

Response ID ANON-4W83-HA98-G

Submitted to **Consultation on the Minimum Age of Criminal Responsibility**
Submitted on **2016-06-12 23:17:16**

Introduction

Are you responding as an individual or an organisation?

Organisation

What is your name or your organisation's name?

Name/orgname:

Centre for excellence for looked after children in Scotland (CELCIS)

What is your email address?

Email:

ben.farrugia@strath.ac.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Care Protection & Risk

1. Do you think that the support needs of, and risks posed by, children aged 8-11 years demonstrating harmful behaviour can be met through the extension of the National Child Protection Guidance?

Yes

If yes, what adjustments do you anticipate might be required and why?:

Scotland's National Child Protection Guidance sets out an approach which is both child-centred and needs-led. But it will need to be adjusted to accommodate the risks posed by, and not just to, children. This could be achieved through an adaptation of the FRAME and the Care and Risk Management frameworks, as noted in the in the Advisory Group report (para 2.7). However, to ensure that the extended and adjusted guidance is implemented fully and consistently across Scotland, additional training and support will need to be made available to relevant professionals.

2. Do you think that a multi-agency scoping study of training and skills would be helpful?

Yes

Please provide reasons for your answer.:

Raising the age of criminal responsibility is likely to affect a range of different professionals, working within a number of connected but separate systems. As such, a comprehensive review of competencies and learning needs seems critical to the successful implementation of this reform, structured with a view to identifying the immediate and ongoing support professionals require in order to meet the needs of children demonstrating harmful behaviour.

Children's Hearings System

3 Should the age of criminal responsibility be raised to 12, do you think that it will be possible to deal with the harmful behaviour of 8-11 year olds via existing care and protection (welfare) grounds through the Children's Hearings System?

Yes

Please provide reasons for your answer.:

As noted in the SCRA research, and the Advisory Group report, 70 of the 100 children referred to the Reporter in 2013-14 on offence grounds had previously been referred to the Reporter on care and protection grounds, and most had behavioural difficulties, disrupted education, and came from homes characterised by violence and parental substance misuse. It should be possible, therefore, to respond to the harmful behaviour exhibited by 8 – 11 year-old children under the existing care and protection grounds available to the Reporter.

Role of the Police

4. Should the age of criminal responsibility be raised to 12, do you agree with the assessment of the Advisory Group that some police powers should be retained in relation to children under 12?

Yes

Please provide reasons for your answer.:

Although we continue to have some significant concerns about the retention of police powers for children under 12, we acknowledge that the Advisory Group gave this question its full and detailed consideration, and came to the conclusion that some powers should be retained. Specifically, we understand that to ensure the police are able to get to the facts of the matter it is important that they are able to question children under the age of criminal responsibility, and in the most serious of cases, to take forensic samples.

However, we believe that the use of police powers for children under 12 will only be necessary in extreme cases, and therefore encourage the Scottish Government to carefully consider the safeguards which should be introduced to ensure powers are used only in response to high gravity incidents. Furthermore, we would welcome further clarity on how information obtained by the police, in respect to the involvement of children aged 8 – 11, will be stored and shared. As Claire McDiarmid has noted, 'though the MACR is a legal safeguard for younger children, it does not prevent the mobilization of [negative] arguments against them. [...] some sections of the press have used freedom of information laws to quantify acts carried out by so-called 'under-age offenders' – children younger than the MACR who come to police attention for behaviour which, but for their age, would constitute offences.

*McDiarmid, C (2013) 'An age of complexity: Children and Criminal Responsibility in the Law', Youth Justice 13(2) p.148

5. In relation to forensic samples, should the Police ever be able to retain samples taken from children aged under 12?

No

Please provide reasons for your answer.:

The only reason(s) a forensic sample should be taken from a child under to age of criminal responsibility is to establish the facts of a matter in the most serious of cases, with a view to providing, where relevant, the most appropriate care, protection and support for the child. Such forensic samples cannot form part of a criminal investigation into the individual, as the child is below the age of criminal responsibility, so there is no justification for retaining them.

