



Minimum Age of Criminal Responsibility: Analysis of Consultation Responses, and Engagement with Children and Young People

Minimum Age of Criminal Responsibility: Analysis of Consultation Responses, and Engagement with Children and Young People

Making Scotland the best place to grow up

© Crown copyright 2016



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

First published by The Scottish Government, December 2016
ISBN: 978-1-78652-608-3

Published by The Scottish Government, December 2016

INTRODUCTION

Consultation

The consultation took place over the period 18 March to 17 June 2016, which included the election period. There was no publicity for the consultation during the election period. The public consultation yielded 76 responses – from 47 organisations and 29 individuals. There is very strong support among respondents for raising the age of criminal responsibility, accompanied by the necessary safeguards for hard cases.

Consultation questions addressed both the principle of change and the key implications in relation to care and protection, risk, disclosure and the role of the Children's Hearings System.

95% of respondents support an increase to 12 or older. All organisations responding to the public consultation including Police Scotland, Victim Support Scotland, the Faculty of Advocates, the Law Society of Scotland and the Children and Young People's Commissioner support an increase, which provides a strong basis for proceeding with proposals to legislate.

Engagement with Children and Young People

Throughout June and July 2016 a series of events were held with various groups of children and young people across Scotland, based on the questions in the formal consultation but tailored to meet the needs of each of the groups especially bearing in mind the age of the children and young people and potential sensitivities around individual circumstances. The methods used to elicit and record their views ranged from scenario storytelling to quizzes, timelines, discussion groups, voting cards and artwork.

We targeted those affected by the current legislation, and those that have experienced negative life experiences from contact with the criminal justice system from an early age – as perpetrators and as victims.

In all we have engaged with over 200 children and young people from 8 to 22 years old. This depth of engagement with diverse groups has proved challenging but very worthwhile. All really wanted to take part and relished the opportunity to have their voices heard. There is a real desire from these young people to know their voice has been heard and a willingness to take part in future conversation.

ACKNOWLEDGEMENT

We would like to thank all of the children and young people for taking part in the engagement events and for being so frank with us.

Our thanks also go to the organisations who supported us:

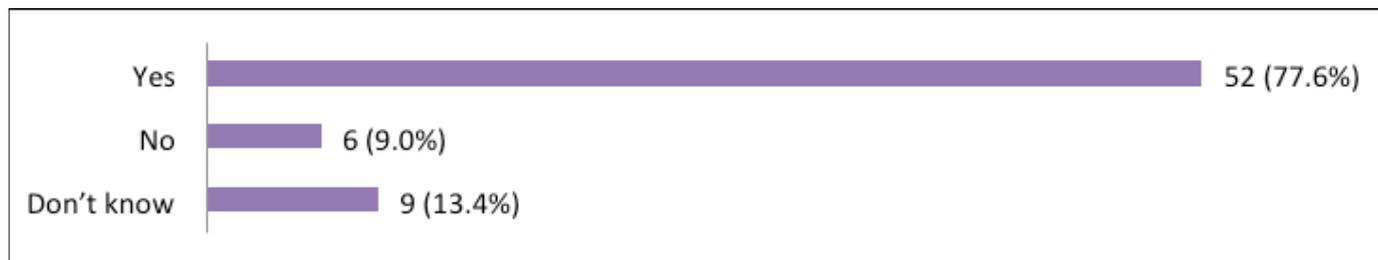
Who Cares? Scotland
Good Shepherd
Calderside Academy (Blantyre)
Sciennes Primary (Edinburgh)
Children's Parliament
Scottish Youth Parliament with the Young Offenders Institute, Polmont
Sacro
Up-2-Us
Youth Advantage Outreach
Action for Children (in particular Aimee and Craig)

CONTENTS

	Page
SUMMARY OF CONSULTATION RESPONSES AND KEY ISSUES	1
Q1: Do you think that the support needs of, and risks posed by, children aged 8-11 years demonstrating harmful behaviour can be met through the extension of the National Child Protection Guidance?	1
Q2: Do you think a multi-agency scoping study of training and skills would be helpful?	2
Q3: Should the age of criminal responsibility be raised to 12, do you think it will be possible to deal with the harmful behaviours of 8-11 year olds via existing care and protection (welfare) grounds through the Children’s Hearings System?	3
Q4: Should the age of criminal responsibility be raised to 12, do you agree with the assessment of the Advisory Group that some police powers should be retained in relation to children under 12?	4
Q5: In relation to forensic samples, should the police ever be able to retain samples taken from children under 12?	5
Q6: What safeguards should be put in place for children aged under 12 in relation to the use of these powers?	6
Q7: Do you think that there should be a strong presumption against the release of information about a child’s harmful behaviour when an incident occurred before the age of 12?	7
Q8: Should individuals who may have obtained a criminal record based on behaviour when they were aged 8-11 prior to any change in the age of criminal responsibility no longer have to disclose convictions from that time?	8
Q9: Where it is felt necessary to release information about an incident occurring before the age of 12 (e.g. in the interests of public safety), do you agree with the Advisory Group’s recommendation that this process should be subject to independent ratification?	9
Q10: Should an incident of serious harmful behaviour that took place under the age of 12 continue to be disclosed when that person reaches the age of 18?	10
Q11: Do you have comments on wider issues in respect of disclosure for all under 18s?	11
Q12: Do you have comments on arrangements to provide appropriate and effective support available to victims affected by harmful behaviour, where that behaviour involves children under the age of criminal responsibility?	12
Q13: Do you have any comments on the circumstances in which it might be appropriate to share information with the victim where harmful behaviour involves a child under 12?	13
Q14: Do you agree with the Advisory Group’s recommendation that the age of criminal responsibility in Scotland should be raised from 8 to 12 years of age?	14
Q15: Please tell us about the groups of children and young people you believe should be consulted as part of this consultation process and how they should be consulted.	15
SUMMARY OF ENGAGEMENT WITH CHILDREN AND YOUNG PEOPLE	16
SCOTTISH YOUTH PARLIAMENT/ACTION FOR CHILDREN WORKSHOP	22
LIST OF ORGANISATIONS THAT RESPONDED TO THE CONSULTATION	26

SUMMARY OF CONSULTATION RESPONSES AND KEY ISSUES

Question 1: Do you think that the support needs of, and risks posed by, children aged 8-11 years demonstrating harmful behaviour can be met through the extension of the National Child Protection Guidance?



NOTES: Responses to this question were overwhelmingly positive – they reflect a general view among children’s services and criminal justice practitioners, youth services professionals and the third sector that the transition to a welfare-based approach to dealing with young children exhibiting harmful behaviours is ‘overdue’.

HIGHLIGHTED EXTRACTS:

- Extension of the 2014 National Guidance on Child Protection is the most appropriate place for practitioner guidance for managing the welfare needs and risks posed by children exhibiting harmful behaviour.
- Existing risk management guidance is congruent with GIRFEC and articulates a welfare-based approach, so its extension would be in line with ensuring that intervention by the state in children’s lives is compatible with the Kilbrandon philosophy, i.e. ‘deeds are symptomatic of needs’.
- Respondents also repeatedly highlighted evidence demonstrating the link between children exhibiting harmful behaviour and their likelihood of having experienced previous trauma and unmet needs.
- Intervention in a child’s life should be proportionate (and predicated on the earliest intervention); the proposed change to the MACR, should be viewed as the logical extension of the approach currently taken with younger children.
- Any extension of the National Guidance must be met with a commitment to provide sufficient resources and practitioner supports, including access to specialist services such as psychological assessment and trauma support.
- Any revision to the guidance should ensure that there is advice on assessing a child’s harmful behaviours with a view to determining whether they display a pattern indicative of pursuing a ‘pathway’ of harmful behaviours as this will have a significant bearing on the assessment of risk posed by the child both to themselves and others. Guidance should be offered on assessing the public protection implications along with clear definitions of what constitutes harm, including significant harm to self and others, as this is currently defined exclusively in terms of welfare assessment.
- To accompany the guidance, **training** should ensure that practitioners are capable of identifying the contexts in which harmful behaviours occur, this should be reflected in the guidance also.
- The guidance should be clear about information sharing requirements in the context of children displaying harmful behaviours; the existing guidance needs to be much more robust in the context of sharing information for the purposes of managing risks posed by ‘offending behaviours’. Thought should be given also to the relative congruence of information sharing requirements (including legislative duties) across the GIRFEC landscape. Attention should be paid to whether the relevant guidance articulates similar standards and thresholds in different contexts, taking into account the persistent concerns, in a child protection context, about the adequacy of relevant information sharing.
- There was concern that any revision to the national guidance should effectively manage the post-12 transition process and look forwards also to adulthood transition. If the guidance is remodelled in line with FRAME the two risk management processes should be complementary to assist with any transition.
- There was some concern that the focus on the national guidance, and by extension formal Child Protection processes, inadequately reflected the wider role for children’s services and prioritised the need to engage in forensic protective intervention.

