

**The Report from the Age of Criminal  
Responsibility Advisory Group on the review of  
the Age of Criminal Responsibility (Scotland)  
Act 2019**

**16 December 2024**

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# 1. Foreword

The Age of Criminal Responsibility (Scotland) Act 2019 ([the Act](#)) fully commenced on 17 December 2021. [Section 78](#) of the Act places a statutory duty on Scottish Ministers to review the operation of this Act generally, and with a view to considering the future age of criminal responsibility. The three-year review period commenced on 17 December 2021 and concluded on 16 December 2024.

The Age of Criminal Responsibility Advisory Group and its four subgroups lead on the review of the current legislation and have determined the implications of any change to the age.

This report sets out the learning and experience from three years since full commencement of the Act. It provides information, and perspectives, on community confidence, victim support, data, research, and the operational implications of any change to the current age - including what would be required by way of systems, structural and practice changes. This report also provides an update on the policy landscape, and how this has changed to build the scaffold of support children and young people need to grow up loved, safe and respected, making Scotland the best place to grow up.

In submitting this report to Scottish Ministers, I wish to acknowledge the enormous work and dedication of partners and stakeholders who have contributed to this work throughout this three-year review period.

I would particularly like to thank the four subgroup chairs for their passion and commitment. Thank you, Fiona Dyer from Children and Young People's Centre for Justice (CYCJ) and chair of the Data and Research Subgroup, Fiona Steel, from Action for Children and chair Community Confidence Subgroup, Neill Mitchell from Scottish Children's Reporter Administration (SCRA) and chair of the Operational Implications Subgroup, and Carol Eden from Victim Support Scotland and chair of the Victim Support Subgroup.

**Brian Taylor/Ian Donaldson**  
**Deputy Director for Children's Rights, Protection and Justice**

## 2. Introduction

The Age of Criminal Responsibility (Scotland) Act 2019 (the Act) was passed by the Scottish Parliament on 7 May 2019, received Royal Assent on 11 June 2019, and fully commenced on 17 December 2021. The Act resulted from the work of an Advisory Group established in 2015, which identified key issues related to raising the age of criminal responsibility from 8 to 12. The 2015 Advisory Group made several recommendations aimed at safely and responsibly increasing the age of criminal responsibility, while effectively removing young children from criminal justice processes.

The Act changes the way in which the law treats children who are aged under 12. The reforms made by the Act signal an important shift in how our society expects the behaviour of children to be managed. The provisions in the Act recognise and respond to evidence that dealing with childhood behaviour in a criminalising, stigmatising way serves only to promote escalation and further harm. This is neither in the interests of any individual child, nor in the safety of our communities.

The Scottish Government is fully committed to deliver on its pledge to care-experienced people in Scotland by accepting and responding to the conclusions of the Independent Care Review set out in The Promise. Keeping the Promise requires immediate action to improve experiences and outcomes for children, young people and their families who are currently in or on the edges of care; combined with action over the longer term to improve the level of support for families from birth through to adulthood to significantly reduce the numbers of families coming into the care system. The Promise sets out that the age of criminal responsibility in Scotland should be ‘in line with the most progressive countries in the world.’

### The Review

[Section 78 of the Act](#) places a statutory duty on Scottish Ministers to review the operation of this Act generally, and with a view to considering the future age of criminal responsibility.

The Act states that the Scottish Ministers must lay a copy of the report before the Scottish Parliament. The report on the review must be prepared, published, and laid before the Scottish Parliament no later than 12 months after the end of the review period (by 16 December 2025).

The Act provides Scottish Ministers with the power to require information in relation to the carrying out of the review and for monitoring the exercise of functions under Part 4 of the Act, following the end of the review period.

The three-year review period started on 17 December 2021, the day on which section 1 of the Act commenced, and concludes on 16 December 2024.

### Age of Criminal Responsibility Advisory Group (Advisory Group)

[The Advisory Group](#) was established to assist Scottish Ministers to undertake the review, and members include senior professionals from a wide range of disciplines -

the full list of membership is noted below. It is therefore important to note that the opinions expressed in this report are those of the Advisory Group, and not those of the Scottish Government.

The following organisations are members of the group:

|  |   |
|--|---|
| Action for Children                              | Bairn's Hoose Policy                              |
| CAMHS Lead Clinicians' Group                     | Child Interview Rights Practitioner               |
| Children's and Young People's Centre for Justice | Children and Young People's Commissioner Scotland |
| Clan Childlaw                                    | Children's Hearings Scotland                      |
| Crown Office and Procurator Fiscal Service       | Convention of Scottish Local Authorities          |
| Education Scotland                               | Disclosure Scotland                               |
| National Youth Justice Advisory Group            | Includem  |
| Scottish Children's Reporter Administration      | Police Scotland                                   |
| Scottish Courts and Tribunal Service             | Scottish Community Development Centre             |
| Social Work Scotland                             | Scottish Legal Aid Board                          |
| Victim Support Scotland                          |   |
| Together Scotland                                |   |

The Advisory Group was tasked to evaluate the Act in its current form, to recognise and reflect on the operational learning and experience about how the legislation operates for the under 12 age group and to consider any future age of criminal responsibility in Scotland.

The Advisory Group has considered the following issues in relation to how the Act operates for children under 12 years old, as well as consider the potential for future ages of criminal responsibility:

- data and research;
- age of prosecution;
- grounds for referral to Children's Hearings;
- disclosure of criminal records and non-criminal police information;
- the taking, storage, retention, and destruction of forensic samples;
- police investigatory powers;
- the rights of victims;
- community confidence;
- the jurisdiction and powers of the Children's Hearings System;
- the role of the criminal justice system;
- UNCRC compliance; and
- post-18 process and procedures.

### 3. Executive Summary

The Advisory Group was established to support Scottish Ministers with the three-year comprehensive statutory review of the Age of Criminal Responsibility (Scotland) Act 2019, which raised the minimum age of criminal responsibility in Scotland from 8 to 12 years. The review must include a general review of the effectiveness of the Act since its full commencement (from 16 December 2021) and an evaluation of the issues attending any future changed age of criminal responsibility.

The UN Committee on the Rights of the Child published its [Concluding Observations](#) on United Kingdom and Northern Ireland in June 2023 and urges the State party to bring its child justice system fully into line with the Convention and other relevant standards. This includes the recommendation of raising the minimum age of criminal responsibility to at least 14 years of age.

[The Promise](#) states that Scotland must aim for an age of minimum criminal responsibility in line with the most progressive global Governments, alongside efforts to prevent criminalisation of all children.

The Advisory Group has taken into consideration; i) the rights of children whose behaviour causes serious harm; and ii) the rights of the public, including other persons who have been, or are at risk of being, harmed by that behaviour.

The Advisory Group has taken into consideration other policy and legislative developments that have commenced over the review period. The Advisory Group focused on four key areas: data and research, victim support, community confidence and operational implications of moving to a higher age. These key areas developed into subgroups to the Advisory Group.

#### Data and Research findings

Over the last decade Scotland has seen significant changes in the youth justice sector since there has been a decisive shift towards prevention by tackling the root causes of harmful behaviour. Since full commencement of the Act, it has further reinforced a more rehabilitative approach, with no children under 12 years old being processed through the criminal justice system. This reduction aligns with a broader focus on child welfare rather than punitive measures as the primary means of responding to children's offending or harmful behaviour. Removing the trauma and stigma of early criminal conviction increases life chances and opens up opportunities in terms of access to education and employment.

Raising the age of criminal responsibility shows leadership in rights-respecting policies, especially compared to other UK jurisdictions, where the age of criminal responsibility remains at age 10.

Scotland's children's hearings system – operating in the wider context of the proven Whole System Approach to youth justice - already effectively manages the behaviour of children under the age of criminal responsibility using a welfare-based approach. This system prioritises 'social education' and rehabilitation over punishment, addresses the underlying causes of offending, and is well-suited for managing young people, even those at, or posing, significant risk.

The evidence collected by the Data and Research Subgroup supports a further increase in the age of criminal responsibility in Scotland. The evidence that exists suggests that the age of criminal responsibility in Scotland could be raised to 16 with minimal impact on prosecutorial or court services, although the impact on other agencies would have to be taken into consideration.

The Children's Hearings System can, and does, manage the behaviour of children who present a significant risk. It would continue to do so, should the age be increased further. However, the data and research subgroup agrees with the recommendations from the operational implications subgroup, that there would need to be further consideration in relation to managing the risk that a very small minority of children may continue to present post age 18, should they be responsible for very serious harmful behaviour committed when they were below any future age of criminal responsibility.

### Victim Support Subgroup findings

The victim support subgroup finds that victims are impacted by harm caused and require the provision of support, noting that the needs of children who are victims, may be different to adults who are victims.

The provision of information to victims of children referred to the Scottish Children's Reporter Administration (SCRA) is a consistent and national service. However, when a child is not referred to the Reporter or dealt with through a criminal justice route, provision may not be the same across all areas of Scotland and depends on locally available services. There will continue to be variations in the provision of information depending on the response to the child causing harm as these are governed by separate systems.

There is a requirement to balance the often-competing rights of children harmed with the rights of the child responsible for harm.

Restorative justice or restorative practices, adapted appropriately for children under any new age of criminal responsibility could be explored as a route to resolving issues.

If there is any future increase in the age of criminal responsibility, there would need to be considerations on support and information available to victims of harm caused by children.

Creating national guidelines to ensure a consistent approach to the provision of information and support to victims who have been harmed by children, and systematic high-quality services to best meet the needs of victims through an offer of restorative practices should both be prime considerations.

Essentially, the subgroup recognises that raising the age of criminal responsibility removes the option for a criminal justice response for some cases. The subgroup acknowledged that for the 'critical few' children who would previously have gone through a criminal justice route and who instead be referred to a welfare-based response with a hard cut-off at age 18, and the impact this would have on the victims in these incidents, as well as on wider community confidence in Scotland's response.

## Community Confidence Subgroup findings

Community confidence plays a critical role in ensuring that justice systems are effective and that communities remain cohesive and supportive. High levels of public trust contribute to better social stability, whereas low confidence can breed distrust and division.

There has been meaningful engagement with the public regarding the implications of age of criminal responsibility and related youth justice issues. However, it is recognised that despite widespread understanding of age of criminal responsibility as a concept, many people lack a deeper understanding of the developmental and cognitive maturity factors involved in determining age of criminal responsibility age limits.

The community confidence subgroup found that public perception shows a disconnect. Many people support having an age of criminal responsibility at 12-13 years but also believe that the minimum age for jury service should be 20 or older. This paradox highlights a lack of understanding about the connection between cognitive maturity and the ability to make responsible, moral decisions.

Young people themselves understand that age limits, including those related to criminal responsibility, are in place to protect them from making decisions they may later regret due to cognitive and emotional immaturity.

There is a significant opportunity to improve public understanding through better communication about children's rights, the rationale behind age limits, and the developmental science that informs decisions on criminal responsibility. Clearer, more consistent messaging could help build trust and foster informed, productive community discussions.

The portrayal of youth behaviour and crime in the media significantly shapes public perceptions. The subgroup finds that the introduction of clearer guidelines for media reporting on youth issues to prevent negative stereotypes from being reinforced, which could undermine public confidence in the justice system overall, and in youth justice system responses in particular.

A lack of feedback and transparency from the justice system regarding actions taken after youth offences erodes confidence. Many communities feel a sense of injustice because they are not informed about the outcomes or progress of cases involving young people who cause harm.

The subgroup made several recommendations to strengthen public confidence in the youth justice system:

- Develop a national accessible communication strategy to explain the youth justice process, ensuring/ the public understands the implications of raising the age of criminal responsibility and how young people are held accountable.
- Incorporate restorative justice processes outside formal proceedings to repair harm, improve community perceptions of youth accountability, and provide victims with opportunities for healing.



- Provide transparent, accessible data showing the minimal impact of raising the age of criminal responsibility on youth crime and court proceedings, helping to alleviate concerns about potential increases in crime or perceptions of impunity.
- Invest in community hubs and safe spaces for young people to support their development, strengthen community relationships, and challenge negative stereotypes about youth.
- Address broader community concerns by focusing on perceptions of fairness, justice, and well-being, ensuring that raising the age of criminal responsibility is seen as beneficial for all involved.

### Operational Implications Subgroup findings

The first phase of the subgroup was to examine the operational implications of raising the age of criminal responsibility through the perspectives of the four main organisations involved: Police Scotland, the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Children’s Reporter Administration (SCRA), and Social Work Scotland (SWS). While the operational impact extends beyond these four bodies to other public authorities and third-sector organisations, the group noted that these organisations play a key role in responding to offending by children under 14. The group’s work identified foundational policy issues and cross-organisational themes that could be applicable more broadly.

The group agreed that raising the age of criminal responsibility to 14 represented a desirable goal but highlighted that a small number of children (aged 12 and 13) commit very serious offences. For example, between 2011 and 2020, 29 cases involving children aged 12 or 13 were prosecuted, including serious charges like murder and rape. The absence of a criminal justice framework for these children creates challenges in how serious offences would in future be managed.

While the group acknowledged that these challenges are significant, they did not consider them as impossible to overcome. However, the group concluded that a full understanding of the operational implications can only be achieved after gaining experience with the recent increase in the age of criminal responsibility to 12. The group recommended that before moving to an age of criminal responsibility of 14, there should be further policy development, potential legislative changes, and cross-system planning informed by lessons learned from the age of criminal responsibility of 12. When the Act was commenced in 2021 there was an assumption there would be significant learning for the implementation, however in reality parts of the legislation have not yet been tested so any learning has been limited. This does demonstrate the very low level of serious harmful incidents.

In the second phase (following the June 2022 Advisory Group meeting), the group identified several key areas for further focus:

- Investigative interviews and interagency referral discussions (IRDs).
- Resource implications of an increase in the age of criminal responsibility.
- The Children’s Hearings system’s response to seriously harmful behaviour.
- The 24-hour limit for keeping a child in a place of safety.
- Harmful behaviour by children from outside Scotland.
- The process for obtaining court orders outside of office hours.

The subgroup's fundamental position is that raising the age of criminal responsibility to 14 is a goal worth pursuing. The reports produced during the review period highlight several operational, resource and workforce challenges associated with increasing the age of criminal responsibility. These challenges apply for all organisations but particularly for Social Work Scotland, Scottish Children's Reporter Administration, Police Scotland and third sector organisations. These issues will need to be carefully considered and addressed before any increase can occur. While some present significant challenges, particularly regarding the serious harmful behaviour of children from outside Scotland and the lack of options for compulsory intervention once a child reaches 18, none of these should be seen as insurmountable obstacles to raising the age of criminal responsibility.

## Conclusion

The Advisory Group's review of the Act has provided valuable insights into the current state of youth justice in Scotland and the potential for further reform. Since the Act's full commencement in December 2021, significant progress has been made in reducing the criminalisation of young people, shifting the focus towards rehabilitation and child welfare, protecting rights, and offering safeguards where appropriate.

The evidence suggests that raising the age of criminal responsibility further, potentially to 14, 15, or even 16, would align Scotland with jurisdictions at the leading edge of international standards, enhance the rights of children, and reinforce Scotland's position as a leader in progressive, rights-respecting policies.

While the benefits of raising the age of criminal responsibility are clear, the review has also highlighted key considerations, particularly in relation to the potential operational and practical challenges. These include managing the serious behaviour of children just above the age of criminal responsibility threshold or those nearing adulthood and ensuring that victims of harm caused by children receive appropriate support.

In this context, the review calls for enhanced victim support, including the development of national guidelines to ensure a consistent and restorative approach to victim care. Additionally, more robust public engagement and communication about the rationale behind age of criminal responsibility reforms will be essential to build community confidence and address concerns.

The Advisory Group collectively agrees that there should be an increase to the age of criminal responsibility to 14 or above, with proper policy development, cross-agency collaboration, and lessons learned from the initial increase to 12, alongside necessary reforms to operational systems and victim support frameworks, and resource would strengthen Scotland's commitment to child rights, rehabilitation, and social justice.

## 4. Data research and evidence

*Please refer to the Data and Research Appendix for full reports.*

The Data and Research Subgroup has worked with key partners to collect and analyse data and research as part of the Advisory Group's remit of considering a future age of criminal responsibility.

### Objectives

- To oversee the research commissioned by the Scottish Children's Reporter Administration (SCRA).
- To consider whether there are any gaps in research evidence and identify how these could be filled.
- To consider whether there are any gaps in the minimum dataset for child protection that need to be filled in relation to considering a future age of criminal responsibility, and to identify how these gaps can best be filled.
- To work with Police Scotland, local authorities, and partners to collect the further data required to assess the implications of raising the age of criminal responsibility (ACR) to a higher age.
- To report to the Advisory Group on the findings of the data and research which will support the review of the Act.

