



## **Public Consultation on Raising the Minimum Age of Criminal Responsibility in Northern Ireland from 10 Years to 14 Years**

**December 2022**

VOYPIC is the charity for children and young people with lived experience of care in Northern Ireland. Created in 1993 by a group of young people in care and the professionals that supported them, VOYPIC has almost 30 years of experience promoting the rights and voice of children in care and care leavers.

We want every child to have a safe, stable and positive experience of care, and to be involved in the decisions about their life.

Our work supporting young people with lived experience of care focuses on three main areas; Independent Advocacy, Participation, and Influencing Change. In 2021-22 we supported 551 children in care and young people leaving care.

In preparing this response we reviewed recent discussions and engagements with care experienced children and young people across Northern Ireland, as well as seeking the views of young people currently involved in two VOYPIC participation groups. In total, the views of 34 young people are reflected in this response.

We also worked in partnership with colleagues in the Children's Law Centre, NIACRO and Include Youth to deliver a workshop to discuss this consultation. This event, hosted by Queen's University Belfast, brought together experts in the field of child psychology, criminology, and children's rights, to address the question of what the minimum age of criminal responsibility should be.

## Consultation Questions

1. The UN Committee on the Rights of the Child recommends that Member States set a minimum age of criminal responsibility (MACR) of no lower than 14 years. The Justice Minister supports this recommendation. **Do you agree that MACR should be raised in Northern Ireland from the current age of 10 to 14 years?**

Yes  No  If, No, go to question 2)

If you have answered "YES" to this question, there are no further questions to answer. Thank you for taking the time to respond to our consultation.

If you answered "NO", please consider the further questions below.

2. **Only if you answered no to Q1** - please consider the options below and select the one which most closely represents your preferred MACR.

10 years  (Please go to question 3)  
12 years   
16 years   
18 years

**VOYPIC supports raising the Minimum Age of Criminal Responsibility in Northern Ireland from 10 years to 16 years.**

At 10 years of age, Northern Ireland has one of the lowest ages of criminal responsibility in the world, and the lowest in Europe. Despite repeated calls from the international children's rights community and a large number of organisations working with children and young people here in Northern Ireland over the years, no progress on raising the age of criminal responsibility has been made.

As the Voice of Young People in Care, we are particularly concerned by the over representation of young people from care, and that the current criminal justice approach disproportionately impacts children with experience of care.

There are over 3,530 children and young people in care in Northern Ireland; the highest number recorded since the introduction of the Children Order.

In 2019/2020, 30.9% of children in custody were children in care. In 2020/21 this has risen to 35.2%, and by 2021/2022 it stood at 37.2%.

The majority of children and young people live in foster care (81%). While 6% of children in care live in residential children's homes, they are significantly more likely to come into conflict with the law, and to be cautioned or convicted. In 2019-20, a third of young people living in residential care (31%) were cautioned or convicted, compared with just 2% of children placed in foster care.

Trauma informed training has been rolled across the HSC sector and that must be harnessed in changing our response to young people. HSC staff, and carers and others, have to be appropriately trained and supported so that they feel empowered, confident and competent to manage behaviours, deescalate heightened situations and avoid a police response which can further escalate and result in an arrest, detention, caution or conviction.

In compliance with international children's rights standards we are calling for the minimum age of criminal responsibility to be raised to 16 years, based on the following ten reasons.

## **1. It does not comply with international children's rights standards**

- 1.1. 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 United Nations Convention on the Rights of the Child (UNCRC).<sup>1</sup>
- 1.2. The UN Committee on the Rights of the Child recommend that the minimum age of criminal responsibility should be 16 years.
- 1.3. We have an opportunity to go beyond the bare minimum of what a children's rights compliant age of criminal responsibility should be. Our health and social care agencies and our voluntary and community sector are such that we are able to provide an alternative pathway for children that does not necessitate branding them as a criminal from a young age. We should not be aspiring to just meet the lowest age threshold of what is acceptable in terms of the age of criminal responsibility

## **2. Experts tell us 10 is too low**

- 2.1. Following the devolution of justice to the Northern Ireland Assembly, the Minister of Justice launched an independent review of the youth justice system in Northern Ireland which was to take into account international human rights standards, including the United Nations Convention on the Rights of the Child (UNCRC).
- 2.2. One of these was that the age of criminal responsibility should be raised to 12 with immediate effect and that following a period of no more than three years, consideration should be given to raise it to 14.<sup>2</sup>

## **3. Our age of criminal responsibility is at the bottom of the league**

- 3.1. We have one of the lowest ages of criminal responsibility in the world and one of the lowest in Europe. The worldwide trend is to raise the age, generally to at least 14.<sup>3</sup>

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<sup>1</sup> 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 (2016), Concluding Observations: United Kingdom of Great Britain and Northern Ireland, Geneva: United Nations; UN Committee on the Rights of the Child (2010) General Comment No. 24 on Children's Rights in Juvenile Justice, United Nations.