Question 2: Do you think a multi-agency scoping study of training and skills would be helpful?



NOTES: The majority of substantive responses to this question supported the proposition that a multi-agency scoping study of training and skills would support any new approach to dealing with 8-11 year olds who exhibit harmful behaviour. Respondents felt that the study would be necessary to establish the existing skills base as between practitioners in different agencies and that this could be useful for identifying and disseminating good practice on risk management.

HIGHLIGHTED EXTRACT:

- A scoping study would usefully establish the lay of the land and be an opportunity to reiterate the importance and value of consistent multi-agency approaches to dealing with harmful behaviour and managing associated risks.
- Some highlighted the need for this to be matched to a commitment to deliver appropriate further **training**. In addition, the scoping should focus on capacity of agencies to deliver a consistently welfare focused approach, since training and skills in themselves do not ensure that children receive adequate needs-based support.
- Some highlighted that the scoping study would likely demonstrate a need for further training in specific and discrete areas, including Joint Investigative Interviewing. Others highlighted the need to reinforce overarching policy messages, the holistic role of GIRFEC and how the needs based approach to dealing with harmful behaviour of children and young people fits into that continuum. A number felt that a scoping study would be useful in response to revising guidance in relation to Minimum Age of Criminal Responsibility (MACR), but that the study could justifiably have a broader purpose in ensuring that the workforce is appropriately skilled and adept at pursuing children's rights and wellbeing approach to care and protection.
- Respondents indicated that this is an opportunity to promote commonality of understanding as between agencies, where different institutional cultures and thereby different approaches and starting points can prevail. Further, the NSPCC identified what they believe is an acute need to disseminate existing expertise within the system at all levels (particularly in relation to therapeutic support to children who have experienced trauma and who demonstrate very challenging behaviour).
- There was some concern that a detailed scoping study would unreasonably delay measures to increase the MACR.

Question 3: Should the age of criminal responsibility be raised to 12, do you think it will be possible to deal with the harmful behaviours of 8-11 year olds via existing care and protection (welfare) grounds through the Children’s Hearings System?

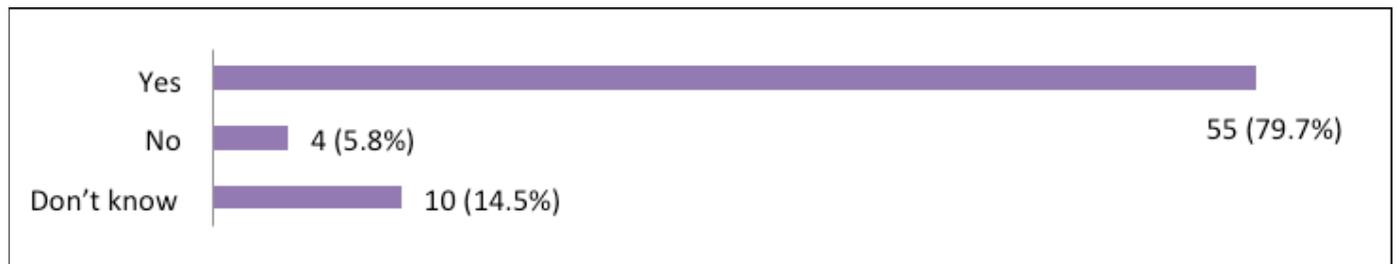


NOTES: The vast majority of responses supported the proposition that it would be possible to deal with harmful behaviour of 8-11 year olds via existing care and protection grounds at the Children’s Hearings should the age of criminal responsibility be raised to 12.

HIGHLIGHTED EXTRACTS:

- The Children’s Hearings System should be able to deal with harmful behaviour via existing care and protection grounds, as it does for under 8 year olds. However the burden of proof would now be the lesser civil test of ‘on balance of probabilities’, which means that while all 8-11 years olds are protected from the consequences of criminalisation, it is possible that more of them may face measures as a result of this lesser burden of proof. This should be closely monitored and reviewed.
- Very rare that any 8-11 year olds referred on offence grounds who did not have more concerning welfare issues. Appropriate supports for the welfare issues as key to dealing with harmful behaviour in this group.
- We could not identify an example of behaviour that would not be covered under care and protection grounds, with criteria such as causing harm to others or being outwith the control of guardians/parents.
- The Committee on the Rights of the Child has stated that: ‘states parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system, and ensure that children’s human rights and legal safeguards are thereby fully respected and protected’.
- The Children’s Hearings System is based on the assumption that the ‘similarities in the underlying situation’ of young people who demonstrate harmful behaviour and those in need of care and protection ‘far outweigh the differences’. As a consequence Children’s Hearings never focus exclusively on the child’s harmful behaviour but address wider questions of the child’s welfare in a holistic and non-criminalising way.
- Many young people’s experiences of the Children’s Hearings System is they are unaware that different grounds exist. Young people need to be supported well enough to understand the process, the decisions and their own rights.
- The founding principle of addressing both ‘needs’ and ‘deeds’, as advocated by the Kilbrandon Report remains at the heart of the Children’s Hearings System, making it the most appropriate place to deal with needs and risks.

Question 4: Should the age of criminal responsibility be raised to 12, do you agree with the assessment of the Advisory Group that some police powers should be retained in relation to children under 12?

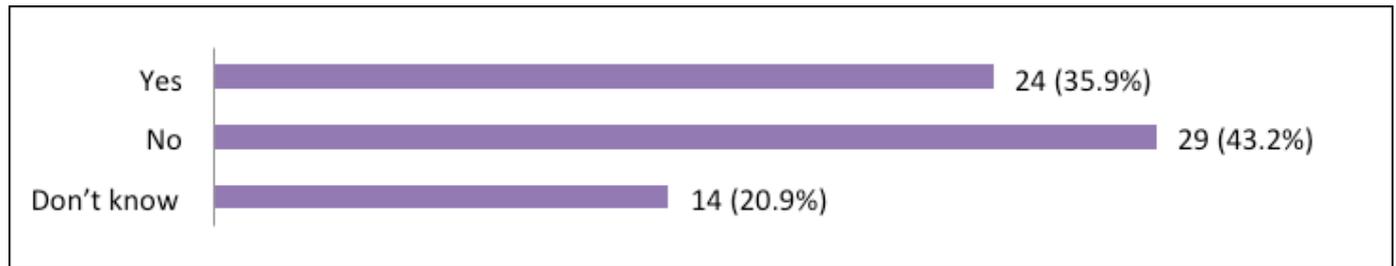


NOTES: There is an overwhelmingly positive response to the suggested principle of retaining police powers in some form for children under 12, backed up with the safeguards recommended by the advisory group.

HIGHLIGHTED EXTRACT:

- Some children do commit offences and police **must** have the powers to deal with this. Police powers need to remain as they are the primary investigators and agency of first contact when a crime/incident occurs.
- Respondents are aware of the impact the offences have on victims and a need for a factual determination of events, however social work must be involved at an early stage to allow collaborative involvement in the most serious offences. Investigation should be multi-agency and based on Child Protection Principles as suggested by the advisory group.
- Lack of definition of 'a place of safety'.
- Clear need to define incidents which fall into 'Exceptional Circumstances'.
- Children need to have right to effective representation and advocacy at all stages of inquiries.
- Some respondents felt it would only be on rare occasions this will be required and any legislation must reflect likely demand.
- Future guidance should incorporate a recommendation that an order similar to that of a Child Assessment Order (application submitted to a Sheriff /JP) indicating whether samples are required. Respondents had concerns over obtaining samples from 8-11 year olds despite them being exempt from criminal responsibility. Careful consideration must be given to the circumstances where forensic samples are taken.

Question 5: In relation to forensic samples, should the police ever be able to retain samples taken from children under 12?



NOTES: The slight majority of respondents stated the police should not be able to retain samples taken from children under 12.

