

# Raising the Age of Criminal Responsibility

Joint Briefing Paper

November 2022

# 10

REASONS WHY

TEN IS TOO YOUNG



## Introduction

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

On 3<sup>rd</sup> October 2022 the Department of Justice issued a 12 week public consultation on increasing the minimum age of criminal responsibility in Northern Ireland from 10 years to 14 years.

In compliance with international children's rights standards NIACRO, VOYPIC, Include Youth and the Children's Law Centre are calling for the minimum age of criminal responsibility to be raised to 16 years, with no exceptions for serious or grave offences.

We are asking you to add your voice and let our Executive know that we believe 10 is too young and it is time for change.

This briefing outlines the 10 reasons why we need to raise the age. It also contains an appendix containing a suggested response to the Department's consultation response template. Alongside responding to the Department's template we're encouraging individuals and organisations to submit more detailed responses directly to the Department, we hope this briefing document will support you to do that.<sup>1</sup>

---

<sup>1</sup> The Department of Justice is accepting responses to their consultation in formats different to their template by email to this address: [macviews@justice-ni.gov.uk](mailto:macviews@justice-ni.gov.uk) . More information is available at: <https://www.justice-ni.gov.uk/consultations/consultation-increasing-minimum-age-criminal-responsibility-ni>

## 10 Reasons

### ➤ REASON 1: It does not comply with international children's rights standards

The United Nations Committee on the Rights of the Child has repeatedly said that the minimum age of criminal responsibility in the UK is not compatible with the government's obligations under international standards of juvenile justice and the United Nations Convention on the Rights of the Child (UNCRC).<sup>2</sup>

A recent report submitted in December 2020 to the UN Committee on the Rights of the Child in preparation for the next examination of the UK Government's compliance with the UNCRC, compiled by the Children's Law Centre and drawing on evidence submitted by a range of organisations in NI stated:

*'Despite a 'Raise the Age' campaign involving organisations working with children and young people, the Northern Ireland Commissioner for Children and Young People, and children's rights advocates, the age of criminal responsibility in Northern Ireland remains 10 years. This contravenes international standards, including the Global Study on Children Deprived of Liberty which argued that states should establish a MACR "which shall not be below 14 years of age".'*

The UN Committee on the Rights of the Child recommend that the minimum age of criminal responsibility should be 16 years. This position is based on extensive global evidence on the harm having a low age of criminal responsibility has, the ineffectiveness of such an approach and on the improved understanding of child and adolescent development.

*'States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age.'* (UNCRC, 2019, General Comment No.24 on children's rights in the justice system)

When delivering the Children's Law Centre 2008 Annual Lecture, the then Chair of the Committee stated:

*'The Committee clearly stated the importance of raising it to 12 with a view of eventually raising it even further... In order to persuade State parties to seriously raising the age of criminal responsibility... 12 was decided as the absolute minimum age by the Committee... Furthermore, it was the general understanding of the*

---

<sup>2</sup> UN Committee on the Rights of the Child, (2008), Concluding Observations: United Kingdom of Great Britain and Northern Ireland, Geneva: United Nations, paragraph 78; UN Committee on the Rights of the Child (2016), Concluding Observations: United Kingdom of Great Britain and Northern Ireland, Geneva: United Nations; UN Committee on the Rights of the Child (2010) General Comment No. 24 on Children's Rights in Juvenile Justice, United Nations.

*Committee that industrialised, democratic societies would go even further as to raising it to even a higher age, such as 14 or 16'.<sup>3</sup>*

We have an opportunity to go beyond the bare minimum of what a children's rights compliant age of criminal responsibility should be. Our health and social care agencies and our voluntary and community sector are mature and developed meaning that we are able to provide an alternative pathway for children, that does not necessitate branding them as a criminal from a young age. We should not aspire to just meet the lowest age threshold of what is acceptable in terms of the age of criminal responsibility. Rather we should aim for a position which sets us out as exemplary in terms of how we treat our vulnerable children. When the UN Committee on the Rights of the Child 'commends' State parties that have a higher minimum age such as 16 we should be aiming to reach a point of commendation rather than just the 'at least' option.