The following section summarises the subgroup's work during the past 3 years. It is in two sections, research, and data.

### Research

#### **The Scottish Children's Reporters Administration**

The Scottish Children's Reporters Administration (SCRA) was commissioned by the Scottish Government to undertake [research on children aged 12-15](#) referred to them on offence grounds.

SCRA analysed data from their management systems about the number and profile of children referred on offence grounds over a 5-year period. Key findings from this analysis include:

- In 2018-19, 0.9% of children in the Scottish population aged 12-15 years were referred to the Reporter for offending. There were variations in referral rates between local authorities.
- 74% of standard offence referrals to the Reporter involved boys and 26% involved girls. These proportions had changed little over the previous 5 years (between 2013-14 and 2018-19).
- The most common offences included in referrals were assaults (28% of charges); threatening and abusive behaviour (19% of charges); vandalism (14% of charges); and theft (13% of charges).
- There were reductions in referrals for alcohol/drug/substance offence, housebreaking, and vehicle offence referrals over the 5-year period from 2013-14 to 2018-19.
- Children aged 12 years or over who commit the most serious offences can also be dealt with in the adult criminal justice system. Such serious cases are jointly

reported by the police to the Procurator Fiscal and the Reporter. In 2018-19, 1,225 joint reports were made for children under 16 years.

- The number of children whose joint reports were referred by the Procurator Fiscal to the Reporter increased by 28% from 482 children in 2013-14 to 674 children in 2018-19. Conversely, for those whose joint reports were retained by the Procurator Fiscal, there was a 60% decrease from 317 children in 2013-14 to 125 children in 2018-19. These trends reflect the aim to divert children from the criminal justice system to the Children's Hearings System.
- The overall aim of the research was to describe the backgrounds and offending of these children.

SCRA also conducted more detailed research based on a sample of 400 children's case files held by their case management system (CMS). The sample comprised approximately 10% of all children referred on offence grounds to the Reporter, and approximately 20% of those who were jointly reported to the Procurator Fiscal and the Reporter, during 2018-19.

For many of the 400 children in the case file study, (79 girls, 321 boys), their lives were characterised by adversity, trauma, neglect, exposure to harmful behaviours by others, victimisation, and exploitation (including criminal exploitation and sexual exploitation), often compounded by socioeconomic disadvantage. Findings indicated several areas of concern, including children's educational attainment and attendance, children's health and well-being, particularly for mental health, self-harming, substance misuse and bullying.

A significant number of children experienced bereavement through the loss of at least one person close to them. Several children experienced harmful parental behaviour and witnessed significant traumatic events, including aggression and domestic violence in the home. These findings paint a disquieting picture highlighting the difficult life circumstances and vulnerabilities faced by many of these children (SCRA 2021).

### **Edinburgh Study of Youth Transitions and Crime**

Similar research findings were reported by the authors of the Edinburgh Study of Youth Transitions and Crime, a longitudinal study of over 4300 individuals, who started school in 1998 in Edinburgh. Evidence from this study, and wider research, provided by the study authors as a policy briefing shows that:

- Young people who get involved in offending in early adolescence are significantly more likely than others to be: growing up in poverty; exposed to adverse childhood experiences; subject to victimisation and other harms; care experienced; and vulnerable in many other ways that are well outwith their control.
- Vulnerable and deprived young people who offend are more likely to be identified by the police and dealt with through formal justice system processes than young people from more affluent backgrounds who offend, which often perpetuates their vulnerability and deprivation.
- Once a young person gets formally involved with the justice system, they are less likely to desist from offending and more likely to have a long-term criminal career.

- Developmental processes that occur between the ages of 12 and 15 are particularly important in shaping outcomes for young people, and less formal system contact during this period can help reduce the likelihood of moving from the juvenile into the adult criminal justice system when they reach the age of 16.
- The period of transition out of adolescence has extended in recent decades, and there is increasing evidence that young people are not fully mature and integrated into adult life until the mid to late 20s. This has been recognised by the Scottish Sentencing Council in their guidance on sentencing young people aged under 25.
- Advances in developmental psychology and neuroscience show that full brain maturity is not reached until at least age 25 due to protracted development of the prefrontal cortex.
- Adolescent maturation is likely to be hindered by brain injury, substance use, adverse childhood experiences and neurodevelopmental disorders, all of which are more likely amongst those who get involved in offending behaviour.

## Growing Up in Scotland

Findings from a more recent longitudinal study of around 5,000 individuals, born in 2004/05, suggests that the prevalence of offending amongst children and young people has declined significantly over the last 20 years.

Comparing the Growing up in Scotland Cohort at age 14 (2019/20) with the Edinburgh Study cohort at age 14 (2000/01) shows more than a 50% reduction in the likelihood of involvement in a range of types of offending using the same measures (see briefing paper by McAra & McVie).

Despite the overall decline in offending, research findings from Growing Up in Scotland continue to show that inequalities experienced in childhood – especially persistent poverty and adverse childhood experiences – continue to be strongly predictive of offending in childhood<sup>1</sup>.

## International comparisons

The subgroup was tasked with examining how the ACR functions in other countries, what happens to children involved in offending, the role of police, public opinion and any challenges encountered in implementation. Following a literature review, Portugal and Sweden were identified as two countries that may provide helpful insights into how progressive age of criminal responsibilities are operationalised. A paper was produced which outlined what these countries do when children under the age of criminal responsibility are involved in offending/harmful behaviour, and how this can be addressed without the need to criminalise. This paper is summarised below:

### Portugal

Portugal adopts a tripartite or three-tiered approach to implementing its ACR of 16 years old, which encompasses **three** distinct age thresholds.

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<sup>1</sup> [ACEs, Places and Inequality: Understanding the Effects of Adverse Childhood Experiences and Poverty on Offending in Childhood | The British Journal of Criminology | Oxford Academic \(oup.com\)](#)

For children engaged in offending behaviour who are below 12 years old, the child is not considered to be criminally responsible for their actions. In such cases, an approach in law entitled 'promotion and protection' (*Lei de Promoção e Proteção de Crianças e Jovens em Perigo*) is implemented in respect of the child. Promotion and protection measures in respect of children below 12 years old, who have committed offending behaviour, commonly take two forms; the utilisation of measures that engage with the child within their traditional living environment and those that engage with the child outwith their traditional living environment.

Children aged between 12-16 years who engage in offending behaviour are also not determined to be criminally responsible for their actions. Within this age bracket, these children are subjected by the Youth Court to 'educational measures' (*Lei Tutelar Educativa*). The aim of educational measures is not to retributively punish the child for their actions, but instead educate them so that they can eventually become a law-abiding citizen within the community. The emphasis is therefore less on the offence and more on successfully reintegrating the child into society.

Children engaged in offending behaviour who are aged over 16 and up to 21 years old (e.g., over Portugal's ACR), are subjected to adult criminal justice proceedings and are held criminally responsible for their actions. This means that they appear before the adult court and can receive adult measures and sentencing outcomes.

## **Sweden**

The age of criminal responsibility (ACR) in Sweden is currently set at **15 years old**. Within the workings of the Swedish youth justice system, social services play a central role in responding to children under 15 years old who have engaged in offending behaviour. A clear emphasis is placed on addressing the social context surrounding the child, rather than administering punitive penalties or retributive forms of punishment – as such, offending behaviour by children under the ACR is perceived as a social welfare concern.

Significantly, as children under the ACR in Sweden cannot be criminally held responsible or convicted, police are not able to carry out a preliminary investigation. However, there are certain instances where police can investigate offences that have been committed by children under 15 years old via a *Section 31 investigation* - this can be overseen by either the police or prosecutor depending on the seriousness of the offence committed. Although broadly similar to a police preliminary investigation, there are certain differences, such as a restriction on the use of coercive measures - e.g. the bugging of an individual's telephones and electronic devices. The main purpose of a Section 31 investigation is to provide social services with information to assist in deciding the child's care and support needs.

## Overview

Comparisons can be drawn between Portugal and Sweden and the Children's Hearing System in terms of taking a welfare-based approach. Which children cause the most harm and how we respond to them, are areas that would need further exploration should the ACR increase past 12.

## **The Views of Children and Young People**

The subgroup conducted a survey to gain the views of children and young people on what the ACR should be. The survey, which comprised six key questions, was sent out to various partners within the sector including, Youth Link Scotland, Young Scot, Education Scotland, Local Authorities, Children's Hearings Scotland, CELCIS, Scottish Children's Reporter Administration and Who Cares? Scotland, amongst others. A total of 342 children and young people aged 12-26 (with a mean age of 17), of whom around two thirds were female and one third male, completed the survey.

### **Survey results**

- On average, participants thought the ACR should be 15.3 years (15 years and 4 months).
- There was no significant difference between males and females, or between older and young participants.
- Four per cent of respondents thought ACR should be lower than 12.
- Eleven per cent of respondents thought ACR was right at age 12.
- Eighty-five per cent of respondents thought ACR should be older than 12.
- The most common age selected was 16 (24.6% of respondents).
- Almost 1 in 5 (19.7%) thought ACR should be 18 or older.

### Summary of research

Overall, the research evidence tells us that:

- By raising the age of criminal responsibility to 15 or 16, Scotland would align with international standards and would be demonstrating rights-respecting leadership in contrast to the other UK jurisdictions which retain age 10 as the ACR.
- Scotland has the Children's Hearing system to manage the behaviour of children under the age of criminal responsibility in line with a welfare-based approach, that we aspire to for all children.
- Removing the trauma and stigma of early criminal conviction increases life chances and opens up opportunities in terms of access to education and employment.
- The majority of young people surveyed believe the ACR should be raised to 15 or 16.

### Research gaps

The data and research subgroup were also asked to look at research gaps. Following discussions, SCRA has recently started a piece of research to fill a particular gap identified by the subgroup.

This research builds on the previous research to improve our understanding of the backgrounds and experiences of 12-15-year-olds in conflict with the law. This piece of work will explore decision-making concerning 12-15-year-olds who are referred to the reporter for 1) high frequency (previously defined as persistent) offending; and 2) serious offences. The research has several components:

1. Trend analyses of high frequency and serious offending; this analysis has already been done for serious offending as we are using the s39<sup>2</sup> test as a means of identifying serious offences.
2. Detailed case sampling of 40 children referred for serious offending, split by gender to explore backgrounds, characteristics, histories of high frequency and persistence of offending, service intervention and decision-making.
3. Interviews with children's reporters about their considerations when handling referrals related to serious and high-frequency offending. The interviews with reporters will include consideration of issues such as Child Criminal Exploitation (CCE) and the role of victims.

SCRA hope to have a draft report in February 2025.

## Data

Using a template agreed upon by the subgroup, data has been collected by CYCJ from social workers in the use of the ACR legislation since the Age of Criminal Responsibility (Scotland) Act was enacted. This work is ongoing, as reports are completed after every incident using the powers under the Act. A report covering years one and two of the Act has been completed; a further report for Year 3 will be completed in January 2025.

Three data papers – for the years 2022, 2023 and 2024 – have been produced to show the number of children over the age of criminal responsibility (up to age 18) involved in offending behaviour.

Police Scotland has completed a dip-sampling report to show the number of children over the ACR involved in very serious behaviour. The dip sampling exercise aimed to analyse a selection of 200 files of incidents involving children aged 12-17 under the four following groups: group one – serious violence; group two – serious sexual harm; group three – house break-ins; and group four – fire harm. Although still useful, the report does not break down the children by age. Due to the scale of the study, for statistical accuracy, Police Scotland has advised that this cannot be done. SCRA has analysed the data of children involved in serious harmful behaviour which, alongside Crown Office and Procurator Fiscal Service (COPFS) data of children appearing in court, allows for some accuracy concerning the number of children meeting the threshold for serious harmful behaviour.

Official data and links to the Edinburgh Study were also included in the presentation and policy briefing paper submitted by Professor McAra and Professor McVie.

Key findings from the data analysis include:

- In the wake of progressive Scottish policy changes (including GIRFEC and the Whole Systems Approach), there has been an 89% reduction in the rate of 12-15-year-olds coming into the Children's Hearing System on offending grounds.
- Preventing 12-15-year-olds from coming into the Children's Hearings System has also had a positive knock-on effect on the adult criminal justice system, with fewer 16 and 17-year-olds being brought to court.
- There has been a 93% reduction in the rate of conviction and a 98% reduction in the rate of custodial sentences for 16–17-year-olds since 2006/07.

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<sup>2</sup> <https://www.legislation.gov.uk/asp/2019/7/section/39>



- Since raising the age of prosecution to 12 in 2011, the number of 12-15-year-olds convicted in Scottish Courts has fallen by 94%.
- Over the six years between 2012/13 and 2018/19 (the last full year of published data before the COVID-19 lockdowns) there were no convictions for children aged 12 or 13 and only 9 in total for those aged 14.<sup>3</sup>
- Figures for 2018/19 show that only 15 young people under the age of 16 were convicted that year, which equates to only 3 children out of 100,000 of that age in Scotland. Further information on this can be found at Annex B of the Data and Research Appendix.
- Under the Act, there has been 7 incidents of serious harmful behaviour which have led to a decision to undertake an investigative interview in the 3 years since commencement, requiring the use of 8 Child Interview Rights Practitioners (ChIRPs) for children under the age of 12 (CYCJ paper on SW feedback).
- Whilst the use of ChIRPS has been low in the 3 years since commencement there have been a number of ACR IRDs which have taken place where the outcome has been to refer the child to SCRA or some other disposal. Additional work is needed to better understand the decision-making process and the details of the IRDs.

The evidence presented above shows that the number of young people in Scotland who are held criminally responsible for their actions (through prosecution and criminal conviction) has reduced substantially in recent years and is now very small, so raising the ACR would make very little difference in terms of formal sanctioning (see Annex B of Data and Research appendix).

Nevertheless, the data show that as children get older, more are involved in offending and more involved in more serious offending which will have implications for practice and resource (source CYCJ data papers 2021, 2022 and 2023). In addition, the seriousness of offending increases with age (Annex A of Data and Research Appendix).

### Conclusion

Reflecting General Comment No. 24 of a minimum age of 14, in 2020, the Independent Care Review in their report 'The Promise' made clear that: *"To ensure that all children are diverted from the criminal justice system, Scotland must aim for the age of minimum criminal responsibility to be brought in line with the most progressive global Governments alongside efforts to prevent criminalisation of all children."*

The aim of the [Children \(Care and Justice\) \(Scotland\) Act 2024](#) is "to introduce trauma-informed, age-appropriate support for children involved with care and justice services", so this must take account of the developmental needs of young people and the inadvertent impact of a low ACR on longer-term outcomes and life chances. The evidence collected by the data and research subgroup supports a further increase in the age of criminal responsibility in Scotland.

The evidence that exists suggests that the ACR in Scotland could be raised to 16 with very little impact on prosecutorial or court services, although the impact on other agencies would have to be taken into consideration. The Children's Hearing System

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<sup>3</sup> [Criminal Proceedings in Scotland, 2021-22 - gov.scot](#) and data tables which indicate numbers are outlined at Annex B of the Data and Research Appendix.

can and does manage the behaviour of children who present a significant risk, and would continue to do so, should the age be increased further. However, the Subgroup agrees with the recommendations from the operation subgroup, that there would need to be further consideration in relation to managing the risk that a very small minority of children may present post age 18.

## 5. Community perceptions and how to improve community confidence

*Please refer to the Community Confidence Appendix for full reports.*

It is widely acknowledged community confidence is an important aspect of social cohesion as it relates to the trust, belief, and assurance that the public have in various institutions, systems, policies and indeed with each other. Community confidence often reflects a community's own sense of safety, security, harmony, and ability to build mutual support and respect.

When confidence is high, communities tend to thrive, when confidence is low or eroded communities can be unbalanced resulting in distrust.

The Community Confidence Subgroup carried out media tracking, data analysis, polling, developed a toolkit to engage with communities, while also linking with other interested parties to gain different perspectives of community confidence. All this work has underpinned a total of 24 recommendations split across three key thematic areas, 1. Messaging and engagement, 2. Better investment to combat root causes, and 3. Wider support needs.

