

Reviewing Section 12 of the 1937 Children & Young People (Scotland) Act 1937



Section 12: Cruelty to persons under sixteen – person with parental responsibilities (from 16 years upwards):

“wilfully assaults, ill-treats, neglects, abandons, or exposes him [child], or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence...”

Issues:

too narrow – focussing on physical effects

- difficulties in investigating and prosecuting under the existing offence
- relationship between child cruelty and domestic violence
- age limits for prosecution under the offence

Scope of existing offence – other administrations



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- Hoyano Report (Action for Children 2013) found that the scope of the corresponding provision to S.12 in England & Wales (s.1 Children and Young Person's Act , 1933) limited to the physical. Recommended that offence re-framed to child “maltreatment; neglect; physical abuse; sexual abuse; emotional abuse; exploitation
- Recs not fully adopted but clarification that harm may be “psychological” (amended via s. 66 Serious Crimes Act 2015)

Basis on which the Offence is prosecuted in Scotland



- Courts have problems with the meaning of the S.12 offence – tension between whether the defendant intended cruelty or should have foreseen that result of actions constituted cruelty

Exposing a child to domestic violence



- Domestic abuse offence
- Consultation response to domestic abuse bill
- Potential solutions

Age & the offence



- If $16 >$ can be prosecuted under S.12
- If $16 <$ protected by S. 12

Table Discussion



- Are there additional issues that stakeholders feel need to be addressed as part of any proposed legislative refresh, which we haven't addressed here?
- Do children and families stakeholders feel that legislative change is necessary?
- Is this the right time?
- Do stakeholders believe that there is value in keeping the existing provisions?