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

<sup>3</sup> 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.

- 3.2. England and Wales also have a minimum age of criminal responsibility of 10 years.
- 3.3. In the Republic of Ireland, the age has been raised to 12 for all but the most serious offences.
- 3.4. In Scotland, the Age of Criminal Responsibility (Scotland) Act 2019 was passed unanimously by the Scottish Parliament on 7 May 2019, received Royal Assent on 11 June 2019 and fully commenced on 17 December 2021. This Act raised the age of criminal responsibility in Scotland from 8 to 12. Additionally, it provides certain safeguards to ensure that harmful behaviour by children under 12 can be responded to in an appropriate and meaningful way, which will not criminalise children.<sup>4</sup>
- 3.5. There have been calls in Scotland to go beyond raising the age to 12, with considerable support from key stakeholders to raise the age to 16. The Children's Commissioner for Scotland has called for the minimum age of criminal responsibility to be raised to 16 years old claiming that an increase to only 12 years of age is a significant missed opportunity.<sup>5</sup>

#### **4. Children at risk of coming into contact with the justice system have complex needs**

- 4.1. Children in areas of high deprivation are more likely to be at risk of coming into contact with the criminal justice system and in NI this is particularly true of communities affected by the conflict. The 2011 Youth Justice Review made 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 care experienced children.<sup>6</sup>
- 4.2. There is no shortage of research linking the higher risks of young people living with poverty, mental ill health, having experience of being in care or experiencing neglect/ abuse, misusing drugs or alcohol, and having learning and behavioural difficulties, coming into contact with the criminal justice system.<sup>7</sup>

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<sup>4</sup> <https://www.gov.scot/policies/youth-justice/raising-age-criminal-responsibility/>

<sup>5</sup> Children and Young People's Commissioner Scotland, Age of Criminal Responsibility (Scotland) Bill, Evidence to the Equalities and Human Rights Committee, 2018

<sup>6</sup> Youth Justice Review, page 86.

<sup>7</sup> 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'.

4.3. Children in care are particularly over-represented in figures of children in custody in Northern Ireland. Of the children in custody during 2021/2022, 34% were in care.<sup>8</sup>

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

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

5.1. The age of criminal responsibility is out of step with other legal age limits.

5.2. Below the age of 18 children cannot vote; sit on a jury; buy alcohol, tobacco or fireworks; get a tattoo or open their own bank account.

5.3. Below the age of 16 children cannot consent to sex, leave school, play the lottery or buy a pet.

5.4. How we treat children within the criminal justice system is starkly different to how we treat them in other areas of social policy.

## 6. **Children's brains are still developing**

6.1. 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.<sup>9</sup>

6.2. 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.

6.3. 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 impulses, understand consequences and control emotions.<sup>10</sup>

6.4. Evidence on children's understanding of the criminal justice process suggests that 13 years old and younger are impaired in their ability to understand criminal proceedings

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<sup>8</sup> Youth Justice Agency, Annual Workload Statistics, 2021/2022.

<sup>9</sup> Michael E Lamb and Megan PY Sim, (2013), Developmental Factors Affecting Children in Legal Contexts, *Youth Justice*, 2013 13: 131

<sup>10</sup> Enys Delmage, (2013), The Minimum Age of Criminal Responsibility: A Medico Legal Perspective, *Youth Justice*, 2013 13:102.

and only begin to understand what it means to appear before a judge at around 14 or 15 years of age.<sup>11</sup>

6.5. Evidence also suggests that children who have experienced trauma, abuse or neglect are 'particularly poorly developed in the required capacities for criminal responsibility and are much more likely to come into conflict with the law'.<sup>12</sup>

## **7. Criminalising children doesn't work – it does more harm than good**

7.1. Research demonstrates that criminalisation of children tends to increase their risk of engaging in offending behaviour.<sup>13</sup>

7.2. It also stigmatises the child and alienates them from society, creates problems of self-esteem and creates barriers in the way of return to education or future employment, not least in the form of acquiring a criminal record.

7.3. Punitive measures increase the likelihood of reoffending.

## **8. There are better ways to deal with it – better for children and better for communities**

8.1. Our reoffending rates demonstrate that the criminalisation of children does not offer the best chance of success if we aim to prevent reoffending, and to encourage rehabilitation and reintegration of the child into playing a constructive role in society.

