

## JUSTICE COMMITTEE

### CHILDREN (SCOTLAND) BILL

#### SUBMISSION FROM FAMILIES OUTSIDE

Families Outside is a national independent charity that works on behalf of children and families affected by imprisonment in Scotland. We do this through a comprehensive national family support service that serves both families and the professionals who work with them, through direct support in person and by telephone; through delivery of training; and through development of policy and practice.

Families Outside is grateful for the opportunity to submit written evidence to the Justice Committee regarding the Children (Scotland) Bill. We welcome the aim of the Bill to ensure the views of the child are heard; to protect victims of domestic abuse and their children; to ensure that the best interests of the child are at the centre; and to ensure compliance with the UN Convention on the Rights of the Child.

However, our understanding of the Bill is that the provisions apply only to the Children's Hearings System and to cases heard in the Family Court. We believe this does not go far enough: equivalent provisions should apply in the adult criminal justice courts as well, where currently the voice of the child is completely unheard unless the child is called as a witness.

To ensure full equality and protection for children when a family member, and parents and carers in particular, are involved in the adult criminal justice system, a number of Articles from the UN Convention on the Rights of the Child apply. These include:

- **Article 2:** the right to be free from discrimination based on the status of a parent
- **Article 3:** the best interest of the child must be a primary consideration in decisions that concern them
- **Article 9:** contact with a parent should be supported unless this is against the best interest of a child
- **Article 12:** the child should have a voice in any decision that affects them directly or indirectly
- **Article 20:** children who are unable to live with their family should be provided with appropriate support

The Council of Europe Recommendations CM/Rec (2018) concerning children of prisoners underlines these rights and will still apply in the event of Brexit. The UN Bangkok Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2010), which the UK has ratified, also protects the rights of children, recommending that mothers be allowed time to make arrangements for the care of their children prior to starting a sentence. Such provisions are not routinely implemented in adult criminal justice courts in Scotland.

Recognition of the potential impact of parental imprisonment on children through a Child & Family Impact Assessment was something recommended by Scotland's

Commissioner for Children and Young People in 2007 and 2012; by Together Scotland, the Children's Commissioner, and Families Outside in 2012; by the UN Committee on the Rights of the Child in 2012; and by the Private Member's Bill from Mary Fee MSP in 2015. The Criminal Justice (Scotland) Act 2016 acknowledged the need to recognise the impact of parental imprisonment on children though only added a provision for such questions to be asked and shared with the Named Person once a parent was already in prison. Even this latter provision is now obsolete following the withdrawal of the Information Sharing Bill.

Again, Families Outside welcomes the Children (Scotland) Bill and the protections it offers to children and young people in the Children's Hearings System and Family Courts. We would however request that these be applied in the adult criminal justice setting as a matter of urgency to ensure parity and to ensure the need for children to be considered in decisions that potentially impact upon them.

Families Outside is happy to speak with the Justice Committee on this matter.

Families Outside  
13 November 2019