

Members of the Justice Committee

19 April 2010

Dear Justice Committee members,

I am writing to draw your attention to Stage 2 amendments of the Criminal Justice and Licensing Bill that concern the age of criminal responsibility and criminal prosecution. On behalf of our 450 members (public, voluntary and private sectors) throughout Scotland, Children in Scotland encourages you to vote:

1. **FOR Amendment 379** to section 38 of the Criminal Justice and Licensing Bill; and,
2. **AGAINST Amendments 126 & 127** to section 38 of this Bill.

We think that it is wrong to retain **8-years-old** as the age of criminal responsibility (and thus, liable to criminal prosecution under current law). Labelling and treating children as young as eight as if they are adult criminals undermines Scotland's commitment to the UN Convention on the Rights of the Child (UNCRC) and such cross-party policies as Getting it right for every child (GIRFEC). It also is the antithesis of the ethos undergirding Scotland's distinctive Children's Hearings system.

There is overwhelming international evidence that labelling and punishing children as criminals does not improve their behaviour, does not keep communities safer, but does increase the likelihood of these children becoming adult career criminals. Children tend to live up - or live down - to adult expectations of them. Calling them criminals creates or reinforces an identity and confers a negative status upon them that is counterproductive.

The Bill currently separates the age of criminal responsibility (which it leaves at 8 years-of age) and the age of criminal prosecution (which it raises to 12-years of age). This separation makes little logical or legal sense. Thus, the age of criminal responsibility and criminal prosecution should be one and the same. Amendment 379 unites the two at the age of 12. Amendments 126 & 127 do not unite the two ages and 'muddy the waters' by allowing unspecified crimes and circumstances for which the age of criminality would remain at eight.

The issue is not whether children of these ages 'know right from wrong'. The question is whether Scotland wants to continue regarding and treating children between the ages of

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8 and 11 as adults. Similarly, the issue is not whether adults/society/government should 'do something' in response to very bad behaviour by children. Everyone agrees that doing nothing would be wrong. However, Amendments 126 & 127 (which we oppose) enables 'do something' to mean label and treat them as no different than adult criminals. By contrast, Amendment 379 (which we support) enables them to be dealt with as children who are in need of, and will receive, meaningful intervention to change their behaviour. The Children's Hearings Bill now before the Scottish Parliament offers all MSPs an opportunity to further define and determine what 'meaningful intervention' will include for these children.

Children in Scotland does not think that Amendment 379 is ideal; just that it offers a better direction of travel than Amendments 126 & 127. We think that the age of criminal responsibility and criminal prosecution actually should be at least 13, in order to be consistent with the relevant sections of the Sexual Offences Act (Scotland) 2009. Raising both ages to 16 would bring criminal law into line with current practice, as 16 is the youngest admission age for HM Young Offenders Institution (Polmont), as well as the time at which the Children's Hearings system no longer is applicable to most young people.

Thank you in advance for your consideration of Children in Scotland's recommendation to approve Amendment 379 and reject Amendments 126 & 127 at Stage 2.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bronwen Cohen', with a stylized flourish at the end.

Bronwen Cohen
Chief Executive