



Consultation on the Minimum Age of Criminal Responsibility

Consultation response from Includem

Introduction

Includem is a specialist charity supporting some of the most vulnerable, troubled and difficult to engage young people in Scotland. We believe that no young person is beyond help and that with a responsive, consistent service at the time of most need we can rebuild relationships and deliver positive, sustainable outcomes.

Our work is focused on prevention – prevention of offending or reoffending, prevention of unnecessary accommodation away from home and prevention of exclusion from school. In all cases our framework of support consists of professional one to one relationships with a focused work to deal with the underlying needs and challenges in order to develop hope, aspiration, resilience and improved family relationships.

Overview of consultation response

Includem welcomed the opportunity to participate in the Advisory Group on the Minimum Age of Criminal Responsibility and to contribute our experience to the initial stages of this process.

We welcome the proposal to raise the age of criminal responsibility from 8 to 12 as a step in a process that we would hope culminates in an age beyond 12.

We recognise from our experience working with young people that there is a clear link between the underlying complexity of their needs and their vulnerability and risk taking, harmful and offending behaviour. For many of the young people we support their past histories of abuse, neglect, trauma and loss have directly impacted on the behaviour which led us to working with them.

We would agree fully with the conclusion of the Advisory Group: “rarely does a child demonstrate harmful behaviour without first having been harmed themselves”.

We therefore fully support the intention that the focus for children under 12 years of age should be on the welfare and wellbeing needs which need to be addressed in order to turn around the negative behaviours. In our view, this is a more appropriate and effective method of managing their risk to the wider community.

Specific consultation questions

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? If yes, what adjustments do you anticipate might be required and why?

Yes.

National Child Protection Guidance provides a useful framework to meet the needs of children aged 8 to 11, but there is a need to ensure the risk to themselves and others is paramount. Although our experience tells us the best way to deal with those risks is to sustainably deal with the underlying concerns, there is clearly a more immediate need to safeguard the child and the community from further harm.

There is useful guidance within the FRAME and CARM policies which could be applied in this context.

Firstly, the principles of GIRFEC should be applied to these children, ensuring that all professionals and organisations work together to improve the situation and using the already embedded assessment tools to achieve this. Within this context there should be a recognition that while the immediate aim is the prevention of further harm, unless the underlying risk factors are dealt with there will be a considerable likelihood of further negative behaviour in the future.

Secondly, there is an important recognition in the FRAME guidance of the need to consider transitions into adulthood. We factor into our support planning the need to consider the long term future for every young person, and part of our work is therefore focused on building connections to universal services which are available after our support comes to an end. It would be useful to consider some specific guidance around transitions into adulthood, noting the particular social, environmental and physical/mental health pressures in this period in addition to the risk factors already identified.

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

Yes.

We think this would be helpful not just in recognition of the raising of the age of criminal responsibility but more generally to ensure those agencies working with young people of any age are trained and experienced in the support that is necessary to achieve positive, sustainable outcomes.

There should be a particular emphasis going forward on ensuring agencies understand the need to both protect young people (and the community) from further harm but also deal with the underlying needs. Whilst this emphasis may be the result of increasing the age of criminal responsibility, we would consider this a step that would be helpful for all those under 16 years of age.

We welcome the comments in the Advisory Group report about the need for a “tailored, personalised approach which responds to a child’s specific characteristics and needs”. We would hope that any scoping study could also include learning from services which already use this approach and build on those experiences to inform further development of specialist provisions. We would be happy to participate in such a study and share our experiences.

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.

We see no reason why the existing care and protection (welfare) grounds could not be used to deal with children aged 8 to 11 who will no longer be referred on offence grounds. The evidence of current referrals would seem to suggest very few children are currently being referred on offence grounds without any recognition of wider care and protection grounds in any event, so there would seem to be very little of a shift in this area.

We particularly welcome and support the recognition in the Advisory Group's report that "if the main issue relates to a child's behaviour, then an offence label is not essential to identifying and tackling this behaviour".

We do not consider it necessary to create any additional grounds of referral.

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.

There is clearly a need to retain some police powers in order to help identify and investigate the facts and to establish the circumstances surrounding an incident.

However, we would question why, if the age of criminal responsibility is raised to 12, the police should have powers over children under the proposed age of criminal responsibility that they do not have for those aged under the current age of criminal responsibility of 8 years.

Furthermore, we have a hesitation about any powers being retained on the basis, as the Advisory Group states, that they would be "required to be used only very rarely". Whilst we recognise, for example, in the case of parents refusing to cooperate with necessary inquiries by police or social work, these circumstances are uncommon, the law should be designed without the quantity of cases in mind but rather with the principle of what we want to achieve at its heart.