6. What safeguards should be put in place for children aged under 12 in relation to the use of these powers?

Please explain.:

The decision to use these police powers in relation to children aged under 12 should be approved by an independent decision maker (such as a Chief Social Work Officer). A review of how such powers are being used should also be conducted regularly, to satisfy the Government and the public that they are being used appropriately, in the interests, and to the protection of, children.

Disclosure and Protection of Valuable Groups

7. Do you think that there should be a strong presumption against the release of information about a child's harmful behaviour when an incident occurred before the age of 12?

Yes

Please provide reasons for your answer.:

There is a recognition in the literature (see SCRA report (2016) and Norrie (2011)) that the disclosure of information from incidents of harmful behaviour can limit the future opportunities of children and young people, such as access to college/university and certain employment options. Looked after children and care leavers, who are disproportionately represented among those 8 – 11 year olds currently referred on offence grounds, already face multiple, complex barriers to their access to such opportunities. Indeed, as the Advisory Group's report acknowledges, looked after children are structurally disadvantaged in comparison to their non-looked after peers, as due to their involvement in the care system they are much more likely than other children to have contact with the police, and be involved in formal processes which lead to recording of behaviour. It is therefore fair that there is a strong presumption against disclosure of information about incidents which occurred under age 12.

8. Should individuals who may have obtained a criminal record based on behaviour when they were aged 8 to 11 prior to any change in the age of criminal responsibility no longer have to disclose convictions from that time?

Yes

Please provide reasons for your answer.:

9. Where it is felt necessary to release information about an incident occurring before the age of 12 (e.g. in the interests of public safety), do you agree with the Advisory Group's recommendation that this process should be subject to independent ratification?

Yes

Please provide reasons for your answer and any views on the most appropriate independent authority.:

We strongly agree with the Advisory Group's recommendation that releasing such information should be subject to independent ratification. Such information may be released when the individual is an adult, despite the fact that there has been no subsequent history of harmful behaviour. It is critical, therefore, that the decision to release this information is ratified by an informed individual outwith the police; for instance, a Chief Social Work Officer.

10. Should an incident of serious harmful behaviour that took place under the age of 12 continue to be disclosed when that person reaches the age of 18?

No

Please provide reasons for your answer.:

See answer to question 7 above.

11. Do you have comments on wider issues in respect of disclosure for all under 18s?

Please explain.:

The conclusions of the Advisory Group, in recognising the potential disadvantage experienced by looked after children in terms of disclosure, are welcomed. Looked after children are likely to come into contact with police and the Children's Hearing System more frequently than other children and young people, potentially accruing information which could later appear on a disclosure or PVG. The Advisory Group's recognition that the conduct of 12-18 year olds takes place against a backdrop of developing maturity is also welcomed. Again, looked after children are likely to have experienced life events and experiences which can have a detrimental effect on their development, and the imposition of rigid, chronologically-determined ideas of maturity often leads to this vulnerable group becoming further disadvantaged. We therefore support the suggestion that an independent person be involved to ratify decisions on the disclosure of information in relation to under 18s, and that a presumption against disclosing conduct under 16 is introduced. Should these ideas be adopted by the Scottish Government, clear guidance will need to be made available to police and the individual / organisation providing independent ratification, indicating the kind of information which would be relevant for disclosure, and emphasising the importance of involving the young person in the process.

Victims and Witnesses

12 Do you have comments on arrangements to provide appropriate and effective support available to victims affected by harmful behaviour, where that behaviour involves children under the age of criminal responsibility?

Yes

Please explain.:

Victims should receive appropriate and effective support in all cases, regardless of their age, or that of the perpetrator. Where the victim is under the age of 18, support should be focused on safeguarding and promoting their wellbeing, with needs assessed and services organised through the GIRFEC approach. However, the GIRFEC approach can only work if there are a range of quality services available to meet victims' (and perpetrators') needs. Every Community Planning Partnership must, therefore, have a detailed understanding, based on up-to-date data and analysis, of the needs of both child victims and children involved in harmful behaviour, so that the statutory process of Children's Services Planning can secure, in the local area, the range of necessary services. In view of the fact that the statutory guidance on Children's Services Planning is not yet published, we suggest using that document to highlight the critical importance of such strategic planning, for both child victims and perpetrators.

