



Aim and proposal

- **We support an increase in the minimum age of criminal responsibility from 10 years of age to 12, in line with recommendation 29 of the 2011 Youth Justice Review.**
- **In line with recommendation 30 of this review, we also believe appropriate local services and programmes should be developed to meet the needs of children and young people who would otherwise have entered the criminal justice system.**

Why?

- **The age of criminal responsibility is out of line with other age-related legislation**

Age of marriage – 16 (with parental consent), 18 (without parental consent)

Age of sexual consent – 16 (boys) 16 (girls)

Age of majority (voting rights) – 18

Age for driving licence– 17

Leaving school – 16

Living unsupported - 16

Buying cigarettes – 18

Jury service - 18

The age of criminal responsibility sits very uneasily alongside other developmental milestones. How we treat children within the criminal justice system is starkly different to how we treat them in other areas of social policy. While the law in most areas recognises that children do not have the same capacity as adults to make decisions, when it comes to criminal law, we bestow adult type responsibility from the age of 10 and bring down the full weight of the criminal justice system on them.¹

➤ **Experts tell us 10 is too low**

In 2011 an independent team of experts with a wide experience in the field of youth justice and law carried out an extensive review of the youth justice system in NI. They were supported by a Reference Group made up of renowned academics and senior decision makers. Following a lengthy analysis of reports, inspections, policy papers, written submissions and engagement with many individuals and groups, including children and young people, they presented a series of recommendations. One of these was that the age of criminal responsibility should be raised to 12 with immediate effect.² David Ford, Minister for Justice, has confirmed that the public consultation on the review showed substantial support for the age to be raised and has publicly stated that he personally favours an increase to 12 or 14.³

➤ **We compare unfavourably with other jurisdictions**

We have one of the lowest ages of criminal responsibility in the world and one of the lowest of any of the European Union States.

The worldwide trend is to raise the age, generally to at least 14.⁴ Those countries that have an age of less than 14 tend to be Commonwealth countries or those that have an early association with the British legal system. Reasons for retaining such a low age are thus more connected with historical tradition than with consideration of children's best interests.

¹ Dr Tim Bateman, (October 2012), 'Criminalising Children for No Good Purpose: The age of criminal responsibility in England and Wales', National Association for Youth Justice; Claire McDiarmid, (2013), 'An Age of Complexity: Children and Criminal Responsibility in Law', *Youth Justice* 2013 13:145; Barry Goldson, (2009), Counterblast: 'Difficult to Understand or Defend': A Reasoned Case for Raising the Age of Criminal Responsibility, *The Howard Journal* Vol 48 No 5, December 2009; Barry Goldson, (2013), 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales, *Youth Justice Series* 2013 13: 111.

² Youth Justice Review Team, 2011, 'A Review of the Youth Justice System in NI', Department of Justice NI, Recommendation 29.

³ Ford, D, (2012), Review of Youth justice: Ministerial Briefing, Official report, Hansard, Session 2011/12 28 June 2012.

⁴ Hazel, N (2008) 'Cross national comparison of youth justice, London: Youth Justice Board and Howard League for Penal Reform (2008) Punishing Children: a survey of criminal responsibility and approaches across Europe', London: Howard League.



England and Wales also have a minimum age of criminal responsibility of 10 years, but in Scotland, the official age of prosecution was raised from 8 to 12 in 2009.⁵ In the Republic of Ireland, the age has been raised to 12 for all but the most serious offences.

Comparison of Northern Ireland rights and responsibilities with some other European countries:

Country	Age of consent	Marriage (with parental consent)	Age of majority	Obtaining driving license (supervised)	Buying cigarettes	Age of criminal responsibility
France	15	18 (16)	18	18 (16)	18	13
Austria	14	18	18	18	16	14
Germany	14	18 (16)	18	18 (17)	18	14
Italy	14	18 (16)	18	18 (17)	18	14
Spain	13	18	18	18	18	16
Belgium	16	18 (16)	18	18	16	18
Luxemburg	16	18	18	18 (17)	16	18
N. Ireland	16	18 (16)	18	17	18	10

