



Response to Department of Justice Consultation on Increasing the Minimum Age of Criminal Responsibility from 10 years to 14 years

**Children's Law Centre
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1. Introduction

- 1.1 The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.
- 1.2 We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY as well as a Live Chat service for young people through an on line Chatbot, REE Rights Responder and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health needs and complex physical health needs and children and young people from ethnic minority backgrounds.
- 1.3 Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:
- Children shall not be discriminated against and shall have equal access to protection.
 - All decisions taken which affect children's lives should be taken in the child's best interests.
 - Children have the right to have their voices heard in all matters concerning them.
- 1.4 From its perspective as a children's rights organisation working with and on behalf of children with many years' experience working with and on behalf of children and young people in conflict with the law, CLC is grateful for the opportunity to make a submission to the Department of Justice in response to their public consultation in relation to increasing the minimum age of criminal responsibility in Northern Ireland from 10 years to 14 years.

2. International Children's Rights Standards in relation to the Age of Criminal Responsibility

- 2.1 Article 40 of the UN Convention on the Rights of the Child is of particular relevance in the conversation relating to the minimum age of criminal responsibility. Article 40 states that:

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society....

3. 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;
(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

2.2 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.

2.3 The UN Committee on the Rights of the Child in its 2002 Concluding Observations and Recommendations, following its examination of the UK Government stated that the age at which children enter the criminal justice system was low and made a clear recommendation that the UK government **considerably** raise the age of criminal responsibility.¹ (Our emphasis).

2.4 This recommendation was reiterated by the UN Committee in its 2008 examination of the UK Government's compliance with the UNCRC. The Committee recommended that the UK Government:

*"...raise the minimum age of criminal responsibility in accordance with the Committee's General Comment No. 10, and notably its paragraphs 32 and 33"*²

¹ CRC/C/15/Add.188 paragraphs 59 and 61

² Para 78a) CRC/C/GBR/CO/4

2.5 This was again restated in the 2016 Concluding Observations, where the Committee recommended that the UK Government:

“Raise the minimum age of criminal responsibility in accordance with acceptable international standards”.³

2.6 General Comment No. 24 on children’s rights in the child justice system (2019)⁴ states clearly that:

*“.... 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**, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.” (Our emphasis).*

2.7 In the context of Northern Ireland, Professor Yanghee Lee, the then Chair of the UN Committee on the Rights of the Child speaking at the Children’s Law Centre’s Annual Lecture in 2008 stated that:

“It can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

*In order to persuade State parties to seriously consider raising the age of criminal responsibility to an age that would be considered as not being too drastic of a change, 12 was decided as the absolute minimum age by the Committee. What was important was to have countries that still had MACR set at 7 and 8 years to effectively reset the age in a rather speedy manner. **It must not be forgotten that the Committee also emphasized raising the age even further. Furthermore, it was the general understanding of the Committee that industrialized, democratic societies would go even further as to raising it to even a higher age, such as 14 or 16”.**⁵ (Our emphasis).*

2.8 Recognising recent neuroscience evidence and to ensure compliance with international human right standards, as an industrialised democracy, we must,

³ Para 79 a) CRC/C/GBR/CO/5

⁴ OHCHR | General comment No. 24 (2019) on children’s rights in the child justice system

⁵ <https://childrenslawcentre.org.uk/?mdocs-file=5365>

without further delay, raise the minimum age at which we hold our children criminally responsible to 16. Our health and social care agencies, alongside our voluntary and community sector are well developed and able to provide an alternative pathway for children, one that does not necessitate branding them as a criminal from an early age. The UN recommendation of ‘at least’ 14 years, represents the ‘floor’, not what is expected or accepted as a standard for industrialised democracies; as far back as 2008, the then Chair of the Committee when speaking in Belfast, was clear that the expectation for our society was 16. It is not acceptable to ‘aspire’ to the absolute minimum standards expected for less developed democracies.

3. No exceptions

3.1 The UN Committee on the Rights of the Child are also very clear in General Comment No 24 (2019) relation to no exceptions for serious crimes:

“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.”⁶

CLC therefore recommend the introduction of a minimum age of criminal responsibility of 16, with no exceptions for serious crimes.

