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Andrew Proudfoot
Clerk to the Delegated Powers and Law Reform
Committee
Room T1.01
Scottish Parliament

Your ref:
Our ref:
9 April 2019

Dear Andrew

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL AS AMENDED AT STAGE 2

I am writing in response to your letter dated 26 March 2019 asking for more information regarding the above Bill. The Committee's questions are in bold.

Section 4B(4) – Disclosure of information about convictions etc. relating to time when person under 12

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative

In relation to the power in subsection (4) of section 4B to modify the meaning of “relevant behaviour” in subsection (1), the Committee asks:

(a) for clarification whether it is intended that this power would enable the modification of:

- **“behaviour”, presumably by limiting it to certain types of behaviour,**
- **the child's age of 12 when the behaviour occurred, and**
- **the matters stated in paragraphs (a) and (b) of section 4B(1), which set out results of behaviour and actions arising from behaviour;**

(b) whether, if it is intended that the power should enable a change of the age of 12 and/or of any of those matters specified in paragraphs (a) and (b), this power could be more clearly expressed; and

(c) if the power to change the age of 12 is intended, why is this considered to be appropriate?

With regard to your points at (a), the power in subsection 4B(4) of the Age of Criminal Responsibility (Scotland) Bill is to be used to modify the meaning of "relevant behaviour" in subsection 4B(1) and those "circumstances ancillary to relevant behaviour" in subsection 4B(2).

Whilst an integral part of "relevant behaviour" is that the person is under the age of 12, what constitutes "relevant behaviour" is behaviour which resulted in those things which are mentioned in subsection (1)(a) or in relation to which the matters listed at subsection (1)(b) have occurred. With reference to subsection (1)(b) in particular, the outcomes listed can be taken forward only in relation to a person who is under the age of 12. The relevant age for the purposes of those outcomes is determined elsewhere in the Bill (e.g. section 23).

It is also relevant to say that section 4B(4) would be read in context. Section 4B is concerned with disclosure of information which relates to a time when a person was under the age of 12 and the Bill as a whole is concerned with raising the age of criminal responsibility to 12. The principles of statutory interpretation will therefore limit the power at subsection 4B(4) to things which occurred when the person was under 12.

On your point (b), as explained above, the power is to be used should a change be needed in the future to the matters listed at 4B(1)(a) or (b), or 4B(2)(a) or (b). For the above reasons, we are content that the power is clearly expressed.

Finally, as it is not intended that the power should enable a change of the age of 12, the question at point (c) is not applicable.

Yours sincerely



PAUL BEATON
Bill Team Leader