Examining the issue of messaging, it was clear that not enough direct and meaningful engagement with communities on the subject of age of criminal responsibility and other related issues has occurred. While it was encouraging that the concept of age of criminal responsibility had a high resonance amongst the public we polled, this could be argued as a superficial or one-dimensional understanding of the subject matter especially when looking at the concept of a young person's maturity, cognitive development and understanding to make judgments over their own actions compared to making judgment on others actions. Especially given Scotland's complex and muddled legislative landscape over age restrictions and limits.

This was one of the biggest and striking disconnects around age of criminal responsibility in what the Subgroup call the 'Jury question paradox.' Findings indicate that a majority of people polled would like the age of criminal responsibility to be 12-13 years, but conversely a majority also believe that the minimum age a person should sit on a jury should be 20 plus.

This public thinking encapsulates the view that acquiring a moral understanding is not like learning to walk, a once-and-for-all achievement, it is rather a skill that improves incrementally over an extended period, which matures. If that is the case, why the disconnect over the age of criminal responsibility and jury service age?

Being able to investigate this further on the issue of age limits and why we have them young people told the Subgroup, that the purpose for age limits was to:

- 'Protect us from making bad decisions mistakes, for future me'
- 'Because we are not emotionally ready for things.'
- 'Not mature enough.'

- 'Because the brain hasn't fully developed yet which is why young people do irresponsible things or life changing decisions.'
- 'So, people don't make stupid decisions when they are young'
- 'To ensure that children and young people fully understand their actions and have been able to fully think through those actions.'

More messaging needs to be carried out regarding children's rights and why age limits are in place so that communities are fully aware and are reminded of these. Communities need to have access to materials to spark debate and to talk through the issues and concepts and what this means for their beliefs and confidence when it comes to age of criminal responsibility and related matters.

The subgroup noted that topical issues can crop up that can create a catalyst to erode confidence. For example, the issue of school behaviour was clearly an area of concern for communities, and this was amplified by media reporting on the matter. The need for better style guidelines and language for media was noticeable.

How communities get their information and how it is framed can play a crucial role in confidence levels. The use and role of social media in spreading information both factual or incorrect rumour in local communities needs better examination to determine how we can use or combat this media method.

Linked to topical issues the report also highlights the public's anxiety about victims and justice seen to be done. The report noted through media tracking that there is a vacuum with regards to victim feedback and or victim is being aware of possible actions taken as a consequence of a young person's action. If there is not clear information around this area it can result in adverse media which thus detracts from community confidence.

A note of caution is a requirement to balance the needs and rights of victims whilst doing the same for children who exhibit serious and harmful behaviour, particularly for those children who sit out with the criminal justice route. An added complexity is that children can have a dual role as both victim and perpetrator.

It was clear that a strategy is needed to reflect the journey through the justice system a young person goes on. It would be a simple and effective way to show to communities the reality of the consequences of children's actions when they come into conflict with the law. This needs to be as accessible as possible so that communities can easily make use of it.

Having the option of young people being able to undertake restorative justice without the need for justice proceedings could also garner better community confidence as local people can see for themselves young people willing to take ownership of their decisions and make amends.

The report shows that data could also appease concerns about especially around the issue of increasing the age of criminal responsibility could lead to 'people getting off with it', as the statistics show how little impact, increasing the age of criminal responsibility would have on the number of court proceedings against children, the numbers are in fact minuscule. If the public were more aware of this fact it could go some way to build better understanding of the need to change the age of criminal responsibility.

This section highlights another aspect to create and build more community confidence is by investing in people's local areas. By ensuring young people have access to more community hubs, places of safety and dedicated youth spaces where young people can have and been seen to have positive experiences. This would combat the negative community stereotypes of young people just spending time together on street corners, bus stops or at the shops.

There are many more areas the report identifies fundamental and serious concerns over community confidence. However, if the Scottish Government takes on board the below recommendations which seeks to rectify these concerns and provide different pathways to increase that confidence. Then Scotland's communities could have that better social cohesion built on trust and having clear information, knowledge and understanding. Creating more communities that have a sense of safety and the ability to garner mutual support and respect. Especially when it comes to age of criminal responsibility and its implications.

**The Subgroup offer these recommendations in the hope of creating that needed change.**

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| Messaging and engagement   |
| A communications and engagement strategy are developed, implemented, and managed by an agreed group.   |
| Communications need to include, at a minimum, any changes to age of criminal responsibility and thought given to responding to specific incidents of serious and harmful behaviour by young people. It is essential that communication is given to what will happen (the consequences) in the event of a young person under the age of criminal responsibility involved in seriously harming behaviour to others – the public want to know that 'something is being done'. Having this information can fill an existing knowledge vacuum which is be filled with negative and inaccurate information, leading to a lack of confidence. |
| The strategy includes a focus on sourcing good news stories, while noting the media do not always highlight these. Scottish Government and local communities need to find a way to amplify positive aspects relating to young people and showing young people in a positive light. It was noted positive similar work has been carried out before in relation to refugees via the publication; 'Forward Together: Ideas for working with asylum seekers, refugees, the media and communities' <sup>4</sup> This could be a template to follow.   |
| Rights: as part of the communication strategy incorporate a statement to the public why they are taking action with regards to age of criminal responsibility, protecting Rights and emphasise why there are age limits for various aspects of policy.   |
| Again, the strategy should incorporate recommendations to seek engagement directly and actively with communities: This means going out and talking to communities, making a toolkit available for anyone to use to start those conversations.  |
| The strategy should include Investment in a 'journey through justice' pictorial resource. This would reflect the journey through the justice a young person goes on. It would be a simple and effective way to show to communities the reality of the  |

<sup>4</sup> <https://www.scribd.com/document/340786812/Forward-Together-Ideas-for-working-with-asylum-seekers-refugees-the-media-and-communities>

consequences of children's actions when it comes into conflict with the law. We note CYCJ are updating their materials and agreement as part of this to try have a one-page document which clearly articulates the processes. Should also ensure that this includes children's rights as well as the victims' rights info.

The issue of social media needs to be monitored and there could be research into social media content (especially Facebook) to identify themes and possible opportunities to improve public sentiment linked to negative behaviours of children and young people.

Invest in ongoing polling, to sense check temperature of people regarding age of criminal responsibility and other justice matters, the group already have the baseline to work from. Noting that follow-up surveys provide a useful snapshot of public understanding and confidence in the system. But any survey should offer the opportunity for more reflective approaches as well as direct questions to capture wider views.

That the group who hold the strategy remit continue with media tracking to gauge what the public are being told and the way its framed regarding age of criminal responsibility and youth justice matters.

The opportunity to ensure localised multi agency approaches, giving communities structured forums to talk issues over and get a response to their concerns. We note the legal requirement for Community Justice Partnerships to engage with communities on justice issues, these could be used for this multi-agency approach, or it may sit within the remit of Children and Young Peoples Community Planning Partnerships.

Potential increases to age of criminal responsibility need to be mindful what this means for community confidence if just the 'detected alleged crimes' figures were ever to be used. To show a more rounded picture the much, much smaller statistics relating to court proceedings should be used. Alongside providing information on the support/action given to young people surrounding those alleged detection crimes.

Identify a group or organisation (e.g. third sector partner, a taskforce, advisory group) which can respond publicly in the media with a youth justices informed viewpoint. Sort of rebuttal unit post or pre story that media could go to get a rounded picture/quote

Style guidelines for media, use of language, code of conduct, Scottish Government host a summit with media/ NUJ and Promise Scotland, the organisation 'Each and Every Child' and other experts in child friendly language to agree on principles when reporting children in conflict with law. Again 'Forward Together: Ideas for working with asylum seekers, refugees, the media, and communities<sup>5</sup> could provide useful learnings in this area.

Research and develop a short messaging pack on Scotland's youth work, youth justice and local policing response to children and young people behaviour to coordinate and amplify existing activity:

- To highlight the limited number of children young people taking part in behaviour that is in conflict with the law.
- Promote the core work already taking place in schools, youth work and youth justice.
- Taking measures to raise the profile of the Children's Hearings System and the fact that this is not only effective in supporting children in conflict with

<sup>5</sup> <https://www.scribd.com/document/340786812/Forward-Together-Ideas-for-working-with-asylum-seekers-refugees-the-media-and-communities>

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| the law, but also that such children and young people are already supported in the hearings system (and therefore raising the age of criminal responsibility would not result in a significant change) would provide reassurance to local communities.  |
| A co-ordinated strategic approach to media/ government messaging relating to age of criminal responsibility, Care and Justice matters; Scotland's youth work and local policing response to children and young people should be developed. Linked to the strategic approach the identification of a government group and or organisation (e.g. third sector partner, a taskforce, advisory group) which can respond publicly in the media with a youth justice informed viewpoint as a core part of the strategy. |
| Better investment to combat root causes   |
| Invest in ensuring young people have access to more community hubs, places of safety and dedicated youth spaces where young people can have and been seen to have positive experiences. This would combat the negative community stereotypes of young people just spending time together on street corners, bus stops or at the shops.  |
| Preventative spend on services that tackle conflict with law behaviour and highlight to community what early intervention services are available.<br>Invest in mental health provision, especially regarding school behaviour   |
| Roll out more contextual safeguarding and incorporate children, young people, and families as key partners in a Contextual Safeguarding approach. Development of a young person-led Champions board or peer-led awareness raising sessions.   |
| Group believe there might also be a value in the longer term of connecting thinking about justice issues to other community wellbeing issues in the context of Community Led Action planning. It would only be possible to do this by providing resources for communities to consider the issues as these types of plans are entirely community led.  |
| Wider Supports needed   |
| More staff and public who come into contact with children therefore need to be trauma informed  |
| Scotland needs to provide support to children who have the dual role of victim and perpetrator  |
| Invest in more restorative justice when it comes to young people  |
| A need for better information sharing between multi agencies that come into contact with young people   |

### Community perceptions

The group wanted to understand the public's perception of the age of criminal responsibility, and other youth justice matters centred around this issue. The group wanted to identify and reach out to communities to gather their views, concerns, thoughts, understanding and misconceptions regarding the age of criminal responsibility.

In doing so it was noted that there was a need to fill the vacuum which exists regarding age of criminal responsibility. It was recognised that this vacuum exists because of a lack of dialogue with communities. The group acknowledged that there was a need for a baseline of what people in Scotland felt about age of criminal responsibility, the justice system and how it interacts with young people. It was

agreed that there should be a twin approach to research both qualitative and quantitative.

First it was agreed the most accessible and easy way to gather quantitative responses was via a questionnaire.

The group developed and sense checked survey/ polling questions. This led to six questions being used for our baseline. It was believed that this would provide a useful barometer for current thinking and be used as a yardstick to mark and track future opinions. Below are the questions the group agreed:

- Base knowledge of age of criminal responsibility.
- Finding out the public's stated preferred age of criminal responsibility.
- We wanted to find out the reasons why people picked the age.
- What age do you think children first understand when their actions are breaking the law?
- At what minimum age do you think a person should sit on a jury?
- What is the most appropriate action to support children under 12 who have been, for example - violent, sexually violent, or dangerous to others?

To get the widest possible coverage of these questions we utilised a polling firm (Scot Pulse) to tap into their different demographic reach. This survey saw 1,200 people take part from across Scotland.

#### Main findings and what they mean for the future of age of criminal responsibility

The findings indicate that most of the participants were aware of the age of criminal responsibility term prior to participating in the survey and that the most favoured age of criminal responsibility to be set at 12-13.

The overriding response from participants is that children aged 12-13 years are aware of their actions and the consequences of their behaviour and should be accountable and responsible for their actions at that age.

One of the biggest disconnects around age of criminal responsibility is what the group call the 'Jury question paradox' The findings indicate that people (selected by 56% of respondents) believe that the minimum age a person should sit on a jury is 20+ (the current minimum age to sit on a jury in Scotland is 18).

The public feedback to the subgroup was that they think children at a younger age have the cognitive development and understanding to make judgments over their own (the child's) actions. However, when we 'flip' that question by stating if this same age of understanding should be used to judge others actions a shift in attitude is given to what this age should now be (and that age should be raised). This public thinking encapsulates the view that acquiring a moral understanding is not like learning to walk, a once-and-for-all achievement. It is rather a skill that improves incrementally over an extended period, that matures just as we would not expect an infant who has grasped the basic arithmetic to solve quadratic equations. It would be wrong to assume that children knowing the legality of an action can also calculate what the long-term consequences would be of taking said action. In important respects children's decision-making, and the cognitive functioning that underpins it,



is clearly different from that of adults. And when thought about and viewed or framed from a different aspect i.e. the jury question, this premise is confirmed by people's views.

Referring children to the children's hearing was chosen by the most participants as the most appropriate action to support children under 12 who have been, violent, sexually violent, or dangerous to others. There was also strong support for community, police, school, and social work support interventions.

### Scottish Youth Parliament (SYP) and social media poll

The SYP social media poll had 154 responses and found that the highest response for the age of criminal responsibility was:

- 12 (29%) years and
- the second highest response is for the age to be 16 (21%)

### Workshop with Scottish Youth Parliament (SYP) and social media poll

The participants within the workshop believe that 15 years old is when most people will be mature enough to know right from wrong and understand what a crime is. 15 is closer to the age 16 where you are classed as an adult in some situations, for example, at 16 you can legally vote in Holyrood elections.

The participants within the workshop did not know what support is available to children who display harmful behaviour.

The group agreed there needed to be more awareness about the support that can be offered. There was consensus that there should be education on the subject - letting young people understand what help and support is out there.

The group agreed that it would help to ensure that we are including young people voices when making decisions that affect them.

What was evident in this group and the other young people focus groups held is that when there was an opportunity for further discussions relating to a binary choice question more nuance was given by the young people. For example, when asked about what the age of criminal responsibility should be many people who gave 12 as an answer thought they and other people that age was mature enough by that age. It was only when the group then explored the issue and reasons of age limits in general for other activities that this new understanding gave people the chance to reflect and reconsider their first initial answer. Leading to a change of view towards their being a higher age. These exercises highlight the benefits of more in-depth discussions to really understand and examine people's view with more context.

### Focus groups/conversation cafes

Action for Children were tasked with co-producing materials (with young people) regarding age of criminal responsibility and wider youth justice issues to assist with group discussions. It is hoped these materials can be used by different audiences from different communities. These materials are as user friendly and accessible as possible to spark debate by being thought provoking.

Working alongside a young person with lived experience, Action for Children developed some materials to engage young people in discussions around age of criminal responsibility. Developing the material underlined the need to explain a lot of content around the youth and criminal justice system as part of any workshop or conversation as there are varying levels of understanding.

Action for Children also sensed checked and 'road tested' the developed materials with other young people to assist in any refinements needed. The following represented some of the key themes which have been fed back to us from the young people engagement in action for children.

The age range of the young people Action for Children engaged with ranged from 7 years old up to 20 years of age.

Like the national polling, the results from the Action for Children young people group showed:

- The majority (66%) stated they knew the term age of criminal responsibility.
- Regarding what the age of criminal responsibility should be there was a bit of a variety of opinion:
  - 25% opted for age of criminal responsibility to be 12
  - 12% cited age of criminal responsibility should be 13
  - 21% went for the older age of 16
  - 17 % also decided 18 should be the age of criminal responsibility
  - 10, 14, 15 and 17 also registered small votes.

This shows a split between the age range to be 12-13, or 16-18, with both ranges getting close to the same percentages of votes.

### Conclusions and recommendations

Across the spectrum of survey and focus group activity we saw some understanding and knowledge of the age of criminal responsibility. Asking a direct question about the ideal age of criminal responsibility returned a range of responses often aligned with the current age with a degree of support for an increased age. We consistently however, noted the change in perceptions when individuals are given the opportunity to explore age of criminal responsibility alongside other key ages, young people's maturity, and brain development. This exploration led to different conclusions.

Also, notably the jury paradox clearly showed the majority of participants not viewing a child under 16 as being mature enough to undertake that decision-making role.

### Community perceptions and media

To support analysis and recommendations on community perceptions and media reports of behaviours by children and young people which could impact community confidence we captured three high level samples of coverage to review.

Each sample covered several months between November 2023 to July 2024 and included coverage across online Scottish media outlets such as the Daily Record, The Times, BBC News, The Independent, Edinburgh Live, Glasgow Times and The Courier.

The coverage was grouped across these emerging key themes - School violence and behaviour; 'gang' activity; individual incidents and anti-social behaviour; and general reporting - then split between coverage describing those under and those over 16 years old.

The detailed media tracking can be sourced from appendix documents:

1. Community Confidence Subgroup - November 2023
2. Community Confidence Subgroup - March 2024
3. Community Confidence Subgroup - August 2024

The below summary provides an overview of findings from the media tracking analysis, the other factors the group identified as needing to be considered and some recommendations for action.

### What does the media tracking highlight?

The samples combined included over 100 articles which provide an overview of the range of media reporting on children and young people's behaviour, common framings of incidents and specific details included in reporting.

During our analysis one clear topic of coverage was behaviour in schools which we have used a core topic within the sample and identify what action we may take to boost community confidence on the matter.

It must be noted during the timing of our analysis there was several significant publications on behaviour in schools – the Scottish Government's: 'Behaviour in Scottish schools: research report 2023<sup>6</sup>'. The Educational Institute of Scotland's: 'Survey on Pupil Behaviour - Result Survey on Pupil Behaviour – Results 7.'<sup>7</sup>

And the new Scottish Government guidance: 'Relationships and behaviour in schools: national action plan 2024 to 2027'<sup>8</sup>.

As such, we must remember that the ability of the media to sustain high-profile coverage on the topic was not only driven by pupil behaviour but sparked by several national data publications and government responses.

More widely, the samples did strongly confirm that the media reporting of young people's behaviour and or young people in conflict with the law fell far below what we would aim to showcase about the action taking place in youth justice, early intervention, and violence reduction. Reporting tended to be sensationalist and focused on negatives, did not include descriptions of action taking place and did not create confidence in the system.

This does present a clear challenge for community confidence and identifies a critical need to develop an understandable and coordinated response which can explain the

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<sup>6</sup> <https://www.gov.scot/publications/behaviour-scottish-schools-research-report-2023/>

<sup>7</sup> <https://www.eis.org.uk/latest-news/violencesurvey>

<sup>8</sup> <https://www.gov.scot/publications/national-action-plan-relationships-behaviour-schools-2024-2027/>

significant amount of work by government, statutory and public bodies, and partners to improve the lives and behaviour of children and young people.

During the later section on factors which the subgroup identified as needing to be considered and recommendations for action we aim to offer some first steps to progress this response.

### Behaviour in schools

Throughout each sample there was a large amount of coverage on school 'violence' rates (the terminology used in the media reporting, but the subgroup would prefer to call it 'behaviour') and its ongoing negative impact on children and teachers.

We found the coverage described many incidents with children both under and over 16, however it notable there was a strong focus on the story being a 'national problem' rather than individual young people.

Occasionally the coverage identifies individual children for specific behaviour 'i.e. 'Child bites teacher in classroom.' But primarily there does remain a degree of responsibility allocated to pupils as a whole, which presents issues about viewing them as a homogeneous group, but coverage mainly centres on the impact to teachers and other children as 'victims.'

Much of the coverage did call on more serious punishment or discipline in schools as the best solution, however there was a sharp focus on when and what the Scottish Government response will be. The group believed that it would be prudent to track how the coverage is impacted by publication of Scottish Government 'Improving relationships and behaviour in schools' guidance which was published on 15th August 2024.

While during this period the issue of school behaviour was a current active issue picked up by the media which acted as a 'lighting rod' for being a wedge to harm community confidence regarding young people and their actions, other issues could be a catalyst for similar occurrences to erode community confidence and thus detracts from the overall confidence and messaging to communities regarding youth justice issues.

Victims' experiences in media reporting and a youth justice informed response  
Within the coverage it was notable the most shocking and emotive coverage has been framed around the experiences of adult and child victims perpetrated by children and young people.

Articles used emotive descriptions of incidents, for example: Boy tied to chair & forced him to apologise for being gay, Teen battered on school bus, Scots mum left shaken after 'youth hurled rock at car', or Edinburgh mum 'angry' [at] masked off-road biker gang.

Within the coverage some of these situations have not yet or may not go through a formal justice process, so the coverage is a report of the victims' experiences. In the interest of showing how the justice and community services respond to these incidents, this group believes it is important to consider who and what response can

be offered to explain the range of reactive and proactive actions which are taken forward linked to incidents like these.

How can we tap into this coverage regarding the bigger age of criminal responsibility confidence picture:

Within the samples of coverage, a majority reported on negative behaviour of children and young people using a framing of problem children acting badly and citing adults, vulnerable groups and the community being the victim.

As mentioned elsewhere in this report, this often did not include any response or details on the actions taken by the children's hearings or justice system.

Despite this dominant framing there are various articles across several publications including (The big issue, The Guardian, Daily Record, STV, The Scottish Sun) which offered a constructive big picture view of the behaviour of children and young people. There articles offer headlines, including:

- Social media and closure of youth 'safe spaces' could lead to surge in violent crime, research warns
- Youth violence experts say terrified kids want safe spaces back in communities'
- Progress on ending youth violence in Glasgow slows due to lack of safe spaces
- I am a violence reduction expert – we need to remember youths running riot are still kids

While this was only a small proportion of the coverage, it confirms media publications and the public, do have a frame of reference for viewing child and young people's behaviour through a wider trauma informed lens which we should target as an opportunity to shift the dominant narrative.

What other factors need to be considered?

### **Coordinated messaging and knowing the facts:**

It was discussed within the group that despite positive and impactful work being done in the youth work and youth justice sectors on the ground, improving community outcomes for children and young people it is not well articulated to the public.

The group identified this is often because there are a complex network of projects, programmes, and legal systems so individuals and organisations don't have the facts to explain the response to children and young people's behaviour, especially in the media.

It was proposed that we need to create clear core messages on the proactive and reactive responses being taken – such as in schools, youth work, children's hearings, and youth justice system – which can empower individuals, public and third sector organisations and partners to offer coordinated messaging in their local communities.

In doing so we need to be mindful of use of language and need to promote positive language framing in line with The Promise ensuring that we are inclusive of all our children and that in delivering core messages we do not exclude or “other” the children we are trying to support.

Understanding reports of children and young people’s behaviour on social media: There was lots of discussion during the group about the role of social media such as Instagram and Facebook. It was strongly noted there is a large local community focus in lots of social media use which can spread news quickly when incidents involving children and young people occur. However importantly these platforms offer no capacity to fact check the details on whether the user-led reports are accurate.

This presents a significant challenge for community confidence linked to the age of criminal responsibility as it remains a complex channel on which to respond due to personalised news feeds and limited reach of official channels such as government or charity social media pages.

However, addressing known social media usage which is detrimental to local community confidence could be addressed more widely through agreed and co-ordinated strategic approach.

To understand how we might respond to social media reports and the themes apparent in user-led social media reporting it may be worthwhile undertaking research to identify specific concerns by members of the public and opportunities on how the youth justice sector could respond.

### Data and research findings

The Age of Criminal Responsibility Advisory Group also established the Data and Research Subgroup. The terms of reference for the data and research subgroup state that the group will work with key partners to collect and analyse data and research as part of considering a future age of criminal responsibility.

Specifically, the subgroup was tasked with gathering data and research to inform the raising of the age of criminal responsibility beyond 12, up to the age of 18.

One note of caution the group wanted to raise was that due to the various data points being held within different organisations, across different systems, and being counted and presented in different ways and across different time periods, it was not possible to get a seamless picture of children’s journeys through the justice system. The data we could use, told us a tale of two stories regarding the impact of increasing the age of criminal responsibility.

Firstly: using a summary for last four years of data available (2016-2020) an issue to be mindful of was the ‘detected alleged crimes to have been committed by children is high and will have implications for changes in practice as to how children are responded to in terms of investigatory processes and places of safety etc’.

For example, if age of criminal responsibility:

- was 12 years (only those 12 and above were held criminally responsible) there would have been on average 2,063 detected crimes where children

were not held criminally responsible per year. A reminder this data set is from 2016-2020 and the Age of Criminal Responsibility (Scotland) Act 2019 only came into force in 2021.

- was 13 years (only those 13 and above were held criminally responsible) there would have been on average 4,666 detected crimes where children were not held criminally responsible per year.
- was 14 years (only those 14 and above were held criminally responsible) there would have been on average 9,231 detected crimes where children were not held criminally responsible per year.
- was 15 years (only those 15 and above were held criminally responsible) there would have been on average 15,768 detected crimes where children were not held criminally responsible per year.
- was 16 years (only those 16 and above were held criminally responsible) there would have been on average 23,573 detected crimes where children were not held criminally responsible per year.
- was 17 years (only those 17 and above were held criminally responsible) there would have been on average 30,007 detected crimes where children were not held criminally responsible per year.
- was 18 years (only those 18 and above were held criminally responsible) there would have been on average 35,461 detected crimes where children were not held criminally responsible per year

#### What this means for community confidence

This may alarm in some communities if this was presented as ‘rising number of detected crimes by young people to go ignored or to ‘vanish’ giving rise to a fear of alleged crimes not being investigated or taken seriously. This could just be an issue over framing and what support could be given/offered surrounding these alleged detection crimes. This emphasises the need for clear and accessible messaging to be made available to the public so that they are better informed about what happens or will happen regarding address those behaviours that may have previously detected as in conflict with the law.

Secondly and probably most importantly: based on the 2021-22 data increasing the age of criminal responsibility would not have a big effect on the number of court proceedings against children, the numbers are minuscule:

- If age of criminal responsibility were 13 or 14 years, there would have been limited change to the number of court proceedings as no child under the age of 14 years was proceeded against in court.
- If age of criminal responsibility were 15 years, there would have been 1 less child proceeded against in court.
- If age of criminal responsibility were 16 years, there would have been 3 less children proceeded against in court.
- If age of criminal responsibility were 17 years, there would have been 121 less children proceeded against in court.
- If age of criminal responsibility were 18 years, there would have been 623 less children proceeded against in court.

Examining this in more detail if specific age of criminal responsibility increases where to happen it would have seen:

- 13 or 14 years, there would have been limited change to the number of children convicted as no child under the age of 14 years was proceeded against in court.
- 15 years, there would have been 1 less child convicted for non-sexual crimes of violence.
- 16 years, there would have been 1 less child convicted for motor vehicle offences.
- 17 years, there would have been 98 less children convicted. There would have been 25 less children convicted for non-sexual crimes of violence, 1 less conviction for sexual crimes, 6 less convictions for crimes of dishonesty, 8 less convictions for fire-raising, vandalism etc., 28 less convictions for crimes against society, 13 less for antisocial offences, 1 less conviction for miscellaneous offences and 16 less convictions for motor vehicle offences.
- 18 years, there would have been 533 less children convicted. There would have been 155 less children convicted for non-sexual crimes of violence, 10 less convictions for sexual crimes, 52 less convictions for crimes of dishonesty, 27 less convictions for fire-raising, vandalism etc, 145 less convictions for crimes against society, 63 less convictions for antisocial offences, 2 less convictions for miscellaneous offences and 79 less convictions for motor vehicle offences.

These figures could go some way to dispel the first issue over detection, as the numbers of court proceedings that increasing the age of criminal responsibility is minimal if even noticeable especially up to age 16 and even for 17 (it works out less than 100). While for 18-year-olds, this may be over 500 and will seem a bigger figure, when examining the breakdown of offences, it can be argued less serious issues are the majority to be impacted. Nonetheless, of course, we must be mindful that it may just take one child undertaking serious and harmful behaviour which does become dealt with via a conviction which may negatively impact community confidence and therefore we must revert to the national communication strategy and complement that with local messaging where that 'non-conviction' becomes an issue.

### Victims of crime and community confidence

The issue of victims of actions taken by children in relation to criminal responsibility is an emotive subject for the community as referenced by the media tracker and with our discussions with various groups. The impact of crime can be traumatic and life-altering for victims of crime, witnesses of crime and their families. This remains the case whatever the age of the person causing harm.

That is why the victim support subgroup was created to address this issue. The victim support subgroup report has informed the community confidence subgroup. Their report made clear that:

- There must be better provision of adequate information and support for victims of all ages of harm caused/crimes committed by young people, regardless of the route undertaken by the person causing harm/perpetrator
- The need to explore options to consider restorative justice, where appropriate from a victims' perspective.



## Dual role: Child as victim and/or perpetrator

The community confidence subgroup also wanted to reference the nuance of the issue of victims, namely that children can have a dual role of both victim and perpetrator at the same time. So, when considering victims it must be all victims.

While the justice system investigates a criminal event; the safeguarding system identifies harm to a child. However, between the two approaches there is a gap in perceptions, principles, practice, and values indeed a friction between the goals of the criminal justice system and those of the child safeguarding system can happen. This friction can also feed its way into the community regarding children who are seen as just the perpetrator of their actions which come into conflict with the law. However, the group wanted to draw the public's attention the duality of the predicament of criminal exploited children, pointing out that they are victims who are involved in crime.

It was noted that colleagues from Police Scotland fed back some concerns of an increase in age having potential to drive further exploitation. However, the operational implications subgroup state in their report that over two years since the age of criminal responsibility was increased to 12, there is no evidence of children under 12 being at additional risk of criminal exploitation.

There was a clear counter viewpoint to the one expressed by Police Scotland. The subgroup wanted it to be noted that the experience of Action for Children, who have several services linked to youth justice work, in their stated view they believe you cannot criminalise children as the only way to protect them from exploiters. Action for Children staff highlighted from their practice knowledge young people whom they have worked with and supported aren't exploited because they avoid prosecution due to their age, indeed staff cited that the current age range for exploitation is most commonly 15-18, with many of these young people going through the justice system.

What is needed is greater connection across protection and disruption activity to provide and deliver and joined up response. These should work simultaneously as opposed to being addressed as two separate entities. Recognising children need to be accountable but not criminally responsible. Noting an increase in the age of criminal responsibility would not prevent the possibility of the child being made subject of a compulsory supervision order through the Children's Hearings system if that is required. It would also not prevent the child protection response to the criminal exploitation of a child that is described in the National Guidance for Child Protection in Scotland and the recently published [Criminal Exploitation Guidance for Practitioners](#).

## Role of Restorative Justice in helping community confidence

Restorative Justice (RJ) is value-led and focuses on the following questions:

- What has happened?
- What is it that matters to each of you that needs to be restored?

It focuses primarily on the specific act of harm that has brought the parties together and the subjective experience, understanding and wishes of each person affected by the harm. The key to restorative justice is that it allows those with a stake in the outcome of a crime-related intervention or conflict to communicate in a safe and structured way. This communication allows all parties to collaborate on a means for dealing with the aftermath of an offence or conflict and its implications for the future.

It is acknowledged that the youth and criminal justice system does not always meet the needs of victims throughout. More specifically as Scotland develops a more child-friendly justice system which not only meets the needs of the children but the communities that they live, there needs to be more thought on how victims are supported. One way that this could be offered is through a restorative process. This is voluntary for all parties but would allow for all those who have a stake in the harm or offence to have their voices heard. Making restorative justice more accessible for people to enter at an early stage without formal justice proceedings concluding could also build better confidence.

Support for victims needs to be available out with the justice system, as currently the supports offered within these mechanisms are not always available out with a criminal justice route. There are gaps and disparity in service provision across the country. A consistent approach will build community confidence.

It has been noted through media tracking that where there is a vacuum with regards to victim feedback and or victims being aware of possible actions taken and that this can result in adverse media which does detract from community confidence. Balancing the needs and rights of victims whilst doing the same for children who exhibit serious and harmful behaviour brings complexity particularly where those children sit out with the criminal justice route.

There is a need for a consistent approach which communicates that there are actions being taken that takes account of the needs and rights of victims (some of whom are children) as well as the needs and rights of children whose behaviour has caused harm.

As outlined above restorative justice could play a vital role in addressing complexity in these cases and may be considered as an action to put in place for serious and harmful behaviour by children.

The issue of young people being both a victim and whose behaviour has caused harm to others highlights a gap in this type of victim support provision. Again, ensuring that this support provision is available can help build community confidence, if the public know that young people can get support it may help them get away from those people exploiting that young person and ultimately leading them away from being a perpetrator of future behaviours that may come into conflict with the law.

## 6. Victims of harmful behaviour by children under the age of criminal responsibility

*Please refer to the Victim Support Appendix for full reports.*

The purpose of this section is to identify and assess the impact and implications of increasing the age of criminal responsibility, in order to inform the discussion from the perspective of victims and organisations that support victims.

Through the existence of this group, there was an opportunity to not only assess the impact of the increase of age of criminal responsibility, but also to improve provision for people harmed.

The subgroup recognises that whilst the key provisions of the Victims and Witnesses (Scotland) Act 2014 Act remain, the 2019 Age of Criminal Responsibility (Scotland) 2019 Act does require the police and partners to adopt a more child-focused approach to better support and understand the needs of the child causing or risking causing harm. However, this should not change the way in which victims who have been harmed by children are treated. It would appear the Act does not cover additional provision to provide support to victims.

At best, support, separate to information, for a child victim is sporadic across the country and it is clear that there is an impact on the victim's ability to access services depending on their geographical location.

The subgroup finds that:

- The overall volumes of children referred to Children's Hearings System will not change significantly. However, the grounds may change from Offence Grounds to conduct-based Care and Protection Grounds.
- Victims are impacted by harm caused and they require the provision of support, although the needs of children who are victims, may be different to adults who are victims.
- The provision of information to victims of children referred to the Scottish Children's Reporter Administration is a consistent and national service. However, aside from this when a child is not referred to the Reporter or dealt with through a criminal justice route, provision may not be the same across all areas of Scotland and depends on locally available services.
- There will continue to be variations in the provision of information depending on the response to the child causing harm as these are legislated by separate systems.
- There is a requirement to balance the often-competing rights of children harmed with the child causing harm.
- Restorative justice or restorative practices appropriate for children under the age of criminal responsibility can be explored as a route to resolving issues.

Any future increases in age of criminal responsibility would need to consider:

- Support and information available to victims of harm cause by children.
- If protocols exist to allow for appropriate information sharing.

- Creating national guidelines to ensure a consistent approach to the provision of information and support to victims who have been harmed by children.
- Ability to make referral to a victim support organisation.
- Provision of information on how to best meet the needs of victims through an offer of restorative practices.
- Essentially, we recognise that raising the age of criminal responsibility removes the option for a criminal justice response. The difference exists for the critical few who would previously have gone through a criminal justice route and who now would be referred to a welfare-based response, and the impact this would have on the victims in these incidents.

### Recommendations

- Provision of equitable, adequate and appropriate information and support for child victims of harm caused by children (under the age of 18), regardless of the system's response to the child causing harm, whether that be Children's Hearings, justice, or any other route.
- Explore options to consider restorative practices or restorative justice, where both parties find this to be appropriate.
- Ensure the impact on victims is considered with any future policy changes, in particular for the most extreme cases.
- Consider opportunities to amend legislation to support provision for victims within the Victims, Witnesses, and Justice Reform Bill.
- Ensuring a robust process for feedback to victims of harm caused by children and their families regarding actions taken in relation to the child causing harm.
- Consideration of automatic eligibility of victims (or parents on their behalf if below the age of criminal responsibility) of harm caused by children to the Victim Notification Scheme.
- Ensuring equity of availability and access to victim support provisions nationally, regardless of age of the victim.
- Establish clear and automatic processes for criminal justice partners to refer victims of harm cause by children to support services, ensuring an opt-out is possible following initial support service contact.
- Ensuring clear and identifiable pathways for peer-on-peer criminality in order to remove current issue of victim having to make changes.
- Consider the impact for victims when a child who has caused harm becomes an adult.
- Voices of people with lived experience
- Information available from the data and research subgroup tells us that the vast majority of incidents of harm caused by children are already considered as part of a welfare approach to the child causing harm. Therefore, the data becomes important when considering the numbers of children causing harm and volume of incidents of serious harmful behaviour. This provides context and proportionality which increases as the age group increases.

In recognising the volume and numbers, this does not serve to diminish the harm caused in cases of serious harmful behaviour, including sexual harm. Given the low volumes of applicable incidents, it was challenging to identify people affected by harm caused by this specific age group.

In June 2024, Victim Support Scotland (VSS) held an internal workshop for staff and volunteers delivering services so they could share their experiences of supporting people who have been harmed by children.

This information is generally from victims who have been harmed by children, and significantly does not identify their age or the route (welfare or criminal justice) that was offered. However, the key themes emerging from a victim's perspective were:

- Peer on peer harm, both within a school and familial context.
- Lack of information and support.
- Onus on victim to amend behaviour.
- Perception that no action is being taken against the person causing harm.

These themes were further discussed by the victim support subgroup, and they broadly reflect professional viewpoints, rather than from an evidential standpoint. A joint piece of work is currently being undertaken by SCRA and VSS to gather views of people harmed by children.

The types of harm caused by children under the age of 12 where people have sought support from VSS have been wide ranging and can be very serious, including:

- physical assault.
- sexual crime.
- hate crime.
- bullying that also includes violence.

For children aged over 12 years, this can include domestic abuse as the age group approaches 16, and in rarer cases, this can also include murder or culpable homicide. This is relevant as considerations are made regarding future increases. In even rarer instances, children under 12, who are under the age of criminal responsibility, may also be in conflict with the law regarding these incidents.

For young victims who have been harmed by children, in addition to the physical or psychological effects of the crime, the impact of missing out on schooling and the associated life chances connected to this has been a core factor across experiences. They often report fears regarding their continued safety in the community where an attack has happened, and the need for changed routine on behalf of the victim, and in more severe cases the need to relocate entirely.

### Current legislation supporting victims

When considering a potential increase in the age of criminal responsibility, it is helpful to consider what duties are in place and what protocols currently exist to allow information and support to be available to victims who have been harmed by children where a criminal justice route is pursued.

These are included within the following Acts and schemes:

[Children \(Care and Justice\) \(Scotland\) Act 2024](#)

[Standards of Service for and Witnesses](#)

[Victims Code for Scotland](#)

[Victims and Witnesses \(Scotland\) Act 2014](#)

[Victim Impact Statements](#)

[Victim Notification Scheme](#)

[Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019](#)

[Working with children in conflict with the law 2021: Standards](#)

If the age of criminal responsibility increases, a criminal justice outcome would not be an option and a child causing serious harm (under age of criminal responsibility) would be responded to in a non-criminalised approach.

The age of criminal responsibility is not likely to move children from an adult justice system where the above mechanisms are relevant. It is more likely that the needs of children would be considered within the Children's Hearings System on a welfare basis.

It is also important to highlight the information and support available in the criminal justice system currently (if the person who caused harm is a child going to criminal court). Drawing on the parallels where the person who caused harm and victims are both adult, these could be:

- Established referral protocols between criminal justice agencies and support organisations once in court stage - Police and SCRA are both key referrers.
- Can find out the charges, bail conditions, if/when a court case is happening.
- Can find out about any pleas given – the victim would have to potentially give evidence if there was a court case. This is a mandatory situation rather than a right, and often not something people always want to do. Special measures and Bairns Hoose, whilst not currently available for all, attempt to minimise this distress.
- Can attend court case to view rest of case after giving evidence - unless this is not possible due to accused being a child.
- Can provide a victim impact statement, where applicable, as this can be restricted by offence.
- Can find out sentence given.
- Depending on sentence length, potential to register with the Victim Notification Scheme (VNS). VNS extends now to children 12+, and if aged below 12, their parent is able to register for them. A suggestion has been made that it may be more beneficial if the parent was automatically registered. However, registration with the VNS is currently on an opt-in basis and any changes requiring automatic registration would need to be considered alongside recommendations following a review of the Victim Notification Scheme were issued in May 2023.
- Can apply for a Non-Harassment Order (NHO) as part of the court proceedings. Court is obliged to consider an NHO in certain cases, even if the offender was aged below 18 years.

The Crown Office and Procurator Fiscal Office provide information on victims' rights on their website: [Your rights as a victim | COPFS](#)

If the person that has caused harm is of non-age (under 12), Police will still record a crime and carry out investigations like gathering statements and reviewing CCTV. As

this is recorded on the crime system, the victim will still be offered a care card telling them about their rights and offered the right to be referred to a support service.

### Support for young victims

The victim support subgroup also explored what information and/or support is available for child victims who have been harmed by children.

The group considers that a gap may exist in providing support to child victims. Through this, we need to consider more fully the needs of child victims, and the difference in provision of support services provided to children.

The information and support available for people harmed may vary depending on the support system the person who has caused harm/risked causing harm enters, rather than the needs of the person harmed. Specifically, we wish to explore whether the legal responsibilities and protocols exist to allow victim support organisations to provide this information and support.

The subgroup's experience indicates that a large majority of victims who have been harmed by children are themselves also children. As well as people directly impacted, also impacted by crime are the family members of victims and witnesses and others in the community. Victim support organisations, including Victim Support Scotland, provide support to victims and witnesses of crime and their families of all ages regardless of the age of the offender.

### Support from Victim Support Scotland

The table below highlights the protocols in Victim Support Scotland for provision of support where the victim or witness of crime is a child.

| VSS support to children and young people who are victims of crime – Protocols around ages   |  |
|---|--|
| Community   | Court  |
| 11 years old and under: support from VSS is provided to the parent/guardian of the child.<br><br>Agencies such as Children1st, Barnardos, Kibble, NHS CAMHS also provide community support to child victims of crime who are 11 years old or under. | VSS supports all children and young people aged 15 years old and under. Within the court setting, VSS supporters are not to be on their own with a child/young person; there should always be another adult present. |
| 12-15 years old: support from VSS can be provided directly to the child/young person or their parent/guardian.  |  |
| 16 years old and over: support from VSS is provided directly to the child/young person or their parent/guardian.  |  |

Where a victim of crime is a child of 11 years old or younger and who requires direct support, Victim Support Scotland can assist in providing referral or signposting support to a range of third sector support organisations that support young children

including Children 1st, and Kibble, as well as Child and Adolescent Mental Health Services (CAMHS).

Referrals can be received from Police, Victim Information and Advice (VIA), COPFS, partner agencies, local authorities, GPs, education establishments, parents/guardians, and the individual themselves.

Referrals for victims/witnesses attending court are received from Victim Information and Advice (VIA). All children and young people who are victims/witnesses are automatically referred to VSS court service because they are considered “vulnerable” and will be afforded the use of Special Measures whilst giving evidence. VSS provides support to children/young people regardless of whether the crime has been reported to the police.

Information from the Scottish Children’s Reporter Administration (SCRA)  
Within the Scottish Children’s Reporter Administration, there is a well-established [Victim Information Service](#) that operates to provide information to victims who choose to opt-in to receive that information. The Children’s Hearings System is a ‘private’ system and requires the balancing of competing rights of both victims and referred children.

SCRA provides an information service to victims of offending behaviour by children and young people across Scotland.

Sections 179A-179C of the Children’s Hearings (Scotland) Act, 2011 give powers to the Principal Reporter to offer victims the opportunity to receive information about the outcome of seriously harmful behaviour or offence(s) against them by a child or young person, whilst also protecting the child or young person’s right to confidentiality.

The principles of SCRA’s Victim Information Service are:

- to provide victims with access to routine information about the Children’s Hearings System,
- to provide specific information to victims and certain specified others about what has happened to the referral to the Reporter, of the child or young person responsible for the offence or serious harm.
- to protect the right of the child or young person to confidentiality.

The process involves the victim of an offence being identified from the police report when the child or young person is referred to the Reporter. Victim Information Co-ordinators then write to victims at the initial stage of their investigation. On receiving this initial letter, victims can then opt in to receive further information regarding key stages of the investigation and the final decision.

### Support from Police Scotland

Irrespective of the age of the person causing harm, a police investigation will be carried out to determine the circumstances. This allows for the victim to be referred for support. Police can speak to the child on an informal basis, with the agreement of their parent. Children are not cautioned in the same way as adults and are advised that they do not need to answer the officers’ questions. Early and Effective



Intervention (EEI) can apply to cases that do not meet the threshold for significant harm (age of criminal responsibility incident).

All instances of harmful behaviour in relation to child victims and persons who have caused harm will be recorded on Police Scotland's Interim Vulnerable Persons Database (IVPD). There will be distinctions in categories depending on age, however this will always be assessed by the public protection hubs and social work will also be informed. Subsequent referrals and signposting are dependent on what support is available locally.

From a police enquiry viewpoint, the initial support offered to the victim should be the same irrespective of the age of the person that has caused harm.

Additional support can also be provided, and reasonable adjustments can be made, to make sure victims have access to information and support services. However, it should be acknowledged that once a referral has been made to justice partners for the child under the age of criminal responsibility, police are unable to obtain updates and therefore unable to update the victim.

### Role of Social Work

#### **Victims of harm**

The age of criminal responsibility operational guidance for police and social work (2023)<sup>9</sup> states:

*Police and statutory services will take action to protect the safety and meet the needs of those involved in the situation, including the victim(s) and the community. Responding proportionately and effectively to the needs of a child who has caused or risked causing harm, does not diminish the rights of victims. They will still be the victim of a crime and entitled to have that crime fully investigated by the police and offered the support that is available to all victims of crime.*

Local authorities have a duty to promote, support and safeguard the wellbeing of all children in need in their area.

The role of social work in relation to the protection of harm is outlined in national guidance and legislation. A local authority must make all necessary inquiries into the child's circumstances if it appears that the child is in need of 'protection, guidance, treatment or control', and if it might be necessary for a Compulsory Supervision Order (CSO) to be made in relation to the child.

Social work services often work with victims of harm and trauma. Services support victims of harm and crime in many contexts due to the nature of the responsibilities, this can be across children and families, adults, and justice social work services.

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<sup>9</sup> <https://socialworkscotland.org/wp-content/uploads/2021/12/ACR-Operational-Guidance-Final-Formatted-Version-August-2023.pdf>

## Child who has caused harm

A GIRFEC approach for children is firmly grounded in securing both their best interests and wellbeing and supporting families by ensuring children receive the right help, at the right time.

This approach ensures that the child's health, education, and wellbeing needs are at the fore and that early intervention, support and diversion is recognised.

Support can include Early and Effective Intervention (EEI); intervention as part of a statutory order or voluntary measures, this can include children being looked after and accommodated, and in specific circumstances secure care<sup>10</sup>.

Under the duties of the Act, Local Authority Social Work are involved with Police in Investigative Interviews of children where the behaviour of the child has caused serious harm or sexual harm. The Act provides powers for the immediate response to and planned investigation of harmful behaviour.

An age of criminal responsibility Inter Agency Discussion (IRD) will coordinate decision-making and planning and will assess whether the provisions of the Act apply. This involves social work, police, health and, in some circumstances education. A primary consideration of the age of criminal responsibility IRD will always be the protection and wellbeing of all children, including any victim of harm.

### Anticipating volumes

Although the anticipation of volumes sits within the data and research group, this is helpful in attempting to quantify victims who have been harmed by children by current and potential changes in legislation.

Although an exact correlation is not possible, as not every harm will have an associated victim, and equally not every individual incident will have just one victim, volumes are helpful in identifying where and how the system changes for victims who have been harmed by children.

As the age of criminal responsibility is currently 12 years of age, there would have been on average 2,603 detected crimes where children were not held criminally responsible per year.

These range across seven groups of crimes, with the highest incidence within the miscellaneous offences category (52%). These seven groups include:

- Non-sexual crimes of violence (1%)
- Sexual crimes (3.5%)
- Crimes of dishonesty (17.5%)
- Fire-raising / Vandalism (20.5%)
- Other crimes (3.5%)
- Miscellaneous offences (52%)

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<sup>10</sup> The Children's Hearings (Scotland) Act 2011 provides the legal framework, including specific conditions and the 'secure care criteria' that must be satisfied ; Secure care: pathway and standards - gov.scot ([www.gov.scot](http://www.gov.scot))

- Motor vehicle offences (0.5%)

Additionally, these figures provide an average number of crimes detected where children across ascending ages would not have been held criminally responsible per year. This is helpful when considering the impact of future increases in age of criminal responsibility on victims. We note the low figures for children under the age of 12, leading to a view that raising the age of criminal responsibility from 8 to 12 years of age impacts by decriminalising children. However, volumes increase dramatically above 12 years of age. Although children under 12 years of age are not held criminally responsible, they are still assessed and likely provided with often robust intervention.