➤ **REASON 2: Experts tell us 10 is too low**

Following the devolution of justice to the Northern Ireland Assembly, the Minister of Justice launched an independent review of the youth justice system in Northern Ireland which was to take into account international human rights standards, including the United Nations Convention on the Rights of the Child (UNCRC). The independent team of experts with a wide experience in the field of youth justice and law carried out an extensive review of the youth justice system in Northern Ireland. They were supported by a Reference Group made up of renowned academics and senior decision makers. Following a lengthy analysis of reports, inspections, policy papers, written submissions and engagement with many individuals and groups, including children and young people, they presented a series of recommendations.

One of these was that the age of criminal responsibility should be raised to 12 with immediate effect and that following a period of no more than three years, consideration should be given to raise it to 14.<sup>4</sup> David Ford, Minister of Justice at that time, confirmed that the public consultation on the review showed substantial support for the age to be raised and publicly stated that he personally favours an increase to 12 or 14.<sup>5</sup> Subsequent Ministers of Justice have also supported an increase in the age of criminal responsibility. The UN Committee on the Rights of the Child recommend that the minimum age of criminal responsibility should be 16 years.

The recommendation relating to the minimum age of criminal responsibility from the independent review team was made in 2011.

Ten years later, no progress has been made.

---

<sup>3</sup> Professor Yanghee Lee, Chairperson of the UN Committee on the Rights of the Child, The Convention on the Rights of the Child: From Geneva to Northern Ireland, Bringing Children's Rights Home, CLC Annual Lecture, 13<sup>th</sup> March 2008.

<sup>4</sup> Youth Justice Review Team, 2011, 'A Review of the Youth Justice System in NI', Department of Justice NI, Recommendation 29.

<sup>5</sup> Ford, D, (2012), Review of Youth justice: Ministerial Briefing, Official report, Hansard, Session 2011/12 28 June 2012.

➤ **REASON 3: Our age of criminal responsibility is at the bottom of the league**

We have one of the lowest ages of criminal responsibility in the world and one of the lowest in Europe. The worldwide trend is to raise the age, generally to at least 14.<sup>6</sup>

The table below outlines the minimum age of criminal responsibility across European countries.<sup>7</sup>

Country	MACR	Country	MACR
Albania	14	Luxembourg	18
Andorra	12	Macedonia	14
Armenia	16	Malta	14
Austria	14	Moldova	16
Azerbaijan	16	Monaco	13
Belarus	16	Montenegro	14
Belgium	18	Netherlands	12
Bosnia & Herzegovina	14	Northern Ireland	10
Bulgaria	14	Norway	15
Croatia	14	Poland	15
Cyprus	14	Portugal	16
Czech Republic	15	Romania	14
Denmark	15	Russian Federation	14
England	10	San Marino	12
Estonia	14	Scotland	12
Finland	15	Serbia	14
France	13	Slovakia	14
Georgia	14	Slovenia	14
Germany	14	Spain	14
Greece	15	Sweden	15
Hungary	14	Switzerland	10
Iceland	15	Turkey	12
Ireland	12	Ukraine	16
Italy	14	Wales	10
Latvia	14		
Liechtenstein	14		
Lithuania	14		

<sup>6</sup> Hazel, N (2008) 'Cross national comparison of youth justice, London: Youth Justice Board and Howard League for Penal Reform (2008) Punishing Children: a survey of criminal responsibility and approaches across Europe', London: Howard League.

