

## **PE1847/A**

Scottish Government submission of 16 December 2020

I am writing to provide the Scottish Government's response to the above petition, calling for the Scottish Government to urgently raise the criminal age of responsibility to a minimum age of 14.

### **Background**

Scotland has two rules which relate to the age at which a child can be held criminally responsible. The first is the age below which a child is deemed to lack the capacity to commit a crime. This age is currently eight (see [section 41](#) of the Criminal Procedure (Scotland) Act 1995). The second is the age of prosecution, which is 12. Children below the age of 16 can be prosecuted only on the instructions of the Lord Advocate by virtue of [sections 41A](#) and [42\(1\)](#) of the 1995 Act.

The Age of Criminal Responsibility (Scotland) Bill was passed unanimously by the Scottish Parliament on 7 May 2019 and received Royal Assent (becoming the Age of Criminal Responsibility (Scotland) Act 2019) on 11 June 2019. As the Bill progressed through Parliament, amendments were submitted that would increase the age of criminal responsibility to 14 and 16. These amendments were rejected by the Parliament. Once fully commenced, the Act will increase the age of criminal responsibility from 8 to 12 years of age.

### **International context**

As the petitioner points out, Scotland has the lowest minimum age of criminal responsibility in Europe. However, it is worth pointing out that while General Comment No 24 issued by the UN Committee on the Rights of the Child in September last year recommends that states set a minimum age of criminal responsibility of at least 14, the articles of UNCRC do not specify what the age of criminal responsibility should be. General Comments are issued periodically to help states with their implementation of the UNCRC.

### **Implementation of the Act**

Implementing the Act is not simply a case of increasing a number (the age). We are seeking a culture shift in how we respond to children whose behaviour is harmful, whilst not losing sight of the needs of victims. Since the Act received Royal Assent, we have prioritised the changes that will have the most positive material effect for children. The removal of the offence ground for referring a child under 12 to a children's hearing (through the commencement of section 3) means that it has not been possible for children under 12 to obtain criminal convictions since end-November 2019. So although Part 1 of the Act (which raises the age of criminal responsibility from 8 to 12) is not yet fully commenced, and the age is still 8, it is not possible for children under 12 to be either prosecuted (as was already the case), or to be referred to a hearing on offence grounds.

Section 1 (and by association section 2) and Part 4 will be commenced as part of the final set of commencement regulations (planned for autumn 2021). The rationale for

linking the commencement of sections 1 and 2 with the commencement of Part 4 is that, if the age of criminal responsibility were raised in the absence of Part 4, the police would lack appropriate powers to investigate the most serious instances of harmful behaviour by those under 12 in a way which victims and communities would expect. This is because existing investigative powers which are based on suspicion of committing an offence will cease to apply to a child aged 8-11 once such a child can no longer commit an offence.

### **Raising the ACR beyond age 12.**

Reviewing the ACR remains high on this Government's agenda. However, the increase in the ACR from 8 to 12 is a significant reform that will need to be carefully evaluated to identify further policy, legislative, system and practical changes that may be required to ensure that the 2019 Act has been safely implemented. We cannot put children, communities and victims at risk by rushing changes. The Act requires the Scottish Ministers to review the operation of the Act in general, and with a view to considering a future age of criminal responsibility. This review must take place within 3 years of the commencement of section 1. An Advisory Group has been established to assist with this work. Evaluation of the Act will ensure that operational learning and experience about how the legislation and associated change programme operates for the under-12 age group is taken into account as part of the overall consideration of a future age of criminal responsibility in Scotland.