4. Independent Review of Youth Justice in Northern Ireland

4.1 The Independent Review of Youth Justice (2011), which was established under the Hillsborough Agreement and was part of the outworking of the Good Friday/Belfast Agreement following on from the Criminal Justice Review, was undertaken by an independent team of experts with a wide experience of youth justice and the law. They were supported by a Reference Group made up of renowned academics and senior decision makers. Following a lengthy and detailed analysis of reports, inspections, policy papers, written submissions and engagements with many individuals and groups, including children and young people, they presented a series of recommendations. One of the recommendations was that the age of criminal responsibility should be raised to 12 with immediate effect and that following a period of no more than 3 years,

⁶ General Comment No 24 Children’s Rights in the Child Justice System CRC/C/GC/24 para 25
<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>

consideration should be given to raising the age to 14. As referenced above, the UN Committee on the Rights of the Child have recommended that the minimum age of criminal responsibility should be 16 years for industrialised democracies such as ours. It is also worth noting neuroscience developments vis-à-vis child brain development since they made their recommendations over 11 years ago. It is within this context that the discourse regarding raising the minimum age of criminal responsibility should be take place.

- 4.2 Given that there has been no progress made on this issue in over a decade since the recommendations of the Independent Review of Youth Justice were published, it is imperative that positive action is taken as a matter of urgency, to raise the age in line with children's rights standards, to 16 years. As the Children's Commissioner for Northern Ireland has said in relation to raising the age of criminal responsibility, *"pragmatism didn't work – [it is] time for vision."*⁷

5. Comparison with other countries

- 5.1 The consultation document helpfully outlines the age of criminal responsibility across the world. Northern Ireland has 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 to at least 14⁸, with many countries opting for 16 and even 18 for their minimum age of criminal responsibility.
- 5.2 The Scottish government has recently raised their minimum age of criminal responsibility from 8 years to 12 years. However, 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**.⁹ (Our emphasis).
- 5.3 There are also 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 to the House of Lords aimed at raising the age.¹⁰ Lord Thomas of Cwngiedd, the former Lord Chief Justice of England and Wales has also called for an increase, stating:

⁷ <http://qpol.qub.ac.uk/pragmatism-didnt-work-time-for-vision/>

⁸ 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.

⁹ Children and Young People's Commissioner Scotland, Age of Criminal Responsibility (Scotland) Bill Evidence to the Equalities and Human Rights Committee (2018)

¹⁰ 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

“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.”¹¹

6. Children in the criminal justice system

6.1 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 needs and care experienced children.¹²

6.2 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.¹³ It is often children who are in greatest social need that are swept up by youth justice systems.¹⁴ 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.¹⁵ On any given day the percentage of the child custody population who are care experienced frequently reaches 60%. Children and young people will enter the care system for a range of reasons. There may be parallels in the experiences of these young people but no two stories are the same. This group are in such need of support that we, as a society, have assumed responsibility for them with the State entrusted to be their corporate parent. In that context, to acknowledge that over one third of the custody population of under 18s are from care experience backgrounds is to acknowledge a grave failing on the part of the State and on society as a whole. It also suggests criminalising our most vulnerable children is not a measure of last resort, but rather a response to the complex needs of children who have suffered adverse childhood experiences.

6.3 In recent DoJ funded research examining 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

¹¹ The Guardian, Monday 4th November 2019, Age of Criminal Responsibility Must be Raised Says Experts

¹² Youth Justice Review, page 86.

¹³ 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’.

¹⁴ 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.

¹⁵ Youth Justice Agency, Annual Workload Statistics, 2021/2022.

family involvement in the criminal justice system.¹⁶ 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.

6.4 In a recent blog post¹⁷ for Queen's Policy Engagement (QPol) on Raising the Age of Criminal Responsibility, Professor Lesley McAra and Professor Susan McVie from the University of Edinburgh outline findings from the Edinburgh Study of Youth Transitions and Crime, a longitudinal programme of research on pathways into and out of offending for a cohort of 4,300 people who started secondary education in the City of Edinburgh in 1998:

"[Their] findings show that early involvement in serious and persistent offending, including violence, is strongly associated with poverty and a range of other vulnerabilities, thus demonstrating that deeds are symptomatic of deeper-seated needs, driven by factors not in the control of young people."

6.5 McAra and McVie point to evidence that shows that *"deeds are symptomatic of needs"*, i.e. the more serious the deed, the deeper the need. Their research shows that:

*"...those involved in violence in comparison with other young people in cohort are significantly more likely to come from the poorest backgrounds, report self-harming behaviours including suicide attempts (especially girls), to have been victims of bullying and of crime, especially violent crime, and to have been excluded from education (either by truancy or formal exclusion)."*¹⁸

6.6 This research strongly demonstrates the need to take a welfare approach, in the best interests of children, to addressing the needs of these children, and that criminalising them at an early age only serves to exclude and stigmatise them further.

7. Other age-related legislation

7.1 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; or get a tattoo. Below the age of 16 children cannot consent to sex, leave school or play the lottery. 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.

¹⁶McAlister, S., McNamee, C., Corr, M., Butler, M., Over-Representation in the Youth Justice System in Northern Ireland, QUB, DoJ, March 2022, p34,35.

¹⁷ McAra and McVie <http://qpol.qub.ac.uk/raising-the-minimum-age-of-responsibility-the-research-evidence/>

¹⁸ McAra and McVie <http://qpol.qub.ac.uk/raising-the-minimum-age-of-responsibility-the-research-evidence/>

7.2 A clearer example still of this dichotomy can be seen in the fact that the *Mental Capacity Act (NI) 2016* taken forward jointly by the Departments of Health and Justice sets out a statutory presumption that anyone under the age of 16 is not deemed to have capacity to make decisions for themselves. Recognising (as we evidence throughout this consultation response) the range of vulnerabilities that many of the children and young people who come into contact with the justice system have, it is clear that there is a contradiction in the fact that the existing minimum age of criminal responsibility presumes that children have the capacity required to commit a crime when aged 10 but not to make decisions for themselves until reaching the age of 16 when compared against the *Mental Capacity Act (NI) 2016*.

8. Neuro-science data and research

8.1 To apply the same standards of criminal responsibility to a 10 or 14 year old as we would to an adult is to ignore large amounts of evidence about the immaturity of children at that age.¹⁹ Children do not have the sufficient maturity to be responsible in law for their actions. Although it is true that 10 or 14 years old 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.

8.2 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.²⁰ 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.²¹ Evidence also suggests that children who have experienced trauma, abuse or neglect are '*particularly poorly developed in the required capacities for criminal responsibility and are much more likely to come into conflict with the law*'.²² Emerging neuroscience evidence should be a significant factor to be considered when debating the need to raise the minimum age of criminal responsibility.

8.3 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

¹⁹ Michael E Lamb and Megan PY Sim, (2013), Developmental Factors Affecting Children in Legal Contexts, *Youth Justice*, 2013 13: 131

²⁰ Enys Delmage, (2013), The Minimum Age of Criminal Responsibility: A Medico Legal Perspective, *Youth Justice*, 2013 13:102.

²¹ Children and Young People's Commissioner for Scotland, Age of Criminal Responsibility (Scotland) Bill, Evidence to the Equalities and Human Rights Committee, 2018.

²² *ibid*

Mental Health, states in his contribution to the QPol blog series on MACR,²³ 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.”*²⁴

8.4 In giving evidence²⁵ to MPs on the House of Commons 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.”* (Our emphasis).

8.5 Additionally, in McAra and McVie’s blog contribution to MACR²⁶, they state that:

“In recent years policy makers have paid greater attention to research on brain development and on the impact of early trauma on children and young people. This research has been used in support of new sentencing guidelines in England and Wales and Scotland – in which rehabilitation is being foregrounded as the principal aim in sentencing, and which acknowledge that full capacity (in terms of reasoning and maturation) may not be reached until the mid-20s for some young people.”

8.6 This wealth of scientific data and expertise must be taken into account when considering what age the minimum age of criminal responsibility should be set at. It is clear that children and young people are not fully cognisant of the

²³ Dr Phil Anderson <http://qpol.qub.ac.uk/minimum-age-of-criminal-responsibility-macr-why-it-should-be-raised-in-northern-ireland/>

²⁴ Ibid

²⁵ Justice Committee Oral evidence: Children and young people in custody, HC 306
<https://committees.parliament.uk/oralevidence/621/pdf/>

²⁶ McAra and McVie <http://qpol.qub.ac.uk/raising-the-minimum-age-of-responsibility-the-research-evidence/>

consequences of their actions until much later in their development and therefore the minimum age of criminal responsibility in Northern Ireland should be set at 16 years.

9. Outcomes for children and young people in the criminal justice system

9.1 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 and seriously reflect on the reason we are criminalising children; do we wish to prevent further offending and rehabilitate these children or do we just want to punish them? Research demonstrates that criminalisation of children tends to increase their risk of engaging in offending behaviour.²⁷ 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.