<sup>7</sup> This table is taken directly from the Department of Justice Consultation Document, available at <https://www.justice-ni.gov.uk/consultations/consultation-increasing-minimum-age-criminal-responsibility-ni>

England and Wales also have a minimum age of criminal responsibility of 10 years. In the Republic of Ireland, the age has been raised to 12 for all but the most serious offences. In Scotland, the Scottish Law Commission recommended that the age should be raised to 12.<sup>8</sup> The Age of Criminal Responsibility (Scotland) Act 2019 was passed unanimously by the Scottish Parliament on 7<sup>th</sup> May 2019, received Royal Assent on 11<sup>th</sup> June 2019 and fully commenced on 17<sup>th</sup> December 2021. This Act raised the age of criminal responsibility in Scotland from 8 to 12. Additionally, it provides certain safeguards to ensure that harmful behaviour by children under 12 can be responded to in an appropriate and meaningful way, which will not criminalise children.<sup>9</sup>

There have been calls in Scotland to go beyond raising the age to 12, with considerable support from key stakeholders to raise the age to 16. The Children's Commissioner for Scotland has called for the minimum age of criminal responsibility to be raised to 16 years old claiming that an increase to only 12 years of age is a significant missed opportunity.<sup>10</sup> There have also been calls for an increase in the age in England and Wales from some Parliamentarians, academics, NGOs and civil society. Lord Dholakia has repeatedly introduced bills into the House of Lords aimed at raising the age.<sup>11</sup> Lord Thomas of Cwmgiedd, the former Lord Chief Justice of England and Wales has also called for an increase stating:

*"There are better ways to deal with children than criminalising them. The current age of criminal responsibility is too young. It does not comply with the United Nations Convention on the Rights of the Child."*<sup>12</sup>

➤ **REASON 4: Children at risk of coming into contact with the justice system have complex needs**

Children in areas of high deprivation are more likely to be at risk of coming into contact with the criminal justice system and in NI this is particularly true of communities affected by the conflict. The 2011 Youth Justice Review made specific reference to a number of groups of young people that are over-represented in the youth justice system. These included young people with speech and language difficulties, mental health problems and care experienced children.<sup>13</sup>

There is no shortage of research linking the higher risks of young people living with poverty, mental ill health, having experience of being in care or experiencing neglect/ abuse, misusing drugs or alcohol, and having learning and behavioural difficulties, coming into contact with the criminal justice system.<sup>14</sup> It is often children who are in greatest social need that are swept

---

<sup>8</sup> Age of Criminal Responsibility (Scotland) Bill, 2018

<sup>9</sup> <https://www.gov.scot/policies/youth-justice/raising-age-criminal-responsibility/>

<sup>10</sup> Children and Young People's Commissioner Scotland, Age of Criminal Responsibility (Scotland) Bill, Evidence to the Equalities and Human Rights Committee, 2018

<sup>11</sup> Brown, A. and Charles, A. (2021), Minimum Age of Criminal Responsibility: The Need for a Holistic Approach, Youth Justice, 2021, Vol.21 (2), 153-171.

<sup>12</sup> The Guardian, Monday 4<sup>th</sup> November, 2019, Age of Criminal Responsibility Must be Raised Says Experts.

<sup>13</sup> Youth Justice Review, page 86.

<sup>14</sup> Howard League for Penal Reform (2011), 'Response to Breaking the Cycle: Effective Punishment, rehabilitation and sentencing of offenders', London: The Howard League for Penal Reform; Prison Reform Trust, (2009), 'Seen and Heard, supporting vulnerable children in the youth justice system'.

up by youth justice systems.<sup>15</sup> Children in care are particularly over-represented in figures of children in custody in Northern Ireland. Of the children in custody during 2021/2022, 34% were in care.<sup>16</sup> In recent DoJ funded research on over-representation in the youth justice system in NI, the authors drew attention to the multiple disadvantages and vulnerabilities that the majority of children who come into contact with the justice system have. These included economic disadvantage, under-resourced communities, conflict legacy, parenting stress, educational disadvantage, and family involvement in the criminal justice system. <sup>17</sup>A low age of criminal responsibility that seeks a criminal justice solution to welfare issues, poverty and adverse childhood experiences, simply accelerates already vulnerable children further into the system and ultimately custody.

