

Response ID ANON-4W83-HA9H-Z

Submitted to **Consultation on the Minimum Age of Criminal Responsibility**

Submitted on **2016-06-10 16:21:44**

Introduction

Are you responding as an individual or an organisation?

Organisation

What is your name or your organisation's name?

Name/orgname:

Together (Scottish Alliance for Children's Rights)

What is your email address?

Email:

juliet@togetherscotland.org.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?:

The Advisory Group evidences that many children who are involved in harmful behaviour are also in need of protection. Extending the use of National Child Protection Guidance would reinforce the message that younger children need to be supported in a holistic way to address any harmful behaviour. As noted in the Child Rights and Wellbeing Impact Assessment (CRWIA) conducted by the Advisory Group (Stage 4, question 1), in taking a child protection approach, it would be important to put in place processes to ensure that when a child turns 12, there is a smooth transition to Care and Risk Management approaches (when this intervention is deemed still to be required).

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

Yes

Please provide reasons for your answer.:

It is essential that a multi-agency scoping study of training and skills is conducted in tandem with raising the minimum age of criminal responsibility. However, this study must not delay the implementation of steps to raise the minimum age.

Together supports the findings of the CRWIA. This noted the importance of looking at workforce training requirements including those for Police officers, teachers, social workers, residential care workers, foster carers and health professionals (whilst noting that this is not an exhaustive list). Consideration should be made as to whether specific training is likely to be needed for Named Persons, including in relation to the support needs of children who have experienced other children's harmful behaviour and/or are required to act as a witness.

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.:

The CRWIA shows that there is no evidence to suggest that an increase in the minimum age of criminal responsibility would result in an increase to the numbers of referrals to the Children's Hearings system, should offence grounds for these children be removed. Removing the label of criminality for all incidents under the age of 12, and instead referring a child to a Children's Hearing on the basis of care and protection grounds is likely to bring extensive benefits to this age group.

This is well articulated within Stage 4, question 1 of the CRWIA.

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.:

Very careful consideration needs to be given to the circumstances in which forensic samples can be obtained. It must be clear that this can only take place in the most rare of cases and when it is in the best interests of the children concerned. The child's right to privacy would be crucial in any consideration, particular the need to balance the child's right to private life with the right of other children to be protected from harmful behaviour (in line with ECHR Article 8 and UNCRC Article 16).

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.:

ECHR Article 6 guarantees the right to a fair trial and a fair hearing and enshrines the principle of 'innocent until proven guilty'. Any proposal to retain a forensic sample from a child would need to take full consideration of both the ECHR and UNCRC. It seems unlikely that, given the understanding that a child under 12 years-old will not be deemed capable of committing a 'crime', that there would be no situation in which it would be appropriate to retain forensic samples of a child below the age of criminal responsibility.

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

Please explain.:

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.:

Any information sharing relating to a child and their behaviour must be proportionate, relevant and necessary. As outlined in the CRWIA, the child retains the right to privacy and that any information shared about them should only be done so to protect them and/or others from harm.

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.:

This proposal should be applied retrospectively. It would impact positively on many young people and adults who committed offences whilst a child and reinforce the culture change that the Advisory Group is seeking in relation to how society views harmful behaviour by children aged under 12 years old.

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.:

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?

Yes

Please provide reasons for your answer.:

This should only take place in exceptional circumstances and after a full assessment of the risk presented by the young person. In line with the Advisory Group's recommendation, agencies would need to satisfy an independent authority that such a disclosure would be merited and appropriate.

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

Please explain.:

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?

No

Please explain.:

Again, we would refer to the CRWIA which addresses the rights of children who may be victim or witness to harmful behaviour, as well as those who may display harmful behaviour.

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?

No

Please explain.:

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.:

Whilst welcoming the recommendation to raise the minimum age of criminal responsibility to 12 years old, we believe that this should just be seen as a starting point on a journey to remove all children from the criminal justice system. This is a position shared by child rights experts internationally:

In General Comment No. 10, the UN Committee on the Rights of the Child encouraged governments to increase their lower minimum age of criminal responsibility to the age of 12 years. The Committee is clear that this is an absolute minimum age and that governments should continue to increase it to a higher age level.

In 2009, Thomas Hammarberg, Council of Europe Commissioner for Human Rights said that he would "like to move the debate on from fixing an arbitrary age for criminal responsibility. Governments should now look for a holistic solution to juvenile offending which does not criminalise children for their conduct."

This approach is articulated in the Rome Statute which established the International Criminal Court and excludes all people under 18 from its jurisdiction: Article 26 states: "The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime."

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.:

Together welcomes the approach taken by the Scottish Government to consult directly with children and young people through the Children's Parliament and Scottish Youth Parliament. It is also important that steps are taken to consult directly with children who have had contact with the criminal justice system, including those who have displayed harmful behaviour as well as those who have been victim or witness to harmful behaviour. Recognising the vulnerabilities of these groups and the complexities involved in consulting with them, Together recommends that efforts are made to work with organisations who have already established meaningful and trusted relationships with these groups of children and young people.

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?:

Very satisfied

Please enter comments here.:

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

Slightly dissatisfied

Please enter comments here.:

It would be useful to be able to download a copy of the questions beforehand, and to be able to print out copies of the response throughout completing the consultation.