HIGHLIGHTED EXTRACTS:

- Clear difference between using forensic samples for the immediate case and retaining them for future use.
- Concern that the retention of samples beyond any period of 'detention investigation or prosecution' (even if civil) creates an ethical and human rights risk if the requirement has to be clearly defined and justified.
- Some respondents felt the process of obtaining and retaining forensic samples will result in children's anxiety.
- Further consultation with Scottish Government and children's rights organisations needed to ensure the powers do not undermine the reform intentions of raising the age of criminal responsibility.
- Some respondents felt there is a need for wider consultation on the collection and retention of forensic samples for children below the age of criminal responsibility.
- Any proposal to retain forensic samples from a child would need to take full consideration of both the European Convention on Human Rights (ECHR) and UN Convention on the Rights of the Child (UNCRC).
- Respondents agreed with the suggestions of an application to the sheriff in those exceptional cases with the child fully represented.
- There is some support in the taking of samples, but only in a very narrow set of circumstances/ serious incident and not to be retained beyond the immediate incident. Samples must be destroyed at a later date as prescribed by the relevant law with strict guidelines detailing what happens to these samples in the future, how they are collected and stored.
- Positive feedback in relation to taking of forensic samples as a method of both investigation, inculpation and exoneration.

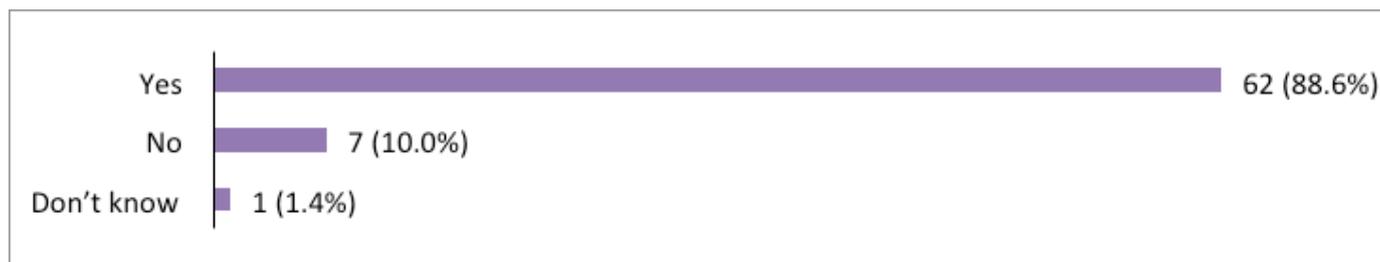
Question 6: What safeguards should be put in place for children aged under 12 in relation to the use of these powers?

There are 61 responses to this part of the question.

HIGHLIGHTED EXTRACT:

- Need for a 'place of safety to be defined'. It was felt a police office is not a suitable place.
- The interview should be based on the principles of Child Protection and Joint Investigative Interview. There is a requirement for this to be fair, robust and child centred. The respondents felt further consideration should be given to the best agency or professional best placed to deal with the child's needs during this process.
- Clear need for an independent source of representation/advocacy for the child at the earliest stage in the process of investigation.
- Concern that keeping in place some of the police powers in respect of a child under the age of 12 will leave those children engaged in the most concerning behaviour with fewer rights and less safeguards than those children over the age of 12 involved in similar behaviour.
- Careful examination of the current safeguards available to children needed in order to ensure under 12s do not inadvertently end up with lesser protection under the new arrangements.
- Quality assurance of child protection practice tends to be better developed and more routinely applied than practice for other groups of children, and respondents welcomed the suggestion to build on this.
- It was suggested consideration be given to exploring the creation of a new role to provide the safeguards required for children under 12 years of age.
- Further review required to ensure any proposals are firmly based on evidence of best practice and an assessment of children's rights is undertaken. This will allow for a wellbeing impact assessment to be adopted within the principles of GIRFEC.
- Existing safeguards in relation to Child Protection should remain with enhanced training for social workers and police on the framework of GIRFEC. If police powers are retained then safeguards will be necessary with emphasis on child protection and not any criminal context.

Question 7: Do you think that there should be a strong presumption against the release of information about a child's harmful behaviour when an incident occurred before the age of 12?

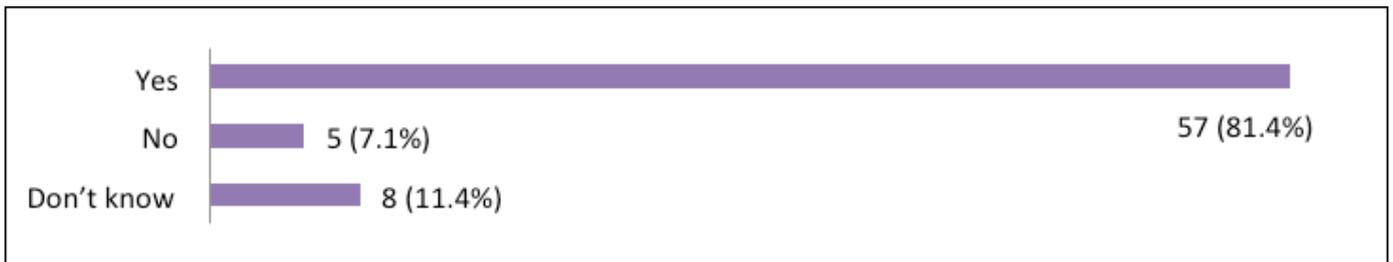


NOTES: Respondents were concerned to protect young people from the blanket, longer term release of information relating to harmful behaviour occurring before the age of 12. However, that principle should be balanced against the seriousness/type of offence, the risk/public protection issues as they presented in later adolescence, and most importantly the harm to future development and life chances of the child. There is a minority view that no information relating to behaviour prior to age 12 should ever be disclosed.

HIGHLIGHTED EXTRACTS:

- Children can and do move on from problematic behaviours as they age and develop.
- The rationale presented by the Advisory Group for the disclosure of that kind of information is clearly described and the need to justify it to an independent authority would appear to offer sufficient safeguards.
- Unless the information is of such seriousness that the public may be at risk then it should not be disclosed.
- Effectively labelling a child as a criminal could a) lead to the child's accepting this and so continuing to engage in criminal activity; and b) destroy that child's chances to pursue training/education or employment, in the future.
- Given that many mental health difficulties start in early life and that some of these challenges are associated with risk behaviour, information sharing within welfare, policing and health domains should be encouraged. The focus of this information sharing should fundamentally be the wellbeing and safe development of the child.
- The release of information should be subject to special criteria that take account of welfare and risk to the public or indeed individuals, and again we would draw the focus back to the welfare of the child at the core of any information sharing processes.
- We should have the courage of our convictions: the child under 12 who behaves troublingly is showing a need for care and protection not a need (ever) for protective measures to be taken against the child. Designing in legislation a 'strong presumption' will be extremely difficult.
- The Edinburgh Study of Youth Transitions and Crime clearly demonstrates that children who are involved in offending are the most likely to be highly vulnerable and be victims of offending. This study also highlights that those children who come into contact with the police and are known by youth justice agencies are the most likely to continue to offend (even when compared to children who commit as serious offences with the same frequency but who are not caught). There is thus a strong argument that sharing information between agencies can stigmatise children making it more difficult for them to break away from negative labels and build a more positive identity/life.
- Raising the age of criminal responsibility is relevant, not only to issues of culpability, but crucially, to the children's reintegration into society.
- We recognise there will be circumstances where disclosure is required, and we support the recommendation that in these few cases, an independent ratification process should be carried out. We would welcome further detail on this process.
- Information on harmful behaviour displayed by a child aged 8-11 should never be included on an Enhanced Disclosure or a PVG Scheme record. It would negate the whole culture shift to a welfare approach for younger children.
- Raising the age of criminal responsibility to 12 ought to make it a legal impossibility to regard troubling behaviour of children between 8 and 11 as offending behaviour. As such, the question of disclosure does not arise. There should be an irrebuttable presumption against the release of information about behaviour before the child's 12th birthday.

Question 8: Should individuals who may have obtained a criminal record based on behaviour when they were aged 8-11 prior to any change in the age of criminal responsibility no longer have to disclose convictions from that time?