➤ **REASON 5: The age of criminal responsibility is out of line with other age-related legislation**

The age of criminal responsibility is out of step with other legal age limits. Below the age of 18 children cannot vote; sit on a jury; buy alcohol, tobacco or fireworks; get a tattoo or open their own bank account. Below the age of 16 children cannot consent to sex, leave school, play the lottery or buy a pet. How we treat children within the criminal justice system is starkly different to how we treat them in other areas of social policy. There is an inherent unfairness to the standards of accountability we hold children to in this way.

➤ **REASON 6: Children’s brains are still developing**

To apply the same standards of criminal responsibility to a 10 year old as we would to an adult is to ignore large amounts of evidence about the immaturity of children at that age.<sup>18</sup> Children do not have the emotional maturity to be responsible by law for their actions. Although it is true at 10 children are likely to know the difference between right and wrong, they do not have the capacity to fully understand the consequences of their actions.

Neuroscience data has found that there are developmental differences in the brain’s biochemistry and anatomy that may limit adolescents’ ability to perceive risks, control impulses, understand consequences and control emotions.<sup>19</sup> There is an argument that children are not capable of fully understanding the implications of their behaviour or know how to regulate their behaviour. Evidence on children’s understanding of the criminal justice process suggests that 13 years old and younger are impaired in their ability to understand criminal proceedings and only begin to understand what it means to appear before a judge at around 14 or 15 years of age. <sup>20</sup> Evidence also suggests that children who have experienced trauma, abuse or neglect are ‘particularly poorly developed in the required capacities for

---

<sup>15</sup> Barry Goldson, (2013), ‘Unsafe, Unjust and Harmful to Wider Society’: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales, *Youth Justice Series* 2013 13: 111.

<sup>16</sup> Youth Justice Agency, *Annual Workload Statistics, 2021/2022*.

<sup>17</sup>McAlister, S., McNamee, C., Corr, M., Butler, M., *Over-Representation in the Youth Justice System in Northern Ireland*, QUB, DoJ, March 2022, p34,35.

<sup>18</sup> Michael E Lamb and Megan PY Sim, (2013), *Developmental Factors Affecting Children in Legal Contexts*, *Youth Justice*, 2013 13: 131

<sup>19</sup> Enys Delmage, (2013), *The Minimum Age of Criminal Responsibility: A Medico Legal Perspective*, *Youth Justice*, 2013 13:102.

<sup>20</sup> Children and Young People’s Commissioner for Scotland, *Age of Criminal Responsibility(Scotland) Bill*, Evidence to the Equalities and Human Rights Committee, 2018.

criminal responsibility and are much more likely to come into conflict with the law'.<sup>21</sup> Emerging neuroscience evidence should be one factor to be considered when debating the need to raise the minimum age of criminal responsibility.

Key voices with expertise in child development and child psychiatry are calling for an increase. As Dr Phil Anderson, Consultant Psychiatrist in Child and Adolescent Mental Health, states in his contribution to our blog series on MACR, hosted on the Queen's University Policy Engagement Site, the UNCRC requires that domestic laws are developed in a manner consistent with the emerging capacities of the child. He goes on to say:

*"The relevance of these brain findings to youth justice is that the adolescent population is demonstrably and substantially different to the adult population. Legislative approaches to issues, such as MACR, needs to reflect the current scientific understanding of the brain."*<sup>22</sup>

In giving evidence<sup>23</sup> to MPs on the Justice Committee, Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrists, stated:

*"Previously, it was thought that the most significant period of brain maturation was in the first five or possibly eight years. We now know that a second critical period takes place in adolescence and is a very dramatic development of the frontal lobes, which are, essentially, responsible for decision making, planning, consequential thinking, getting ideas about ourselves and social interaction... We have reached a point where nobody is saying any different, and everybody understands that brains are not mature by the age of 10. **They are not mature by the age of 13 or 15.** It is a much longer process than anybody thought, so it does not make sense to treat somebody at 10 the same as an adult, because they are fundamentally quite different in their decision-making abilities."*

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

In asking whether a low age of criminal responsibility is in the child's best interests it is necessary to look at the impact of criminalisation on the child's future development. Research demonstrates that criminalisation of children tends to increase their risk of engaging in offending behaviour.<sup>24</sup> It also stigmatises the child and alienates them from society, creates problems of self-esteem and creates barriers in the way of return to education or future employment, not least in the form of acquiring a criminal record. Punitive measures increase the likelihood of reoffending.

