

PE2139/C: Automatic expulsion for children charged with committing a crime against another child

COSLA written submission, 26 May 2025

Thank you for your letter dated 28 April 2025 inviting COSLA to provide our views in relation to the above petition.

Firstly, we would reference our national approach to supporting the wellbeing of children and young people, Getting it right for every child (GIRFEC).

GIRFEC was created in response to Scotland's commitment to equality, inclusion, and the wellbeing of every child. More than a policy; it's a unifying framework to support progress with our national vision to make Scotland the best place for every child to grow up. It aims to provide all children, young people and families with the right support at the right time – so that every child and young person can reach their full potential.

GIRFEC is embedded into Scotland's laws and policies. It provides a single, consistent framework used by all agencies and organisations that work with children, including councils, health boards, third sector service providers, police, and the Children's Hearing System. This integrated approach ensures continuity of care and avoids the confusion of conflicting services.

A policy aimed at embedding an automatic response to any behaviour presented by a child would not be in line with GIRFEC which requires an individualised response from multiagency professionals supporting families, working in partnership with the child and their family. Harmful behaviour presented by children requires a tailored multiagency response to understand the behaviour, the underlying need, the impact on those affected, the most effective response and to then provide the required support and intervention, monitoring outcomes to ensure risk of harm is reduced and impact of harm is attended to and resolved.

GIRFEC is rooted in the United Nations Convention on the Rights of the Child (UNCRC) and is central to the individualised approach, developed over decades in Scotland, to identifying and responding to needs and risks for children.

The commencement of the UNCRC (Incorporation)(Scotland) Act 2024 in July 2024 is a milestone development in Scotland and further underscores our commitment to make sure Scotland is the best place to grow up. Local government takes the obligations to act compatibly with the UNCRC very seriously and views the incorporation of the UNCRC into domestic law is an important tool in embedding children's rights across all public services.

Since commencement, COSLA and professional associations have worked closely and purposefully to progress the intentions of incorporation and the meaningful protection and fulfilment of children's rights. This is exceptionally challenging work to which we remain fully committed. The types of situations inferred by the current petition are an example of the complexities that arise in our society whereby the

rights of different children can be in conflict, demanding a considered, thoughtful, skilled, multiagency response in order to navigate a way forward.

It is incumbent on us not to be drawn towards automated responses as apparent solutions as these tend to oversimplify individual sets of circumstances and risk undermining the rights of all involved.

We note the framing within the petition of “children charged on suspicion of committing a crime against another child”. This implies that a sanction is to be applied prior to any due process in terms of the judicial system and is indicative of undermining of the rights of the child involved.

Research tells us that responding to childhood behaviour in a criminalising, stigmatising manner serves only to promote escalation and further harm. Scotland has proven approaches to confronting and correcting this childhood behaviour that do not need a criminal justice response.

Over the last decade Scotland has seen significant changes in the youth justice sector since there has been a decisive shift towards prevention by tackling the root causes of harmful behaviour.

Scotland's children's hearings system – operating in the wider context of the proven Whole System Approach to youth justice – has been effectively managing the behaviour of children using a welfare-based approach since the 1970's. This system prioritises 'social education' and rehabilitation over punishment, addresses the underlying causes of offending and harmful behaviour, and is well-suited for managing young people, even those at, or posing, significant risk.

In December 2021, the Age of Criminal Responsibility (Scotland) Act 2019 was fully commenced, raising the minimum age of criminal responsibility to 12 years of age. The reforms made by the Act signal an important shift in how our society expects the behaviour of children to be managed. The provisions in the Act recognise and respond to evidence that dealing with childhood behaviour in a criminalising, stigmatising way serves only to promote escalation and further harm. This is neither in the interests of any individual child, nor in the safety of our communities.

This reduction in the minimum age of criminal responsibility aligns with a broader focus on child welfare rather than punitive measures as the primary means of responding to children's offending or harmful behaviour. Removing the trauma and stigma of early criminal conviction increases life chances and opens up opportunities in terms of access to education and employment.

Further, these developments are in line with the conclusions of the Independent Care Review set out in The Promise. The Promise states that Scotland must aim for an age of minimum criminal responsibility in line with the most progressive global Governments, alongside efforts to prevent criminalisation of all children. It is likely that the minimum age of criminal responsibility will be raised further, particularly as The UN Committee on the Rights of the Child published its Concluding Observations on United Kingdom and Northern Ireland in June 2023 and urged the State party to bring its child justice system fully into line with the Convention and other relevant standards. This includes the recommendation of raising the minimum age of criminal responsibility to at least 14 years of age.

Over the next several years we expect to see the minimum age of criminal responsibility continue to rise, in line with international standards of good practice in respect of children in conflict with the law, and therefore in practical terms the number of children who will ever be charged with any crime will become smaller and smaller, meaning the impact of the proposed petition becomes increasingly redundant.

COSLA and the Scottish Government co-chair the Scottish Advisory Group on Relationships in Schools whose membership includes schoolteacher and support staff unions. They endorsed a [Relationships and Behaviour Action Plan](#) which was published in 2024, and the first [annual progress report](#) on was published on 29 March 2025.

The School Attendance Guidance Included, engaged and involved part 1: promoting and managing school attendance is currently being updated and once this has been published Included, engaged and involved part 2: preventing and managing school exclusions will also be updated.

Notwithstanding the above, we do recognise the point being made in the petition about the need to ensure children are protected from risk of harm, and supported to recover from any harm experienced, including harm caused by other children.

We acknowledge that a significant proportion of harm caused to children is due to the behaviour and actions of other children.

In our view, these rights to protection from harm and right to recovery from harm extend beyond behaviour which reaches a criminal threshold. We feel the focus should be on impact and that all children who are adversely impacted by harm have the right to recovery support and protective measures.

In Scotland we have an increasingly skilled multiagency workforce which, on a daily basis, rises to the complex challenge of managing risk, mitigating harm and balancing the needs and rights of all involved.

We agree with the position currently articulated by Scottish Government that employing a policy of automatic exclusion without considering the individual circumstances of each case would not be lawful under the Schools General (Scotland) Regulations 1975 which set out the criteria for expulsion.

Fundamentally, this petition is contrary to a vast range of policy and legislative developments introduced in Scotland over the past two decades, including, but not limited to, GIRFEC, UNCRC, the Children's Hearing System, the whole system approach, The Promise and the Age of Criminal Responsibility (Scotland) Act 2019 and any movement to support the proposal within the petition jeopardises the significant progress we have made over decades of work to embed a person-centred, trauma-informed, rights-respecting approach across our workforce, systems and services for children and their families.