



Age of Criminal Responsibility (Scotland) Bill

Submission at Stage 2

Equalities and Human Rights Committee

7th January 2019

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 380 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs. Our activities include collating an annual *State of Children's Rights* report to set out the progress made to implement the UNCRC in Scotland. Together was a member of the Advisory Group on the Age of Criminal Responsibility and provided support and expertise to the Child Rights and Wellbeing Impact Assessment conducted on the group's final report and recommendations. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

Minimum age of criminal responsibility

Whether you are supportive of increasing the age of criminal responsibility/prosecution to 14 or 16; please explain the reasons for your views.

In previous evidence, Together (Scottish Alliance for Children's Rights) raised concerns that a minimum age of criminal responsibility (MACR) of 12 is too low.¹ Similarly, we believe that the age of 12 is too low for the minimum age of prosecution. Our initial response noted that the MACR must be raised "far higher" than 12 before the Bill would represent the "progressive commitment to international human rights standards" envisaged by the Scottish Government.² This sentiment has since been supported by the Council of Europe's Commissioner for Human Rights in her letter to the Scottish Government which stated that:

"[raising] the minimum age from 8 to 12 still provides insufficient guarantees for a child-friendly and forward-looking system of dealing with children who come into conflict with the law".³

Ultimately, so long as individuals are legally children, the criminal justice system should reflect this. As such, Together would like to see the age of criminal responsibility raised to 16 years-old through this Bill. At the very least, the minimum age should be raised to 14, but with a firm commitment to eventually remove all children from the scope of the criminal justice system. Our position is based on two key factors:

1. *Protecting children and young people's rights*

The current Bill raises the MACR to 12 at a time when the UN Committee on the Rights of the Child (the Committee) is recognising international consensus through a revision of its guidance to reflect a higher level of 14. [Draft Revised General Comment No. 24 \(replacing No.10\)](#) sets out an absolute international

¹ [Consultation Response \(July 2018\)](#); [Oral Evidence \(September 2018\)](#)

² Para: 58, [Policy Memorandum \(2018\)](#)

³ Council of Europe Commissioner for Human Rights, [Letter to Maree Todd MSP \(6th December 2018\)](#)

minimum accepted level of 14 years, a development upon its 2007 position that 12 was the minimum accepted level. Age 14 should not be seen as the ‘limit’ and the Committee encourages States to go beyond this, commending those which have a higher MACR of 15 or 16.⁴ The Committee recognises that raising the MACR to 14 gives greater protection for children and young people’s human rights. We believe this effect increases as the MACR is raised beyond 14. The Draft Revised General Comment comes at a time when the Scottish Government has committed to incorporating the principles of the UNCRC into Scots law. We encourage the Scottish Government to aim beyond 14 in order to achieve the best protection for children and young people’s rights as part of this process.

There is wide civil society support for raising the MACR beyond 12, as currently provided for in the Bill. The Stage 1 report was published in early November 2018 and showed that 61% of responses were in favour of a MACR higher than 12.⁵ Furthermore, many members of the Advisory Group on the Age of Criminal Responsibility - which reported to the Scottish Government back in 2016⁶ - have publicly stated support for a higher MACR than 12. For example, the ‘Kilbrandon Again’ report, published later that month, called for the MACR to be raised to 16. This report, jointly commissioned by Action for Children and the Children and Young People’s Commissioner Scotland (both members of the Advisory Group), highlighted inconsistencies between Scotland’s policy and practice around youth justice, and internationally accepted standards.⁷ The Scottish Association for Social Workers (SASW), another member of the Advisory Group, further added:

“Whilst 12 would be a significant improvement, it simply aligns Scotland with the minimum requirements set by the UN and as a result does not reflect ‘progressive reform’ and make Scotland ‘the best place in the world to grow up’. In this view, Scottish Association of Social Workers (SASW) – informed by the views of our members – believes the Bill should raise the MACR to at least 16 years old.”⁸

The Centre for Youth and Criminal Justice – also a MACR Advisory Group member – has also stated support for a MACR of at least 16 years-old and will be reflecting this in the response to the Committee’s call for additional evidence.

A MACR of just 14 years old is still barely keeping up with the approach taken in other European countries. The majority of EU countries have a MACR of 14 or above. Finland, Norway, Sweden and Iceland all have a MACR of 15 years old.⁹ Certain organisations, such as the European Network on Ombudspersons for Children (ENOC), propose that MACRs should be set “as high as possible, up the age of 18”.¹⁰ If Scotland is to keep pace with standards in the rest of the Europe, then this requires raising the minimum age of criminal responsibility to an absolute minimum of 14 years old. However, there is a clear opportunity for Scotland to go further and raise its MACR *beyond* 14. This would give the most effective protection for children and young people’s rights.

In order to uphold Article 6 of the European Convention of Human Rights (the right to a fair trial), steps should be taken to ensure that any child charged with an offence is able to understand and participate in proceedings.¹¹ This is reflected in research from the Netherlands that suggests that the MACR should reflect the age at which a child or young person understands what is happening during the proceedings

⁴ [Draft Revised General Comment No. 24 \(replacing No.10\)](#), Para 33

⁵ [Age of Criminal Responsibility \(Scotland\) Bill, Stage 1 Report \(2018\)](#), para. 70

⁶ Scottish Government (2016) [Report of the Advisory Group on the Minimum Age of Criminal Responsibility](#).

⁷ [Kilbrandon Again \(2018\)](#), p.14

⁸ Scottish Association of Social Workers (2018), as referred to in [Kilbrandon Again \(2018\)](#), p.14

⁹ Child Rights Information Network (CRIN, 2018), [‘The Minimum Age of Criminal Responsibility’](#)

¹⁰ European Network of Ombudspersons for Children (ENOC), [2012 Position Statement](#)

¹¹ The ECtHR which has stated that the right to a fair trial under Article 6 requires that: “a child charged with an offence is dealt with in a manner which takes full account of his age/level of maturity and intellectual and emotional capacities and that steps are taken to promote his ability to understand and participate in the proceeding” (T v. UK, No. 24724/94, 16 December 1999, at [84]).

and what the potential repercussions are.¹² We note that childhood trauma and adverse experiences can delay a child's cognitive development and that children with developmental difficulties and additional support needs are overrepresented in the criminal justice system.¹³ There are concerns that the proposal to raise the MACR to 12 does not go far enough to protect children with additional needs who are 12 or older but who may nevertheless struggle to understand and effectively participate in criminal justice processes. This raises concerns around the right to a fair trial/process. Raising the MACR to 16 would help alleviate these risks by ensuring that all children and young people under 16 are dealt with through non-criminalised, child-centred approaches focused on providing protection, support and guidance.

2. Reducing reoffending

The links between vulnerability, adversity and harmful behaviour are well established. Research shows that children who engage in harmful behaviour have almost always been the victims of harm themselves.¹⁴ Treating the symptoms of these problems without tackling the root causes is ineffective. Contact with the police and criminal justice system makes children *more* rather than less likely to reoffend.¹⁵ Being labelled as an 'offender' or 'criminal' can make children more likely to disengage, isolate and proceed to engage in further harmful behaviour.¹⁶ Non-criminalised approaches based on care and protection have been shown to be more effective in helping children and young people move past their harmful behaviour.¹⁷ As the Edinburgh Study (2010) notes:

*"the working cultures of both the police and the reporter to the Children's Hearings system have created a group of youngsters who might readily be called the usual suspects. These young people become sucked into a repeat cycle of contact with the system which has damaging consequences in terms of inhibiting desistance from offending and in terms of youth to adult criminal justice transitions"*¹⁸

Young people with care-experience, doubt whether criminalised approaches help prevent them from reoffending.¹⁹ Care-experienced children and young people are overrepresented within the criminal justice system due to a variety of factors, including that they are criminalised for behaviour which is a manifestation of earlier trauma and that centre staff are more likely to call the police for behaviour which parents or other carers would have been unlikely to.²⁰ The argument that criminalised approaches to children are counterproductive has been accepted internationally by the Council of Europe Parliamentary Assembly.²¹

¹² Lourijsen, M. & Liefwaard, T. (2018). '[Raising the minimum age of criminal responsibility and the importance of proper youth care](#)' Leiden Law Blog.

