



Age of Criminal Responsibility Bill House of Lords Second Reading briefing

For debate on Friday 8th September

Introduction

The Age of Criminal Responsibility Bill 2016 ('the Bill') legislates to raise the age of criminal responsibility in England and Wales to 12 years old. Currently it is 10 (as set in the 1963 Children and Young Person's Act. Previously the 1908 Children Act set it at seven).

The Children's Rights Alliance for England (CRAE) and Just for Kids Law (JFKL) believe that the current age of criminal responsibility in England and Wales is manifestly too low, and represents a serious breach of the Government's obligations under international law. We support the intention of the Bill to raise the age of criminal responsibility.

Background – the current law

Children aged 10 and over can be arrested and detained in a police station; they can be charged, tried in a crown court (if they commit a "grave crime") and can be given a sentence equivalent to that which an adult may receive.

There were 317 children aged ten and eleven entering the criminal justice system for the first time in 2016. None of those children committed a crime serious enough to warrant immediate custody. 38 children aged 10 and 11 were convicted and sentenced in the courts for crimes not serious enough to warrant custody¹. The vast majority, 279, were given an absolute or conditional discharge, a fine or a caution.

Why raise the minimum age?

We believe that with the right support, children who have got into trouble can turn their lives around. We think there are more effective, welfare-based interventions that can be made by the authorities that are effective at breaking the cycle of offending and deal appropriately with very young children in trouble and their families – for example the use of intensive intervention projects including family intervention projects.

One of the members of the Children's Rights Alliance for England, Barnardo's, runs services supporting children and families on the edge of the criminal justice system including a number of family intervention projects (FIPs) that have shown positive outcomes for children including reductions in anti social behaviour and offending. In addition, an independent evaluation of intensive intervention projects for the Department for Education found "*for two thirds of case study young people, anti-social behaviour or offending had been significantly reduced or had ceased entirely, and improvements had been made in school attendance or engagement with further or alternative education.*"²

¹ Ministry of Justice, Criminal Justice Quarterly Statistics for England And Wales: December 2016 (published 18 May 2017). First Time Entrants Statistics available from: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016>

² See Flint, Batty, Parr, Platts Fowler, Nixon and Sanderson (2010), *Evaluation of Intensive Intervention Projects* (Department for Education Research Report DFE-RR113: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182613/DFE-RR113.pdf)



How will this make a difference?

10 and 11-year-olds commit a small proportion of youth crime but evidence shows that contact with the youth justice system makes them more likely to re-offend not less, boosting future criminal behaviour. Constructively challenging behaviour, outside the criminal justice system, at this crucial point could help reduce their re-offending.

Criminalisation and stigmatisation of children as a result of behaviour in early childhood can be severe. Carrying a criminal record for offences committed during childhood can restrict life chances by impacting upon a young person's ability to undertake further or higher education, or to follow their chosen career path.

Why 12 years old?

It will make a real difference to children at a critical time in their lives – ages 10 and 11 are a crucial period in a child's life including the move to secondary school. At such a time, all children need support and those who are offending need to be recognised as children with welfare needs who require assistance, rather than criminalisation.

In maintaining such a low minimum age of criminal responsibility, England and Wales are failing to take account of the evidence on cognitive development. In 2011, the Royal Society published a ground-breaking report on the legal implications of developments in neuroscience. It underlined that neuroscience was *“providing new insights into brain development, revealing that changes in important neural circuits underpinning behaviour continue until at least 20 years of age”*³

England and Wales are out of step with many of our international counterparts in considering how best to deal effectively with children in trouble with the law. Most European countries set their ages of criminal responsibility at between 14 and 16, with France an exception at 13. The age of criminal responsibility is 14 in Germany, Spain, Italy and Hungary and 15 in Denmark, 16 in Portugal and 17 in Poland.⁴

Scotland

In December 2016, the Scottish government announced it would introduce a Bill to raise the age of criminal responsibility to 12 years old.

The policy change in Scotland took place because of a growing understanding of the close link between adverse childhood experiences and children's offending behaviour. The substantial body of evidence from across Scotland (and the UK) considered as part of a wide-ranging consultation included:

- evidence from the Centre for Youth and Criminal Justice Studies confirming that the context of children's serious offending behaviour is a background of trauma, bereavement and abuse;

³ See The Royal Society, Brain Waves 4 (December 2011) :

https://royalsociety.org/~media/Royal_Society_Content/policy/projects/brain-waves/Brain-Waves-4.pdf

⁴ Child Rights Information Network, Minimum Ages of Criminal Responsibility <https://www.crin.org/en/home/ages>



- the NSPCC 2011 prevalence study⁵ which found that sexual abuse, physical violence and domestic abuse have strong independent effects in relation to young people's 'delinquent' behaviour, and;
- the Edinburgh Study of Youth Transition and Crime findings that involvement in serious offending by young people is strongly linked to their experiences of multiple aspects of vulnerability and social adversity. The Edinburgh Study also showed that children tend to desist from offending on their own, and even these offences tend to be minor. Any interaction with formal criminal justice processes increases their likelihood of offending⁶.

