**HOWARD LEAGUE SCOTLAND RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION ON RAISING THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY**

**Summary**

Howard League Scotland welcomes the proposal to raise the minimum age of criminal responsibility (MACR) from age eight to age 12, bringing it into line with the minimum age of prosecution. However, we would like to see consideration given to raising it further. Raising the MACR does not mean refusing to hold children accountable for their actions, but it does mean ensuring that we avoid the criminalisation of children, and that we pay due attention to their welfare and educational needs.

**Why it matters**

It is a source of great disappointment to Howard League Scotland that, despite repeated criticism by the United Nations (UN) Committee on the Rights of the Child, children’s charities and advocacy groups, as well as legal and cognitive development experts, until now no administration has moved to raise the minimum age of criminal responsibility in Scotland.

In maintaining such a low minimum age of criminal responsibility, not only are we failing to comply with our obligations under international standards of juvenile justice and the UN Convention on the Rights of the Child, we are failing to take account of the evidence on cognitive development:

*“There is strong evidence that, from a neurological perspective, the human brain is not fully developed in its capacity for cognitive functioning and emotional regulation until well into the period of young adulthood.”[[1]](#footnote-1)*

The effect of inaction in this area is the criminalisation and stigmatisation of children as a result of behaviour in early childhood. Carrying a criminal record for offences committed during childhood can restrict life chances by impacting upon a young person’s ability to undertake further or higher education, or to follow their chosen career path.

**International context**

Scotland’s minimum age of criminal responsibility is eight years old, the lowest in Europe and one of the lowest in the world. By comparison, the MACR is

* 13 years old in Greece and Poland
* 14 years old in Bulgaria, Spain, Italy, Germany and Austria
* 15 years old in Denmark, Norway and Sweden
* 16 years old in Portugal and Romania and
* 18 years old in Brazil and Luxembourg, and in Belgium for all but the most serious offences[[2]](#footnote-2).

**Minimum age of prosecution**

Although the Criminal Justice and Licensing (Scotland) Act 2012 set the minimum age of prosecution at 12 years old, children under the age of 12 are still regarded as having the legal capacity to commit an offence.

If a child agrees they have committed an offence under the Children’s Hearing System, this counts as a conviction under the Rehabilitation of Offenders Act 1974. It is therefore still possible for an individual to carry a criminal record for offences committed between the ages of eight and 12.

**Views and evidence on MACR**

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”*[[3]](#footnote-3)*.*

A report by the All Parliamentary Group on Women in the Penal System, published in 2012, recommended that the MACR be raised to 14 years old.[[4]](#footnote-4)

A 2010 report by the All Party Parliamentary Group on Children noted that the European experience suggested that a higher MACR tended to be associated with a greater focus on alternatives to prosecution for older teenagers.[[5]](#footnote-5)

In 2011, the Royal Society published a report that look at the legal implications of developments in neuroscience. It stated that neuroscience was

*“providing new insights into brain development, revealing that changes in important neural circuits underpinning behaviour continue until at least 20 years of age”[[6]](#footnote-6)*

**Other comments**

We also agree that there should be a strong presumption against police including non-conviction information on disclosures about conduct that occurred under the age of 12 and that such information should only be included if necessary for public protection and subject to independent ratification.

**Conclusion**

If we are serious about wanting to make Scotland *‘the best place in the world to grow up in’*[[7]](#footnote-7), then we must raise the MACR. We support bringing the MACR in line with the minimum age of prosecution as a first step. However, we would like there to be ongoing debate and discussion about raising both the MACR and minimum age of prosecution further.

1. Prior, D, Farrow, K., Hughes, N, Kelly, G, Manders, G, White, S and Wilkinson, B (2011) *Maturity, Young Adults and Criminal Justice: A Literature Review*. University of Birmingham: Birmingham. [↑](#footnote-ref-1)
2. <http://thenayj.org.uk/wp-content/uploads/2015/06/2012-The-Age-of-Criminal-responsibility.pdf> [↑](#footnote-ref-2)
3. <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> [↑](#footnote-ref-3)
4. All Party Parliamentary Group on Women in the Penal System, *Keeping girls out of the penal system*, March 2012, p.6 [↑](#footnote-ref-4)
5. <http://www.ncb.org.uk/media/153014/youth_justice.pdf> [↑](#footnote-ref-5)
6. <https://royalsociety.org/~/media/Royal_Society_Content/policy/projects/brain-waves/Brain-Waves-4.pdf> [↑](#footnote-ref-6)
7. <http://www.gov.scot/Topics/People/Young-People/early-years/about> [↑](#footnote-ref-7)