

Consultation Questions

Age of Criminal Responsibility

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/No

Please provide reasons for your answer.

Yes, we agree that the age of criminal responsibility in Scotland should be raised from 8 to 12 years of age?

Raising the age of criminal responsibility seems the right course of action for many reasons. The current age of criminal responsibility in Scotland is 8 years and is the lowest in Europe. By comparison this is far lower than the average across 90 countries which is 14 years. There are only 16 countries that have an age of criminal responsibility lower than that of Scotland. The differing ages for criminal responsibility (8) and criminal prosecution (12) can cause confusion. The Children's Hearings (Scotland) Act 2011 Section 67 (2) (m) already provides a provision to deal with behaviours causing concern currently captured under "offence grounds" and this could be utilised if the age of criminal responsibility were to be raised.

The Getting it Right for Every Child model (GIRFEC) recognises the principle that children's cognitive ability develops over time and that a child aged between 8-11 years may not fully understand the impact of their actions. The complexity of child development and in particular young people who may have psychosocial deficits would leave very young children vulnerable to an assumption that they had capacity to take responsibility for their actions purely by their biological age. The UN Committee on the Rights of the Child concluded that a minimum age of criminal responsibility below the age of 12 years is considered to be internationally unacceptable.

Research would also evidence that it is not effective to criminalise children in terms of supporting them to stop offending, particularly for low level offending. This in addition to "labelling" and carrying convictions into adulthood makes their continued involvement in offending more likely and reduces their life chances. There are appropriate services in place in order to address low level and more harmful behaviours which holistically address the root causes.

Care Protection & Risk

Child Protection Guidance

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?

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If no, what other framework would you use instead and why?

We agree that the support needs and risks posed by children aged 8-11 years demonstrating harmful behaviour can be met through the extension of the National Child Protection Guidance. The existing section provides enough guidance and no adjustments to this are deemed necessary. The change in the age of criminal responsibility does not alter the need for support and proportionate intervention for children who pose a risk of harm to themselves or others and current processes and procedures are already in place to deal with this through the Children's Hearing System to manage risk and provide appropriate supports and to reinforce victim and public confidence.

However, it is recognised that the number of children under the age of 12 who pose a risk to others is relatively small and existing frameworks such as FRAME and CARM could be adapted to include this in the National Child Protection Guidance.

Managing risk and serious harmful behaviour should be addressed within the context of recognising that many children have experienced a high level of trauma.

Support & Training Materials

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

The important aspect is the assessment and management of risk, not the age of criminal responsibility. All areas will already have training in this area of work but could include improving knowledge and understanding about the age of criminal responsibility and the issues specifically associated with this age group in assessing and managing risk. It may be helpful to undertake a national review of skill gaps to ensure equity of approach nationally.

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.

It is important that all partners provide the same level of priority to this and therefore public, private and 3rd sectors should all be consulted.

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Information Provision

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.

This would probably be best publicised through a national media campaign through the Youth Justice division of the Scottish Government.

Children's Hearings System

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.

Yes, the existing care and protection grounds would be relevant. There are a high number of children who are referred to the Children's Reporter on care and protection grounds as well as offence grounds. We agree that the current care and protection grounds adequately address the care and protection issues as well as the root causes of any offending within this age range. The 2011 Act provides additional grounds which could be used for those children who offend between the ages of 8-12. It is likely that children who exhibit harmful behaviours have also been the victims of harm themselves.

It is recognised that the number of referrals to the Children's Reporter on offence grounds has been in decline in recent years. The number of children committing serious crime is rare.

Nevertheless, there are a critical few very high risk of harm cases where victim impact along with perpetrator factors needs to be considered. The public need to have confidence that where there are exceptional circumstances, mechanisms are in place to address the risks and support the reasons behind the offending whilst not criminalising this behaviour.

Role of the Police

Police Powers

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.

It may be appropriate to retain some police powers particularly in more serious offences, but that this needs to be fully considered by all agencies/professionals who are involved in the care and

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protection of children in order to determine the most appropriate way forward.

It may be appropriate to have police powers to take a child to a place of safety and make enquiries in such circumstances where the child's care and protection are likely to be compromised otherwise. This should be in the context of Child Protection Procedures.

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.

A child may be a victim as well as perpetrator and therefore it may be appropriate to be able to retain forensic samples.

Safeguards

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

Existing safeguards in relation to Child Protection Procedures should remain.

Disclosure and Protection of Vulnerable Groups

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.

There should not be a routine disclosure of information about a child's harmful behaviour where an incident occurred before the age of 12 years. This can have a detrimental impact on their future life chances. However, where there are cases of high/serious risk of harm then the protection of the public would over-ride this. This would have to be considered on a case by case basis.

There should be firm evidence that this information or evidence cannot be sourced from elsewhere and that access is proportionate.

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

In principle this should apply to cases retrospectively where the offences were committed by children aged between 8 and under 12 years.

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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.

Yes – all authorities need to be consistent in what information can be released and this could take the form of national guidance. This should be considered independently on a case by case basis taking all factors into account.

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.

Yes, where the test for imminent risk of serious harm is met. Proportionality and need to know basis underpins this.

Victims and Witnesses

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 other children? Please provide reasons for your answer.

Support for victims perpetrated by children of any age should still have access to appropriate supports. This should include a general awareness for victims to reassure that behaviours are being addressed albeit not criminalised.

Other

Consultation with 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.

Older looked after children where there will be no direct impact on them. 4-6th year school pupils with same criteria regarding no direct impact, public and local authority service users, 3rd sector agencies, young people's forums and a cross section of minority groups.

Young people who have been involved and previously been criminalised and the impact this has had on their life opportunities.

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