

Advice

Consultation on Increasing the Minimum Age of Criminal Responsibility in Northern Ireland

The Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in NI. Under Articles 7(2)(3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of the Office is children and young people up to 18 years, or 21 years of age if the young person has a disability or is/has experience of being in the care of social services. In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

Consultation

The age at which children can be held criminally responsible is 10 years in NI (as well as in England and Wales) and 12 in Scotland. In 1998, the Criminal Justice (Children) (NI) Order confirmed the age of 10 whilst removing *doli incapax*, which had allowed an assessment of maturity up to the age of 14.

There was detailed examination of the MACR as part of both the Criminal Justice Review, 1999 and the Youth Justice Review, 2011. In an attempt to comply with the UN Committee on the Rights of the Child General Comment 10 recommendations to the UK government the YJR recommended that the MACR should be raised to 12 with immediate effect and then further consideration should be given to an increase to 14 within 3 years. Whilst NICCY has been frustrated at the delay in formally progressing the YJR recommendation we welcome this consultation and commend the previous Minister for Justice for issuing it. However, the length of time taken to progress the recommendations of the YJR makes a phased approach no longer appropriate and instead NI must adhere to best practice.

NICCY does not intend to re-rehearse the clear arguments made by a range of international bodies (many of which have been included in the consultation document) on the need for a child-centred age of criminal responsibility. NICCY is also aware of the responses of the key NGOs in this area (Include Youth, CLC, NIACRO and VOYPIC) and

fully endorses their positions. Instead, we will answer the questions posed with added context as deemed necessary.

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

2. If you answered No to Q1, please consider the options below and select the one which most closely represents your preferred MACR.

10 years
12 years
16 years
18 years

The Commissioner reminds the DoJ that the UN Committee’s recommendation of 14 years is a minimum and General Comment 24 (para 22) they state that “*developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making.*” NICCY recognizes the work undertaken in NI on understanding and responding to adverse childhood experiences (ACEs) so that there can be a more effective response to vulnerable children and families. Again, there is strong evidence that children involved in the criminal justice system often experience multiple ACEs and to prevent further unacceptable behaviour these must be addressed in a child centred system away from the criminal justice system.

Therefore, NICCY strongly **recommends that the DoJ move beyond minimum standards to a more fully children’s rights compliant system that takes into account the neurological science and adverse childhood experiences and raises the minimum age of criminal responsibility to 16.**

3. If you indicated, in Q2, that your preference is for MACR to remain at 10 years, would you support an increase if exceptions were permitted for the committal of serious offences? Serious offences include murder, manslaughter, rape and aggravated sexual assault.

N/A

Yes No

The Commissioner for Children and Young People does not believe that it is appropriate to have a 2-tier approach to MACR. It would place unnecessary burden on both the criminal justice and care system as they would be required to have accommodation and processes available for very young children in the rare event of them being charged with a serious offence.

Additionally, in General Comment 24 (para 27) the Committee on the Rights of the Child urges states to have one minimum age of criminal responsibility. One age of criminal responsibility for all children would enable the system to develop services and responses appropriate to the needs of the child and the community.

Conclusion

Raising the age of criminal responsibility will not undermine the rights and experiences of victims. Those who are harmed by young people's actions must have their needs met and their views listened to. It is not in the best interests of children to not support them to understand the impact of their behaviour. Nor is it in their best interests to believe that their rights have priority over others, they do not. In reality the rights of victims and young people rarely compete and on the rare occasion when they do a best interests test must be made taking into account the above.

By raising the age of criminal responsibility to 16 and re-investing resources into appropriate services and therapeutic interventions for young people, their families and communities we will achieve better outcomes for young people, increase the likelihood that children do not get involved in such behaviour and if they do it will not be repeated and communities will, in turn, be safer.

Raising the age of criminal responsibly to 16 will progress Northern Ireland's journey to being a rights compliant society where every child gets the best start in life.