

# In response to the Scottish Government's consultation on 'Protecting Children: Review of section 12 of the Children and Young Persons (Scotland) Act 1937...'

Response from the Equalities and Human Rights Committee of the Scottish Youth Parliament  
November 2018



## Introduction

The Scottish Youth Parliament represents Scotland's young people. Our vision for Scotland is of a nation that actively listens to and values the meaningful participation of its children and young people. Our goal is to make this vision a reality, in order to ensure Scotland is the best place in the world to grow up.

We are a fundamentally rights-based organisation, and our mission, vision and values are grounded in the United Nations Convention on the Rights of the Child (UNCRC). In particular, our purpose embodies Article 12: that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As a completely youth-led organisation, the words and sentiment of Article 12 have a profound importance for our work.

Our democratically elected members listen to and recognise the issues that are most important to young people, ensuring that their voices are heard by decision-makers. We exist to provide a national platform for young people to discuss the issues that are important to them, and campaign to effect the change they wish to see.

SYP's Values are:

**Democracy** - We are youth-led and accountable to young people aged 12 to 25. Our democratic structure, and the scale of our engagement across Scotland, gives us a mandate that sets us apart from other organisations.

**Rights** - We are a fundamentally rights-based organisation. We are passionate about making young people aware of their rights, and ensuring that local and national government deliver policies that allow those rights to be upheld.

**Inclusion** - We are committed to being truly inclusive and work tirelessly to ensure the voices of every young person from every community and background in Scotland are heard.

**Political Impartiality** - We are independent from all political parties. By working with all stakeholders, groups, and individuals who share our values, we can deliver the policies that are most important to young people.

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## **Our approach**

SYP's Equalities and Human Rights Committee comprises of 17 young people and we wish to relay the views of Scotland's young people to the Scottish Government in relation to your consultation on the potential changes to the criminal offences of cruelty to children. We would be grateful if you could take account of these views in your consideration of this area of policy development.

Our views were gathered at a workshop our Convener Robbie Burgess MSYP co-produced with the Scottish Government's Child Protection team, Suki Wan MSYP and our Committee members at our 67<sup>th</sup> National Sitting on 21<sup>st</sup> October in Kilmarnock.

Given the complexity of this consultation and constraints around time and capacity, it was not possible to consult on Section 42 of the Sexual Offences (Scotland) Act 2009 as well. The questions asked were adapted by Robbie and the Child Protection team to allow for meaningful participation with our members. A Members' briefing was also circulated before the meeting, signposting flyers were distributed at the meeting itself, and we had Scottish Government officials as table facilitators - while the session was led by Suki Wan MSYP and Chair of SYP.

We discussed the following questions through a café discussion method, and came up with the following findings/recommendations under the following three headings:

- 1) Criminalising the emotional abuse of children.
- 2) Ages of protection and perpetration.
- 3) Vulnerable parents and victims/survivors of domestic abuse.

## **Our findings**

### **1) Criminalising the emotional abuse of children.**

The Committee believes that emotionally harming a child should be illegal.

In terms of the behaviours being proposed (terrifying, rejection, corruption and conflict), we feel that, while guiding, the specific terms will still result in ambiguity as the facts will differ from case to case, and emotional abuse can be subjective.

They may omit certain types of harm, for example, it is unclear whether 'corruption' would extend to 'being forced to do degrading/inhuman acts or being treated in an inhuman/degrading way - Article 3 of the European Convention on Human Rights. Sarcasm intended to harm a child, isolation, coercion, being 'kicked out' the family home and substance abuse would also be missed.

Other factors must be taken into account such as whether the harm is ongoing or a one-off act, the intention of the perpetrator, and any cultural sensitivity.

A need was identified to ensure that the procedure for proving emotional harm protects vulnerable children and young people from further suffering and distress.

## **2) Ages of protection and perpetration**

### **Age of perpetration**

The current offence can only be committed by a person aged 16 or over, and it only protects children under 16-years-old.

The Committee discussed this at length, considering the consequence the Scottish Government's proposal to remove the age limit for perpetration would have on children and young people at the age of criminal responsibility (currently 8 in Scotland, with a view to being 12 if the Age of Criminal Responsibility (Scotland) Bill is approved by Parliament in its current form.

**The Committee feels that there should not be a definitive age for perpetration, as this black and white approach does not allow for a full and proper consideration of the specific circumstances of each individual case.**

However, we generally feel that the age of perpetration should not start from as young as 8 or 12, as you can legally become a parent with a duty of care, ie. from 16, and that is when Scotland generally considers you an adult. The United Nations Convention on the Rights of the Child policy calls on us to go higher than 12, and is under review. The full membership of SYP may wish to explore this question more fully in the future.

Dependency and parental or caring responsibilities should be taken into account, as well as other factors including capability, vulnerability and culture. The unintended consequence a change in the law could have on criminalising young and young adult carers must be avoided.

### **Age of protection**

In terms of the proposal to raise the age of protection from this offence from 16 to 18-years-old, the Committee agrees in principle, and in reality believes that this should be raised to 21 especially for care experienced young people.

Again, a review of the entire circumstances of each case would be necessary to determine whether protection is needed, including whether relationships of dependency and care exist, and whether there are any vulnerabilities present such as disability or additional support needs.

## **2) Vulnerable parents and victims/survivors of domestic abuse.**

### **Who is vulnerable?**

The Committee feels that, while it is helpful to identify who is vulnerable to mitigate the unintended consequences of the Section 12 review, again, there is no-one size fits all answer to this question. Anyone could be at risk of harm.

However, we identified some indicators of potential vulnerability, such as our interpretation of the 'protected characteristics' in the Equality Act 2010: age, disability, gender identity, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

However, this omits young carers as mentioned above, people with mental health issues, people living in poverty, victims of domestic abuse, refugees and asylum-seekers, and people who have additions or are suffering from substance abuse. Young people who have left home could also still be subject to emotional abuse.

### **How can we avoid criminalising vulnerable parents or carers?**

- Ensure the relevant parties (parents/carers, social work, psychologists, health care professionals, police, lawyers, teachers etc.) are aware of/trained/receive guidance on the difference between physical and emotional abuse, that anyone could be at risk of harm, and indicators of vulnerability.
- Parenting/caring programmes on the 'best interests of the child' and what that means in practice.
- Adopting a rehabilitative approach, and not a punitive one, with perpetrators, which is capacity-building, reformative and allows for contact to be maintained with the 'perpetrator', if so desired. 'Listen to the child and ask them what they want' (Article 12 UNCRC).
- A blanket defence may not allow for a full and proper consideration of the individual circumstances of each case.
- Guidance for prosecutors on what it means to have deliberately caused harm is a good idea.
- Ensuring there is support for those being protected by Section 12, including for the trauma of the outcome of any proceedings e.g. a parent going to prison.
- Ensuring better financial support for parents/carers on low incomes.

It may be worthwhile exploring the concept of 'good enough parenting' to ensure parents are not too afraid to seek help or assistance for fear of prosecution:

'According to a survey of practitioners' perceptions of 'good enough' parenting, there are four elements:

- meeting children's health and developmental needs
- putting children's needs first
- providing routine and consistent care
- acknowledging problems and engaging with support services.

From the same survey, risky parenting was associated with:

- neglecting basic needs; putting adults' needs first
- chaos and lack of routine
- and an unwillingness to engage with support services (Kellett and Apps, 2009).'