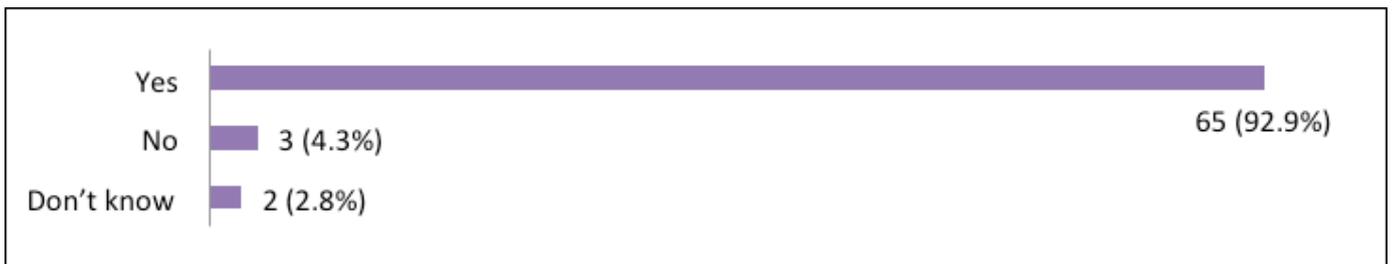
NOTES: The vast majority support the view that any new provisions should be retrospective so far as reasonably possible. Some highlighted a need for consistency with historic and new offences and to avoid inequity.

HIGHLIGHTED EXTRACTS:

- As a blanket policy children who already have a criminal record based on behaviour when they were under 12 should no longer have to disclose this, to ensure that they are not treated more harshly than their peers just due to the time this legislative change has taken.
- As indicated by the advisory group there will be exceptional circumstances where a current presenting risk makes it essential that information about behaviour when under the age of 12 is shared.
- The change should be retrospective to give children the best advantages in life. It would seem counter-productive to what the change is trying to achieve to continue to disclose information about non-criminal activities.
- This is a problem which is affecting adults today. A change in the law will need to encourage a change in public attitudes; that behaviour under the age of 12 years old should not be viewed as criminal. If the law is not applied retrospectively we are of the view that it will be much harder and take a lot longer to change public attitudes.
- The passage of time, nature of the offence and age of the child when they committed the offence should be taken into consideration. In extreme cases, where significant harm has occurred, disclosure would have to occur to protect the individual and future employer, education establishment, its staff and service users (depending upon the position and potential risk posed).
- If disclosure was discontinued this would rectify a major injustice to these young people – many of whom were not made aware that admitting an offence would constitute a conviction that was potentially disclosable until they were aged around 40 and potentially beyond.
- It would be discriminatory, unethical and illegal to continue to require the disclosure of offences for which children can no longer be considered criminally responsible on the basis that a person's behaviour had been dealt with under a superseded criminal justice process.



Question 9: Where it is felt necessary to release information about an incident occurring before the age of 12 (e.g. in the interests of public safety), do you agree with the Advisory Group's recommendation that this process should be subject to independent ratification?

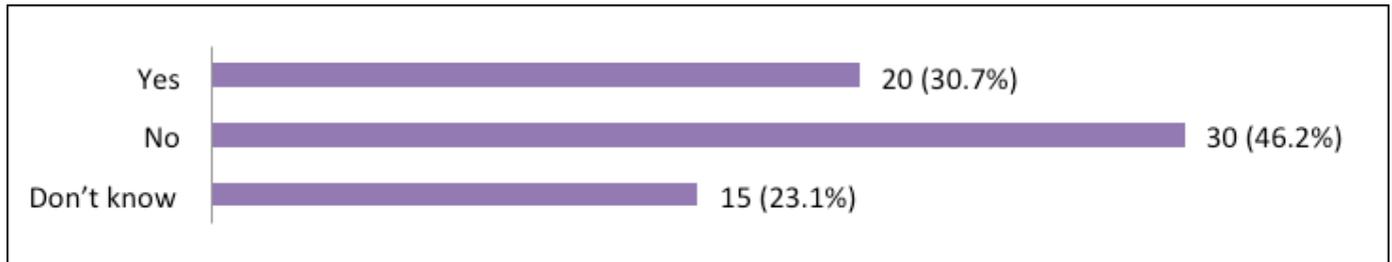


NOTES: There is overwhelming support for the view that the retention and release of information relating to an incident occurring before the age of 12, should be subject to independent ratification, providing essential protection for the child's rights.

There are a range of views on which authority should carry out this role. Respondents were clear that system integrity required that these questions should not be left to the police alone. Suggestions included:

- Combination of members of the public and professionals with police input
- Coalition of children's charities
- Scottish Children's Reporter Administration (SCRA) including a children's hearing
- Children and Young People's Commissioner
- Sheriff
- Wide support for independent advocacy for each child

Question 10: Should an incident of serious harmful behaviour that took place under the age of 12 continue to be disclosed when that person reaches the age of 18?



NOTES: Views are more mixed as to whether incidents of serious harmful behaviours that occurred before the age of 12 continue to be disclosed after the person reaches 18. In particular, views were influenced by the potential nature/severity of the offending including frequency and the potential risks of disclosure for public protection but also on the child's future life chances.

HIGHLIGHTED EXTRACTS:

- There may be exceptional circumstances in which behaviour that took place at under 12 still contributes to a real and current likelihood of harm to another person.
- Given that more than six years will have passed since the incident in question and the effect of the passage of that time on the maturity of the young person, it would be preferable not to disclose such information.
- In the majority of cases where there are no further concerns about the individual, an incident that took place under the age of 12 should not continue to be disclosed when that person reaches the age of 18. There may be a small number of cases whereby this is required to be disclosed and these should be examined on a case by case basis through independent ratification in a process similar to that proposed for the release of information.
- These questions appear to be predicated on the assumption that non-conviction information about a child under 12 should in some circumstances be disclosed. I don't accept that. However, if that were to be so, then that should certainly cease when a young person turns 18.
- The purpose of disclosure is to allow employers and the state the means to take into account information relevant to a decision in the present day. The only way the test of 'relevance' can be made is by sight of the information or by an independent assessment to be made considering the circumstances. Public safety should be part of the assessment.
- In the majority of cases where there are no further concerns about the individual, an incident that took place under the age of 12 should not continue to be disclosed when that person reaches the age of 18. There may be a small number of cases whereby this is required to be disclosed and these should be examined on a case by case basis through independent ratification in a process similar to that proposed for the release of information.
- This is an extremely complex area, which requires a balance to be struck between respect for the rights of a child/young person and the importance of protecting members of the public from harm. Evidence would suggest that the kinds of egregious offending/harmful behaviour by children and young people that might require consideration being given to disclosure post-18 are so rare that they could be assessed on a case by case basis. Arguably the death of Jamie Bulger in Liverpool in 1993, a tragic event involving extremely uncommon and hugely harmful behaviour by children under the age of 12 has served to distort debates about criminal responsibility and disclosure. Building legislation around such exceptional cases is likely to serve more harm than good.
- As the changes intend to promote the welfare needs of children and young people and end criminalisation, under no circumstances should an incident that took place before the MACR continue to be disclosed when the individual reaches the age of 18.

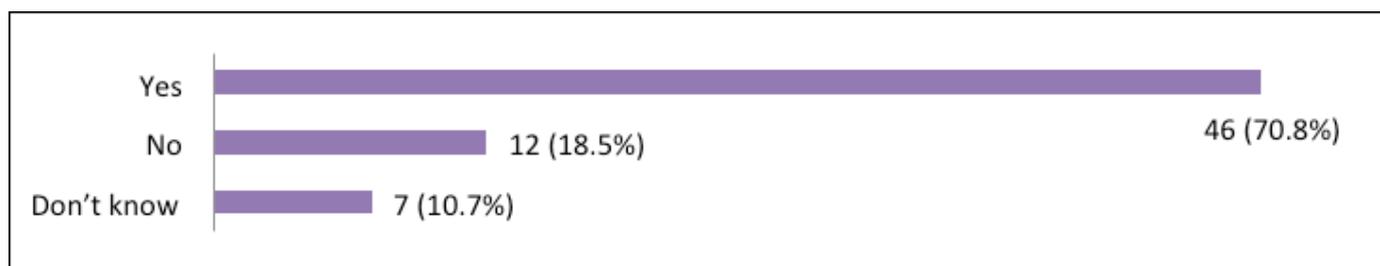
Question 11: Do you have comments on wider issues in respect of disclosure for all under 18s?

There are 42 responses to this part of the question.