The table below outlines the number of detected crimes by age of the child at the time the offence was committed<sup>11</sup>.

| Year (Apr-Mar)            | Age of Offender at Time of Offence (years) |            |              |              |              |              |               |               |               |               |
|---------------------------|--|------------|--------------|--------------|--------------|--------------|---------------|---------------|---------------|---------------|
|                           | 8  | 9          | 10           | 11           | 12           | 13           | 14            | 15            | 16            | 17            |
| 2016/17                   | 177  | 381        | 592          | 1,204        | 2,940        | 5,025        | 6,573         | 7,798         | 7,309         | 6,649         |
| 2017/18                   | 179  | 309        | 597          | 1,089        | 2,928        | 4,950        | 7,100         | 8,145         | 6,952         | 5,479         |
| 2018/19                   | 151  | 315        | 542          | 918          | 2,157        | 4,337        | 6,391         | 7,733         | 5,756         | 5,182         |
| 2019/20                   | 126  | 225        | 483          | 962          | 2,388        | 3,948        | 6,086         | 7,544         | 5,716         | 4,509         |
| Average                   | 158  | 308        | 554          | 1,043        | 2,603        | 4,565        | 6,538         | 7,805         | 6,433         | 5,455         |
| <b>Cumulative (total)</b> | <b>158</b>                                 | <b>466</b> | <b>1,019</b> | <b>2,063</b> | <b>4,666</b> | <b>9,231</b> | <b>15,768</b> | <b>23,573</b> | <b>30,007</b> | <b>35,461</b> |

The prevalence of each category of crime changes as the age groups increase.

| Crime group                   | Age 13 | Age 17 | Percentage increase across 13 to 17 years of age | Number increase across 13 to 17 years of age |
|-------------------------------|--------|--------|--|--|
| Non-sexual crimes of violence | 47     | 117    | +249%  | +70  |
| *Sexual crimes                | 161    | 97     | -40%   | -64  |
| Crimes of dishonesty          | 989    | 826    | -16%   | -163   |
| Fire-raising / Vandalism      | 923    | 438    | -52%   | -485   |
| Other crimes                  | 221    | 1,321  | +598%  | +1,100                                       |
| Miscellaneous offences        | 2,110  | 2,079  | -1%  | -31  |
| Motor vehicle offences        | 42     | 507    | +1,207%  | +465   |

\*It is important to highlight that although sexual crimes between the ages of 13 and 17 decrease significantly, sexual crimes peak at age 15 (increase of 18% from age 13). It is unknown, but it may be reasonable to assume that as any sexual activity under the age of 16 is unlawful, we need to consider these figures alongside the age of consent at 16 years of age.<sup>12</sup>

### Additional resources and organisations

<sup>11</sup> These figures have been produced purely for management information and do not constitute official Police Scotland statistics. This caveat has been captured on relevant reports and any reuse of the data is only for the specific purpose of the Advisory Group (and its subgroups). Police Scotland do not support any publication of this data out with those parameters. The data has been obtained from Police Scotland's Interim Vulnerable Persons Database (IVPD) and captures the number of detected crimes by the age of children across specified years.

<sup>12</sup> As provided within Jan 2024 age of criminal responsibility Data and Research paper, page 5. This is an average based on four years of data from 2016/17 until 2019/20.

## Bairns Hoose

Scotland's Bairns' Hoose is based on an internationally renowned model first developed in Iceland, called Barnahus. Establishing Bairns' Hoose in Scotland reflects wider policy and legislative developments across children's services, justice, health, and social care in Scotland. This includes consistency with the overarching approach outlined in Getting it right for every child (GIRFEC) and being grounded in the requirements of the United Nations Convention on the Rights of the Child (UNCRC).

The overall vision of a Bairns' Hoose in Scotland is that all children in Scotland who have been victims or witnesses of abuse or harm, as well as children under the age of criminal responsibility whose behaviour has caused significant harm or abuse, will have access to trauma informed recovery, support and justice.<sup>13</sup>

The model is based on the four 'rooms' of the European Barnahus model:

- child protection
- police investigation and judicial procedures
- health
- mental wellbeing and recovery support

There is a phased approach to the development of Bairns' Hoose to create a system that works nationally, allowing time for learning and continuous evaluation to ensure that the model is achieving the correct outcomes and is aligned with other key policy objectives. The first phase began in October 2023 with the announcement of six Pathfinder and four affiliate partnerships. The Bairns' Hoose Policy Team are working closely with partners as they trial and test Bairns' Hoose [Standards](#) to develop a rights-based Scottish approach which will inform the development of a national Bairns' Hoose model ahead of incremental roll-out during 2027.

By testing the approach to implementation of Bairns' Hoose in Scotland, gaps in child protection, justice and health services for child victims can be addressed, leading to improved service delivery. This approach not only aids in the recovery of children and their families from trauma but also enhances their long-term outcomes, breaking cycles of abuse and contributing to stronger communities.

Bairns' Hoose continues to support the national implementation of the Scottish Child Interview Model (SCIM) for Joint Investigative Interviews (JIIs) as a cornerstone of the Bairns' Hoose model, as part of the Bairns' Hoose Pathfinder Phase. The model is now live in all policing divisions and in 30 local authorities, with the majority of the child population now able to access this trauma-informed approach to joint investigative interviewing. The two remaining areas are expected to be live by the end of 2024 and in 2025. Local multi-agency partnerships, jointly led by social work and police, are leading on making the necessary adaptations to local child protection systems to accommodate the new approach.

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<sup>13</sup> <https://www.gov.scot/publications/bairns-hoose-scottish-barnahus-vision-values-and-approach/>

## **(Interim) Vulnerable Person Database**

The interim Vulnerable Persons Database (iVPD) is an incident-based database that allows officers from Police Scotland to record concerns that may be a risk to a person's current or future wellbeing.

Any child victim or child causing harm would be subject of a VPD which would be assessed by the local divisional risk and concern hub and referred to Social Work SCRA, NHS and third sector organisations as appropriate.

## **Kibble SAFE Service**

The SAFE service is a new, free, national service for young people and families affected by crime operated by charity and social enterprise Kibble, funded by Scottish Government Victim Centred Approach Fund. SCRA began signposting some children towards this service in 2023, otherwise referral can be made via email or telephone direct to Kibble. <https://www.kibble.org/services/safe-children-and-family-support-after-crime/>

The overall aim of the SAFE service is to support the emotional wellbeing of young people, aged between 5 and 25, who have been a victim or witness to a crime. The service will be available to access online or face to face depending on the needs and preferences of the young person and family. Face to face services can be offered in the family home, at the SAFE service or in the community. The service will deliver this by providing three types of support:

### **Professional consultation (formulation)**

Kibble will provide systemic and psychological advice and support for organisations and professionals (e.g. education, social work, police) who support young victims and witnesses and who require expertise in trauma and mental health. This will include drawing together shared understanding formulations and care/intervention plans. Where appropriate a further consultation will take place with the young person and their family, allowing for the development of a systemic formulation.

### **Direct/Indirect support**

- This will be delivered in the form of:
- therapy (psychological therapy or systemic family therapy),
- assessment (as per the needs of the young person and family)
- and/or further consultation.

### **Advocacy (available throughout)**

Kibble will provide advocacy support to children who have experienced crime helping them through the criminal justice process, explaining the procedures, how they work and ensuring they understand their individual rights. They will support young victims to be able to make decisions based on what is right for them.

## **Role of Restorative Practices**

Restorative Justice (RJ) is value-led and focuses on the following questions:

- What has happened?
- What is it that matters to each of you that needs to be restored?

It focuses primarily on the specific act of harm that has brought the parties together and the subjective experience, understanding and wishes of each person affected by the harm. In that sense, the process is designed to undo an injustice (Chapman, 2021). It is based on the inclusion and active participation of both the person harmed and the person responsible. The key to restorative justice is that it allows those with a stake in the outcome of a crime-related intervention or conflict to communicate in a safe and structured way. This communication allows all parties to collaborate on a means for dealing with the aftermath of an offence or conflict and its implications for the future.

It is acknowledged that the youth and criminal justice system does not meet the needs of victims throughout. More specifically, as Scotland develops a more child-friendly justice system which not only meets the needs of the children but the communities in which they live, there needs to be more thought on how victims are supported. One way that this could be offered is through a restorative process. This is voluntary for all parties but would allow for all those who have a stake in the harm or offence to have their voices heard.

Going forward, it will be important to include a mechanism by which suitability may be determined, including measures to prevent further trauma and victimisation of victims who have been harmed by children.

Nationally the policy states that there is no lower age for Restorative Justice for children. Therefore, children under the age of criminal responsibility can be included. Additionally, Restorative Practices could be used where both parties do not want to engage in a Restorative Justice process.

Further exploration is required of which agencies are the gatekeepers for restorative practices to take place. Consideration must be made regarding the process as well as capacity to deliver the desired outcomes.

## 7. What are the operational implications of potentially moving to a higher age

*Please refer to the Operational Implications Appendix for full reports.*

### Work of the Operational Implications Subgroup

The objectives of the Operational Implications Subgroup (the group) are:

- To consider and identify the operational issues arising from any move to a higher age of criminal responsibility initially up to 14 years of age<sup>14</sup>.
- To consider the viability of current statutory provisions in Part 4 (Police investigatory and other powers) of the Age of Criminal Responsibility (Scotland) Act 2019 (the Act), in the context of a potential move to a higher age of criminal responsibility, initially up to 14 years of age.
- To consider and identify relevant capabilities that may need to be put in place to support any move to a higher age of criminal responsibility.

In the first phase of the group's work, the approach was to examine the operational implications through the lens of the four main organisations represented on the group – Police Scotland, the Crown Office and Procurator Fiscal Service (COPFS), Scottish Children's Reporter Administration (SCRA) and Social Work Scotland (SWS). This resulted in the report previously submitted to the Advisory Group (written in January 2022 and submitted to the meeting in June 2022 - the full report can be found in Annex H of appendix).

In the second phase of their work (following the age of criminal responsibility Advisory Group in June 2022) the group identified a number of issues to focus on:

- Investigative interviews and interagency referral discussions (IRDs).
- Resource implications of an increase in the age of criminal responsibility.
- The response of the Children's Hearings system to seriously harmful behaviour.
- The 24-hour limit on a child being kept in a place of safety.
- Harmful behaviour by a child from outside Scotland.
- The process for obtaining court orders out with office hours.

Where appropriate to do so, the group decided that relevant organisations should work together to produce joint reports for the Advisory Group. In addition, the group requested that COPFS update the report they had previously provided on 12- and 13-year-olds who were the subject of criminal proceedings and supplement it with data on 14- and 15-year-olds. The full reports are enclosed with this summary report. The following is a summary of the key messages from those reports.

### **Investigative interviews and interagency referral discussions**

A significant change made by the Act was to restrict the ability of the police to question a child where it is believed the child (while under 12) has acted in a harmful way (seriously harmful where it is physical harm<sup>15</sup>). The Act introduced a new investigative interview, with prescriptive procedures for its conduct, when the police

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<sup>14</sup> The Advisory Group later said that the group should consider the potential operational implications for an age of criminal responsibility older than 14.

<sup>15</sup> The specific criteria are in section 39 of the Act.

decide they require to interview a child about such behaviour. The Act requires the involvement of the local authority (in practice a social worker) in the investigative interview (known as an Age of Criminal Responsibility Investigative Interview). It also requires that a child has a Child Interview Rights Practitioner (ChIRP).

Both the [statutory guidance](#) and [operational guidance](#) for Part 4 of the Act require that an inter-agency referral discussion (IRD), as an established mechanism that enables a multi-agency approach to children, is held prior to any Investigative Interview taking place. These IRDs are referred to as an “Age of Criminal Responsibility IRD.”

In considering the operational implications of an increase in the age of criminal responsibility, the group wanted to learn from the experience of the police and social work in carrying out Age of Criminal Responsibility IRD and Age of Criminal Responsibility Investigative Interviews in relation to children under 12. This work was carried out jointly by Police Scotland and Social Work Scotland. It was informed by feedback to the Scottish Government from ChIRPs. A copy of the full report is at Annex A of operational implications appendix.

Since the commencement of the Act 7 Age of Criminal Responsibility Investigative Interviews have taken place in 3 different local authority areas. None have required a Child Interview Order to be sought from a sheriff. The report contains much important learning from the experience of these interviews and IRDs.

The key points from the report (based on the limited experience to date) about the operational implications of an increase in the age of criminal responsibility are:

- The Act brought a significant change in operational practice where a child meets the criteria for the use of police powers under the Act. Practitioners, including interviewers and managers, need support and training to ensure this change is fully embedded.
- The planning required for an Age of Criminal Responsibility Investigative Interview is resource intensive and time consuming, with a significant impact on resource capacity for the police and social work.
- Planning the interview and venue is crucial to avoid the child harmed and child responsible for causing the harm coming into contact with one another.
- There is an important balance between what is best for children and the investigative process.
- The Age of Criminal Responsibility Investigative Interview Protocol and Guidance provides a structure and approach to questions to be used in the interview. Police officers who have used the Protocol have envisioned no particular difficulty adapting it for a higher age group if necessary.
- National points of contact who can provide support and advice for local areas have been useful. However, a sustainable model and approach is needed for this, and future consideration is needed to ensure adequate specialist support is available to support planning for interviews as well as offering guidance on processes and requirements.
- The provisions of the Act relating to the Age of Criminal Responsibility Investigative Interview may restrict an opportunity for a disclosure where the interviewed child may have abused or harmed. Talking to a child about what has happened and restricting the ability to ask if there is anything that has



happened to them, may not be child-focused or safe and may be a missed opportunity to protect a child from harm. The legal requirements that an interview has ended, and an alternative child protection Joint Investigative Interview (JII) progressed, have raised concerns for some social work practitioners.

- Where an Age of Criminal Responsibility Investigative Interview of the child causing harm is conducted and a JII is also undertaken for the child victim, the impact on resourcing cannot be underestimated.
- The Act says that, where the Age of Criminal Responsibility Investigative Interview takes place by agreement, the parent who consents to the interview must be the supporter. There may be a need to consider the implications of this e.g. what if this is against the child's wishes and they want someone else? In some instances, the parent in the room may make it more difficult for the child to share information about what happened. For example, this could be due to the child wanting to protect the parent or feeling uncomfortable to share information such as harmful sexual behaviour.
- The ChIRP spending time with the child before the interview was helpful and needs to be built into the timeframe for the ChIRPs. In addition, it is important that interviewers and ChIRPs take the time to meet and plan the interview together. A collaborative approach and effective communications between social worker, police and ChIRPs are essential.
- As a result, the ChIRPs involvement is very time consuming with involvement ranging from 9-14 days from initial appointment to the end of the interview, and on occasion longer where contact with the parent has continued thereafter.
- There would be a resourcing pressure on the Scottish Government team who manage the ChIRP Register processes should the requirement for a ChIRP increase significantly. Consideration should be given to whether the network of ChIRPs appointed to the Register could sustain an increase in numbers; and whether there is a likelihood of attracting enough additional ChIRPs to ensure one is readily available.

### **Resource implications of an increase in the age of criminal responsibility**

The first phase report from the group contained a report from Social Work Scotland (SWS) on the anticipated operational implications for local authority social work services of an increase in the age of criminal responsibility to 14. SWS provided an updated report on these implications, the report being based on a survey of social work services (as was the original one). The survey and report also considered the implications if the age of criminal responsibility is higher than 14. The full report is at Annex B of appendix.

All local authorities who responded support a further increase in the age of criminal responsibility and support the current welfare-based children's hearing system as the response to the needs and deeds of children up to age 18. The key points from the report about the operational implications of an increase in the age of criminal responsibility are:

- There is an ongoing and significant recruitment and retention issue across social work nationally that must be addressed before the sector can continue to support future changes with additional responsibilities.<sup>16</sup>
- Workforce planning is an essential element that must be addressed to ensure the system is supported and adequately resourced.
- Implementation of a further increase in the age of criminal responsibility must be robustly planned and resourced, with levels of capacity (people, skills, places) delivered before changes in the law are commenced. In the wider context of the current complex and legislative landscape, it is important to align and sequence significant change for social work children and families' services.
- Intensive and specialist interventions are needed for a small but significant group of children where there may be a risk to others or themselves. Current provision is stretched and there needs to be a recognition that a preventative approach for children involved in harmful behaviour must include the provision of adequate specialist resourcing.
- The provision of learning and development, training, clear practice guidance and implementation support are required for specific duties such as places of safety, IRDs and risk management.
- Prior to commencement of legislation to increase the age of criminal responsibility, there is need for investment in learning and skills-based training for police and social workers undertaking age of criminal responsibility investigative interviews. This should also link to the role of the ChIRP. A national consistent approach is important to support local partnership working practice and alignment to the principles and practice of the Act.
- Any future legislation must provide clarity around the role and responsibilities of all agencies, in particular that of police and social work in relation to the most serious behaviour including IRDs and interviews with children. This requires investment in learning and development to support new collaborative working processes.
- The provision of places of safety by local authorities brings significant challenges, with some areas having very limited options. As the data shows there is likely to be a greater need for places of safety if the age of criminal responsibility is raised, there is a need to explore the resourcing, and processes required. There is also a need to consider the investment in resources that is needed.
- There is not a universal, consistent approach to out of hours social work services across the country. The additional provision required to meet the intentions of the Act are a challenge within current resources and structures, particularly given the anticipated increase in future demand if the age of criminal responsibility is raised.
- Pathways between agencies currently exist to ensure early identification and effective supports for children. If the age of criminal responsibility is increased, these pathways may require review to ensure that intervention remains effective and proportionate.
- Future changes must recognise the needs and rights of victims, with their safety and wellbeing fully considered. Community confidence is critical, and so building confidence within communities while raising the age of criminal responsibility requires careful consideration.