➤ **It does not comply with international children’s rights standards**

The United Nations Committee on the Rights of the Child has repeatedly said that the minimum age of criminal responsibility in the UK is not compatible with the government’s obligations under international standards of juvenile justice and the UN Convention on the Rights of the Child.⁶

The UN Convention on the Rights of the Child calls for states to establish a minimum age “below which children shall be presumed not to have the capacity to infringe the penal law.”⁷ While not recommending a specific age, the Committee has tended to criticise jurisdictions in which the minimum age is 12 or less. Specifically it has urged the UK government to give serious consideration to raising the age of criminal responsibility. In its

⁵ The Criminal Justice and Licensing (Scotland) Bill 2009.

⁶ UN Committee on the Rights of the Child, (2008), Concluding Observations: United Kingdom of Great Britain and Northern Ireland, Geneva: United Nations, paragraph 78; UN Committee on the Rights of the Child (2007) General Comment No.10 on Children’s Rights in Juvenile Justice, United Nations.

⁷ United Nations, (1989) Convention on the Rights of the Child, Geneva: United Nations, Article 40 (3) (a).



2008 recommendations, the Committee concluded that: *“a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable”*. The Committee recommended the age of 12 *“as the absolute minimum age”* and that State parties should *“continue to increase it to a higher age level”* such as 14 or 16.⁸⁹

➤ **Children at risk of offending have complex problems**

The justice system does not impact on all children equally. Children in areas of high deprivation are more likely to be at risk of offending and prosecution. In Northern Ireland this is particularly true of communities affected by the conflict.

Children in trouble are also children in need. There is no shortage of research linking criminal behaviour of young people with poverty, mental ill health, being in care or experience of neglect/ abuse within their families, misuse of drugs or alcohol, and having learning and behavioural difficulties.¹⁰ It is often children who are in greatest social need that are swept up by youth justice systems.¹¹ Children in care are particularly over-represented in figures of children in custody in Northern Ireland.

A snapshot study on the backgrounds of young people detained in Woodlands Juvenile Justice Centre in Bangor revealed that¹²:

- 34% were looked after or voluntary accommodated within the care system and a further 22% were known to social services
- 34% had experienced domestic violence
- 38% had a statement of special educational needs, while 14% had a recognised learning disability
- 92% had misused or were misusing alcohol and drugs
- 32% had self-harmed

⁸ The general philosophy behind this approach is explained in the official commentary to the United Nations’ Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) Rule4.

⁹ Professor Yanghee Lee, 13th March 2008, Children’s Law Centre Annual Lecture, ‘The Convention on the Rights of the Child - from Geneva to NI, Bringing Children’s Rights Home’.

¹⁰ Howard League for Penal Reform (2011), ‘Response to Breaking the Cycle: Effective Punishment , rehabilitation and sentencing of offenders’, London: The Howard League for Penal Reform; Prison Reform Trust, (2009), ‘Seen and Heard, supporting vulnerable children in the youth justice system’.

¹¹ Barry Goldson, (2013), ‘Unsafe, Unjust and Harmful to Wider Society’: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales, Youth Justice Series 2013 13: 111.

¹² Criminal Justice Inspection NI, (2012), ‘Early Youth Interventions: an inspection of the contribution that criminal justice agencies in NI make to preventing children and young people from entering the criminal justice system’.

Almost all had experienced some form of trauma in their lives including:

- Suicide of family member or friend
- History of sexual, physical or emotional abuse
- Parental substance misuse
- Parental mental health difficulties
- Victim of bullying in school and/or in the community
- Victim of paramilitary threat

The Youth Justice Review makes specific reference to a number of groups of young people that are over represented in the youth justice system. These included young people with speech and language difficulties, mental health problems and looked after children.¹³

An inspection of Woodlands Juvenile Justice Centre revealed that of the 30 children detained at that time, two thirds had a diagnosed mental health disorder, 50% had a history of self harm and 50% had a record of special needs.¹⁴

A low age of criminal responsibility that seeks a criminal justice solution to welfare and poverty issues simply accelerates already vulnerable children further into the system and ultimately custody.