¹³ Centre for Youth and Criminal Justice (CYCJ, 2016), [Key messages from the Centre for Youth & Criminal Justice](#); Arthur, R. (2012) "Rethinking the Criminal Responsibility of Young People in England and Wales", *European Journal of Crime, Criminal Law and Criminal Justice*, vol 20, pp13-29

¹⁴ Vaswani, N. (2018). '[Adverse Childhood Experiences in children at high risk of harm to others. A gendered perspective](#)'

¹⁵ McAra, L. & McVie, S. (2010) 'Youth Crime and Justice: Key messages from the Edinburgh Study of Youth Transitions and Crime', (2010) *Criminology and Criminal Justice* 211-230

¹⁶ [CRWIA \(2016\)](#), p.30

¹⁷ See discussion at p.20 and p.30 of the [CRWIA \(2016\)](#); see also research that suggests interventions which involve family and wider systems as the most effective in reducing offending behavior ([NICE Guidance \(2013\)](#), '[Antisocial behaviour and conduct disorders in children and young people: recognition and management](#)'; Farrington, D. P., & Welsh, B. C. 'Family-based prevention of offending: A metaanalysis', (2003) 36(2) *Australian & New Zealand Journal of Criminology* 127-151; Humayun, S., & Scott, S. 'Evidence-Based Interventions for Violent Behavior in Children and Adolescents', in J. Lindert & I. Levav (Eds.) *Violence and Mental Health: Its Manifold Faces*, pp. 391-419 (Netherlands, Springer, 2015); Moodie, K., Vaswani, N., Shaw, J., Morton, P., Orr, D., Allardyce, S. and Connelly, G. Working with young people who offend: An examination of the literature regarding violence, substance misuse and harmful sexual behaviour (2015).

¹⁸ McAra, L. & McVie, S. (2010); see related discussion in [Kilbrandon Again \(2018\)](#), p.11

¹⁹ [Who Cares? Scotland \(2018\)](#)

²⁰ NACRO, 'Reducing Offending by Looked After Children: A Good Practice Guide'. (London, 2003)

²¹ [Resolution 2010 \(2014\) on Child-friendly juvenile justice: from rhetoric to reality](#): Recommendation 4: in addition to improving children's rights and juvenile justice practices, having a high MACR (plus diversionary methods) is "also less costly and more likely to ensure public safety and help young people to reach their potential"

For the above reasons, we support the MACR being raised beyond 12. A MACR of 14 is the *absolute minimum* that we would accept. However, our preference is that the MACR should be raised to 16. This reflects the position of the Council of Europe Commissioner for Human Rights whose recent letter to the Scottish Government stated:

*"I call on you to consider ensuring that the minimum age of criminal responsibility is fixed at 14 at least, but preferably higher, in line with [international] standards and the clear trend towards increasingly high minimum ages."*²²

In either case (14 or 16), the age should not be presented as the 'limit', but rather a step in a journey to eventually remove all children and young people from the criminal justice system. In this vein, we would support the inclusion of a provision allowing the age to be kept under consideration, with the possibility of upwards-only review.

Additional Services

What changes to or additional services are required to support an increase in the age of criminal responsibility/prosecution to 14 or 16

The Scottish Government is already working actively with partners to ensure the Bill's provisions are child rights and child wellbeing orientated, taking account of available effective mechanisms to manage situations where there is a concern about the behaviour of children who are at risk of causing serious harm to others. As such, this work could easily be adapted to include children aged 12 to 14 or even 12 to 16 years old.

For further information, please contact:

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²² Council of Europe Commissioner for Human Rights, [Letter to Maree Todd MSP \(6th December 2018\)](#)