



Response to Scottish Parliament Equalities and Human Rights Committee call for evidence on the age of Criminal Responsibility (Scotland) Bill at Stage 2.

January 2019

The opportunity to provide further evidence to the Equalities and Human Rights Committee to inform its consideration of amendments to the Age of Criminal Responsibility (Scotland) Bill at Stage 2 is warmly welcomed. From evidence gathered to date, and as noted in the Committee's [Age of Criminal Responsibility \(Scotland\) Bill Stage 1 Report](#), there is a clear consensus that the age of criminal responsibility must be raised; and concern remains that raising the age to 12, whilst an obvious improvement, does not go far enough. The detailed consideration of a higher age is therefore fully supported. As a country striving to be the best place in the world in which to grow up, Scotland now has a crucial opportunity to make progressive change in this area, supporting children and respecting their rights, rather than treating them as criminals.

In their General Comment 10 (2007), the UN Committee on the Rights of the Child recommended that the age of 12 years is the absolute minimum age at which it is internationally acceptable to consider a child to have criminal responsibility.¹ On the basis of advancements over the past 10 years, including in knowledge of child and adolescent development, General Comment 10 has been revised, and a draft is currently subject to international consultation. The draft revised General Comment (paragraph 33) now states:

*"In the original general comment No. 10 (2007), the Committee had considered 12 years as the absolute minimum age. However, the Committee finds that this age indication is still low. States parties are encouraged to increase their minimum age to at least 14 years of age. At the same time, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age."*²

It is anticipated that the CRC will adopt the revised general comment as new General Comment 24 in 2019.³ In this context, and at a time where the Scottish

¹ United Nations Committee on the Rights of the Child (2007) [GENERAL COMMENT No. 10 \(2007\) Children's rights in juvenile justice](#). Geneva: United Nations, para 32

² United Nations Committee on the Rights of the Child (2018) [DRAFT General Comment No. 24 \(201x\), replacing General Comment No. 10 \(2007\) Children's rights in juvenile justice](#)

³ CYPCS (2018) [Letter to Convener of the Equalities and Human Rights Committee RE Draft Revised United Nations Committee on the Rights of the Child General Comment – Children's rights in juvenile justice](#). EHRIC/S5/18/30/4(P)

Government has committed to incorporating the principles of the UN Convention on the Rights of the Child (UNCRC) into domestic law⁴, there is a key opportunity to ensure new Scots law will meet the requirements of the Convention, rather than align with a soon-to-be outdated absolute minimum. We fully support the increase of the age of criminal responsibility to **at least** 14 (in line with European countries such as Austria, Germany, Spain, Italy and Hungary⁵). Furthermore, we strongly advocate for an increase to the age of 16 (in line with other European countries such as Lithuania, Ukraine, Moldova and Portugal⁶). This older age would also better reflect an understanding of the findings of the Edinburgh Study of Youth Transitions and Crime, in terms of the negative consequences of contact with the justice system for those aged 12-15.⁷

Additionally, the UNCRC defines a child as a person below the age of 18. We share concerns raised by the Centre for Youth and Criminal Justice (CYCJ) in their response to this call for evidence, that even if the age of criminal responsibility is raised to 16, this leaves unresolved issues for older children aged 16 and 17. Like CYCJ, we support proposals by the Children's Hearing Improvement Partnership to ensure all under 18's are supported by the Children's Hearing System.

Children and young people with care experience

As highlighted in our evidence at Stage 1, this matter is particularly critical for children and young people with care experience, for a number of reasons:

- Research identifies that children and **young people in care are more likely to be criminalised** than their non-looked after peers⁸, drawn into youth justice systems in part because of their increased proximity to public officials (e.g. social workers and police), and for behaviours which are shaped by and rooted in the trauma they have experienced. Research indicates that children and young people in some care settings, for example residential care, continue to be criminalised for behaviours that in other family settings would not be met by a formal justice response.⁹ A higher age of criminal responsibility is crucial in helping to eradicate inequalities faced by care experienced people, and to combat unnecessary criminalisation of their childhood behaviours.
- Psychological development is significant in determining capacity and responsibility under the law, and unless moral reasoning, consequential thinking and rationality are sufficiently developed, an individual should not be held criminally responsible. **Care experienced children are likely to have experienced life events and experiences which can have a detrimental effect on their development**, and the imposition of rigid,

⁴ Scottish Government (2018) [Delivering for Today, Investing for Tomorrow: The Government's Programme for Scotland 2018-19](#), Edinburgh: Scottish Government

⁵ <https://www.crin.org/en/home/ages/europe> at 07/01/19

⁶ *ibid*

⁷ McAra L. and McVie S, 'Youth Crime and Justice: Key messages from the Edinburgh Study of Youth Transitions and Crime', (2010) *Criminology and Criminal Justice* 211-230

⁸ The Howard League of Penal Reform (2016) *Criminal Care*. London: The Howard League of Penal Reform.

⁹ Nolan, D., & Moodie, K. (2016). "Between a rock and a hard place": Responses to Offending in Residential Childcare. Glasgow: CYCJ

chronologically-determined ideas of maturity often leads to this vulnerable group becoming further disadvantaged.

- Involvement in the criminal justice system can have a **lasting impact throughout care experienced children and young people's lives.**

The disclosure of information from incidents of harmful behaviour can limit the future opportunities of children and young people, such as access to college/university and certain employment options.¹⁰ **Care experienced children and young people already face multiple, complex barriers** to their access to such opportunities. Indeed, those with care experienced are structurally disadvantaged in comparison to their non-looked after peers, as due to their involvement in the care system they are much more likely than other children to have contact with the police, and be involved in formal processes (including Children's Hearings) which may lead to recording of behaviour and disclosure of information when pursuing opportunities later in life.¹¹ Raising the age of criminal responsibility would offer greater protection for care experienced young people in this context.

About CELCIS

CELCIS is Scotland's centre of excellence for children's care and protection, based at the University of Strathclyde. We work to ensure the best international evidence is reflected in policy and practice, strengthening the skills and capacities of people who care for children and young people. CELCIS is part of the Institute for Inspiring Children's Futures, working together to build brighter futures for children in need of care and protection around the world.

¹⁰ Henderson G, Kurlus I, McNiven G, (2016) [Backgrounds and outcomes for children aged 8 to 11 years old who have been referred to the Children's Reporter for offending](#), Stirling: SCRA; Norrie, K. (2010)

"Criminalising Children" *The Journal of the Law Society*, Vol. 55, No. 7, pp22-23

¹¹ Scottish Government (2016) [The Report of the Advisory Group on the Minimum Age of Criminal Responsibility](#), Edinburgh: Scottish Government