We would support the suggestion that the current Child Assessment Orders under the Children's Hearings (Scotland) Act 2011 could be expanded or a similar Order created to cover many of the circumstances which would require police power, for example the right to remove a child to a place of safety. We also support the suggestion that this should be expanded for all children under the age of 12 to avoid creating a tiered set of processes for different age groups. We would support further work to identify who would be an appropriate person to apply to or by authorised by a Sheriff under this potentially expanded (or similar to) Child Assessment Order.

In relation to forensic samples, should the Police ever be able to retain samples taken from children aged under 12?

No.

We recognise the sensitivities and complexities around this area and the potential for forensic samples to substantiate a child's account of a situation. However, we are concerned that in seeking to create a different law for children aged 8 to 11 there is a risk of creating one set of rules for one group of children and one set for another with no evidential justification – e.g. why not include 7 year olds?

The intention is to raise the age of criminal responsibility to 12. It would, in our view, therefore be inappropriate to retain samples from children at an age where they cannot have committed a criminal offence. There is also, as the Advisory Group noted, the risk that children are confused by the fact they are not being held criminally responsible for their actions yet are being asked to provide police with forensic samples.

We would echo our earlier concerns about the small number of cases where these powers (particularly around retention of samples) are used. We do not consider the number of cases to be relevant to the appropriateness of the power existing (or not existing).

We would recommend a further review is carried out on this area of work to ensure any proposals are firmly based on evidence of best practice and do not create unnecessary confusion.

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

We would simply reiterate our suggestion that a further review is carried out to ensure any proposals are firmly based on evidence of best practice and that an assessment of children's rights is undertaken.

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.

We support the Advisory Group's recommendation that there should be a strong presumption against the release of information about a child's harmful behaviour before the age of 12. If the age of criminal responsibility is raised to 12, we have to collectively accept that brings a step-change in what we would define as behaviour – moving away from a criminal definition.

We recognise there will be circumstances where disclosure is required, and we support the recommendation that in these limited cases, an independent ratification process should be carried out. We would welcome further detail on this process.

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.

Steps should be taken to ensure those who are aged under 12 now and who currently have a conviction or proven offence ground are able to avail themselves of the same rights as those who will not enter this category if the age of criminal responsibility rises to 12 and therefore we would support the proposal that those aged under 12 with convictions should not have to disclose those convictions going forward.

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.

We would welcome more detail on this process, including who will be responsible for the independent ratification, what the process will be to obtain independent ratification and what framework will be put in place to evaluate the number and detail of releases under this power.

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.

In reality, the answer to this question is more complex than the simple 'yes' or 'no' available.

In cases where a pattern of behaviour suggests a serious risk to the public we could understand why behaviour under the age of 12 should be disclosed beyond the age of 18.

However that would be extremely limited in scope and would have to be part of a review process that clearly outlined why it was relevant for information to be disclosed after the age of 18. That review process should be independently scrutinised.

Do you have comments on wider issues in respect of disclosure for all under 18s?

We are interested by the Advisory Group's recommendation that consideration should be given to ceasing the disclosure of convictions accrued under the age of 18. However we feel this is something that should be explored in much greater detail, and probably out with the question of raising the age of criminal responsibility.

These issues are all complex and there will always be scenarios and situations which point to a different approach being taken to meet a particular set of circumstances. We would argue it is important that the changes are clear so that children know and understand what their rights are.

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?

We recognise this is a challenging area as it will result in victims, including many victims who will be children themselves not being easily defined as such, due to no offence having taken place. However, we think the same support and entitlements could be put in place for these people, including some mechanism for the Victim Information Service to let them know basic information about the outcomes of the situation without necessarily identifying any young people involved.

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?

We recognise this is an important issue, particularly to ensure the needs of the victim are taken into account. However consideration also needs to be given to all the parties involved in an incident to ensure the best possible outcome is arrived at – that should include a clear understanding of the impact of any sharing of information on the young person implicated.

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 – we support this recommendation.

However we would welcome further consideration about whether 12 is the final destination in this discussion. Given what we know from detailed evidence about desistance there is a strong case for raising the age beyond 12 to at least 14 where offending generally peaks before declining. This would take into account the changes a young person goes through – physical, mental, emotional and social and their maturity within the environment they live.

We fully support the current recommendation as a step to getting to where we need to be, but we would welcome an assurance that the issue is open to being revised in the future.

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.

We would encourage consultation with young people who have experience of the criminal justice system (regardless of age) and those who have experience of the Children’s Hearing process. They will be able to give a unique insight into what the process is like as a young person and what support needs to be in place. We would be happy to facilitate such conversations with young people supported by Includem if this would be helpful.