8.2. Rather the focus should be on assessing the child's problems and needs, and attempting to meet those needs. In a children's rights compliant approach, children in conflict with the law are defined as 'children in need' and the response to these needs the responsibility of children's services (e.g. education, health, social care).

8.3. 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 rights-based 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.

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<sup>11</sup> Children and Young People's Commissioner for Scotland, Age of Criminal Responsibility(Scotland) Bill, Evidence to the Equalities and Human Rights Committee, 2018.

<sup>12</sup> *ibid*

<sup>13</sup> 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.

8.4. Young people were particularly concerned to discuss alternative responses to children who are in conflict with the law, making clear that increasing the minimum age of criminal responsibility does not equate to ignoring offending behaviour.

## **9. We can remove children from the justice system**

9.1. Raising the age of criminal responsibility would remove a considerable number of children from the justice system. According to government figures<sup>14</sup>, there were 456 individual children aged 10- 15 years old referred to the Youth Justice Agency Services in 2021/2022.

9.2. There has been an increase in the proportion of individual 10-13 year olds referred to the Youth Justice Agency Services in the last seven years, doubling from 8.8% in 2014/2015 to 17% in 2021/2022. This, the highest level to date, is deeply concerning.

9.3. In terms of individual children in custody in 2020/2021, 10-15 years old account for 42% of under 18 year olds detained in Woodlands Juvenile Justice Centre.

9.4. It is worth noting that in 2021/2022 the proportion of admissions to the Juvenile Justice Centre involving children subject to Care Orders has increased from 30.9% in 2019/2020 to 37.2% in 2021/2022. Of the 106 individual children in custody in 2021/2022, 33 were subject to a Care Order and 3 were Voluntary Accommodated. The increase in care experienced children being deprived of their liberty is deeply concerning.

9.5. Also worthy of note is the breakdown of the average population in the Juvenile Justice Centre by status. Very few children who are detained there have actually been sentenced. In 2021/2022, there were NO admissions to the Juvenile Justice under sentence; 79.7 % admissions were under PACE and 20.3% were on remand.

## **10. The call for change is growing**

10.1. There are increasing calls for and growing evidence to support an increase in the minimum age of criminal responsibility in NI.

10.2. We asked young people involved with VOYPIC to tell us what they thought the minimum age of criminal responsibility should be.

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<sup>14</sup> NISRA, DOJ, Youth Justice Agency Annual Workload Statistics 2021/2022, 15<sup>th</sup> September 2022.



10.3.The average age suggested was 15.8 years.

10.4.Only 7.5% of the group answered '10 years old', supporting the MACR remaining as is.

10.5.Over 80% of respondents supported increasing the MACR to 16 years or older.

10.6.All young people we spoke to in the VOYPIC participation groups supported raising the MACR, with most suggesting 16 years as a suitable age.

### **Alternatives to Criminalisation**

In our discussions with young people the alternatives to criminalisation of young people was raised as a key area of concern. While the majority of young people supported raising the minimum age of criminal responsibility to 16, they were clear that this should not mean that offending behaviour, which would have previously been considered criminal, be ignored or go unchallenged.

However, the young people all agreed that responses to such behaviour should be based on the best interests of the child, and seek to break the cycle of reoffending that has become evident over recent years. Diverting young people from the criminal justice system, and meeting their needs through social care approaches, is critical for reducing offending and building safer communities.

Alternative processes and supports, co-designed by young people with lived experience of the system, must be fully developed and properly funded on a cross-departmental basis.

While VOYPIC supports raising the minimum age of criminal responsibility in Northern Ireland to 16 years, with no exceptions for serious or grave offences, we recognise that it is sometimes necessary for young people's liberty to be restricted in order to maintain their safety and/or the safety of others. We believe that, where necessary, this can be done without the need to criminalise children.

## Concluding Remarks

***VOYPIC supports raising the minimum age of criminal responsibility in Northern Ireland to 16 years, with no exceptions for serious or grave offences***

This is based on conversations with young people with lived experience of care, including young people with experience of coming into conflict with the law, and on the ten reasons identified in partnership with Children's Law Centre, Include Youth and NIACRO:

- It does not comply with international children's rights standards
- Experts tell us 10 is too low
- Our age of criminal responsibility is at the bottom of the league
- Children at risk of coming into contact with the justice system have complex needs
- The age of criminal responsibility is out of line with other age-related legislation
- Children's brains are still developing
- Criminalising children doesn't work – it does more harm than good
- There are better ways to deal with it – better for children and better for communities
- We can remove children from the justice system
- The call for change is growing

### **For further information contact:**

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