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<sup>16</sup> [https://socialworkscotland.org/briefings\\_statements/social-work-in-scotland-is-at-a-critical-tipping-point-setting-the-bar-reveals/](https://socialworkscotland.org/briefings_statements/social-work-in-scotland-is-at-a-critical-tipping-point-setting-the-bar-reveals/)

## **The response of the Children’s Hearings system to seriously harmful behaviour**

The only formal compulsory response to the seriously harmful behaviour by a child under the age of criminal responsibility is through the Children’s Hearings system. Therefore, the group has considered the question of what capabilities, if any, should be put in place to enable the Children’s Hearings system to respond effectively to seriously harmful behaviour if the age of criminal responsibility is increased.

This work was carried out by group members from the Children and Young People’s Centre for Justice, SWS and SCRA. The full report is at Annex C in appendix. It identifies:

- The powers available to the court to respond to such behaviour.
- The responses, resources and approaches currently available to respond to such serious behaviour by children over 12.
- The responses that should be available if the age of criminal responsibility is raised.
- The additional powers, if any, that should be available to the children’s hearing.

The key points from the report are:

- The Children’s Hearings system already responds to a significant number of matters of a violent, sexually harmful, or acutely damaging nature. The powers currently available to the hearing enable a response to those children’s needs in an effective manner. These can deliver robust levels of supervision and support (including movement restriction conditions and secure accommodation authorisations), although resourcing pressures can lead to inconsistent provision across Scotland.
- An increase in the age of criminal responsibility will remove the possibility of children under that age receiving a court disposal as a result of their seriously harmful behaviour. Some of these disposals involve sanctions and punishments aimed at deterring future criminality. The criminal court system has an ethos that is very different to the child-centred Children’s Hearings system which considers the overall welfare of the child responsible for causing harm. The different approach of the Children’s Hearings system should be preserved in future changes (as it was in the Children (Care and Justice) (Scotland) Act 2024<sup>17</sup>).
- Any compulsory intervention through the Children’s Hearings system must end at the child’s 18th birthday. As a result, it will not be possible for the Children’s Hearings system to put in place any intervention beyond the child’s 18th birthday. This contrasts with court disposals which can go beyond the age of 18. (The papers from COPFS at Annex G in appendix provide further data on the extent to which court disposals for the most serious offences have extended beyond 18).
- The other important difference between criminal court disposals and those of the children’s hearing are that some (such as sex offenders’ registration, driving bans and compensations orders) are only available through a court

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<sup>17</sup> Paragraph 72 of the [Policy Memorandum](#) for the Bill states “The intention is not to change the ethos of the Children’s Hearing system into something akin to a criminal court system by bringing in penalties for non-compliance, the existing review mechanism already allows for adjustment to be made to the child’s Compulsory Supervision Order if necessary.”

disposal. It is, however, important to note that the Children (Care and Justice) (Scotland) Act 2024 will allow for a court to impose registration on the Sex Offenders Register, a driving ban or a harassment order on a child before remitting to a children's hearing for disposal.

- Best practice in line with Getting It Right for Every Child would call on the provision of the same resources and supports regardless of which legal system is responsible for responding to the needs of, and risks posed by, the child. This should be true regardless of whether the behaviour results in the child being charged with an offence or not.

It is important to note that the report did not consider the issue from the perspective of the victim of the child's behaviour. This is because the victim support subgroup of the Advisory Group is already addressing issues relating to victims that might arise if the age of criminal responsibility is to be increased. However, the report recognises the importance of ensuring that the absence of a response through the criminal justice system to a child's seriously harmful behaviour does not diminish the support available to a victim, nor the provision of information necessary for the victim's safety planning.

As noted above, the report at Annex C in the appendix identifies the particular issue of children's hearing orders ending at the child's 18th birthday, contrasting that with court disposals that can go with the young person beyond their turning 18. One related issue that is not addressed in the report is the situation where the child responsible for causing serious harm is not identified until a considerable time later. This may be because there is not an immediate disclosure by the victim – especially where that victim was themselves a child. If the child requires compulsory intervention through a children's hearing, the time lapse will reduce the time that compulsory intervention can be in place for. In situations where the time lapse is particularly significant, the age of the person responsible may mean that they can no longer be referred to the children's reporter. The only available response would be through the adult criminal justice system.

### **The 24-hour limit on a child being kept in a place of safety**

In very limited situations, the Act gives the police the power to remove a child under the age of criminal responsibility to a place of safety. The child can be kept in place of safety for up to 24 hours. The reporter has no power to arrange a short-notice children's hearing at the end of the 24-hour period. This is in contrast to the situation where a child over the age of criminal responsibility has been charged with a very serious offence and kept in custody by the police. The group has considered the question of what capability (if any) should there be for the extension of this 24-hour period in the event of the age of criminal responsibility being increased.

This work was carried out by group members from the Police Scotland, SWS and SCRA. The full report is at Annex D in the appendix. It contains a flowchart and case study that illustrate and help explain the issue.

The key points from the report are:

- After the maximum period of 24 hours has expired, the Act does not give the police, local authority or anyone else a power to keep the child in a place of safety. The local authority may make arrangements with the family (with

consent) for the child to be accommodated elsewhere (such as a children's house, alternative family, or foster care).

- In some situations, other legislation will enable the local authority to continue to keep the child in a place of safety. However, there will be other situations where none of these options will be available after the expiry of the 24-hour period. In those situations, the police will have no alternative but to release the child to the care of their parents.
- Therefore, there is a clear legislative gap: having taken a child to a place of safety, there will be situations that arise where the police have no alternative but to release the child to the care of their parents. A case study in Appendix 3 of the report illustrates this.
- Although this gap is there at present, any difficulties caused by the gap are more likely to arise if the age of criminal responsibility is raised – the data shows that both the frequency of children under the age of criminal responsibility engaging in seriously harmful behaviour, and the seriousness of that behaviour, is likely to increase.
- Given the increased likelihood of the gap arising in practice if the age of criminal responsibility is raised, we recommend that legislation is considered to fill that gap.

The group recognised that a separate question arises about the extent of the police's powers under the Act to take a child under the age of criminal responsibility to a place of safety. In particular, whether those powers should be widened if the age of criminal responsibility is increased. However, given the pressure of other work, the group was not able to properly address this question.

### **Harmful behaviour by a child from outside Scotland**

It is possible that a child under the age of criminal responsibility from outside Scotland is involved in seriously harmful behaviour (or other behaviour that causes serious concern) whilst in Scotland. The group has considered the question of what response there can be to that child's behaviour if they are no longer in Scotland.

This work was carried out by group members from the Scottish Government and SCRA. The full report is at Annex E in the appendix. It contains case studies that illustrate and help explain the issue.

The key points from the report are:

- A children's hearing does not have jurisdiction where a child is not within Scotland unless they are already subject to a compulsory supervision order. If a children's hearing does not have jurisdiction, the reporter is not able to receive a referral of the child.
- If a child under the age of criminal responsibility from out with Scotland causes serious harm to someone when in Scotland, Police Scotland are able to share information about the child with the child's home local authority.
- From information provided by UK Government officials, if a child from England or Wales under the age of criminal responsibility is involved in seriously harmful behaviour in Scotland and returns home, there can be no formal, statutory response in relation to the child in England or Wales. The fact of alleged criminal behaviour that cannot be prosecuted due to the child being under the age of criminal responsibility is not sufficient to trigger powers for a

local authority to bring care proceedings. (Although the information from UK Government officials related to England and Wales, there has been no information from Northern Ireland Government officials to say the position would be any different in their jurisdiction).

- A local authority in England or Wales would still be able to provide support to the child and their family with their consent.
- The position is different if a child from Scotland who is under the age of criminal responsibility is involved in seriously harmful behaviour out with Scotland and then returns to Scotland. In those circumstances, the reporter could arrange a children's hearing for the child as a result of their harmful behaviour elsewhere.
- If the child is from out with Scotland but is over the age of criminal responsibility, they could be prosecuted in Scotland for their actions whilst here.

#### **Out of hours service for applications for orders under Part 4**

The Act gives the police a number of investigatory and other powers. Some but not all require to be authorised by court orders. Since implementation of Part 4 of the Act on 17 December 2021, the Scottish Court and Tribunal Service has been able to put in place a limited out of hours service for these court orders. This service draws on the model for obtaining child protection orders outside usual working hours and at weekends. It enables orders under the Act to be obtained where:

- A sheriff decides to make an order without taking representations from any party.
- A sheriff decides to make an order having taken representations from the police only. Where this is the case, the sheriff will take the views of the police by video or telephone conference.

However, there is no current provision for an out of hours service in circumstances where the sheriff decides they wish to give the child, a parent or anyone else the opportunity to make representations. If a sheriff decides they wish to give any of these people the opportunity to make representations, any hearing would be delayed until the normal opening hours of the court.

The group has considered the issue of whether there should be a comprehensive service that would enable these orders to be obtained out with office hours in circumstances where the sheriff decides they wish to give the child, a parent or anyone else the opportunity to make representations.

This work was carried out by the Chair, with input from the Scottish Government, Police Scotland, Scottish Courts and Tribunal Service and Scottish Legal Aid Board. These organisations were members of a working group that met to consider this issue prior to implementation of the Act. The full report is at Annex F in the appendix. It contains case studies that illustrate and help explain the issue.

The report summarises the issue and the views of the organisations involved in the former working group.

It is clear from the report that a lack of a comprehensive out of hours service for these orders gives rise to various risks and concerns. However, it is also evident that there are practical difficulties and expenses involved in developing such a comprehensive service.

The case studies in the report illustrate the important role of the sheriff and how the sheriff will determine the approach to be taken in the absence of a comprehensive out of hours service. In doing so, the sheriff will be balancing the various rights and interests involved.

Contrary to initial expectations when Part 4 of the Act was implemented, as yet there have been no applications for any of these court orders. Therefore, it has not been possible to test out the suitability or rigour of the current arrangements.

From the data available, we know that for every 'age year' that the age of criminal responsibility is increased by, the seriousness and volume of the harmful behaviour of children also increases. Therefore, the likelihood that the need for the police to apply for one of these orders will increase. However, the findings of the "dip sampling" exercise carried out by Police Scotland<sup>18</sup> are relevant to the consideration of the need for an out of hours service: across the 3 order types there were only 17 instances out of the 205 cases sampled where the reviewing officers assessed that the current powers under the Act would be required.

### **Data from the Crown Office and Procurator Fiscal Service**

One of the first phase reports submitted by the group was a report from COPFS on the outcomes for 12- and 13-year-olds who were jointly reported and then the subject of criminal proceedings in the period from 2011 – 2020. For this second phase of the group's work, COPFS updated this report. In recognition of the need to consider the operational implications of a possible increase in the age of criminal responsibility to an age higher than 14, COPFS also produced a separate report on 14- and 15-year-olds who were the subject of criminal proceedings in 2011 – 2022.

The full report is at Annex G in the appendix. The key points from the report are:

- In 2011 – 2022, there were 20 cases in which a child was prosecuted where the child was aged 12 or 13 at the time of the report being submitted.
- In 8 of these cases, the court imposed a custodial sentence after conviction. In 10 of them, the court remitted the case to a children's hearing for disposal of the case.
- In 2 of these cases, the court imposed a sentence which had a duration beyond the child's 18th birthday. One of these cases related to a charge of murder where the child pled guilty to culpable homicide; the other was a charge of assault to severe injury, permanent disfigurement and danger of life, and attempted murder, in which the child's plea to an amended charge was accepted.
- Due to the volume of cases between 2011 and 2022 involving children who were 14 or 15 when they were jointly reported, it was not possible for COPFS to provide such a specific breakdown of cases as they could do in their report on 12- and 13-year-olds.

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<sup>18</sup> This was previously submitted by Police Scotland to the Age of Criminal Responsibility Advisory Group.

- Their data showed that there 393 children of that age who were convicted in a solemn court, 63 in the High Court and 330 in the Sheriff and Jury court. Of the 63 convicted in the High Court, 35 received a custodial sentence. Of these, 4 related to charges of murder where the sentences imposed extended beyond the child's 18th birthday. In one of the 63 cases, the court remitted the case to a children's hearing for disposal of the case.

### **Other matters raised by the Operational Implications Subgroup**

More than 2 years since the age of criminal responsibility was increased to 12, there is no evidence of children under 12 being at additional risk of criminal exploitation. However, the group identified the concern that if the age of criminal responsibility were to be increased, as seen in Sweden, older children who then are under the new age of criminal responsibility could be at additional risk of exploitation by older children or by other people using those children in drugs supply or other criminal activity, in the knowledge the child would not committing an offence that would attract a criminal justice response. However, an increase in the age of criminal responsibility would not prevent the possibility of the child being made subject of a compulsory supervision order through the Children's Hearings system if that is required. It would also not prevent the child protection response to the criminal exploitation of a child that is described in the National Child Protection Guidance.

### **Conclusion**

The foundation position of the group remains as stated in the group's first phase report: that moving to an age of criminal responsibility of 14 is a desirable goal. The various reports prepared in this second phase of the group's work identify a number of operational implications of an increase in the age of criminal responsibility. These consequential issues will need to be considered and addressed prior to any future increase. Some present significant challenges but for a very small number of children - particularly the seriously harmful behaviour of a child from out with Scotland and the absence of any possible compulsory intervention beyond the age of 18. However, none should be seen as insurmountable barriers to an increase in the age of criminal responsibility.



## 8. Risk Management Post 18

*Please refer to the Post 18 Short Life Working Group Appendix for full reports.*

### Introduction

At the Advisory group in September 2024, a concern was raised about how the current system would manage the risk a child may present if there is an increase in the age of criminal responsibility past 12 years. In particular where a child involved in the most serious harmful behaviour reaches the age of 18 and is assessed as still posing a risk and is no longer subject to the Children's Hearings System (CHS) and in this situation there is no recourse to criminal justice response.

A short-life working group was set up and met twice in October and November 2024 (see Annex A of appendix for group membership and terms of reference). The purpose of this group was to consider the assessment and management of risk of children who may, due to the nature of their serious harmful behaviour, present a risk upon reaching age 18. The group specifically considered options for Scotland that will uphold the needs of victims, ensure community confidence, and maintaining the rights of the child.

### Remit

The remit of the group was to consider:

If murder/some offences committed by children under the ACR should be exempt and children remain open for consideration of being prosecuted for this/these offences

And/or

If a child has been referred to the CHS due to being under the age of criminal responsibility but still presents a significant risk upon turning 18, are there current legislation or risk management strategies to manage this risk or is additional legislation required.

### Data

As part of this work, the group looked at the number of children in Scotland that we need to consider for these measures. As highlighted in Annex B in the appendix to gain some sense of the numbers of children involved in the most serious, behaviour data from COPFS highlighted that:

For children aged 12 and 13 referred to the High Court, over a 10-year period, there were 8 children, resulting in less than 1 a year. Offences included murder, attempted murder, rape, serious assaults to permanent disfigurement and robbery. In 4 of those cases, prison sentences were imposed which spanned beyond the child's 18th birthday.

For children aged 14 and 15, over the same 10-year period there were 63 children convicted in the High Court, 4 of which were for murder where the sentence spanned beyond their 18th birthday.

## Exceptions to ACR

Concerning the first point under the remit, the group looked at the UNCRC, Scotland current approach and international examples where certain offences and processes were exempt for children under the age of criminal responsibility (see Annex C).

## UNCRC

The UNCRC (1989) states:

“States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law...”

More recently, General Comment No.24 (2019), in paragraph 25, has highlighted that:

“The Committee is concerned about practices that permit the use of a lower minimum age of criminal responsibility in cases where, for example, the child is accused of committing a serious offence. Such practices are usually created to respond to public pressure and are not based on a rational understanding of children’s development. The Committee strongly recommends that States parties abolish such approaches and set one standardized age below which children cannot be held responsible in criminal law, without exception.”

As a result of the UNCRC (Incorporation) (Scotland) Act 2024 Scottish legislation requires to be compatible with the UNCRC. Given what was said in General Comment No.24 we do not think it would be compatible with the UNCRC to introduce the approach in point One.

## Scotland

The incorporation of the UNCRC follows on from the longstanding approach in Scotland that has aimed to keep children under 18 out of formal criminal justice processes. From the Kilbrandon report 60 years ago, through the CHS and Scotland’s recent Whole System Approach youth justice policy, there has been the understanding that children’s actions should be responded to by addressing their needs, rather than enforcing penalty or punishment with children’s rights being upheld. We think it would be contrary to that longstanding approach to introduce the exception to the ACR that is outlined in point 1.