---

<sup>21</sup> ibid

<sup>22</sup> Dr Phil Anderson, <http://qppl.qub.ac.uk/minimum-age-of-criminal-responsibility-macr-why-it-should-be-raised-in-northern-ireland/>

<sup>23</sup> Justice Committee Oral evidence: Children and young people in custody, HC 306 <https://committees.parliament.uk/oralevidence/621/pdf/>

<sup>24</sup> McAra L and McVie S, (2007) Youth Justice? The impact of system contact on patterns of desistance from offending, *European Journal of Criminology* 4(3): 315-345.

➤ **REASON 8: There are better ways to deal with it – better for children and better for communities**

A key issue in deciding on the age of criminal responsibility is what we want the aim of the process to be. If the aim is to prevent offending, to encourage rehabilitation and the reintegration of the child into playing a constructive role in society then dealing with the child through the criminal justice system does not offer the best chance of success. Our reoffending rates demonstrate this. Government figures from the Department of Justice, reveal that the one year proven re-offending rate of young people for

- Custody release was 16 out of 20 young people
- Non-custodial disposal with supervision was 45.6%
- Non-custodial disposal without supervision was 38.6%
- Diversionary disposal was 21.5%<sup>25</sup>

Rather the focus should be on assessing the child's problems and needs and attempting to meet those needs. In a children's rights compliant approach, children in conflict with the law are defined as 'children in need' and the responsibility of children's services (e.g. education, health, social care). The emphasis is on care, protection and diversion from the criminal justice system through providing support to families and helping them to access services and support. In a rights-based environment the emotional and mental health issues can be addressed without labelling the child as criminal or putting an already vulnerable child through the justice system.

This type of approach would focus more on the well-being and rehabilitation of the child; it will address the difficulties the young person has experienced which led to them becoming involved in the justice system. It will also ensure less children end up in the justice system. It is a more effective approach and will lead to better outcomes for children and families and safer communities for all.

It is also worth noting that there is a fiscal cost to the criminalisation of children and in particular to the detention of children, money which could be diverted to community alternatives. The most recent CJI inspection of Woodlands outlined that with the small number of admissions and no change in the number of staffed places, the cost of holding a young person in custody during 2020-21 was £190,206 (expressed as the cost per place including corporate overheads) or £829,988 when expressed as the cost per occupant.<sup>26</sup>

Younger children who are engaged in criminal activity should be supported to realise the consequences of their behaviour.<sup>27</sup> We are not suggesting that no action should be taken, nor are we condoning unacceptable behaviour. The voices of communities and specifically victims cannot be ignored and are central to this discussion. It is vital that we listen to what communities are telling us and find ways to address issues of concern. As the Youth Justice Review stated, it is not a case of *whether* children should be held accountable, but *how* they are held accountable.<sup>28</sup> The evidence tells us that solutions for these issues are rarely found

---

<sup>25</sup> DoJ, Adult and Youth reoffending in NI 2019/2020 cohort, Research and Statistical Bulletin, November 2022.

<sup>26</sup> Criminal Justice Inspection NI, Announced Inspection of Woodlands, Sept 2022.

<sup>27</sup> Thomas Hammarberg, former Commissioner for Human Rights on Juvenile Crime, Children's Rights Information Network CRIN.

<sup>28</sup> Youth Justice Review, 2011, A Review of the Youth Justice System in NI, page 106, Department of Justice NI.

in criminalising very young children but in non-criminal justice interventions such as, community development, universal family support and early intervention and prevention services. Such interventions would also recognise that many children who display unacceptable behaviour have in fact been victims themselves. This connection was recognised by some respondents to the consultation in Scotland to raise the age of criminal responsibility. Proposals to increase the age of criminal responsibility in Scotland were broadly welcomed by victims' groups due to the close link between childhood victimisation and offending.<sup>29</sup>

➤ **REASON 9: We can ensure our children are not in the justice system**

Raising the age of criminal responsibility would remove a considerable number of children from the justice system. According to government figures<sup>30</sup>, there were **456 individual children** aged 10- 15years old **referred to the Youth Justice Agency Services** in 2021/2022.