HIGHLIGHTED EXTRACTS:

- Our systems of 16 and 18 across law for 'adulthood' are too complicated; you are either an adult at 16 or 18.
- All disclosures for all under 18s should be discussed by a children's hearing to allow the hearing to determine whether the said child has made significant changes to their behaviour and whether the said child will continue to cause concern into their adult life.
- Given that the brains of young people are not fully cognitively developed until at least the age of 21 there needs to be great care taken in regard to this. A young person over the age of 18 may have a very different response to the way they reacted when they were much younger as they now have an increased awareness of consequences and risks. An individual approach would need to be taken as it would be unfair in many circumstances to penalise a young person for the actions that they took when they were much younger and more immature.
- With regards to those children aged 12 years and over, there should be a general presumption against the provision of any information for use in disclosure unless of grave concern and evidenced as being of benefit to public protection. The vast majority of youth offending can be adequately, ethically and effectively managed through the Children's Hearings System and current child-centred practice between key agencies. Disclosure information on lower threshold offending is a barrier to life chances and so perpetuates the determinants of further offending.
- The whole disclosure system is very poorly understood by those in the system, be they panel members, reporters or social workers, and most of all by young people who simply do not understand the consequences of accepting offence grounds or having them established. For example, the guidance available of the RoA is incomprehensible to the adults in the system, let alone the age and stage of development of the young people under 18 affected.
- Disclosure is a complex area that demands to be considered in a wider context. A full range of risk must be considered, including key aspects such as protective factors, dynamic risk factors, assessed imminence of offending, and key characteristics of potential victims such as targeted/untargeted behaviour etc. Public protection is paramount and therefore disclosure should always be considered as part of any risk management strategy to manage harmful behaviour.

Question 12: Do you have comments on arrangements to provide appropriate and effective support available to victims affected by harmful behaviour, where that behaviour involves children under the age of criminal responsibility?

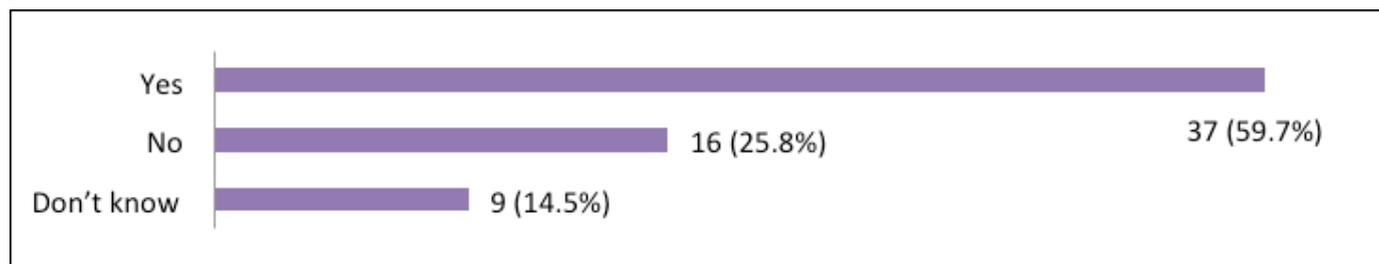


NOTES: Most responses highlighted the importance of balancing the rights and support needs of the victim with those of the child displaying the harmful behaviours. Respondents welcomed the Advisory Groups principled position that any change to the MACR should not adversely affect current victims' rights and that existing support and structures continue to be available even when the child is not held criminally responsible. There was also strong recognition that often those 'offending' children are also victims themselves and that often the people they harm are other children.

HIGHLIGHTED EXTRACTS:

- Where the victim is a child, the child victim should be informed if the child perpetrator has been taken to a place of safety, without being given precise details such as the name or address of the place of safety.
- If the victim is a child then they should be dealt with through GIRFEC and with a multi-agency framework involving health, welfare, education etc.
- Restorative justice strategies need to be victim-led and individualised, they can be highly effective if done properly, but need to be approached carefully in relation to children.
- Victim support should not be retribution based and therefore the identity of the perpetrator is only relevant to protecting the victim from any future reoccurrence regardless of the age of perpetrator. Victims should be confident that adequate protective measures have been taken for future protection.
- Victims should receive appropriate and effective support in all cases, regardless of their age, or that of the perpetrator.
- SCRA should continue to contact victims irrespective of whether or not the perpetrator is under 12.
- The impact of youth crime is often compounded through a lack of knowledge of the system and next steps. Victims need confidence in the youth justice system, which provides closure and reassurance. Clearer information and guidance required which includes the arrangements for children under the age of criminal responsibility who display harmful behaviours.
- Raising the age of criminal responsibility must not have the unintended consequence of removing access to support services for victims. Even though the behaviour or the offence would not be deemed a crime, the response must remain the same.
- There is no reason why provision of support to victims should be dependent on criminal proceedings taking place. The harm caused would not diminish by the fact behaviours for 8-11 year olds would be no longer deemed criminal.
- The report seems to favour the 'perpetrator's' rights over the victim's in this case which is unacceptable even with the small numbers.

Question 13: Do you have any comments on the circumstances in which it might be appropriate to share information with the victim where harmful behaviour involves a child under 12?



NOTES: A strong set of views on ensuring that the appropriate amount of information is provided to the victim. There are also a number of views that if children's behaviour is not deemed to be an offence that no information should be shared.

HIGHLIGHTED EXTRACTS:

- Experience of supporting child victims with information about how a case has been dealt can be important to a victim's recovery. Information should be shared in a way that is helpful to the victim, but which also takes into account the privacy of both the victim and the child displaying harmful behaviour, in line with Article 8 of the European Convention on Human Rights and Article 16 of UN Convention on the Rights of the Child.
- Do not agree perpetrators' rights to the standard level of confidentiality and protection can ever be justified.
- On a case by case basis, where a victim asks for the information or where the victim is another child or vulnerable person, they should be given basic details.
- While there may be some circumstances where a victim might wish to be kept up-to-date with basic case information, this could disproportionately discriminate against the children under 12 years old who are the subject of case proceedings. As such, it would not necessarily be appropriate to share information with victims affected by harmful behaviour under any arranged scheme.
- Victims need to know that something has been done otherwise some may be tempted to take retribution.
- There is already a duty to disclose information if there are specific continuing risks to the victim or those close to him or her.
- If the perpetrator and the victim are likely to come into contact with each other on a regular basis either at school or in the community it would be helpful for the victim to be made aware that action has been taken and that their concerns were taken seriously.
- There should be a presumption against routine sharing of information. The exception would be in matters of grave harm or public protection to assure the victim but this should be ratified through a high level authority.
- The victim should be told whether the facts of the case have been established, whenever this occurs. This will provide the victim with closure, and reassurance that the harm caused to them has been recognised, and will be dealt with.
- More use should be made of the information systems currently used by the SCRA to share details with individuals affected by the action of children and young people.
- In raising the age of criminal responsibility to 12, we believe that there will be no circumstances in which it would be appropriate to share information with a victim. However, if it is decided that some mechanism must be established, we urge the Government to restrict this to the sharing of very general information (such as outlining the sort of services the child is receiving to address their harmful behaviour) and where information is to be shared, it should be done with the child's consent.
- Important that for communities and victims to have faith in the system that the issue of sharing information is addressed and importance of prioritising the safety of a victim and their family.

Question 14: Do you agree with the Advisory Group’s recommendation that the age of criminal responsibility in Scotland should be raised from 8 to 12 years of age?



NOTES: Responses overwhelmingly supported raising the age to 12, and most have suggested this is only an initial stage and there are substantial grounds for raising the age even higher. **95% of respondents support an increase to 12 or older (88% support an increase to 12 and a further 7% who responded ‘no’ to an increase to 12 have suggested a higher age).**

Many have commented on the UNCRC recommended minimum age of criminal responsibility as well as how Scotland is seen and perceived across Europe. Many respondents reference brain development and the ability of children being able at a young stage to control emotions.

