

Stage 3: Age of Criminal Responsibility (Scotland) Bill

Briefing on International Standard for the Minimum Age of Criminal Responsibility

I am deeply concerned that the Age of Criminal Responsibility (Scotland) Bill which the Scottish Parliament will consider at Stage 3 this week sets the age of criminalisation at 12, two years below the international minimum standard.

The policy memorandum for this Bill states that the Scottish Government's intention is to reflect Scotland's progressive commitment to international human rights. Setting the minimum age of criminal responsibility at 12 is in direct contradiction to that stated aim. It has attracted unprecedented intervention by international human rights bodies who have written directly to Scottish Ministers and given evidence to the Equalities and Human Rights Committee (EHRiC). They have been clear that the positive and progressive elements of Scotland's justice system can never excuse the breach of an international minimum.

In 2014 the Parliamentary Assembly of the Council of Europe (PACE) recommended a MACR of at least 14.¹ On 6th December 2018 the Council of Europe Commissioner for Human Rights Dunja Mijatovic took the extraordinary step of writing directly to the Minister for Children and Young People stating that the current proposals "would still leave Scotland behind the majority of Council of Europe Member States" and called on the Minister to ensure that the MACR be fixed at 14 at the very least.² In a subsequent letter to the EHRiC on 10 January 2019 the Commissioner strongly rejected the argument from Scottish Ministers that other characteristics of our justice system, such as Children's Hearings, meant we were not subject to international minimum standards:³

"each member state of the Council of Europe (and many jurisdictions in those member states) apply different approaches, making each unique, with specific advantages and challenges. It is important to underscore that international human rights standards, such as those referred to above, are developed precisely to be able to provide minimum safeguards regardless of the diversity of states' laws, policies and practices."

She went on to make clear that members of the Council of Europe were expected to set an age of criminal responsibility of 14 as an absolute minimum, with an even higher age being preferable.

The United Nations Committee on the Rights of the Child (CRC) was also concerned enough to intervene directly. Professor Ann Skelton from the CRC was unequivocal in her evidence to EHRiC on 17 January 2019:

"The position of the UN Committee would be that Scotland should move to 14 immediately."⁴

¹ [Parliamentary Assembly of the Council of Europe Resolution 2010 \(2014\) Child-friendly juvenile justice: from rhetoric to reality](#)

² <https://www.coe.int/en/web/commissioner/-/commissioner-urges-scotland-s-government-to-increase-the-age-of-criminal-responsibility>

³ <https://www.coe.int/en/web/commissioner/-/commissioner-provides-evidence-to-the-scottish-parliament-on-the-age-of-criminal-responsibility>

⁴ [Official Report of Meeting of the Equality and Human Rights Committee 17 January 2019](#)

The CRC has taken the view for a number of years that 14 is the international minimum, based on extensive global evidence. In the next few weeks they will formally codify that in the revision of the outdated General Comment 10 (2007): Children's Rights in Juvenile Justice.⁵ The draft revised General Comment reflects developments that have occurred since 2007, including the global evidence; improved understanding of child and adolescent development; and the CRC's own jurisprudence and concerns. The fact that the Scottish Parliament is being asked to adopt this Bill in the weeks prior to the formal adoption by the CRC of the revision General Comment cannot be seen as acting in compliance with UN standards. The international community has clearly and consistently communicated the new standard of at least 14.

On Monday 6 May 2019 two young human rights defenders from Scotland will lead a delegation giving evidence to the UN Committee Against Torture which monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee Against Torture has repeatedly condemned Scotland for having a minimum age of criminal responsibility below the minimum international standard. On Tuesday 7 May, the same day as the Scottish Parliament debates this issue, the Committee Against Torture will be examining Scotland's compliance.

The message from the international human rights bodies is clear – the minimum acceptable age of criminal responsibility is 14, and that any age below that cannot be justified in human rights terms.

There was significant evidence to EHRIC which outlined the benefits to children and to society of raising the MACR beyond 12. A low age of criminal responsibility does not keep us safer, nor does it provide an effective remedy for those affected by the behaviour of children.⁶

In choosing to restrict its work on this issue to raising the age to 12, the Scottish Government has created a situation where it now lacks the confidence that systems are in place to allow us to meet the international minimum standard of 14. This failure demands urgent action. 12 and 13 year old children should not need to wait a period of years before the Scottish Government meets its minimum obligations in terms of their rights.

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⁵ UN Committee on the Rights of the Child. 2018. *General Comment No. 24 (201x) replacing General Comment 10 (2007): Children's Rights in Juvenile Justice.*

<https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>

⁶ McAra, L. and McVie, S., 2013. Delivering justice for children and young people: Key messages from the Edinburgh study of youth transitions and crime. *Justice for young people: Papers by winners of the research medal*, pp.3-14. https://www.parliament.scot/S5_Equal_Opps/General%20Documents/SMCVieSuppEvidencedoc.pdf.docx

Background

Article 40 of the United Nations Convention on the Rights of the Child (UNCRC) calls on States to treat children in conflict with the law in a manner consistent with the promotion of the child's sense of dignity and worth; which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and desirability of promoting the child's reintegration and the child's assuming a constructive role in society. Key to this is *"the establishment of a minimum age of criminal responsibility (MACR) below which children shall be presumed not to have the capacity to infringe the penal law"*.⁷

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