The age breakdown of that group is as follows:

- 10-13 years old – 154 children
- 14 years old - 135 children
- 15 years old – 167 children

It is also concerning that we are seeing an increase in the numbers of 10- 13 year olds coming into contact with the criminal justice system. The proportion of individual children referred to Youth Justice Agency Services aged 10-13 has increased, to account for 17% in 2021/2022, which is a considerable increase from 12% in 2017/2018.

The proportion of individual children referred to Youth Justice Agency Services aged 14 has also increased, to account for 14.9% in 2021/2022, which is a considerable increase from 10.9% in 2017/2018.

In terms of individual children in **custody** in 2021/2022, 10-15 years old account for 42% of under 18 year olds detained in Woodlands Juvenile Justice Centre. The age breakdown for this group in 2021/2022 is as follows:

- 10-13 years old – 4 children
- 14 years old – 13 children
- 15 years old – 27 children

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

One in three children detained are care experienced.

---

<sup>29</sup> Houses of Parliament, Postnote Number 577, June 2018, Age of Criminal Responsibility.

<sup>30</sup> NISRA, DOJ, Youth Justice Agency Annual Workload Statistics 2021/2022, 15<sup>th</sup> September 2022.

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

When we look at PSNI figures for children being given Community Resolution Notices (CRNs) we see that there are a considerable number of under 16 year olds receiving these disposals: In 2018/2019, 870 CRNs were given to 10- 15 year olds. <sup>31</sup>

There were 1,057 10-15 year old children recorded as having received prosecutions at court and out of court disposals in 2021.<sup>32</sup>

➤ **REASON 10: The call for change is growing**

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

- In a 2016 a Kids Life and Times survey of over 5,000 children aged 10 – 11 years in Northern Ireland revealed support for increasing the age of criminal responsibility. 59% of the children supported the minimum age of criminal responsibility being raised with the majority supporting an increase to 14 or 16 years old.<sup>33</sup>
- The Northern Ireland Human Rights Commission has called for urgent action to address the low minimum age of criminal responsibility in Northern Ireland.<sup>34</sup>
- There have been calls to raise the age of criminal responsibility to 16 years by the NI Children’s Commissioner.<sup>35</sup>
- The demand for change in NI has been further fuelled by the changes that have been evident in other jurisdictions, notably Scotland.
- In 2015 a number of organisations came together to form ‘Raise the Age’ coalition, a campaign to raise the age of criminal responsibility in NI.
- The number of voluntary agencies adding their voices to the call to raise the age has since grown and now includes Include Youth, NIACRO, Children’s Law Centre, Barnardo’s, Extern, NI Alternatives, Northern Ireland Youth Forum, VOYPIC, Children in NI, Parenting NI, NICVA, and Quakers Service.
- In November 2021, we launched a commissioned research report by Dr Nicola Carr and Dr Siobhan McAlister examining developments in youth justice between 2011 and 2021. The Tracing the Review report recommended that urgent action be taken to raise the age of criminal responsibility to 16 years.<sup>36</sup>

---

<sup>31</sup> McAlister, S., McNamee, C., Corr, M., Butler, M., Over-Representation in the Youth Justice System in Northern Ireland, QUB, DoJ, March 2022, Appendix 2, Table 3, p77.

<sup>32</sup> DoJ Public Consultation on Increasing the Minimum Age of Criminal Responsibility in NI from 10 years to 14 years, October 2022, page 13.

<sup>33</sup> McAlister, S., Carr, N., Dwyer, C. and Lloyd, K., 2017, Raise the Age? Children’s attitudes towards the minimum age of criminal responsibility, ARK.

