

Raising the Age of Criminal Responsibility

Purpose of report

For direction.

Summary

The age of criminal responsibility (ACR) refers to the minimum age that a child can be prosecuted and punished by law for an offence. England, Wales and Northern Ireland have one of the lowest ACRs in the world at age 10. Campaigners have been calling for the ACR to be raised to reflect international standards and research around child development.

This paper asks the Children and Young People Board to agree an LGA position on raising the ACR.

Recommendation

That members agree that the LGA supports calls to raise the age of criminal responsibility to at least 12.

Action

Officers to use the LGA's agreed position in future work with the Government.

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Raising the Age of Criminal Responsibility

Background

1. The age of criminal responsibility (ACR) refers to the minimum age that a child can be prosecuted and punished by law for an offence. In England, Wales and Northern Ireland, this is 10. In Scotland, Age of Criminal Responsibility (Scotland) Act 2019 raised the ACR from 8 to 12.
2. England has one of the lowest ACRs in the world. Campaigners have been calling for the ACR to be raised to reflect international standards and research around child development.
3. This paper asks members to agree whether the LGA wishes to support these calls to raise the ACR.

Policy Context

4. The United Nations Convention on the Rights of the Child, which was ratified by the UK government in 1991, calls upon states parties to establish a minimum age "below which children shall be presumed not to have the capacity to infringe the penal law". The UN Committee on the Rights of the Child recommended in 2007 that states set this minimum age at 12 or higherⁱ; in 2019, it launched a consultation on revising this recommendation to a minimum age of at least 14.ⁱⁱ
5. England currently has one of the lowest ACRs in the world:

Country	Age of Criminal Responsibility
Ireland	12 (though children aged 10 or 11 can be held criminally liable for very serious crimes including murder and rape)
Germany	14 (if 'morally and mentally mature' when the offence took place)
Sweden	15
Italy	14 (persons aged 14 to 17 (inclusive) can only be held criminally liable where they have been judged capable of forming the necessary criminal intent in relation to the specific offence)
Japan	14
Australia	10
China	14
USA	In 33 states, there is no minimum age of criminal responsibility, according to the Child Rights International Network. In theory, that means a child of any age could be convicted and sentenced. Of the states that do have a minimum, North Carolina's is the lowest at seven years.

6. A range of organisations have called for all countries in the UK to increase the ACR, including the Association of Directors of Children's Services, the Association of Youth Offending Team Managers and the children's commissioner for England.ⁱⁱⁱ Other organisations calling for the ACR to be raised include the Law Societies, the Royal Society, the Royal College of Psychiatrists and the All Party Parliamentary Group for Children.^{iv}
7. In May 2019, the Equalities and Human Rights Commission called on the Government to raise the ACR, noting that "criminalising children at such a young age can have a detrimental impact on their wellbeing and development and risks making them more likely to reoffend as adults."^v

Child development

8. A 2011 report by the Royal Society^{vi} outlines that:

8.1 Changes in important neural circuits underpinning behaviour continue until at least 20 years of age...The prefrontal cortex (which is especially important in relation to judgement, decision-making and impulse control) is the slowest to mature. By contrast, the amygdala, an area of the brain responsible for reward and emotional processing, develops during early adolescence. It is thought that an imbalance between the late development of the prefrontal cortex responsible for guiding behaviour, compared to the early developments of the amygdala and associated structures may account for heightened emotional responses and the risky behaviour characteristic of adolescence.

8.2 It is clear that at the age of ten the brain is developmentally immature, and continues to undergo important changes linked to regulating one's own behaviour. There is concern among some professionals in this field that the age of criminal responsibility in the UK is unreasonably low, and the evidence of individual differences suggests that an arbitrary cut-off age may not be justifiable.

9. A Houses of Parliament briefing on ACR^{vii} outlines that:

9.1 Adolescents are less able to consider the perspective of others when making decisions, or to inhibit inappropriate actions. The way their brains develop leads them to prioritise immediate rewards over long-term consequences. Furthermore, adolescents who suffer adversity in early life show particularly high activity in the reward areas of the brain and are more prone to risk-taking behaviours.

10. The briefing also highlights that "conventional morality, including "law and order" morality is generally not achieved until mid-teens."

Children's outcomes

11. The Houses of Parliament briefing highlights that criminalising children does not reduce reoffending and can be harmful, in particular it cites evidence that:

- 11.1. children who are dealt with most severely by the criminal justice system (CJS) are less likely to desist from offending.
- 11.2. contact with the CJS is not associated with reduction in re-offending and can lead to increased levels of criminality in children.
- 11.3. reoffending rates for children who have been in custody are high. Countries with a low ACR, including England and Wales, have the highest rates of child detention in penal institutions and the poorest outcomes with regards to rehabilitation and reoffending
- 11.4. a low ACR does not deter children from offending.
- 11.5. contact with the CJS reduces the likelihood of children completing education, obtaining qualifications and gaining meaningful employment.
- 11.6. children subjected to criminal proceedings experience delays in receiving therapy compared to those placed in SCHs via welfare laws.

12. Alternatives to criminalisation for children under the ACR include welfare interventions, secure children's homes or mental health treatment where relevant.

13. The previous government stated that it had no intention of reviewing the ACR, stating: "Setting the age of criminal responsibility at 10 provides flexibility in addressing offending behaviour by children and allows for early intervention to help prevent further offending."^{viii}

Implications for Wales

14. The age of criminal responsibility is set by section 50 of the Children and Young Persons Act 1933, which applies to both England and Wales. Any change to the ACR would affect both England and Wales.

Financial Implications

15. None.

Next steps

16. Members' decision on the LGA's position on the ACR will inform future work with Government.

ⁱ <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

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- ii <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>
- iii <https://www.theguardian.com/society/2019/nov/04/age-of-criminal-responsibility-must-be-raised-say-experts>
- iv <https://yjlc.uk/wp-content/uploads/2018/06/ACR.pdf>
- v <https://www.equalityhumanrights.com/en/our-work/news/government-must-improve-record-stopping-cruel-and-inhuman-treatment>
- vi https://royalsociety.org/~media/Royal_Society_Content/policy/projects/brain-waves/Brain-Waves-4.pdf
- vii <https://yjlc.uk/wp-content/uploads/2018/06/ACR.pdf>
- viii <https://www.theguardian.com/society/2019/nov/04/age-of-criminal-responsibility-must-be-raised-say-experts>