

Coronavirus (Scotland) (No.2) Bill Stage 2 Briefing Children and Young People's Commissioner Scotland

Amendment 3 (Ross Greer MSP)

The Children and Young People's Commissioner Scotland supports Ross Greer MSP's amendment 3. The Commissioner supports this amendment on human rights grounds as it would in practice prevent children aged 16 or 17 being issued with FPNs, in line with Police Scotland's "Policing Approach to Children and Young People 2016-2020" as well as the UN treaty bodies' calls on States to ensure children's rights are safeguarded in the pandemic.

Parity with the rest of the UK and alignment with Scottish Government policy

There is an anomaly in the emergency provisions between police powers in Scotland and those relating to England, Wales and Northern Ireland. In the other UK countries "a child" is defined as an individual under the age of 18. This correlates with the international human rights definition of a child in the UNCRC.

Police Scotland and the Scottish Government are committed to this definition through implementation of the national Youth Justice Strategy, which includes the Whole Systems Approach and Early and Effective Intervention, as prevention and diversionary responses to children and young people in conflict with the law.

Police Scotland's 'Standard Operating Procedures: Offending by Children 2019' defines a child as everyone under the age of 18, entitled to special protections within the Scottish criminal justice systems. Police Scotland's Independent Advisory Group has agreed to adopt the UNCRC definition of a child in its work.

The 'under 18' definition of a child already exists in domestic law in Scotland and most specifically s.97(1) of the Children and Young People (Scotland) Act 2014, and s.51(3) of the Criminal Justice (Scotland) Act 2016.

However, within the emergency provisions children aged 16 and 17 in Scotland are defined as 'adults' rendering them liable for Fixed Penalty Notices, prosecution and potentially detention if held to be in breach of the new regulations and provisions. Scottish children are therefore disproportionately affected by the emergency measures.

Greater legal protection

We consider that the novelty of the lockdown restrictions, and the pace at which they were introduced, creates scope for confusion for the public and for police officers. This is significant when breach of the restrictions may result in the commission of a criminal offence. On 8 May, the Chief Constable of Police Scotland acknowledged that some FPNs had been issued in error. In the circumstances, this is understandable and unsurprising.

It is important to note that if an FPN is not challenged, it is treated as accepted. However, children are less likely to be able to challenge an FPN and children with additional vulnerabilities may face significant barriers to doing so. Concerns have been expressed to us that certain groups (eg children with learning disabilities and care experienced children) may be at greater risk of police contact that might lead to an FPN.

Very few 16 and 17 year olds in Scotland have independent financial resources, particularly given curtailment of part time work opportunities due to current restrictions and would be in a position to pay a monetary penalty for breach of these emergency laws. Payment of fixed penalty notices will result in additional financial pressure on families; increase family conflict and is unlikely to be in the best interests of the child.

Police will still have other responses at their disposal in the event that a 16/17 year old behaves in a way that requires a criminal sanction after the officer has exhausted the Engage, Explain, Encourage, Enforce approach. Use of these offences will be in line with the WSA (as set out above) and subject to an additional layer of legal scrutiny and protection due to the need for the offence to be reported either to the Crown Office or to the Crown and the Children's Reporter. This means that there will be an opportunity to consider the sufficiency of evidence and determine what further action is justified and in the public interest. The child concerned will also have the opportunity to seek independent legal advice to contest the charge or notice, and thereby have full protections in line with wider ECHR requirements.

Public Health messaging

This amendment does not detract from the important public health message to children about the purpose of the lockdown provisions. Rather it recognises that criminal sanctions are not an effective way to encourage positive behaviour in teenagers. The strong "Stay Home" message will continue to be disseminated and Police Scotland will continue to Engage, Explain and Encourage when speaking to children, avoiding Enforcement unless absolutely necessary.

Amendment 23 (Alison Johnstone MSP)

The Commissioner also supports Alison Johnstone MSP's amendment 23. The effect of this amendment would be to recognise that the pandemic continues to have a significant impact on young people with caring responsibilities and many young carers will be supporting a disabled adult who is shielding, who themselves have been disproportionately impacted by lockdown measures.

In 2016, our office commissioned research into the views and experiences of young carers in Scotland. Their experiences are summed up by the title of the report: "Coping is difficult but I feel proud". Young carers reported that they often felt forgotten in decision making processes and that they were reluctant to engage with social work due to a fear of child protection interventions and due to the stigma and shame of being a young carer. This resulted in a barrier to them fully realising their rights under the UNCRC. Overall, negative impacts were associated with higher levels of caring responsibility.

Young carers require direct support in their own right to help mitigate the impact of the pandemic on them and on those they are caring for. An increase to the Young Carer Grant would assist with this and recognise the contribution of young carers.

Children and Young People's Commissioner Scotland
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