HIGHLIGHTED EXTRACTS:

- 12 is too low compared with many countries in Europe and tends to reflect a continually punitive approach to children in general. Many European states use 14 or 16 as their minimum age of criminal responsibility and would be keen to see Scotland work incrementally towards this.
- Holding 8-12 year olds criminally responsible is not in line with their stage of development and their behaviours are unlikely to have been as a result of free and informed choice.
- Pointers indicate that children in areas of high deprivation are more likely to be at risk of offending and criminalisation, and there is also no shortage of research linking criminal behaviour by young people with poverty, mental ill health, being in care or experience of neglect/abuse, misuse of drugs or alcohol, and having learning and behavioural difficulties. Those children in greatest social need are those swept up by the youth justice system.
- The UN Committee on the Rights of the Child has stated that setting the MACR at age 12 should be an ‘absolute minimum’ and that state parties should ‘continue to increase it to a higher age level’.
- At 8 the current MACR seriously contradicts the evidence base that has established beyond doubt the relationship between adverse childhood experiences and poor outcomes for children, including problematic behaviour.
- Legal reform to raise the MACR in Scotland has a critical role to play in bringing about the wider cultural change necessary to embed the principle of getting it right for every child across the whole of society. Changing how we see children is a core part of GIRFEC endeavour, in order that we share a collective understanding about the origins of children’s severely challenging behaviour, and respond to children and young people not as ‘trouble’ but as potentially ‘troubled’.
- Whilst supportive of the intention to raise the MACR, respondents would welcome a commitment to an ongoing process of reform of the criminal justice response to children aged 12 and over. This is seen as particularly important given recent evidence around the current experiences of older children, and the numbers of children over the age of 12 jointly reported to the Reporter being prosecuted in court – and the range of adverse experiences this brings.

Question 15: While arrangements are already being made to consult with groups of children and young people, please tell us about the groups of children and young people you believe should be consulted as part of this consultation process and how they should be consulted.

The majority of correspondence suggested consulting	We have consulted
<ul style="list-style-type: none"> • Looked after children • Those involved in the Children’s Hearings System • Victims • Children with direct involvement with the criminal justice system 	<ul style="list-style-type: none"> • Males and females either sentenced or placed in a Secure Unit on welfare grounds • Male and female looked after children • Males and females with regular contact with police and services mainly due to minor offending • Vulnerable girls and young women • Male and female school pupils from Calderside Academy, Blantyre and Sciennes Primary, Edinburgh • Remand and sentenced males in YOI • Male and female Members of Youth Parliament • Victims of young people who have offended



SUMMARY OF ENGAGEMENT WITH CHILDREN AND YOUNG PEOPLE

Overview

One of the Advisory Group's recommendations was to seek the views of those most likely to be affected by any potential changes. Specifically:

That children and young people should be supported to participate in the development of this proposal, including ensuring their meaningful involvement in any consultation. Particular care should be taken to ensure that the views of children and young people most likely affected by this proposal are sought and taken into account.

Throughout June and July 2016 a series of events were held with various groups across Scotland, based on the questions in the formal consultation but tailored to meet the needs of each of the groups especially bearing in mind the age of the children and young people and potential sensitivities around individual circumstances. The methods used to elicit and record their views ranged from scenario storytelling to quizzes, timelines, discussion groups, voting cards and artwork.

In all we have engaged with children and young people from 8 to 22 years old, targeting those affected by current legislation and those that have experienced negative life experiences from being connected with the criminal justice system from an early age. All really wanted to take part and relished the opportunity to have their voices heard. In particular we have met with children and young people from:

Organisation	Age Group	Background of Group	No of C&YP
Youth Parliament	15-22	Male and female Members of Youth Parliament	19
Children's Parliament	8-13	Male and female school pupils from Calderside Academy, Blantyre and Sciennes Primary, Edinburgh	40
Good Shepherd Secure Unit	15-17	Males and females either sentenced or placed in the Unit on welfare grounds	6
Who Cares? Scotland	12-20	Male and female looked after children	7
Youth Advantage Outreach	14-16	Males and females with regular contact with police and services mainly due to minor offending	33
Up-2-Us	14-22	Vulnerable girls and young women	8
YOI Polmont	16-22	Remand and sentenced males	17
Sacro*	11-16	Including victims of young people who have offended (Aberdeen, Tayside, Fife)	77
Age groups covered	8-22	Total number of children and young people	207

* 10 attended a focus group and 67 returned a questionnaire

Key Messages from Engagement with Children and Young People

While children and young people had a mixed understanding of the law surrounding criminal responsibility, overwhelming support was expressed for raising the age of criminal responsibility.

Children expressed concern for future prospects, the effectiveness of punishing children who didn't fully understand what they had done wrong, and the appropriateness of such harsh consequences when compared to other day-to-day responsibilities and consequences for children.

Children all agreed that there should be some consequences for harmful or law breaking behaviours and strongly suggested that other consequences which explored addressing issues connected to a child's environment and home life might be a more effective and appropriate way of responding to child offenders.

Youth Parliament (MSYPs)

Includes YOI Polmont (remand and sentenced males)

Young people had a mixed understanding of the law surrounding criminal responsibility, with a slim majority being aware of the age brackets, but fewer aware of the exact meaning.

Young people largely thought that between the ages of 8 and 11 children don't have a strong understanding of right and wrong, or awareness of the consequences of their actions beyond getting into trouble at school and with parents.

Young people largely believed the age of criminal responsibility should be raised to 12, with some suggesting 10. This was mainly due to the opportunity for early intervention and limited capacity and awareness of consequences, though a small number of young people thought offending may increase.

Young people considered that offenders required support focusing on the root causes of crime, in particular community and youth work: 'Me and my brother had similar problems when we were young with crime, but I received more support and we have taken two different paths – he has spent his twenties in and out of prison – has been failed by the system for sure'.

Young people acknowledged victims could feel a lack of justice following a change to the law; however, the majority considered that knowledge of offender rehabilitation could provide sufficient support alongside victim counselling.

Young people largely considered that information on a criminal record should be wiped clean at 16 except for major crimes such as rape and murder.

Young people had mixed opinions on what the extent of availability of criminal record information should be, ranging from allowing full disclosure, to a case by case system based on the type of crime or reasons for requesting information.

Children's Parliament (school pupils)

On raising the age, 37 out of 40 voted to raise the age to 12.

Children overwhelmingly supported raising the age of criminal responsibility. They expressed concern for future prospects, the effectiveness of punishing children who didn't fully understand what they had done wrong, and the appropriateness of such harsh consequences when compared to other day-to-day responsibilities and consequences for children.

Children all agreed that there should be some consequences for harmful or law breaking behaviours and strongly suggested that other consequences which explored addressing issues connected to a child's environment and home life might be a more effective and appropriate way of responding to child offenders.

Children felt that 8 years old was too young to face serious consequences on offence grounds and that it was unfair for incidents from their childhood to haunt them throughout their youth and into adulthood. It is important to recognise how people grow and change throughout their adolescence and to give them a chance to prove that they can be positive members of society, not expect the worst of them.

"I mainly think yes, but if you do commit a crime before 12, something will still happen, but it won't be on a record as a proper crime."

"Because I think 8 is too young. If you do something bad it is because of who is around you, what your family is like, your health and what your school is like."

"You're older and 4 years makes a difference. You are able to control yourself more and you're more responsible. You'll be going to high school and you have matured so you will realise the consequences more. Some people at the age of 8 or even older still are full of carry on."

"You're literally not even in double figures yet! We learn our mistakes and we're not perfect. I don't want to not be employed for a job because I done an offence when I was 8!"

"8 is ridiculous because you haven't fully matured yet and 12 is a much more suitable age."

"Depending on what type of crime you have done and also your age. It's your parents' fault and your environment."

"A crime is a crime, but 8 is too young."

Good Shepherd Secure Unit (sentenced or placed in the Unit on welfare grounds)

On problems of raising the age:

They knew some of the decisions they were making were wrong at the time irrespective of their age.

Some people taking advantage of the age being raised, for example people committing crimes knowing they would get away with it.

On awareness at the time of offending:

Aware of consequences; however they weren't great enough to stop them committing the crimes.

All grew up around offending behaviour and therefore it appeared more 'normal' for them than it would perhaps for other young people without the family offending history.

On longer term effect of offending:

They talked about future careers and how they would have now changed some of the behaviours as they start to explore the impact on their future.

On disclosure:

It should depend on what the crime is. For example if it was a rape charge then this should not be wiped clean, however shoplifting should be.

Everyone should be given a second chance and that nothing should be revealed, however came back to discussing what the crime was and severity should determine what information should be revealed.

On victims:

Discussed trauma, anxiety and fears that may be experienced.

No punishment would be enough and that it wasn't justice for the victim.

A sentence provides so much more than just being 'locked up'.

Able to identify work they had completed on victim empathy and the change that had made to them.

The group decided that support for the victim and a restorative approach would be most beneficial.

On raising the age:

As a group they decided unanimously that no, it should not be raised.

Who Cares? Scotland (looked after children)

On age of criminal responsibility across the world:

Most are shocked that Scotland's MACR is the lowest in Europe and surprised that Scotland is lower than England.

