



Standing Committee for Youth Justice

## The Age of Criminal Responsibility Bill, 2017

The Age of Criminal Responsibility Bill 2017, sponsored by Lord Dholakia, would raise the age of criminal responsibility in England and Wales to 12 years old. Currently, the age of criminal responsibility in England and Wales is 10.

Children above the age of criminal responsibility are subject “to the full rigour of the criminal law”; they can be arrested, charged, tried in a crown court (in certain circumstances), be given the equivalent of adult sentences, including life sentences, and receive a criminal record. 360 children under 12 were convicted of an offence in 2015/16.<sup>1</sup> More than 2000 children aged 10-13 were held overnight in police custody in 2011<sup>2</sup> (more recent statistics are not available).

In July 2015, 76 organisations endorsed the call for the UK to introduce “legislation to increase the minimum age of criminal responsibility”.<sup>3</sup> The Law Society of England and Wales is of the view that “The age of 10 years is far too low and that there is a strong case to be made for raising it to 14 years, with a system in place for diverting those under that age from the criminal justice system entirely”.<sup>4</sup> The Association of YOT managers has said it believes the age of criminal responsibility should be raised to **at least** 12. The Standing Committee for Youth Justice (SCYJ) fully support such a rise, because:

### The law in England and Wales is out of sync with the rest Europe

- ❖ 10 is one of the lowest ages of criminal responsibility in the EU.
- ❖ The average age of criminal responsibility in the EU is 14.
- ❖ The age of criminal responsibility is 14 in Germany, Spain and Hungary. In Poland it is 17.
- ❖ The age of criminal prosecution in Scotland is 12.

### The age of criminal responsibility has been effectively *lowered* in recent years

- ❖ The doctrine of *doli incapax* existed in English law for over 700 years before being abolished in 1998 on the basis that it was, “contrary to common sense”.<sup>5</sup>
- ❖ It applied to children aged between and 10 and 14 and required the prosecution to prove the child knew their behaviour was “seriously wrong, rather than just naughty or mischievous”.

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<sup>1</sup> Ministry of Justice and Youth Justice Board, 2017, Youth justice annual statistics: 2015 to 2016  
<https://www.gov.uk/government/statistics/youth-justice-statistics-2015-to-2016>

<sup>2</sup> 2014, “All Party Parliamentary Group for Children inquiry into ‘Children and the Police’ Initial analysis of information request to police forces” [http://www.ncb.org.uk/media/1150494/appgc\\_police\\_data\\_report\\_july\\_2014\\_final.pdf](http://www.ncb.org.uk/media/1150494/appgc_police_data_report_july_2014_final.pdf)

<sup>3</sup> Children’s Rights Alliance for England (2015) UK implementation of the UN Convention on the Rights of the Child. Civil society alternative report 2015 to the UN Committee – England.

<sup>4</sup> Law Commission consultation paper no 197 ‘Unfitness to plead’, Law Society response to the Law Commission’s Summary of provisional proposals and questions, January 2011

<sup>5</sup> Home Office (1997), No more excuses: a new approach to tackling youth crime in England and Wales. London: Home Office



- ❖ Abolishing *doli incapax* effectively lowered the age of criminal responsibility and greatly increased the number of 10-12-year olds involved in the justice system.<sup>6</sup>

### The current age of criminal responsibility breaches children's rights

- ❖ The UK has signed and ratified the UN Convention on the Rights of the Child (UNCRC), Article 40.3 of which requires states to establish a minimum age of criminal responsibility.
- ❖ The UN Committee on the Rights of the Child has encouraged states to set the age of criminal responsibility at 12 “as the absolute minimum age and to continue to increase it to a higher age level”.<sup>7</sup> In 2016, the Committee recommended that the UK change the law in this regard,<sup>8</sup> but only the Scottish Government has taken action in response (in December 2016 it declared its intention to introduce a bill to raise the minimum age to 12).
- ❖ The EU Committee on Social Rights has declared the age of criminal responsibility in England and Wales, “manifestly too low,<sup>9</sup> and incompatible with EU charters.
- ❖ The UK Children’s Commissions, in a joint submission to the UNCRC in May 2016, called for the UK and devolved governments to raise the minimum age of criminal responsibility ‘as a matter of urgency’.<sup>10</sup>