➤ **Scientific evidence in relation to children's brain development**

To apply the same standards of criminal responsibility to a 10 year old as we would to an adult is to ignore large amounts of evidence about the immaturity of children at that age.¹⁵ Children do not have the emotional maturity to be responsible by law for their actions. Although it is true at 10 children are likely to know the difference between right and wrong, they do not have the capacity to fully understand the consequences of their actions.

Neuroscience data has found that there are developmental differences in the brain's biochemistry and anatomy that may limit adolescents' ability to perceive risks, control

¹³ Youth Justice Review, page 86.

¹⁴ Criminal Justice Inspection NI, (2008), Inspection of Woodlands Juvenile Justice Centre.

¹⁵ Michael E Lamb and Megan PY Sim, (2013), Developmental Factors Affecting Children in Legal Contexts, *Youth Justice*, 2013 13: 131



impulses, understand consequences and control emotions.¹⁶ In particular, the prefrontal cortex, which is responsible for decision-making, impulse control and cognitive control, is among the slowest parts of the brain to mature and is not fully developed until around the age of 18-20.

➤ **Statistics on youth crime**

Despite public perception that there is a rise in the number of crimes committed by children, in reality, the statistics do not bear this out. Children are not out of control and are not responsible for the majority of crime committed. The numbers of children aged 10 and 11 who come into contact with the criminal justice system are extremely low. According to government figures, there were only 8 referrals of 10 and 11 year old children to Youth Justice Services in NI in 2012/13.¹⁷ When we look at the figures for custody, we see that no child under the age of 13 received a custodial sentence in the years between 2008 and 2012.¹⁸

➤ **Perception of children**

Children and young people are too often cast as demons who are out of control and who are need of punishment and regulation. The media representation of children has fed into the popular conception that children are to be feared. Sensationalist headlines and a small number of high profile cases have influenced how we deal with children in trouble with the law.¹⁹ This tendency to demonise children acts as a block to progressive change and is in danger of overshadowing the depth of expert and international legal and social opinion that the age of criminal responsibility should be raised. Over the last few decades we have seen an increasing rise in calls to be tough on crime and these calls have been borne out in developing policy and practice.

¹⁶ Enys Delmage, (2013), The Minimum Age of Criminal Responsibility: A Medico Legal Perspective, *Youth Justice*, 2013 13:102.

¹⁷ Figures supplied to Include Youth from NI Youth Justice Agency Statistics and Research Branch, May 2014.

¹⁸ Department of Justice NI, Consultation document on Custodial Arrangements for Children in NI, October 2013, Annex D, page 38.

¹⁹ Barry Goldson, (2013), see footnote 1.



➤ **The costs of criminalising children**

The latest published accounts from the Youth Justice Agency showed an expenditure of over £20 million and in NI custodial places for children and young people cost between £132,904 and £267,991 per year.²⁰ This added to the significant resources deployed by the courts, PPS and PSNI on children and young people make a compelling economic reason for diverting children away from the system as soon as possible.

➤ **Voice of communities and victims of crime**

10 and 11 years old who are engaged in criminal activity should be supported to realise the consequences of their behaviour.²¹ We are not suggesting that no action should be taken nor are we condoning criminal behaviour. Communities across NI are frustrated at what they perceive to be the lack of action by authorities to keep them safe from crime and anti-social behaviour of young people. The voices of communities and specifically victims cannot be ignored and are central to this discussion.

It is vital that we listen to what communities are telling us and find ways to address issues of concern. As the Youth Justice Review stated, it is not a case of *whether* children should be held accountable, but *how* they are held accountable.²² The evidence tells us that solutions for these issues are rarely found in criminalising very young children but in community development, universal family support and early intervention and prevention services.

It is reassuring that the NI government has made a significant commitment to investment in early intervention and prevention services for children, families and communities. We are confident that as these have an impact, even less young people will be involved in offending.

➤ **Serious crime**

Communities need to be reassured that in the unlikely case of a 10 or 11 year old committing a very serious crime, appropriate action would be taken. If the age of criminal responsibility is raised public safety must not be compromised. A robust response must be adopted, one which has the safety of others as the paramount consideration and secondly,

²⁰ Criminal Justice Inspection NI, (2011), An announced inspection of Woodlands Juvenile Justice Centre.; Youth Justice Agency Annual Report and Accounts, 2012/2013, page 54.

