organisations. An increase in the age of criminal responsibility would lead to an increased emphasis on addressing the specific needs of children within the justice system which can often include issues such as neglect or abusive treatment. It would support the GIRFEC child-centred approach promoted through the Children and Young People (Scotland) Bill recently adopted by the Scottish Parliament.

Together's written evidence on the Criminal Justice (Scotland) Bill recognised that the Bill provides a welcome opportunity to consider raising the age of criminal responsibility in line with the Scottish Government's commitment in the 'Do the Right Thing' Progress Report 2012.<sup>4</sup> As the Stage 1 report notes, a number of witnesses giving evidence to the Justice Committee noted this opportunity.<sup>5</sup> Together welcomes the Cabinet Secretary's commitment to '*see what they can do*' to raise the age of criminal responsibility in the lifetime of this session of Parliament, and the Justice Committee's request for regular updates on this work.<sup>6</sup> However, Together does not agree with the assertion made by the Cabinet Secretary that it would not be practical to raise the age in this Bill.

**Together maintains that the Criminal Justice (Scotland) Bill provides the suitable legislative vehicle to take forward the Scottish Government obligation to consider raising the age of criminal responsibility within the lifetime of this Parliament. Not to do so would be a missed opportunity and would risk the Scottish Government failing to fulfil its commitment.**

### 4.2. Equal protection from assault

The continued acceptance of hitting children is detrimental to attempts to protect children from physical abuse. The current acceptability of physical punishment within Scots' law means that children do not have the same level of protection from violence under the law as adults. Scotland is lagging behind internationally: More than half of the Council of Europe's 47 member states have either fully prohibited the physical punishment of children or committed themselves to do so soon. Among the 28 EU states, just four – the UK among them – have neither prohibited punishment nor committed themselves to do so. If the Scottish Government is serious about its commitment to make Scotland '*the best place to grow up*', it needs to give children equal protection from assault in law.

Together's written evidence on the Criminal Justice (Scotland) Bill recommended that the Justice Committee to '*take heed of international calls to give children equal protection from assault and bring this forward through the Bill*'. Together is disappointed that the Stage 1 report does not acknowledge this call, nor those made by many other children's organisations. These calls have been echoed by UN treaty bodies and through the UN's Human Rights Council.<sup>7</sup>

**Together remains clear that the Criminal Justice (Scotland) Bill is the appropriate vehicle in which to protect children and young people from violence and remove justifiable assault from law in Scotland.**

<sup>3</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom (CRC/C/GBR/CO/4)*. No 78a-h.

<sup>4</sup> Scottish Government (2012). *Do the Right Thing Progress Report 2012* (pg 55). Available at: <http://www.scotland.gov.uk/Resource/0039/00392997.pdf>

<sup>5</sup> Witnesses include Shelagh McCall (Scottish Human Rights Commission), Morag Driscoll (Scottish Child Law Centre), Tam Baillie (Scotland's Commissioner for Children and Young People) and Mark Ballard (Barnardo's Scotland).

<sup>6</sup> Scottish Parliament Justice Committee. *Official Report*, 7 January 2014, Col 4067.

<sup>7</sup> Together (2013). *Criminal Justice (Scotland) Bill: Stage 1 evidence*.

### **4.3. The best interests of the child**

Together welcomes the policy intention of section 42 of the Criminal Justice Bill to place a duty on constables to consider the best interests of the child when holding, arresting, interviewing or charging a child. However, Together notes that the wording of the duty in section 42 (2) is to '*treat the need to safeguard and promote the wellbeing of the child as a primary consideration*'<sup>8</sup>. Together supports the Justice Committee's concerns regarding the lack of consistency in use of the terms 'welfare', 'best interests' and 'well-being' of the child in this and other legislation, and its call to ensure consistency in the language used in section 42 of the Bill.<sup>9</sup>

**Together recommends that the term 'best interests of the child' is referred to in section 42 and throughout the entire Bill.**

Each year in the UK, more children experience a parent's imprisonment than a parent's divorce. Children's experience of a family member's imprisonment can be similar to experiencing bereavement, and its effects may include the child 'acting out' or becoming withdrawn, deterioration in performance at school, being bullied or becoming the bully, and increased risk of substance misuse. Children with a family member in prison suffer from serious mental health issues at three times the rate of other children and are at higher risk of offending and of ending up in prison themselves. The decision to send a parent to prison clearly has a tremendous impact on a child.

**Together restates its call for the Committee to go further in ensuring that the best interests of the child are also taken into consideration when holding, arresting, interviewing or charging a parent.**

## **5. Conclusion**

Together welcomes the Criminal Justice (Scotland) Bill and shares the aspiration to enhance safeguards in the criminal justice system to protect the rights of children and young people. We particularly welcome the inclusion of the 'best interests of the child' principle in the Bill and recommend that this principle is used throughout the Bill. As outlined in this briefing, Together remains confident this Bill provides the best opportunity for the Scottish Government to fulfil its commitment to raise the age of criminal responsibility by the end of this Parliament and to respond positively to a number of calls to give children and young people equal protection from assault in law in Scotland. We urge all MSPs to support the key points above and hope that the Scottish Government will respond positively at Stage 2.

For further information, please contact Juliet Harris, Director,  
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<sup>8</sup> Scottish Parliament (2013). *Criminal Justice (Scotland) Bill (As Introduced)* (pg 35, Section 42 (2) )

<sup>9</sup> Scottish Parliament (2013). *Criminal Justice (Scotland) Bill (As Introduced)* (pg 35, Section 42 (2) )