

Response to the Scottish Government Consultation on the Minimum Age of Criminal Responsibility

1. 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.

As the statutory representative of 3,000 volunteers in the children's hearings system we strongly welcome this proposal. The current age of criminal responsibility is the lowest in Europe and this is vastly out of step with Scotland's welfare-based approach to youth justice. Raising the minimum age of criminal responsibility from 8 to 12 years will ensure this is in line with the minimum age of criminal prosecution, and reflect the age at which children are presumed to have capacity to form and express a view in civil legal proceedings about them and to instruct a solicitor.

As discussed further below we consider that the children's hearings system is the best legal forum to consider issues in relation to children in need of care and protection. Children aged between 8 and 11 years of age who are alleged to have committed an offence first and foremost should be viewed as children in need of care and protection rather than subject to the criminal process.

2. Do you agree 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? If yes, what adjustments do you anticipate might be required and why? If no, what other framework would you use instead and why?

Given our role this is not a question we feel able to provide a detailed informed response to. In line with our support for early appropriate intervention and the implementation of the 2014 Act we suggest that the support needs of children demonstrating harmful behaviour should not be limited to the application of child protection procedures but should be provided by children's services in support of the child/ young person's wellbeing with the child protection procedures being applied where the needs and risks are more appropriately addressed by those procedures.

3. Do you agree that a multi-agency scoping study of training and skills would be helpful? Please provide reasons for your answer.

We do not consider that this work is necessarily linked to a change in the minimum age of criminal responsibility but rather could stand alone. The Children's Hearings Improvement Partnership is currently considering learning and development across the children's hearings system and the provision of a multi-agency resource to introduce the children's hearings system to professionals who are unfamiliar with it. A similar model could be used in this respect.

Panel members receive information and training to allow them to interpret and probe the assessments provided to children's hearings. The perspective of the decision-maker would be an important one to consider as part of this work.

4. Who do you think should be involved in such a study (e.g. social workers, education professionals, Named Persons etc.)? Please provide reasons for your answer.

Given our role this is not a question we feel able to provide an informed detailed response to. However, if a study were to be undertaken those involved in the core competency framework for children's services should be included (e.g. third sector). Those undertaking the role of lead professional should be included as well as named persons.

5. How should the Scottish Government best publicise a change in the minimum age of criminal responsibility? Please include details of the audiences you think publicity and/or information materials should reach.

Given our role this is not a question we feel able to provide an informed response to.

6. Should the age of criminal responsibility be raised to 12, do you agree that it will be possible to deal with the harmful behaviour of 8-11 year olds via existing care and protection grounds? Please provide reasons for your answer.

We agree that it is possible to deal with the harmful behaviour of 8-11 year olds via existing care and protection grounds. There are 16 different grounds for referral within s67 of the Children's Hearings (Scotland) Act 2011 and these are adequate to cover any circumstances referred to the children's reporter without potentially subjecting the child to criminal procedures. For example, s67(2)(m) "the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person" or s67(2)(n) "the child is beyond the control of a relevant person" or s67(2)(a) "the child is

likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care”.

Offending amongst this group of children is rare, In 2014-15, there were 215 children aged 8 to 11 years old referred to the Reporter for offending. Only 12 of them needed compulsory supervision where compulsion may have been required as a result of the child’s family/welfare circumstances rather than as a direct result of their offending. Of those 8-11 year olds who are referred to a children’s hearing on offence grounds, SCRA research has found that around 75% are already also referred on care and protection grounds. Research demonstrates there is a strong link between harmful behaviour and other disruption or trauma occurring in a child’s life and this should be recognised in our response to the behaviour. Whether a child is referred to a hearing on the offence ground or one of the other 15 care and protection grounds in s67 does not alter the powers available to the children’s hearing, which will make a decision with the child’s welfare as the paramount consideration. The existing exception to this being where a decision that is inconsistent with the child’s welfare is necessary to protect members of the public from serious harm (s26).

7. 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? Please provide reasons for your answer.

Given our role this is not a question we feel able to provide an informed response to.

8. In relation to forensic samples, should the Police ever be able to retain samples taken from children aged 8-11 years? Please provide reasons for your answer.

Given our role this is not a question we feel able to provide an informed response to.

9. Do you agree 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? Please provide reasons for your answer.

Yes, we agree with this proposal. The current system of disclosing such information as part of an enhanced disclosure certificate or PVG scheme record can restrict a young person’s opportunities in later life and the categorisation of grounds as ‘convictions’ is not consistent with the ethos of the children’s hearings system of support provided in the best interests of the child, rather than punishment.

10. Should this strong presumption also apply to cases retrospectively? Please provide reasons for your answer.

Yes, the current approach of criminalising and stigmatising a young person for an incident that occurred in early childhood is out of step with Scotland's progressive approach to youth justice and should operate only in exceptional circumstances, where there is a significant and on-going issue of public protection.

11. 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 that this process should be subject to independent ratification? Please provide reasons for your answer.

We would welcome this proposal as it would ensure an additional safeguard is in place to prevent inappropriate disclosure of potentially damaging information.

12. Do you agree that information about an incident of harmful behaviour that took place in childhood should continue to be disclosed when that person reaches the age of 18? Please provide reasons for your answer.

In all circumstances, information about an incident of harmful behaviour that took place in childhood should be disclosed only when absolutely necessary for public protection. We believe there is a continuing need for legislation that enables young people to gain employment and move on with their lives as soon as possible after being convicted of offences at a young and vulnerable stage of their lives.

13. Should the age of criminal responsibility be raised to 12, will this lead to any gaps in the support and information available to victims of a child's harmful behaviour, including

Given our role this is not a question we feel able to provide an informed response to.

14. Please tell us about the groups of children and young people you believe should be consulted as part of this consultation process.

Consultation with children and young people will be a crucial part of policy development in this area. We would suggest consultation with children and young people already involved in the children's hearings system is required. This is both children who have been referred

to the children's reporter only and those children and young people who subsequently attended a children's hearing. It will be important to consult, in particular, those children and young people who are, or have been, in residential care since they can be charged with offending behaviour disproportionately to other children and young people. In addition it will be important to consider that children and young people are often the victims of harmful behaviour by their peers and thus children and young people should be consulted from a victim perspective too.

Children's Hearings Scotland
June 2016