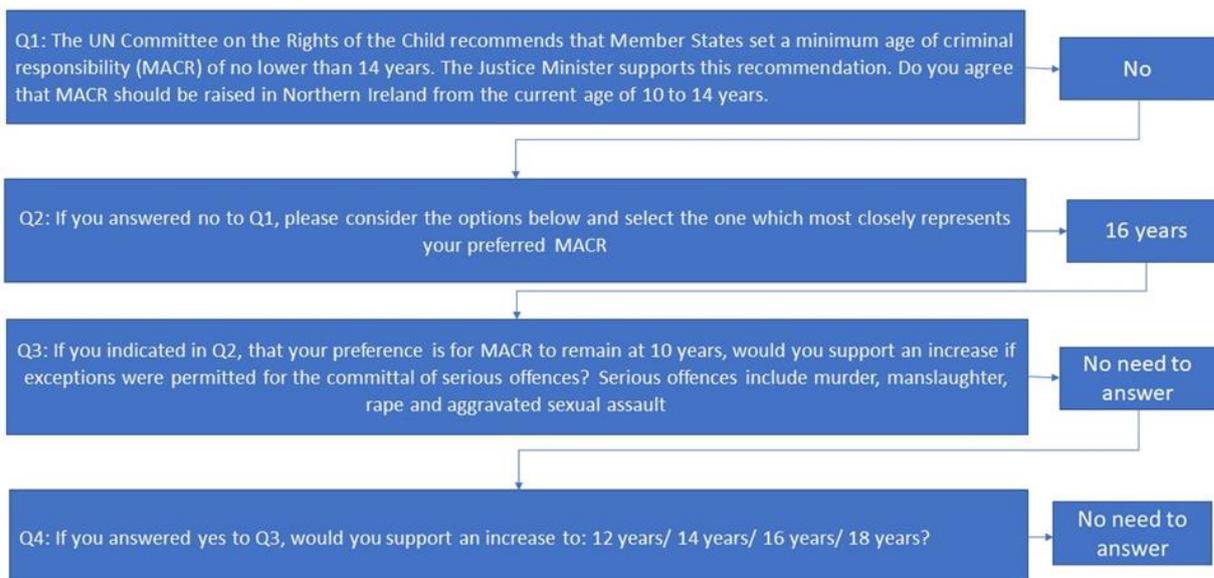
<sup>34</sup> Northern Ireland Human Rights Commission, Human Rights in Northern Ireland 2021, The 2021 Annual Statement.

<sup>35</sup> Northern Ireland Commissioner for Children and Young People, 2022, Statement on Children’s Rights in Northern Ireland.

<sup>36</sup> Dr S McAlister and Dr N Carr, 2021, Tracing the Review – developments in youth justice 2011-2022, NIACRO, Children’s Law Centre, Include Youth, VOYPIC, Centre for Children’s Rights Queen’s University of Belfast, University of Nottingham.

## Appendix A - Suggested response to Department of Justice Consultation Response Template

### Public Consultation on Increasing the Minimum Age of Criminal Responsibility in Northern Ireland from 10 years to 14 years



Q1: The UN Committee on the Rights of the Child recommends that Member States set a minimum age of criminal responsibility (MACR) of no lower than 14 years. The Justice Minister supports this recommendation. Do you agree that MACR should be raised in Northern Ireland from the current age of 10 to 14 years?

No

**Comment:** We are asking you to answer 'No' here, as whilst the UN Committee on the Rights of the Child have recommended that State Parties increase their minimum age to **at least 14 years**, the Committee provide further commentary by stating that *"the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a **higher minimum age, for instance 15 or 16 years of***

*age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.”<sup>37</sup>*

We therefore do not agree that the minimum age of criminal responsibility should be increased to 14, but in fact should be increased to 16 years.