Charities, including NSPCC Scotland, rightly argued that reform had a critical role to play in changing how we 'see' children as a society and in building a collective understanding about the origins of children's severely challenging behaviour: *"raising the age of criminal responsibility articulates the clear message that children's harmful behaviour is rooted in early adversity and that it is neither appropriate nor desirable for the law to punish children for the trauma they have experienced"*.⁷

Announcing the Scottish government's decision, the Scottish Early Years Minister Mark McDonald MSP said the case for change was *"clear and compelling"*. He said it had been backed by the United Nations, police, prosecutors, victims' groups and young people, adding: *"This is emphatically the right time and the right approach to raise the minimum age of criminal responsibility."* We agree and think it is now the right time for England and Wales to do the same.

The UN, children's rights and the minimum age of criminal responsibility

The UK made a binding commitment to international children's rights standards when in 1991, under John Major's Government, it ratified the UN Convention on the Rights of the Child (CRC).

The Committee on the Rights of the Child has said; *"states parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected."*⁸

The CRC requires that States Parties should establish an age below which children are presumed not *'to have the capacity to infringe the penal law'*; however the CRC itself does not specify a minimum age.⁹

The Beijing Rules, setting out the international minimum standards for the administration of juvenile justice state that where a legal system seeks to set an age of criminal responsibility,

⁵ Radford et al (2011) *Child abuse and neglect in the UK today* (NSPCC) available here: <https://www.nspcc.org.uk/services-and-resources/research-and-resources/pre-2013/child-abuse-and-neglect-in-the-uk-today/>

⁶ See McAra, L. & McVie, S. (2010). *Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime* and other papers available here: <http://www.esytc.ed.ac.uk/findings/published>

⁷ NSPCC Scotland (2016) *Response to consultation on the minimum age of criminal responsibility* available here: https://consult.scotland.gov.uk/youth-justice/minimum-age-of-criminal-responsibility/consultation/view_respondent?uuld=29015312

⁸ General Comment 10 at para 26 addressing Article 40 UNCRC

⁹ United Nations (1989) Convention on the Rights of the Child, Article 40(3)(a)

'the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity'.¹⁰

The UN Committee on the Rights of the Child's (the UN Committee) General Comment on children's rights in juvenile justice encourages State Parties to set the age of criminal responsibility at 12 *'as the absolute minimum age'*¹¹, with the aspiration that the age of criminal responsibility be set higher than this, and has repeatedly recommended directly that the UK change the law.

In 1995, on its first report on UK compliance with the CRC, the UN Committee stated that the low age of criminal responsibility was not *'compatible with the provisions of the Convention, namely articles 37 and 40'* and called on the Government to give *'serious consideration'* to raising the age of criminal responsibility across the UK. These calls were reiterated by the UN Committee in 2002 and 2008.

In July 2015, 76 organisations signed up to CRAE's alternative civil society report to the UN Committee which recommended that *'legislation to increase the minimum age of criminal responsibility...'* to be introduced.¹²

In June 2016, the UN Committee published their Concluding Observations and recommendations to the UK on improving children's rights. Yet again, the UN expressed concern that the age of criminal responsibility remained 10 years old in England and Wales and recommended, in line with its General Comment from 2007, that the Government *"raise the minimum age of criminal responsibility in accordance with acceptable international standards"*¹³

CRAE and JFKL believe that the current age of criminal responsibility is too low and fully supports moves to raise it.

CRAE's long-term aspiration is an approach to youth justice where under-18s in conflict with the law are dealt with under a completely separate and distinct system to adults. This approach must be child-centred and comply with child rights standards. It should focus on rehabilitation, education, public safety, responsibility and proportionality.

For more information, please contact:

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The **Children's Rights Alliance for England** (CRAE) is part of **Just for Kids Law** (JFKL). We believe human rights are powerful tools for children's lives better. We fight for children's rights by: listening to what children say; carrying out research to understand what they are going through; and, with colleagues at JFKL, challenging violations using the law. We campaign for change and empower children to as well. Find out more: www.crae.org.uk

¹⁰ United Nations (1985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules")

¹¹ United Nations Committee on the Rights of the Child (1997) General Comment No 10: children's rights in juvenile justice

¹² Children's Rights Alliance for England (2015) UK implementation of the UN Convention on the Rights of the Child. Civil society alternative report 2015 to the UN Committee - England

¹³ para 78 (a) of UN Committee on the Rights of the Child Concluding Observations on the UK (2016) available here: <http://www.crae.org.uk/media/93148/UK-concluding-observations-2016.pdf>