On raising the age:

Six felt it should be higher, between 14-18 years; one thought it should stay the same.

On police involvement if a child commits a crime:

The group felt that police involvement is sometimes necessary – but only in the case of more serious crimes. Police need to be the first responders but pass the information onto social work so the child can be helped and isn't in trouble.

On care experienced being affected differently than those who aren't looked after:

Mostly in agreement that care experienced children and young people are treated differently by the police, especially if they live in a residential home. Therefore, care experienced young people are in need of extra protection so they are not criminalised.

The police used to come to our home and say it was us inside that are causing trouble in the community. They automatically think that everyone in the home is the same.

Youth Advantage Outreach (regular contact with police and services mainly due to minor offending)

On children as young as 8 appearing at a Children's Hearing for offences:

General consensus that 8 was far too young and a child as young as that wouldn't really know what they were doing. The group were aware of the Bulger case and commented that it might be more about the seriousness of the offence and some action could be needed.

On police taking and retaining samples:

There was a really balanced discussion on the reasons why sometimes samples were taken and some felt it would be helpful to take samples especially as this could prove a person innocent. There was very little support however of retaining samples beyond their use for a specific incident.

On later effects in life of behaviours carried out when young:

Really strong views about getting an opportunity and that people can change.

On raising the age:

There were a range of age suggestions all generally opting for raising the age to 12 or higher. Those that 'Don't know' tended to be unsure as it was dependent on the type or seriousness of the offence.

Up-2-Us (vulnerable girls and young women)

On offending:

Young women linked being involved in offending and harmful behaviours to family reputation, labels from being in care, and taught behaviour.

One young woman noted she had been used to carry drugs for her older brother at 10 years old.

Two of the young women recounted knowing a 9 year old boy in secure accommodation whose family were proud that he had started getting into trouble so early in life.

They all agreed that mental health affects behaviour, and that being held accountable depends on clarity of thought and moral understanding. Yet children between 8-12 years are often not flagged up to mental health.

On disclosure:

The criminal record of any individual under 12 should be sealed or wiped clean. Children should not be held accountable for poor decisions or behaviour for any time period that may affect their ability to move forward or make use of opportunities as they grow up. On the rare occasion serious crimes are committed such as trafficking, abuse of minors, murder, records should be kept in line with current policy for length of disclosure.

On raising the age:

Raising the age might be read by young people as an allowance to behave/offend in harmful or negative ways until 12 years with no criminal consequence. Thinking retrospectively they understood that had this legislation been in place for them that they might not have gotten a criminal record as early as they did, and that ultimately raising the age would be a preventative step.

The younger group overwhelmingly felt that the age should be raised to 12. The group were unaware that the current age of criminal responsibility was so low and felt that this did not make sense. Up-2-Us identifies with the young people that there is a need for greater dispersal of information about rights and responsibilities of young people.

On key messages:

That individuals need support and opportunities to help with offending behaviours. Checks should be carried out, there are concerns from the young women that individuals who need help do not always get it. This is especially the case in regards mental health.

Support provided for mental health is not effective, one young woman commented that professionals do not understand symptoms, she would want to speak to someone who gets what she is going through.

Professionals do not always understand the process of their engagement, that young women take time to respond based on their difficult experiences with adults and interaction with multiple agencies. This does not mean they do not want or need support.

Sacro (victims¹)

Participants in the main were unaware of the short and long term effects of their offending behaviour; they knew they would get into some form of trouble but did not realise they would end up with a charge/police record.

There appears to be many misconceptions and gaps in knowledge of young people about the age of criminal responsibility, the youth justice system and the impact and consequences on themselves in the long term of offending behaviour.

The results were mixed with regard to sharing information, but would require that safeguards were put in place and be of relevance to those who were receiving information.

Overall all young people felt that people harmed should be offered support irrespective of the age of offender and the severity of the offence. The participants felt the person's harmed should be protected as they may feel vulnerable.

80% of the young people participating in the focus groups agreed that the age of criminal responsibility should be raised to 12. The reasons for this were due to 8 year olds not being mature enough to understand the consequences of their actions, not knowing right from wrong and being too young to have a police record.

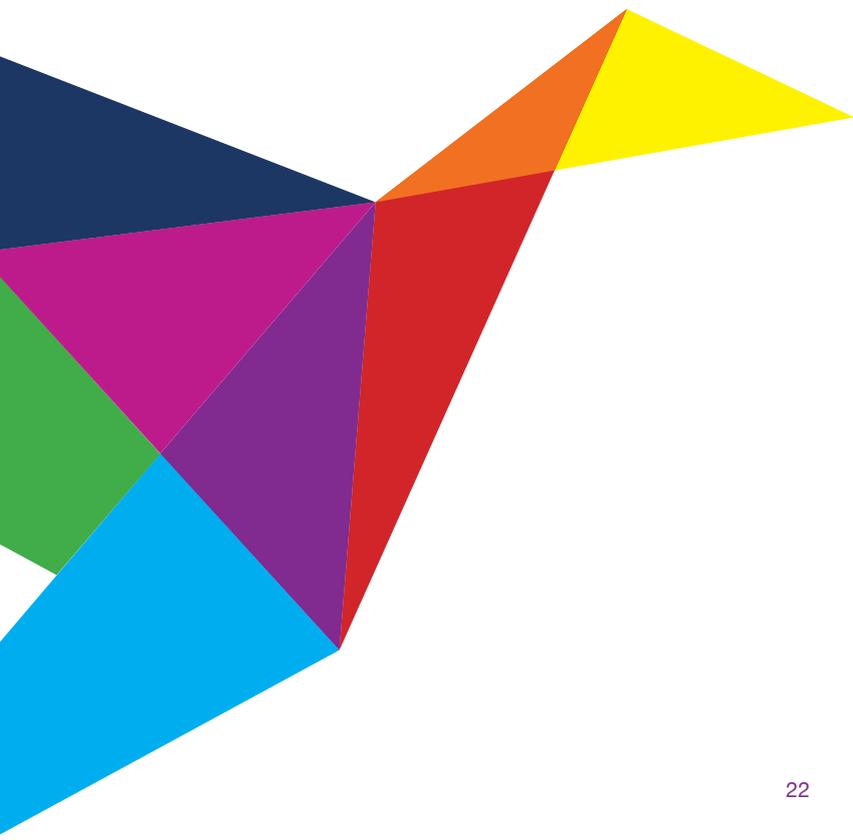


¹ It should be noted that young people who offend are very often victims themselves.



Images: Capturing young people's discussions by Graham Ogilvie

NOTE: Young people felt that 8 ('primary age kids') was too young to discern right and wrong, or to consciously 'break the law'. It was 'unfair' for children to accrue a record that young. They felt that 12 year olds had more experience, knowledge and personal responsibility.