Q2: If you answered no to Q1, please consider the options below and select the one which most closely represents your preferred MACR

16 years

**Comment:** As per above, the Committee have recommended a minimum age of criminal responsibility of 16 years. In addition, the age of criminal responsibility is out of step with out age-related legislation such as buying alcohol, tobacco, fireworks, lottery tickets; consenting to sex; voting; sitting on a jury; and getting a tattoo. Scientific evidence also shows us that while children are likely to know the difference between right and wrong, they do not have the capacity to fully understanding the consequences of their actions. In giving evidence<sup>38</sup> to MPs on the Justice Committee, Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrists, stated:

*“Previously, it was thought that the most significant period of brain maturation was in the first five or possibly eight years. We now know that a second critical period takes place in adolescence and is a very dramatic development of the frontal lobes, which are, essentially, responsible for decision making, planning, consequential thinking, getting ideas about ourselves and social interaction... We have reached a point where nobody is saying any different, and everybody understands that brains are not mature by the age of 10. **They are not mature by the age of 13 or 15.** It is a much longer process than anybody thought, so it does not make sense to treat somebody at 10 the same as an adult, because they are fundamentally quite different in their decision-making abilities.”*

Q3: If you indicated in Q2, that your preference is for MACR to remain at 10 years, would you support an increase if exceptions were permitted for the committal of serious offences? Serious offences include murder, manslaughter, rape and aggravated sexual assault.

**Comment:** As we are recommending that your preference is for MACR to be increased to 16 years, it is not necessary to answer this question. However, if you or your organisation is intending on providing a more substantive written response in tandem with the question, we

<sup>37</sup> General comment No. 24 (2019) on children’s rights in the child justice system CRC/C/GC/24

<sup>38</sup> Justice Committee Oral evidence: Children and young people in custody, HC 306  
<https://committees.parliament.uk/oralevidence/621/pdf/>

would recommend that the minimum age of criminal responsibility is set at 16 years, **with no exceptions**. Criminalising children does not work. Research demonstrates that criminalisation of children tends to increase their risk of engaging in offending behaviours<sup>39</sup>, as well as creating barriers in the way of return to education or future employment, not least in the form of acquiring a criminal record. Children at risk of coming into contact with the criminal justice system have complex problems. There is no shortage of research linking the higher risks of young people living in poverty, mental ill health, having experience of being in care or experiencing neglect/ abuse, misusing drugs or alcohol, and having learning and behavioural difficulties, coming in to contact with the criminal justice system.<sup>40</sup>

A key issue to be considered in the discussion around criminal responsibility is what we want the aim of the process to be. If the aim is to prevent offending, to encourage rehabilitation and the reintegration of the child into playing a constructive role in society, then dealing with children through the criminal justice system does not offer the best chance of success. Figures in relation to reoffending rates illustrate this too easily.<sup>41</sup> We recommend that instead, emphasis is placed on care, protection and diversion from the criminal justice system through providing support to families and helping them access services and support. Focusing on the well-being and rehabilitation of the child, leads to better outcomes for children, families and ultimately safer communities for all.

Q4: If you answered yes to Q3, would you support an increase to: 12 years/ 14 years/ 16 years/ 18 years?

**Comment:** Again, as we are recommending that your preference is for MACR to be increased to 16 years, with no exceptions, it is not necessary to answer this question.

#### Further information and guidance

If you have any questions about the contents of this joint briefing document or would like to discuss your response to the Department's consultation with us, please contact:

- Paula Rodgers, Policy Co-ordinator, Include Youth:  
[Paula@IncludeYouth.org](mailto:Paula@IncludeYouth.org)
- Fergal McFerran, Policy and Public Affairs Manager, Children's Law Centre:  
[Fergalmcferran@childrenslawcentre.org](mailto:Fergalmcferran@childrenslawcentre.org)

<sup>39</sup> McAra L and McVie S (2007) Youth Justice? The impact of system contact on patterns of desistance from offending, *European Journal of Criminology*

<sup>40</sup> Howard League for Penal Reform (2011) "Response to Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders", London: The Howard League for Penal Reform; Prison Reform Trust (2009), "Seen and Heard, supporting vulnerable children in the youth justice system."

<sup>41</sup> Adult and Youth Offending in NI (DOJNI) 2018/19 <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/adult-and-youth-reoffending-in-northern-ireland-201819.pdf>