

Response ID ANON-4W83-HAY4-C

Submitted to **Consultation on the Minimum Age of Criminal Responsibility**
Submitted on **2016-06-07 22:14:53**

Introduction

Are you responding as an individual or an organisation?

Organisation

What is your name or your organisation's name?

Name/orgname:

Centre for Youth and Criminal Justice (CYCJ)

What is your email address?

Email:

cycj@strath.ac.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?:

We anticipate that the child protection guidance will require revision to better acknowledge and support work with children who pose a risk to others. As currently drafted the guidance focuses almost exclusively on the risks posed to children, so we would recommend updating the guidance to build on the existing good practice articulated within FRAME and care and risk management guidance. To fully support this extension further risk assessment and risk management training/professional support would also be beneficial.

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

Yes

Please provide reasons for your answer.:

Changing the age of criminal responsibility provides an opportunity to strengthen the skills of the child care and protection workforce to assess and manage risk posed by children, as well as managing/assessing the risks to children. It is important to explore where the skills gaps are, and where training or other professional development opportunities are needed to ensure the workforce can fulfill this important role. This would also give an opportunity to scope out what training and initiatives exist, encouraging the workforce to share skills, knowledge and training resources.

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.:

In reflecting on instances of young children involved in offending we could not identify an example of behaviour that would not be covered under care and protection grounds, with criteria such as causing harm to others or being outwith the control of guardians/parents ensuring that a referral to the Children's Hearing System could still take place.

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.:

To ensure the police are able to get to the facts of the matter it is important that they are able to question children under the age of criminal responsibility, and in the most serious of cases to take forensic samples.

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.:

Whilst accepting there might be a need to take forensic samples from children in the most serious of cases we think there is a need to be extremely cautious in our approach to retaining such samples. The only reason that taking samples from children under the age of criminal responsibility would be to get to the truth in the most serious of cases. We cannot see a justification to retain children's samples in such cases. If a child from whom a sample had been taken is subsequently associated with another serious incident then another sample may need to be taken. We consider this is the more appropriate approach than retaining children's samples.

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

Please explain.:

Where the use of these powers is considered necessary the decision to use them would need to be jointly approved by the relevant Chief Social Work Officer and Assistant Chief Constable. A record of each use of these powers should be kept and the Scottish Government should be notified of their use. The number of times these powers are used should be published on at least an annual basis by the Scottish Government, perhaps as part of the children's social work statistics. Further, a review of HOW these powers are being used should be commissioned on a regular basis, perhaps every 3-5 year, perhaps conducted by/with the Children and Young People's Commissioner Scotland who could have a key role in assessing whether the powers are being used appropriately.

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.:

It is important that children are given the opportunity to move away from their offending behaviour, and the stigma and attitudes related to this. The Edinburgh Study of Youth Transitions and Crime clearly demonstrates that children who are involved in offending are the most likely to be highly vulnerable and be victims of offending. This study also highlights that those children who come into contact with the police and are known by youth justice agencies are the most likely to continue to offend (even when compared to children who commit as serious offences with the same frequency but who are not caught). There is thus a strong argument that sharing information between agencies can stigmatise children making it more difficult for them to break away from negative labels and build a more positive identity/life.

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.:

As a blanket policy children who already have a criminal record based on behaviour when they were under 12 should no longer have to disclose this, to ensure that they are not treated more harshly than their peers just due to the time this legislative change has taken. However, as indicated by the advisory group there will be exceptional circumstances where a current presenting risk makes it essential that information about behaviour when under the age of 12 is shared.

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.:

It is essential that releasing information of this nature is subject to independent ratification. Such information may be released when someone is an older child or an adult. Whilst recognising that there is no one agency that is ideally suited/set up to take on such a function, on balance we think a decision to release such information should be ratified by the appropriate chief social work officer. A decision to release this information should also be reported to the Scottish Government and the frequency of doing so published by the Scottish Government on an annual basis. It is important that this data is kept under review, perhaps with an annual report produced for consideration by the Youth Justice Improvement Board.

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?

No

Please provide reasons for your answer.:

see previous answer to question 7

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?

Yes

Please explain.:

It is important to acknowledge the strong link between victimisation and offending, appreciating that this link is retrospective not causal. What we mean by this is that whilst most victims of offending do NOT go on to harm others, it is important to acknowledge that most children who offend have been victims of harm by others and/ or experience a range of other vulnerabilities. So when we look at the population of children involved in offending they nearly always have a background of victimisation and vulnerability, but if we look at the population of children who experience victimisation/vulnerability most of them do not go on to seriously harm others.

It is therefore essential that we support all victims/survivors, including children who have been victims, and who are also the most likely group to be the victims of serious harm caused by other children. Support for child victims is under resourced and would benefit from additional attention.

It continues to be important that victims of harm receive the support they need regardless of the age of the perpetrator, and regardless of the age of the victim. However, we perhaps need to think more carefully about what this support should look like.

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?

Yes

Please explain.:

We see the benefits in sharing with victims basic information about how a child is to be supported to improve their behaviour and to manage the risk they pose. However, a balance needs to be struck here about the child's right to privacy. In the most serious cases we would suggest that information is shared with victims in order to provide reassurance/peace of mind. In less serious instances we do not think such information should be shared, as it then in effect means a referral to SCRA on care and protection grounds involving a victim would need to be treated differently to care and protection grounds where no victim is identified. In effect therefore such an approach may lead to the reintroduction of an offence ground through the back door.

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.:

Given the range of vulnerabilities/victimisation and difficulties faced by children involved in offending, combined with their stage of development and thus limited capacity to understand the law and make independent decisions to offend we think it is of fundamental importance to raise the age of criminal responsibility. For too long we have been labeling some of our most vulnerable children as 'criminal' which introduces another barrier for them to overcome and can prevent us from focusing on the wider issues involved in their offending.

However, we see increasing the age of criminal responsibility to 12 as an important, but short term, step, with a wider objective of in the longer term moving to an age of criminal responsibility that takes into account capacity beyond this age. This move would recognise that children develop at different rates, and particularly acknowledges that for our most vulnerable and victimised children, and thus those children most likely to be involved in offending, development is likely to be particularly slow compared to our more supported and nurtured children. This approach could mirror processes for adults with incapacity, more clearly acknowledging that a certain level of understanding and capacity needs to exist before someone is able to commit an offence.

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.:

It is particularly important to consult with children/adults who were involved in offending before the age of 12 to explore whether they think that responding to their behaviour more clearly as a care and protection issue would have been beneficial or not to them and those around them, and to get their views on the appropriate balance or rights on issues such as taking forensic samples, sharing information with victims etc. These issues are likely to be sensitive so would require careful consultation by experienced researchers.

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?:

Neither satisfied nor dissatisfied

Please enter comments here.:

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

Very dissatisfied

Please enter comments here.:

It would be useful if you could see all the consultation questions before answering each one.

It would also be helpful to be able to print out your responses before submitting, to make sure it can easily be shared with others before submitting, particularly important when responding to consultations as an organisation rather than an individual.