9.2 McAra and McVie also point to strong evidence across of years of their study that:

“...formal system contact begets further and more intensive forms of contact – that being charged, referred into the juvenile justice system, being convicted and being made subject to intervention, all heighten the risk of labelling and being sucked further into the system in later years. And this pattern holds even when controlling for involvement in serious and persistent offending behaviour and a range of other variables which are predictive of system contact.”²⁸

9.3 Our reoffending rates in Northern Ireland also 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 **i.e. 80%**.
- Non-custodial disposal with supervision was **45.6%**
- Non-custodial disposal without supervision was **38.6%**
- Diversionary disposal was **21.5%**²⁹

9.4 A key issue in deciding 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, then dealing with the child through the criminal justice system does not offer the best chance of success. Rather, the focus should be on assessing and understanding the child's needs, and consequently their

²⁷ 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.

²⁸ McAra & McVie <http://qpol.gub.ac.uk/raising-the-minimum-age-of-responsibility-the-research-evidence/>

²⁹ DoJ, Adult and Youth reoffending in NI 2019/2020 cohort, Research and Statistical Bulletin, November 2022.

behaviour, in a holistic way 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 away 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.

9.5 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 fewer 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.

9.6 McAra and McVie's longitudinal research findings³⁰ also bear this out:

"A major concern of many consultees to any proposal to raise the MACR, is what would happen to those young people who fall below the age of criminal responsibility and yet who are involved in behaviours which are (either or both) harmful to themselves and others. It is important to stress that in Scotland, as in other jurisdictions where the age of criminal responsibility is higher (such as many Scandinavian countries), these forms of behaviour will trigger interventions but ones which are welfare-based, and do not criminalise children and young people. It is also important to stress that diversion too from formal measures must be to well-resourced services and support for children, including educational, restorative, and other structured activity.

Where jurisdictions have adopted a holistic approach to supporting the development and flourishing of children and young people, this has meant investing heavily in early forms of intervention – parenting support, early years education and support for educational inclusion in the primary and secondary years – as well as youth work and related services. There is growing evidence that where a Whole System Approach has been adopted (with the capacity to divert those who come into conflict with the law at each stage of the youth justice process), that this is associated with reductions in youth crime. Whilst practices across Europe have taken many forms, many of those jurisdictions which have embraced diversion show a declining youth justice client group."

9.7 Younger children who are engaged in criminal activity should be supported to realise the consequences of their behaviour.³¹ We are not suggesting that no

³⁰ McAra & McVie <http://qpol.qub.ac.uk/raising-the-minimum-age-of-responsibility-the-research-evidence/>

³¹ Thomas Hammarberg, former Commissioner for Human Rights on Juvenile Crime, Children's Rights Information Network CRIN.

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.³² The evidence tells us that solutions for these issues are rarely found 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.³³

9.8 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.³⁴ This is monies which, if spent in support and provision of services to meet the child and family's needs, would render better outcomes for the child, the family and ultimately society.

10. Taking children out of the criminal justice system

10.1 Raising the age of criminal responsibility would remove a considerable number of children from the justice system. According to government figures³⁵, there were **456 individual children** aged 10-15years old referred to the Youth Justice Agency Services in 2021/2022.

10.2 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

³² Youth Justice Review, 2011, A Review of the Youth Justice System in NI, page 106, Department of Justice NI.

³³ Houses of Parliament, Postnote Number 577, June 2018, Age of Criminal Responsibility.

³⁴ Criminal Justice Inspection NI, Announced Inspection of Woodlands, Sept 2022.

³⁵ NISRA, DOJ, Youth Justice Agency Annual Workload Statistics 2021/2022, 15th September 2022.

- 10.3 It is also deeply 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.
- 10.4 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 and very worrying increase from 10.9% in 2017/2018.
- 10.5 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
- 10.6 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. One in three children detained are care experienced. The increase in care experienced children being deprived of their liberty is deeply concerning.
- 10.7 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.
- 10.8 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.³⁶ There were 1,057 10-15 year old children recorded as having received prosecutions at court and out of court disposals in 2021.³⁷
- 10.9 Many of the young people represented in the statistics above will have criminal records as a result of their contact with the juvenile justice system. This will have an impact on those children and young people throughout their lives, limiting travel, study and employment options. By criminalising children and giving them criminal

³⁶ 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.

³⁷ DoJ Public Consultation on Increasing the Minimum Age of Criminal Responsibility in NI from 10 years to 14 years, October 2022, page 13.

records, these children will have their life options limited and are being asked to carry the burden of something they did as a child, through to adulthood. By raising the age of criminal responsibility to 16, this automatically reduces the number of children who are being criminalised and given criminal records, thereby increasing life chances and life opportunities for this group of children.

