



In Focus

Age of Criminal Responsibility Bill [HL] HL Bill 17 of 2015–16

Key Provision

The [Age of Criminal Responsibility Bill \[HL\]](#) is a private member's bill introduced by Lord Dholakia (Liberal Democrat). The Bill received its first reading in the House of Lords on 2 June 2015 and is scheduled to receive its second reading on 29 January 2016.

The Bill would raise the age of criminal responsibility in England and Wales from ten to twelve.

Background

The age of criminal responsibility in England and Wales is set out in section 50 of the Children and Young Persons Act 1933 (as amended), which states that: "It shall be conclusively presumed that no child under the age of ten years can be guilty of any offence". The 1933 Act originally set the age of criminal responsibility as eight, but it was raised to ten by the Children and Young Persons Act 1963. Children under the age of ten cannot be arrested or charged with a crime. Children between ten and 17 can be arrested and taken to court if they commit a crime, but they are treated differently from adults and are dealt with by youth courts; given different sentences; and sent to special secure centres for young people, not adult prisons.¹ In 2013–14 (the latest year for which figures are published), 116 ten-year-olds and 424 eleven-year-olds were convicted of an offence in England and Wales.²

Lord Dholakia introduced an identical bill in the 2013–14 session, which did not progress beyond second reading. He argued then that as "children of ten and eleven have less ability to think through the consequences of their actions, less ability to empathise with other people's feelings and less ability to control impulsive behaviour", it "cannot be right to deal with such young children in a criminal process based on ideas of culpability which assume a capacity for mature, adult-like decision-making".³ He observed that there was no other area of the law where children were regarded as fully competent to take informed decisions until later in adolescence. He also believed that the prospects for diverting children from offending would be "far better" if problems such as dysfunctional families, physical and sexual abuse, substance abuse and mental health issues were tackled through welfare interventions.

In response, Lord Ahmad of Wimbledon (Conservative), then a Government Whip, said that the Government had no plans to raise the age of criminal responsibility, as it believed children aged ten and above were "able to differentiate between bad behaviour and serious wrongdoing and should therefore be held accountable for their actions".⁴ The Government was of the view that it was "important to ensure that serious offences can, where appropriate, be prosecuted and the public protected". Lord Ahmad also argued that keeping the age of criminal responsibility at ten allowed multi-agency youth

offending teams to “intervene early and prevent robustly further offending”.⁵ For these reasons, the Government did not support Lord Dholakia’s bill.

UN Committee on the Rights of the Child

Under article 40(3) of the [UN Convention on the Rights of the Child](#), States Parties should seek to establish “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”. In 2007, the UN Committee on the Rights of the Child (CRC) concluded in a ‘General Comment’ that it considered a minimum age of criminal responsibility (MACR) below the age of twelve years as “not internationally acceptable”.⁶ The CRC encouraged States Parties to increase their lower MACR to twelve years “as the absolute minimum age” and to continue to increase it to a higher level. In 2008, under the Convention’s periodic reporting arrangements, the CRC recommended that the UK raise the MACR in line with the 2007 General Comment.⁷ In its most recent report to the CRC, submitted in 2014, the UK Government stated that its position had not changed: “children aged ten are able to differentiate between bad behaviour and serious wrongdoing and it is right that they should be held to account for their actions”, but that “custody for under-18s should be an option of last resort”.⁸

Other Jurisdictions

In Scotland, the Criminal Procedure (Scotland) Act 1995 provides that: “It shall be conclusively presumed that no child under the age of eight years can be guilty of an offence”. The 1995 Act was amended in 2010 to provide that no child under the age of twelve may be prosecuted for an offence, and an older person may not be prosecuted for an offence committed whilst under the age of twelve.⁹ An advisory group on raising the MACR in Scotland from eight to twelve, appointed by the Scottish Government, is due to report by February 2016.¹⁰ In Northern Ireland, an independent review in 2011 recommended raising the MACR from ten to twelve with immediate effect, with consideration given within three years to raising the age to 14.¹¹ The UK Government reported to the UN CRC that there were “no plans to do so at present as cross-party support would be needed for such a change”.¹²

Within the EU, the MACR is twelve in Ireland (ten for very serious crimes) and the Netherlands; 13 in France, Greece and Poland; 14 in Austria, Bulgaria, Croatia, Cyprus, Estonia, Germany, Hungary, Italy, Latvia, Malta (nine where there is “mischievous misdirection”), Romania, Slovakia, Slovenia and Spain; 15 in the Czech Republic, Denmark, Finland and Sweden; and 16 in Belgium, Lithuania, Luxembourg and Portugal.¹³

¹ GOV.UK, ‘[Age of Criminal Responsibility](#)’, 12 August 2015.

² Ministry of Justice, [Youth Justice Statistics 2013/14, England and Wales](#), 29 January 2015, Table 3.1.

³ [HL Hansard, 8 November 2013, col 477](#).

⁴ [ibid, col 487](#).

⁵ [ibid, col 492](#).

⁶ UN Committee on the Rights of the Child, [General Comment No. 10 \(2007\), Children’s Rights in Juvenile Justice](#), 25 April 2007

⁷ UN Committee on the Rights of the Child, [CRC/C/GBR/CO/4](#), 20 October 2008, para 78.

⁸ UN Committee on the Rights of the Child, [CRC/C/GBR/5](#), 6 March 2015, para 248.

⁹ Scottish Parliament Information Centre (SPICe), [Children and the Scottish Criminal Justice System](#), 14 July 2011, p 8.

¹⁰ Scottish Government, ‘[Minimum Age of Criminal Responsibility Advisory Group](#)’, accessed 20 January 2016.

¹¹ Northern Ireland Youth Justice Review, [A Review of the Youth Justice System in Northern Ireland](#), September 2011, p 107.

¹² UN Committee on the Rights of the Child, [CRC/C/GBR/5](#), 6 March 2015, para 249.

¹³ European Parliament, [Developing a Criminal Justice Area in the European Union: Study](#), 2014, pp 47–8.

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