### The law is inconsistent with evidence on child development

- ❖ Proponents of the current age of criminal responsibility argue that 10-year-olds “know the difference between right and wrong” and must be held responsible for their actions.
- ❖ However, as the National Association of Youth Justice (NAYJ) has argued, developing morality is “*not a once and for all achievement; it improves with conceptual maturity.*”<sup>11</sup>
- ❖ Neurological, conceptual and psychosocial developments continue through childhood, adolescence and young adulthood, and alter a person’s ability to understand and assess situations and control their behaviour.<sup>10</sup> The pre-frontal cortex – which is key to decision-making and impulse control – is one of the slowest areas of the brain to mature.<sup>10</sup>
- ❖ An understanding of third-parties’ perspectives, empathy (which is an inhibitor to offending), and impulse control are by no means fully developed at 10 years old, and the capacity to consider long-term consequences is limited.<sup>10</sup>

### The low age of criminal responsibility impedes justice

- ❖ Criminal sanctions are only legitimate if the subject has capacity to understand the criminal process and the implications of the decisions they make within it. There is good evidence to show that children are limited in this regard – particularly young children.<sup>10</sup>

<sup>6</sup> See National Association for Youth Justice, 2012, “Criminalising children for no good purpose: The age of criminal responsibility in England and Wales”: <http://thenayj.org.uk/wp-content/uploads/2015/06/2012-The-Age-of-Criminal-responsibility.pdf>

<sup>7</sup> Paragraph 32, UN Committee on the Rights of the Child (1997) General comment No 10: children’s rights in juvenile justice

<sup>8</sup> Paragraph 78 Committee on the Rights of the Child, forty-ninth session, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5, 03 June 2016

<sup>9</sup> European Committee of Social Rights, *Conclusions XVII-2 (United Kingdom) Articles 7, 8, 11, 14, 17 and 18 of the Charter* (Strasbourg: Council of Europe, 2005), para. 30.

<sup>10</sup> UN Committee on the Rights of the Child, *Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland - UK Children’s Commissioners’ Recommendations*, May 2016

<sup>11</sup> National Association for Youth Justice, 2012, “Criminalising children for no good purpose: The age of criminal responsibility in England and Wales”, Page 6: <http://thenayj.org.uk/wp-content/uploads/2015/06/2012-The-Age-of-Criminal-responsibility.pdf>



- ❖ 10-13-year-olds in police detention in England and Wales “are less likely to request and receive legal advice than any other age group”.<sup>10</sup>
- ❖ Children aged 10-13 are “significantly less likely to recognise that there is a risk to themselves from the decisions they make in a criminal justice context.”<sup>10</sup>

### **The age of criminal responsibility is inconsistent with other areas of social policy**

- ❖ Children younger than 12 cannot buy a pet, those under 14 cannot have a paid job.
- ❖ Children under the age of 16 cannot consent to sexual activity.
- ❖ Children under the age of 18 cannot buy fireworks, sit on a jury or vote.<sup>10</sup>

### **Criminalising children does not reduce offending and may even increase it**

- ❖ Research suggests that “prosecution [of children] at any stage has no beneficial effect in preventing offending”.<sup>10</sup>
- ❖ Research shows that contact with the justice system increases the likelihood of offending.<sup>12</sup>
- ❖ Evidence shows that, “criminalisation of children is associated with higher levels of offending in adulthood.”<sup>13</sup>
- ❖ There are many detrimental consequences to children of being put through the criminal justice system, particularly the associated stigma and discrimination those with a criminal record face in accessing education, training, employment, travel and housing. The disproportionate effect of these records is felt long beyond the original sentence, and into adulthood.<sup>14</sup>

### **Criminalising children is not necessary for public protection**

- ❖ Opponents of raising the age of criminal responsibility argue that children committing crimes would be able to walk free. This is not the case.
- ❖ Such children would not simply be “let off” if the age of criminal responsibility were raised. They would be dealt with through non-criminal channels and could still be deprived of their liberty for public protection.
- ❖ Children could be dealt with through non-criminal channels, involving a range of agencies to address the causes of their behaviour. (For instance, family problems or mental health issues). This would be far more effective than criminal sanction.

***The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.***

<sup>12</sup> McAra, L., and McVie, S., (2007), 'Criminal Justice Transitions', University of Edinburgh.

<sup>13</sup> National Association for Youth Justice, 2012, “Criminalising children for no good purpose: The age of criminal responsibility in England and Wales”, Page 6: <http://thenayj.org.uk/wp-content/uploads/2015/06/2012-The-Age-of-Criminal-responsibility.pdf>

<sup>14</sup>The SCYJ, 2017, 'Growing Up, Moving On: A report on the childhood criminal records system in England and Wales.'

<http://scyj.org.uk/wp-content/uploads/2017/07/Growing-Up-Moving-on-A-report-on-the-childhood-criminal-record-system-in-England-and-Wales.pdf>