Our unique process through the CHS responds to most children<sup>19</sup> who are charged with committing an offence. Although we have that unique process, throughout its history it has remained possible for COPFS to prosecute a child.

In order to facilitate the decision by COPFS of whether to prosecute in a particular case, the Lord Advocate has issued guidelines to the police about which children are to be jointly reported to both COPFS and the children’s reporter. Although those

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<sup>19</sup> Currently those under 16 but due to rise to 18 under the Children (Care and Justice) (Scotland) Act 2024

guidelines include a list of specific, serious offences that the police require to jointly report, it remains for COPFS to make a case-by-case assessment of whether it is appropriate to prosecute – there is no requirement for COPFS to prosecute any particular offence.

Therefore, it would be inconsistent with that longstanding approach to children who offend if the ACR were to be raised but murder and some offences committed by children under the ACR are exempt and children are prosecuted for these offences.

### International example

We can, however, look to other countries in relation to process. In Sweden, following certain offences a prosecutor can ask the court to examine if the child committed the act, but without issuing a criminal sanction. They assist with intervention and risk management of the child with the aim being that social services have better tools to be able to provide care for the young people who commit the most serious crimes. The child remains in the childcare system, by providing a ruling on the role of the child in the offence. This does not apportion criminal responsibility, but rather an account in law of what – in the opinion of the court – took place.

This approach in Sweden has many similarities to proof proceedings in the Children's Hearings system, where a sheriff hears evidence to decide whether the reporter's statement of grounds is established. In a situation where a child is under the ACR and has been involved in seriously harmful behaviour, the statement of grounds will include details of that behaviour. As in Sweden, the child will remain in the childcare system, with the sheriff providing a ruling on the child's role in the behaviour but not apportioning criminal responsibility.

It is important to recognise that the approach in point one would address the concern about what happens post age 18 where a child under the ACR has been involved in seriously harmful behaviour. If some serious offences committed by children under the ACR are exempt and those children are prosecuted for the offences, then it will remain possible (as now) for the criminal justice disposal to extend beyond the child's 18th birthday. However, it would lead to significant practical challenges for the police in deciding whether they can continue to use their normal criminal justice powers (where the behaviour is one of the exempt offences) or whether they have to use their powers under the ACR Act (where the behaviour is not such an offence).

Although we recognise that the approach in point one would address the concerns about what happens post age 18, we do not recommend it for the reasons stated earlier.

### Risk assessment and risk management

Concerning the second point, the Risk Management Authority provided a useful paper in relation to risk assessment and management (Annex D in the appendix). In Scotland, we have an agreed set of risk management principles Framework for Risk Assessment, Management and Evaluation (FRAME) and an agreed process for children aged 12-17 Care and Risk Management (CARM). As a key principle the group strongly believe that any risk management processes for children should come under this process and the principles and processes of FRAME and CARM respectively should inform work under any new order that is created. The current

implementation across the country of the use of CARM processes is inconsistent, however with further work and resource required to ensure this is embedded fully in local processes. The CARM process sits within the National Guidance for Child Protection in Scotland (2021 - updated 2023).

Within this report, examples of assessments that are currently in place through process like the Order for Lifelong Restriction (OLR) were also discussed. Although the group strongly believe that an OLR is not appropriate for children under the age of criminal responsibility, we can learn from this approach and other processes like MAPPA. Namely, that accredited assessors could be used; taking a multi-agency approach to risk management and that formal, regular reviews should take place.

The group discussed the existing risk management strategies that are in place for adults who have been convicted of the most serious offences, noting the process and purpose of MAPPA. Increasing the ACR would ultimately mean that there is no route into the MAPPA process due to an absence of conviction, and so consideration could be given as to how a child who is deemed to present a significant risk (through CARM and regular risk formulation) could enter the MAPPA scheme upon their 18th birthday. (Similarly, due to the absence of a conviction, there is no route into MAPPA where a child over the current ACR is referred to the reporter in relation to an offence and is dealt with through the Children's Hearings system).

The group then examined how risk could be managed in relation to children who were under the ACR at the time of their serious behaviour, ensuring the needs of victims, the community, and the child themselves are met.

### Civil Orders

The group discussed how a child may come to be managed upon leaving the CHS, on a compulsory basis, particularly when they turn 18, where there is some oversight by authorities. The child could not (in the current system) be detained in secure care beyond 18 or otherwise be dealt with in the CHS system. For this issue, the group considered civil orders, which already exist on how to manage the now adults, in the community where they are considered to pose a risk, but where there is no attached criminal conviction.

The group also noted that consideration would have to be given on a practical level as what may be the court mechanism and timing of a child to be risk assessed towards the end of their time leaving the CHS.

There are civil orders which can be applied for (usually by the police) where there is a lack of sufficient evidence to report a person for a suspect offence, but whereby the police assess the person is a risk to the public. These orders usually allow for restrictions and some monitoring of the person and result in a criminal offence should they be breached. Some examples of such orders are:

- Sexual Risk Order, per section 27 of the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (recently replaced SOPO's from the Sexual Offences Act 2003 in Scotland) and section 29 which creates prohibition on foreign travel in an SRO.

- Domestic abuse protection notice under section 4 of the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#)
- Serious Crime Prevention Orders, under s(1A) [Serious Crime Act 2007](#). An SCPO is a civil court order, in the name of the Lord Advocate, which can be sought against a person upon conviction. Or one can be granted without conviction in the Court of Session or the Sheriff Court if the court is satisfied that a person has been involved in serious crime, whether in Scotland or elsewhere, and has reasonable grounds to believe that the Order would protect the public from further harm in terms of **Section 1(1A) of the 2007 Act**.
- An Anti-social Behaviour Order ([Antisocial Behaviour Orders \(ASBO\) - mygov.scot](#)) under s4 of the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#)

Although not a civil order the 1995 Act has some provisions where learning may be considered:

- Under s.205 (2) and s.208 of the Criminal Procedure (Scotland) Act 1995 children can be sentenced to detainment following solemn conviction, with the Scottish Ministers then determining the location. Scottish Government policy is that this will usually be within secure accommodation. This shows an example in legislation there can be a role for Ministers to become involved in decisions around the way a child is detained (albeit in this context it is post criminal conviction).
- s.209 of the [Criminal Procedure \(Scotland\) Act 1995](#) sets out what a supervised release orders, which can be imposed upon a solemn conviction (other than a sexual offence) when a person is sentenced to less than four years, then on passing sentence the court can if it considers that it is necessary to do so to protect the public from serious harm from the offender on his release.

If there were to be any new order it would require a bespoke order, probably in a bespoke scheme, but learning can be taken from current practice. In the examples above usually, the court requires to establish that the person (on a balance of probabilities or to find there are reasonable grounds) has committed the act. Where a child had been in the CHS then there would already have been a finding, either by the accepting of grounds at a children's hearing or by a sheriff at a grounds proof, that the child was responsible for the act.

Therefore, there may be less need for the court to be persuaded there was an act committed by any child. However, the court may require to be persuaded on the risk of the person who may be leaving the CHS, having committed the act when they were under the ACR (if changed). It is also important that no distinction is drawn on the basis of which ground or facts were in the statement of grounds. It is a fundamental Kilbrandon principle that the powers of the hearing and the approach to be taken does not depend on the ground.

### General Principles to consider

Having examined the information presented, the group believe that there will need to be careful consideration of new structures/processes to ensure we get this right, and that the following principles should be followed:

- A new civil order could be created that a child could be assessed for prior to their 18th birthday.
- Any assessment of such an order should be undertaken by a credited professional experienced in working with children and follow the principles of FRAME/CARM.
- Any new order would be overseen on a multi-agency basis, involving the most relevant professionals. Due to the small numbers involved in the most high-risk behaviour, the group does not believe this would be onerous on professions involved, but roles and responsibilities would need to be established.
- Conditions could be attached to such an order if relevant including for example accommodation; exclusions; counselling etc to ensure confidence in the system by victims and communities.
- Regular reviews should be built into the order to respond to an increase or decrease in risk, thus allowing for new or extended conditions and for order to come to an end.
- If there is non- engagement with the order, this would be returned to Court. The outcome of this needs further consideration if this would lead to a criminal offence.
- The order would be for those children who:
  - Behaved in a seriously harmful way when under the ACR, and
  - Are likely to present a serious risk of harm to others when 18 (the group did not think it appropriate to consider the precise wording of these tests).
- Only those assessed prior to leaving the CHS would be made subject to an order.
- Strict criteria would be required to ensure children are not up tariffed.
- Recognising the Kilbrandon principle in relation to the powers of a children's hearing, no distinction should be drawn on the basis of which ground or facts were in the child's statement of grounds.
- Further work is needed to support local areas to fully embed CARM processes. This will take additional resource and time.
- Any new order must be considered within the wider context of changes within the current Children's and Justice services and the complexity of the current policy and legislative landscape.

## 9. Current legislative and policy landscape

Since the full implementation of the Act, several legislative and policy changes have occurred that impact directly on, or relate closely to, the age of criminal responsibility. This section provides an overview of the relevant legislation.

In Scotland there is a range of age-driven limits, capacities, entitlements and restrictions. Examples of current limits include: instruct a solicitor (12); have a job (13 and 14 with certain restrictions); voter franchise for Holyrood (16) and Westminster (18); marriage (16); consent to sexual relations (16); join the armed forces (16); buy a pet (16); driving (17); smoking & alcohol (18); lottery (18); fireworks (18); get a tattoo (18); DVDs and games etc (3, 7, 12, 16 and 18); free bus travel for all young people (under 22).

Further intensive work is required to publicise for communities what the current legislative landscape and processes that are involved for children and young people.

The age of prosecution stipulates that children aged 12 to under 16 (age 18 once Children's Care and Justice Act is fully implemented) may not be prosecuted for any offence unless directed by the Lord Advocate, with jurisdiction limited to the High Court and sheriff court. Additionally, parents or guardians of charged children may be required to attend court proceedings, unless deemed unreasonable by the court.

The United Nations Convention on the Rights of the Child (UNCRC) specifies that all people under the age of 18 are children. And on 16 July 2024, the United Nations Convention on the Rights of the Child (UNCRC) (Incorporation) (Scotland) Act 2024 came into force in Scotland. This means that children's rights, set out in the UNCRC, will be legally protected in Scotland.

Alongside the work to incorporate the UNCRC in Scotland we held an Independent Care Review to examine a 'root and branch review' of the care system and this turned into the Promise: Our Government vowed to keep the Promise by giving a commitment to ensure that children and young people in Scotland grow up safe, loved, and respected and able to realise their full potential. Keeping The Promise includes ensuring that no child under the age of 18 will be sent to a Young Offenders Institution

Therefore, the Scottish Parliament passed the Children (Care and Justice) (Scotland) Act 2024. Once fully commenced, this legislation maximises the use of the children's hearings system and ended the detention of children in Young Offenders Institutions. The Scottish Government is committed to ensuring that children should have age-appropriate support, different to that of adults, when they are in the care and justice systems.

In 2022 there was the implementation of the Scottish Sentencing Council's sentencing young people guideline which applies to the sentencing of those who are under the age of 25 at the date of their plea of guilty or when a finding of guilt is made against them. Reflecting compelling scientific evidence<sup>20</sup> on the

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<sup>20</sup> <https://www.scottishsentencingcouncil.org.uk/media/mi0aavav/20200219-ssc-cognitive-maturity-literature-review.pdf>

development of cognitive maturity, the guideline says that a young person will generally have a lower level of maturity, and a greater capacity for change and rehabilitation, than an older person.

In 2024 there was a public consultation on the proposed changes via Children's hearings redesign to ensure that a modernised children's hearings system meets the needs, and respects the rights, of all the children and families it serves.

#### Criminal Procedure (Scotland) Act 1995

This Act establishes the age at which a child can be deemed to have committed an offence. Currently, the age of criminal responsibility in Scotland is set at 12. Section 41 states, "A child under the age of 12 years cannot commit an offence." Section 42(1) restricts prosecution for children who have reached this age, specifying that children aged 12 to under 16 may only be prosecuted with the Lord Advocate's instructions, and only the High Court and sheriff court can handle such cases.

#### Children (Care and Justice) Act 2024

During the 2022 consultation for the Bill that became this Act, it was noted that it was not appropriate to amend the age of criminal responsibility at that time, though 65% of respondents supported a review. The Act received Royal Assent in June 2024 without changes to the age of criminal responsibility, but it amended section 42(1) of the Criminal Procedure (Scotland) Act 1995 to apply to individuals under 18.

#### Single Point of Contact and Information Sharing

The changes in the Children (Care and Justice) (Scotland) Act once fully implemented will refer 16- and 17-year-olds to the Principal Reporter, although the Lord Advocate and Procurator Fiscal will retain the discretion to begin criminal proceedings and to prosecute children in court, where appropriate.

It is anticipated that more children who previously would have had their cases dealt with through the criminal justice system, are being supported through the Children's Hearings System.

As a result, victims may no longer be able to access the same level of information and support. Therefore, included in the 2024 Act is provision for a Single Point of Contact Service for people who have been harmed, alongside provisions for the Reporter to share appropriate levels of information including to assist with safety planning.

It is recommended that how this service develops and the impact it will have on victims and witnesses, and on services working with them and with the children responsible for harm, is kept under review.



## 10. Learning and feedback over the review period

The Act provides Scottish Ministers with the power to require information in relation to the carrying out of the review and for monitoring the exercise of functions under Part 4 of the Act.

To support the statutory review and to consolidate the insights gained since the full commencement of the Act, a first learning event was established and took place in January 2023 followed by a second learning event in January 2024. A third learning event is planned for 5 February 2025.

[Read the full report](#) of the 2023 event.

[Read the full report](#) of the 2024 event.

### Summary of the learning event findings

Key themes that have emerged from the two learnings events include:

- Understanding children's needs: Emphasis on recognising the specific needs and vulnerabilities of children within the justice system. Ensure a child-centred approach in justice practices.
- Interagency Collaboration: Importance of cooperation among various agencies to provide comprehensive support for children. To gain a better understanding the role of community support.
- Training and Awareness: Need for ongoing training for professionals to ensure effective handling of cases involving young people.
- Impact Assessment: Calls for further evaluation of the Act's impacts on children and communities to identify areas for improvement.

## 11. Conclusion and next steps

The Act states that the Scottish Ministers must lay a copy of the report before the Scottish Parliament. The report on the review must be prepared, published, and laid before the Scottish Parliament no later than 12 months after the end of the review period (by 16 December 2025).

The Advisory Group collectively<sup>21</sup> agrees that there should be an increase to the age of criminal responsibility to 14 or above, with proper policy development, cross-agency collaboration, and lessons learned from the initial increase to 12. Alongside this a clear indication of the necessary reforms to operational systems, victim support frameworks and a national communications strategy. All of this would further strengthen Scotland's commitment to child rights and ensure the children are protected from the harmful effects of early criminalisation.

It is clear from the work carried out across the workstreams under the multi-agency Advisory group, that any age increase will require a commitment to ensuring there is sufficient resource in place across the relevant agencies and services to manage the increase in demand. The level of investment required to ensure a successful implementation cannot be understated. In addition, this applies to training for all relevant practitioners and the reassurance that the services and structures are in place across Scotland to ensure children and young people are supported, whether in relation to those who have been harmed or those who have harmed.

Lessons from the initial increase are still being realised, with learning not being as developed at this stage as initially hoped; it is widely acknowledged that the legislation has not been properly tested to date and therefore the statistical evidence is limited. There is also no evidence of impact or outcome at this stage to emphasise exactly how the implementation of the Act has affected children and reduced harmful behaviour.

Whilst it is recognised that, due to the age, the number of cases would be low, organisations such as Police Scotland and Social Work Scotland are keen to understand the reasons for this. The limitations regarding the low use of the legislation should be noted when considering the statistics produced in this report.

The Advisory Group also acknowledges that several other pieces of legislation will be impacted and required to be amended if there is any change to the Age of Criminal Responsibility (Scotland) Act 2019. These include Age of Prosecution, Children (Care and Justice) (Scotland) Act 2024, Victims, Witnesses, and Justice Reform Bill (if passed), The Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill (if passed).

The Advisory Group recommends Scottish Ministers assess the findings of this report, consider its conclusions, and make an informed decision about any potential increase to the age of criminal responsibility.

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<sup>21</sup> Please note that this may not be in line with individual organisations viewpoints or stance, this position is a collective agreement of the Advisory Group.