²¹ Thomas Hammarberg, former Commissioner for Human Rights on Juvenile Crime, Children's Rights Information Network CRIN.

²² Youth Justice Review, 2011, A Review of the Youth Justice System in NI, page 106, Department of Justice NI.

is capable of assessing the likelihood of further harm. There already exists provision to hold children securely if it is deemed to be in their own best interest or in the best interest of the wider community. It must be noted however, that there have been no 10 or 11 year olds charged with a serious²³ crime in Northern Ireland.

➤ **We already have considerable support**

There is a growing consensus in Europe and internationally that the age of criminal responsibility should be set at at least 12 years old and preferably much higher.²⁴ There has been a call for a rise in the age of criminal responsibility in England and Wales also. The majority of organisations and individuals who responded to the 2011 Youth Justice Review supported an increase.

➤ **It will not lead to a rise in children committing crime**

International research evidence shows that increasing the age of criminal responsibility does not lead to a rise in crime rates or youth offending.²⁵

➤ **Criminalising children doesn't work – it does more harm than good**

In asking whether a low age of criminal responsibility is in the child's best interests it is necessary to look at the impact of criminalisation on the child's future development. Research demonstrates that criminalisation of children tends to increase their risk of engaging in offending behaviour.²⁶ It also stigmatises the child and alienates them from society, creates problems of self-esteem, encourages the child to mix with other young people who have offended and creates barriers in the way of return to education or future employment. Punitive measures increase the likelihood of reoffending. The statutory sector and justice agencies already recognise the importance of diverting children and young people out of the system and are actively seeking to divert as many children as possible. Children who commit serious and harmful acts are profoundly troubled with significant

²³ Schedule 1 offence as defined in The Criminal Justice (NI) Order 2008.

²⁴ Crofts, T, (2009), Catching up with Europe: Taking the age of criminal responsibility seriously in England, European Journal of Crime, Criminal law and Criminal Justice 17 (4): 267-291.

²⁵ Michele Burman, (2011), European Approaches to the Age of Criminal Responsibility, a paper commissioned from NI Youth Justice Review Reference Group, University of Glasgow and Scottish Centre for Crime and Justice Research; Zoe Davis and W McMahon, (2007) Debating Youth Justice: from punishment to problem solving? London: centre for Crime and Justice Studies.

²⁶ McAra L and McVie S, (2007) Youth Justice? The impact of system contact on patterns of desistance from offending, European Journal of Criminology 4(3): 315-345.

mental and emotional health needs. It is precisely such children that require welfare-based rather than punitive interventions, based on a careful and informed assessment of need.

➤ **There are better ways to deal with it**

A key issue in deciding on the age of criminal responsibility is what we want the aim of the process to be. If the aim is to prevent offending, to encourage rehabilitation and the reintegration of the child into playing a constructive role in society then dealing with the child through the criminal justice system does not offer the best chance of success. Our reoffending rates demonstrate this. Government figures from the Department of Justice, reveal that out of 36 young people released from custody, 25 committed a proven reoffence.²⁷

Rather the focus should be on assessing the child's problems and needs and attempting to meet those needs. In a welfare based approach, children in conflict with the law are defined as 'children in need' and the responsibility of children's services (eg. education, health, social care). The emphasis is on care, protection and diversion from the criminal justice system through providing support to families and helping them to access services and support. In a welfare environment the emotional and mental health issues can be addressed without labelling the child as criminal or putting an already vulnerable child through the justice system.

This type of approach would focus more on the well-being and rehabilitation of the child; it will address the difficulties the young person has experienced which led to them becoming involved in offending.

This is not a 'soft' option nor is it 'letting off' children and young people - but is a more effective approach and will lead to better outcomes for children and families and safer communities for all.

²⁷ DoJ NI, Youth reoffending in NI 2011/2012 cohort, Research and Statistical Bulletin, December 2014.