13. Do you have any comments on the circumstances in which it might be appropriate to share information with victim where harmful behaviour involves a child under 12?

Yes

Please explain.:

In raising the age of criminal responsibility to 12, we believe that there will be no circumstances in which it would be appropriate to share information with a victim. However, if it is decided that some mechanism must be established, we urge the Government to restrict this to the sharing of very general information (such as outlining the sort of services the child is receiving to address their harmful behaviour). And where information is to be shared, it should be done with the child's consent.

Age of Criminal Responsibility

14 Do you agree with the Advisory Group's recommendation that the age of criminal responsibility in Scotland should be raised from 8 to 12 years of age?

Yes

Please provide reasons for your answer. Please make clear if you support the principle of an increase in the age of criminal responsibility even if you recommend the age is set at a different level.:

We strongly agree with the principle of increasing the age of criminal responsibility in Scotland. We believe that the age should be set higher than 12, to reflect what we now know about the backgrounds of children involved in harmful behaviour, and the neurological development of children in general. However, we accept that raising the age to 12 is a significant step in its own right, and that a more ambitious upper age limit may meet with resistance. We therefore support the Advisory Group's recommendation, and hope that, once the rationale and benefits of this change are more widely understood, civil society will push for the age to be raised further still.

Our reasons for supporting an increase in the age of criminal responsibility have been well-rehearsed, and are set out comprehensively by the Scottish Government's Advisory Group of experts. As this group repeatedly noted in their final report, and as evidenced by the research carried out by SCRA, children between the ages of 8-11 who undertake harmful behaviour are almost always children who have been subject to harm themselves. Often these are children who are looked after by local authorities, or live on the edges of statutory intervention. Many have significant mental health issues and learning disabilities. These children are in need of care and protection, not criminalisation. The Children's Hearing System, effective Child Protection practice and the GIRFEC National Practice Model are well placed to meet the needs of these children in a holistic, child centred way, removing them from youth justice processes which can throw a

shadow over the rest of their lives. Raising the age of criminal responsibility to 12 does not equate to the granting of a 'free pass' for any harmful behaviour, but rather a recalibration of our reaction to one that is welfare-orientated, cognisant of these children's backgrounds and needs, and which does not stigmatise or restrict their opportunity to build a positive adulthood.

Furthermore, it is worth restating that psychological development is significant in determining capacity and responsibility under the law, and unless moral reasoning, consequential thinking and rationality are sufficiently developed, an individual should not be held criminally responsible. The available evidence now overwhelmingly suggests that 8 years old children do not have these capacities, and while there is of course variation between individuals, for most they do not appear to develop this maturity until late adolescence. Moreover, Raymond Arthur (2012)* notes an overrepresentation of children with developmental difficulties (in terms of speech, language and communication) in the criminal justice system, which could add weight to the argument for approaches used internationally, where a decision is made about criminal responsibility not solely based on age, but also on maturity and taking account of the offence (for example in Germany – CYCJ international study).

We believe that Scotland can be, with appropriate investment in services and an evidence-based attitude towards childhood, the best place in the world to grow up for all children. A minimum age of criminal responsibility set at 12 or above is an essential component of this, reflecting our commitment to children's human rights, and our understanding that children's behaviour is shaped by their experiences and environment.

* Arthur, R (2012) 'Rethinking the criminal responsibility of children in England and Wales', European Journal of Crime, Criminal Law and Criminal Justice

15 While arrangements are already being made to consult with groups of children and young people, please tell us about the groups of children and young people you believe should be consulted as part of this consultation process and how they should be consulted.

Please explain.:

Looked After Children are disproportionately affected by the minimum age of criminal responsibility, and must be a priority in any consultation. While engagement with children in all placement types will be important, special effort should be made to gain the views of children and young people looked after at home (those under a compulsory supervision requirement with no condition of residence). Different methods will be required for different settings, as well as for the differing levels of maturity and literacy. Involving adults whom these children trust and have positive relationships with will be important to enabling participation. The views of families and carers will also be critical, providing insight into the needs of children and young people, and the support which is most effective in addressing potentially harmful behaviour.

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly satisfied

Please enter comments here.: