

# Age of Criminal Responsibility: More than a Number

Sharon Glasgow  
Social Work Professional  
Adviser  
24<sup>th</sup> February 2022

**Improving Outcomes**  
for Children and  
Young People in Scotland

Increasing the age of criminal responsibility in Scotland has not simply been about increasing a number and retaining existing processes and procedures for investigating incidents, but about a change in **culture** and having a **child's rights** focus and providing the right **support** to children in need or at risk, at the right time.

## United Nations Convention on the Rights of the Child (UNCRC)



- The rights of the child must be properly recognised, upheld and protected in line with the United Nations Convention on the Rights of the Child (UNCRC).
- The UNCRC states that children who come into conflict with the law have a right to be treated fairly, with appropriate safeguards and in a manner consistent with the child's sense of dignity and worth (Article 40).
- Children also have the right to participate effectively in proceedings, have their views taken into account (Article 12) and to have their privacy respected (Article 16).
- It is crucial that the approach taken by all professionals takes account of the evolving capacities of the child (Article 5).

- Kilbrandon Report: Scotland's approach to welfare and the protection of children through the Children's Hearing system
- The Independent Care Review (2020): highlights the disproportionate criminalisation of care experienced children and young people.
- The Promise commits to ensuring that all children are diverted from the criminal justice system



# Policy intentions

- Children under 12 are not stigmatised by being criminalised at a young age due to being labelled an “offender”;
- Children under 12 are not disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life;
- Align the age of criminal responsibility with longstanding presumptions around maturity, rights, and participation; and
- Aims to improve the position of care-experienced children, whose behaviours are more likely to have been reported to police



## Some key dates:

- Bill passed unanimously by the Scottish Parliament in 2019 and received Royal Assent on **11 June 2019**
- Changes to referral to a children's hearing on the basis of the offence ground changed on **29<sup>th</sup> November 2019**
- No longer be possible for a person to acquire a criminal conviction on the basis of behaviour that occurred when they were under 12 from **30<sup>th</sup> November 2020**
- Act fully commenced on **17 December 2021**

**Part 1**  
**Raises the age of  
Criminal  
responsibility**

**Part 2**  
**Disclosure of  
convictions**

**Part 3**  
**Victim information**

**Part 4**  
**Police and other  
investigatory  
powers**

**Part 5**  
**General  
provisions**

**Part 6**  
**Review of ACR**

**Part 7**  
**Final  
provisions**

‘On the rare occasion that children of this age do get involved in serious harmful behaviour, it is often in the context of the child experiencing a range of difficulties in their home lives, such as abuse, bereavement, or parental neglect, substance misuse or imprisonment. Where the child is supported to move past these difficulties, there is every chance that the child can go on to have a life free of offending.’





- Conduct by children aged 8 to 11 is typically of a minor to moderate severity
- Very serious and harmful behaviour is comparatively rare
- The majority of children brought before a children's hearing on offence grounds do not go on to re-offend in later childhood
- Children from the most deprived communities are more likely to face more severe police action
- Children in conflict with the law face childhood adversity, abuse and trauma

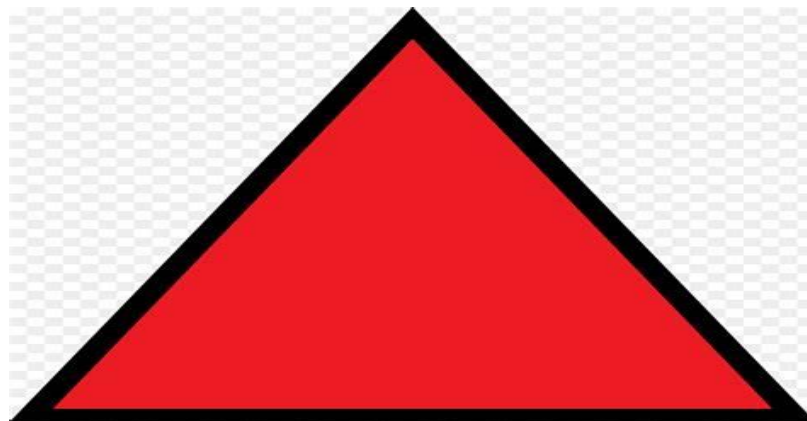
Source : SCRA 2014-15 data

‘Findings indicate that the key to reducing offending may lie in **minimal intervention** and **maximum diversion**: doing **less rather than more** in individual cases may mitigate the potential for damage that system contact brings

Findings confirm that repeated and more intensive forms of contact with agencies of youth justice may be damaging to young people in the longer term ... Such findings are supportive of a maximum diversion approach’

# Support and intervention

The overall aim is to respond to concerns in a proportionate and effective manner, commensurate with the child's age and capacity and the seriousness of the concern – using formal systems only when required.



‘There will be a particular need to support the implementation of the legislation to ensure that children under 12 are not criminalised in all but name.

Without such attention there is a danger that behaviours by children under the age of 12 may continue to attract a labelling, a stigmatising response resulting in the child being excluded from a range of settings and records of such behaviour being kept, thus treated as ‘criminal’ despite no longer formally being held ‘criminally responsible’.

There are dangers here of poor implementation and unintended consequences, ‘how these powers operate in practice will be key, and would benefit from close scrutiny and accountability’

Centre for Youth & Criminal Justice, 2018a

# References

- [Past Lectures | University of Strathclyde](#)
- <https://socialworkscotland.org/publication/age-of-criminal-responsibility-scotland-act-2019-acra-operational-guidance-for-social-work-and-police/>
- [Home - The Promise](#)
- [Age of Criminal Responsibility: Children and Young People's views \(cycj.org.uk\)](#)
- [Home - | Edinburgh Study of Youth Transitions and Crime](#)
- [Age of Criminal Responsibility \(Scotland\) Bill Policy Memorandum \(parliament.scot\)](#)
- [Youth justice - gov.scot \(www.gov.scot\)](#)
- [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](#)
- [Scotland's approach to children in conflict with the law \(cycj.org.uk\)](#)

Contact: [Sharon.Glasgow@gov.scot](mailto:Sharon.Glasgow@gov.scot)