10.10 The question needs to be asked if there is a correlation between the increased numbers of children coming into contact with the criminal justice system and the rise in child poverty and the reduction in access to services such as CAMHS i.e. is it the case that when the services are not there and demand increases, our societies response is to criminalise children in need and the ease with which that can happened facilitates this approach. As the Youth Justice Review stated, it is not a case of *whether* children should be held accountable, but *how* they are held accountable.³⁸ Taking these children and young people out of the juvenile justice system, however, will result in improved life outcomes for many children who will not have to live under the burden of a criminal record or with the stigma of being a young offender.

11. Time for change

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

- A 2016 a Kids Life and Times survey of over 5,000 children aged 10 – 11 years in Northern Ireland revealed significant 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.³⁹
- The Northern Ireland Human Rights Commission has called for urgent action to address the low minimum age of criminal responsibility in Northern Ireland.⁴⁰
- There have been calls to raise the age of criminal responsibility to 16 years by the NI Children's Commissioner.⁴¹
- The demand for change in NI has been further fuelled by the changes that have been evident in other jurisdictions.
- Among the many leading voluntary agencies calling for the MACR to be raised are Include Youth, NIACRO, Children's Law Centre, Barnardo's,

³⁸ Youth Justice Review, 2011, A Review of the Youth Justice System in NI, page 106, Department of Justice NI.

³⁹ McAlister, S., Carr, N., Dwyer, C. and Lloyd, K., 2017, Raise the Age? Children's attitudes towards the minimum age of criminal responsibility, ARK.

⁴⁰ Northern Ireland Human Rights Commission, Human Rights in Northern Ireland 2021, The 2022 Annual Statement. <https://nihrc.org/publication/detail/annual-statement-2022>

⁴¹ Northern Ireland Commissioner for Children and Young People, 2022, Statement on Children's Rights in Northern Ireland.

Extern, NI Alternatives, Northern Ireland Youth Forum, VOYPIC, Children in NI, Parenting NI, NICVA, and Quakers Service.

- In November 2021, the Tracing the Review Report - a commissioned research report by Dr Nicola Carr and Dr Siobhan McAlister examining developments in youth justice between 2011 and 2021 - recommended that urgent action be taken to raise the age of criminal responsibility to 16 years.⁴²

12. Young People's Voices

12.1 The Children's Law Centre engaged with young people from youth@CLC, our youth advisory panel to gather their views on the Minimum Age of Criminal Responsibility to inform our response to this consultation. Members of youth@CLC were overwhelmingly in support of raising the age of criminal responsibility in Northern Ireland to 16.

12.2 Many of them were absolutely shocked that the current age of criminal responsibility in Northern Ireland is 10 years old. Drawing on their own experiences of being 10, or talking about younger siblings around that age, many reflected how horrified they were at the thought of 10 being an age in which they could formally enter the criminal justice system.

12.3 The young people we spoke to pointed to the fact that whilst many 10 year olds would know right from wrong, they certainly would not understand the potential consequences of their actions:

"At 10, I definitely didn't know what would happen. I think 16 is a better age. You know more then. They should get psychological help, rather than punishment."

12.4 The discussion then turned to how young people who have offended could be supported. One young woman remarked that:

"Through life experiences, some young people are labelled as bad. If you are labelled as bad, then you will keep being bad. They are not been given the chance to be rehabilitated. They have a life sentence. Justice can be found in changing the young person."

13. Equality Screening

Direct consultation with children and young people

⁴² 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.

- 13.1 Central to compliance with the statutory duties imposed under section 75 is the concept of increased participation in policy making and development. The Equality Commission's guidance⁴³ states that consultation must be meaningful and inclusive, in that all persons likely to be affected by a policy should have the opportunity to engage with the public authority. It also states that targeting consultation at those most affected by particular policies is also beneficial, in terms of identifying any adverse impact of policies or proposed policies at the earliest possible stage.⁴⁴
- 13.2 CLC commend the Department of Justice for producing a child friendly version of the consultation document, however we would also welcome details of any direct consultation with children and young people that the Department of Justice has carried out, or intends to carry out on this consultation, in compliance with its equality scheme and fulfilment of its statutory duty.
- 13.3 Such consultation is essential not only in ensuring compliance with section 75, but also in ensuring the Government's compliance with Article 12 of the UNCRC (respect for the views of the child). In examining the government's compliance with Article 12, the UN Committee on the Rights of the Child recommended that the government:

*"Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national levels, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving children and children in vulnerable situations, such as children with disabilities.... [and] ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children."*⁴⁵

Use of data in Equality Screening

- 13.4 The Equality Screening document uses data relating to the 10 – 13 years cohort to assess impact in relation to raising the age of criminal responsibility. Given the growing calls to raise the age to 16, and the option for an age 16 and age 18 preference on the online consultation questionnaire, further consideration and assessment of impact should also be given to these age groups, and to all other

⁴³ 'Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities' Equality Commission for Northern Ireland, April 2010, p.14

⁴⁴ Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities' Equality Commission for Northern Ireland, April 2010 p. 38 and 39

⁴⁵ CRC/C/GBR/CO/5 para 31 (a) and (d)

age groups, particularly given the life long impact of criminalising children from the age of 10, in the Equality Screening document.

13.5 It is in breach of the equality scheme to make an equality screening decision without using all available relevant data to provide evidence for the decision. To fulfill its statutory duties under section 75 and before this policy is progressed CLC would assert that the DoJ must consider and assess all relevant data and carry out a full EQIA, including consulting directly with children and young people.

13.6 Furthermore, the data in the equality screening document outlines that of those in custody between January and December 2019, 50% had a moderate learning difficulty and 10% displayed severe learning difficulties. These findings are in line with published research which indicates the prevalence of neurodevelopmental disabilities in children who are in contact with the justice system is higher than their peers. *[Source: see, for example, Hughes et al (2012) "Nobody made the connection: the prevalence of neurodisability in young people who offend".]*⁴⁶

13.7 The equality screening document also outlines the prevalence of young males in the juvenile justice system; of all first offences, 71.1% had been committed by males. Given the clear adverse differential impact that criminalising children has on these two section 75 groups i.e. those with a disability, and young males, it is imperative that mitigations are put in place to address this.

Needs, experiences and priorities

13.8 Similar to above, the Department has only considered the needs, experiences and priorities of those under the age of 14. CLC would assert that there will be direct differential impact on children and young people aged 14 and 15, and older cohorts due to the lifelong impact of criminalising children from the age of 10. Adverse differential impact has also been identified by the Department for those who are young males and/ or have a disability, yet no mitigations have been put in place to address this inequality.

Screening decision

13.9 The Screening document states that it is not considered that this policy needs to be subject to a full Equality Impact Assessment.

13.10 To determine whether there is potential for differential adverse impact the DoJ must consider the potential impact of its policy proposals on all children affected by the policy proposal across all the equality categories, not just a limited age range. Young people aged 14 and 15 will also be impacted by this policy proposal

⁴⁶ Equality Screening document page 12

and therefore qualitative and quantitative data relating to this cohort must be considered and assessed. Older age groups will also be impacted given the life long impact of having a criminal record. In determining whether or not screen this document and consider mitigation the DoJ must collate and consider relevant data across all equality groups. Given the over representation of certain cohorts of children in the criminal justice system e.g. children with disabilities, and male children, there is clearly potential for differential adverse impact, consequently this policy proposal must be screened in and a full EQIA carried out and if appropriate mitigations considered.

- 13.11 As the DoJ has not considered all relevant data regarding cohorts of children and young people who will potentially be differentially adversely impacted by any policy decision flowing from this consultation we are challenged as to how the DoJ can assert that there is no potential for adverse impact. Based on CLC's many years working on these issues there is very clear potential for differential adverse impact and we are clear that this policy proposal must be screened in and a full EQIA carried out including consultation and mitigation proposals.

14. Conclusion

- 14.1 The Children's Law Centre support a raise in the age of criminal responsibility. However, the overwhelming evidence, as demonstrated in our response has shown that based on international human rights standards and scientific evidence the age of criminal responsibility for NI should be 16. This approach affords Northern Ireland to be children's rights compliant in this area of legislation and policy, as well as delivering better outcomes for children, and for society.
- 14.2 CLC would welcome information from the Department of Justice in relation to co-operation between relevant Departments and Agencies to develop plans to deliver alternative models in preparation of the age of criminal responsibility being raised, as per the Children's Services Co-operation Act (NI) 2015. Given that the Youth Justice Review recommended a raising of the age of criminal responsibility in 2011, and that very little tangible progress has been made since, it is imperative that there are no further delays in this area of policy and legislation.
- 14.3 CLC are grateful for the opportunity to respond to this consultation. Please do not hesitate to contact us, should you wish to discuss anything in this response further.