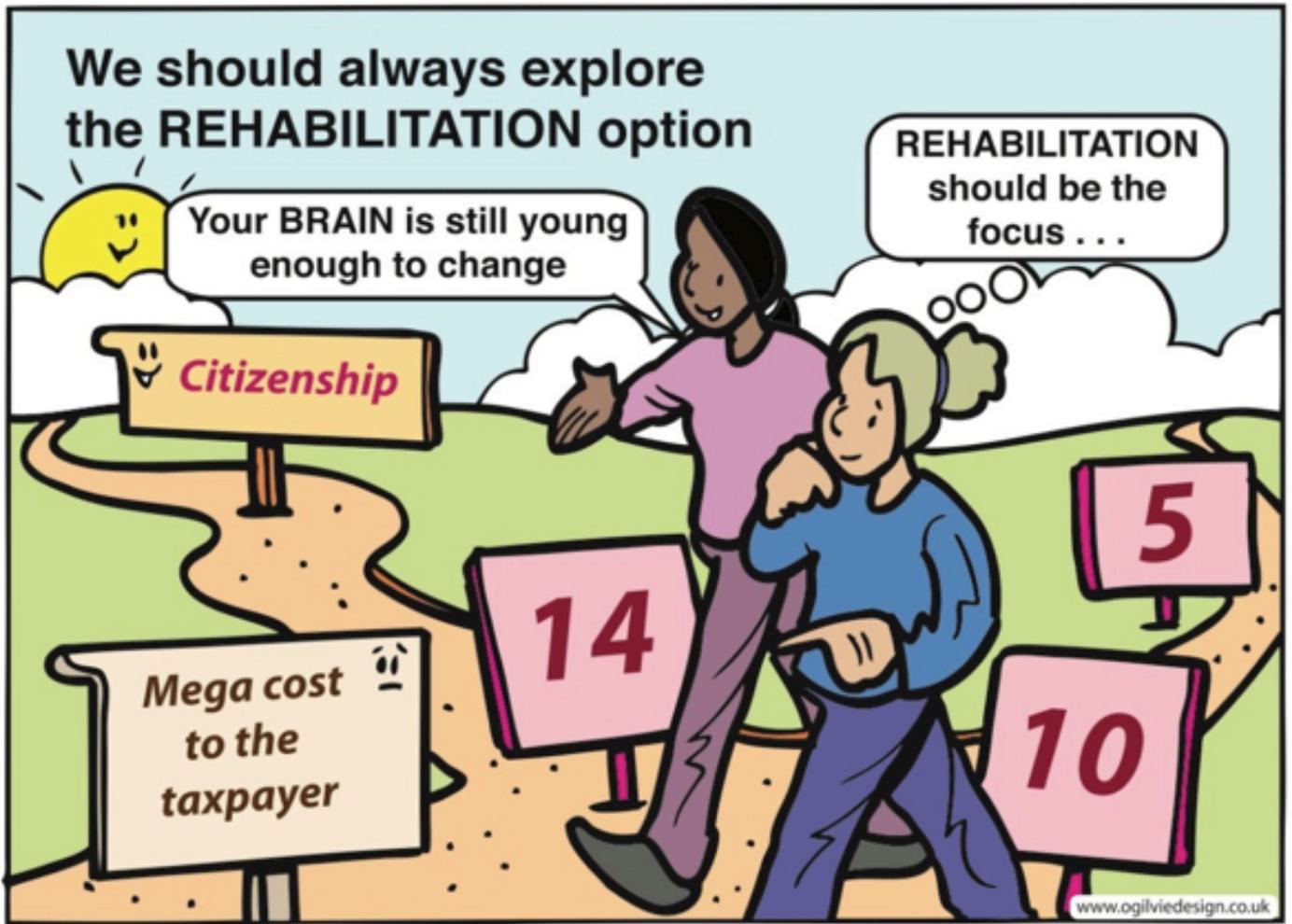




NOTE: Delegates were unhappy about ongoing negative media coverage of young people and their behaviour, given that children's offence referrals have fallen sharply. See the Daily Mail's '**Feral youth army fuels crimewave**' story on 8 August – SCRA 2014-15 figures show the number of children referred for offending was **2,761**; in 2007-08, that number was **14,209**.



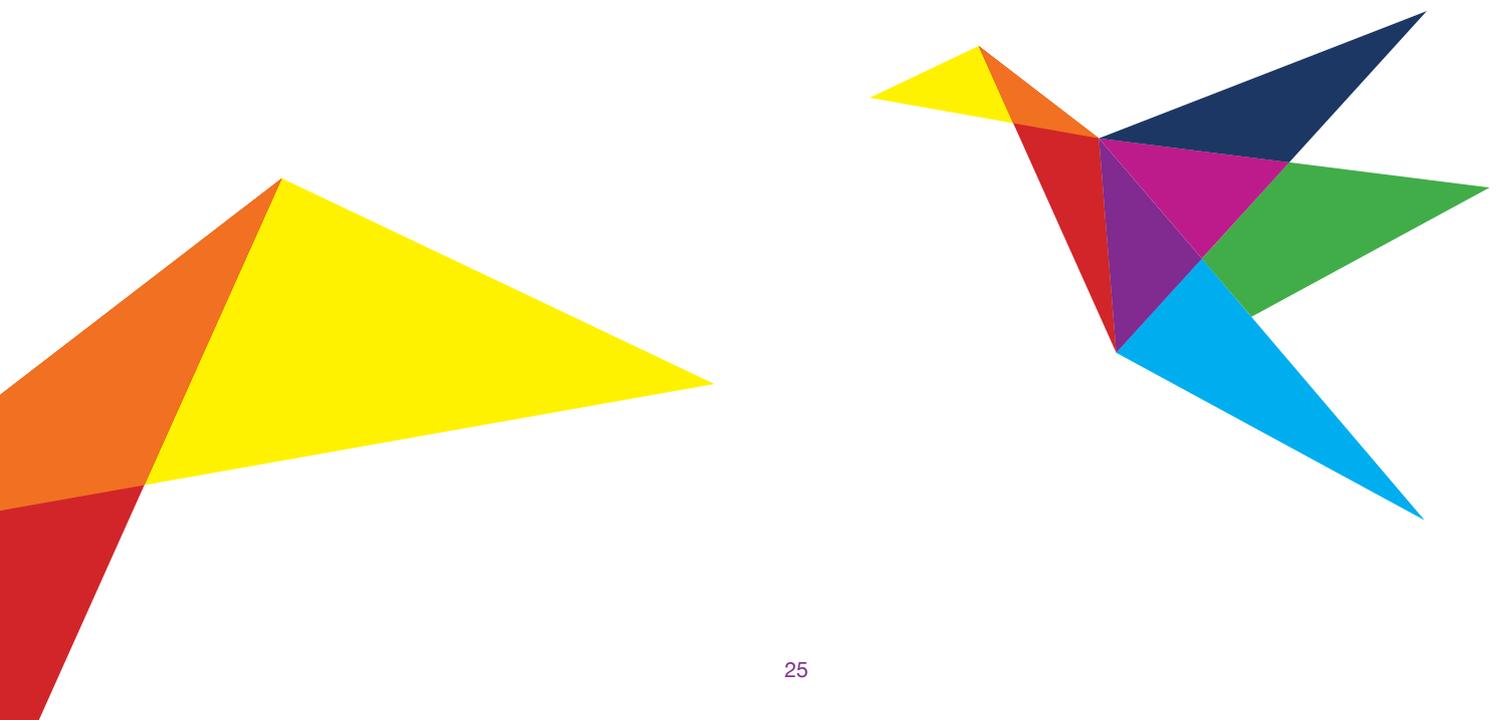
NOTE: Young people felt that being trusted, valued and respected by police and other authorities – and being given 'a chance' – was powerful and effective in promoting better behaviour.



NOTE: Making children 'criminals' was costly to the taxpayer and damaging to the young people. Delegates felt that young people could be rehabilitated, learn from their mistakes and move to positive citizenship – if not dogged by a childhood record.



NOTE: Scotland as ‘the best place to grow up’ involved believing and investing in children, helping them to deal with, and then to get over, mistakes on the way to becoming productive adults. Delegates thought that the Advisory Group’s proposed safeguards dealt well with the ‘most serious cases’ challenges for risk management and public protection.



LIST OF ORGANISATIONS THAT RESPONDED TO THE CONSULTATION

Aberdeen City Council
Aberdeenshire Council Criminal Justice Social Work
Adolescent Forensic Psychiatry Special Interest Group; Royal College of Psychiatrists
Animal Concern Advice Line
Apex Scotland
Barnardo's Scotland
Befriending Networks
British Psychological Society, The
Care Inspectorate
Centre for Child Wellbeing and Protection, The
Centre for Excellence for Looked After Children in Scotland (CELCIS)
Centre for Youth and Criminal Justice (CYCJ)
Child Protection Committee – Scottish Borders
Children 1st
Children and Young People's Commissioner Scotland
Children's Hearings Scotland
City of Edinburgh Council
Clan Childlaw
COSLA
Criminal Justice Voluntary Sector Forum
Dundee City Council
EAH and SCP (multi agency response)
Edinburgh Young People's Service (YPS)
Equality and Human Rights Commission
Faculty of Advocates
Families Outside
Howard League Scotland
Includem
Joint Faiths Board on Community Justice
Law Society of Scotland, The
NHS Health Scotland
NSPCC Scotland
National Youth Justice Advisory Group
Police Scotland
Positive Prison? Positive Futures
Sacro
Scottish Borders Children and Young People's Leadership Group
Scottish Child Law Centre
Scottish Consortium on Crime and Criminal Justice (SCCCJ)
Scottish Out of School Care Network
Scottish Children's Reporter Administration (SCRA)
Together (Scottish Alliance for Children's Rights)
Victim Support Scotland
West Lothian Council
Who Cares? Scotland
Women's Aid East and Midlothian
YouthLink Scotland



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2016

ISBN: 978-1-78652-608-3

This document is also available on The Scottish Government website:
www.gov.scot

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS84287 (12/16)

w w w . g o v . s c o t