



Age of Criminal Responsibility Bill [HL] (HL Bill 3 of 2017–19)

Summary

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 26 June 2017 and is scheduled to have its second reading on 8 September 2017.

The Bill contains one operative clause. It would raise the age of criminal responsibility in England and Wales from ten to twelve.

Legal 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.

Before 1998, there also existed a legal presumption that children under the age of 14 did not know the difference between right and wrong. This was known as *doli incapax*. Evidence submitted to a Joint Committee on Human Rights inquiry into children's rights in 2009 described its operation as follows:

One argument for retaining the relatively low age [of criminal responsibility] of ten was that the system protected 10–13 year old children inclusive by the presumption of *doli incapax*, a long-established principle that children of this age were 'incapable of crime' due to their immaturity, unless proven otherwise. Unless criminal intent could be established, therefore, offenders under the age of 14 were subject, broadly speaking, to welfare disposals rather than criminal prosecution.¹

However, section 34 of the Crime and Disorder Act 1998 abolished the rebuttable presumption of *doli incapax*. The Labour Government of the time argued that "in presuming that children of this age generally do not know the difference between naughtiness and serious wrongdoing, the notion of *doli incapax* is contrary to common sense", and that it created "practical difficulties" for the prosecution which were "not in the interests of justice, of victims or of the young people themselves".²

Children under the age of ten cannot be arrested or charged with a crime. The GOV.UK website states that children under ten who break the law can be given a local child curfew or a child safety order.³ However, this information appears to be out of date, as local child curfew orders were repealed by the Policing and Crime Act 2009, since the power did not appear to have ever been used.⁴ The Ministry of Justice has explained that:

Where a child who is under the age of criminal responsibility is identified as being involved in an act which would invoke a criminal justice response if they were ten or over, the police will normally be

responsible for initial engagement. They will act under the duty imposed on them by the Children Act 2004 to promote and safeguard children. This means that they will return the child to their home and initially speak to the parents and refer the case to the local authority's safeguarding team.

Local authorities have an over-arching responsibility for the welfare of all children and the Children Act 2004 requires all people working with children to promote and safeguard them.

The safeguarding team would engage with the child and parent/s as they see fit. This could include referring parents to parenting courses and consideration of health issues or other support. Formal interventions, Child Safety Orders and Parenting Orders, are available for the local authority to apply for if they consider these necessary. Under a Child Safety Order the child is placed under the supervision of a responsible officer—a social worker or Youth Offending Team worker and must comply with requirements set out in the order. A Parenting Order requires parents to attend a parenting course as opposed to voluntary engagement.

If considered necessary and in their best interests, the child could be taken into care or remain in the family home but become 'looked after' by the local authority. The local authority would then be responsible for the child and a social worker would oversee the child's progress.⁵

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.⁶

In the year ending March 2016 (the latest year for which figures are published), 69 ten-year-olds and 291 eleven-year-olds received a youth caution or court conviction.⁷ The average monthly figure for children aged ten to 14 held in youth custody between April 2015 and March 2016 was 38.⁸ Between 2004 and 2014, the number of ten- and eleven-year-olds who received a custodial sentence was twelve.⁹

Previous Private Member's Bills

Lord Dholakia introduced substantially identical bills in the 2013–14 and 2015–16 session, which did not progress beyond second reading, and the 2016–17 session, which did not progress beyond first reading. Speaking at the second reading of his 2015–16 bill, Lord Dholakia argued that although children of ten and eleven were capable of telling right from wrong, there was “overwhelming” evidence from international research that they had “less ability to think through the consequences of their actions, empathise with other people's feeling and control impulsive behaviour” than older adolescents or adults.¹⁰ He said that it was “not right to deal with such young children in a criminal process based on ideas of culpability that assume a capacity for mature, adult-like decision-making”. 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.

Lord Dholakia also put the case that dealing with ten- and eleven-year-old children through non-criminal procedures “would be more effective than using the criminal justice process”, as there was evidence that children dealt with through the criminal justice process were “more likely to reoffend than those who are diverted from the criminal justice process and dealt with in other ways”.¹¹ 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 rather than by imposing punishments in a criminal court. He concluded that the “simple proposition” contained in his Bill would “be an important step towards dealing with vulnerable, difficult and disturbed children in a way that befitted our civilised society”.¹²

Government Position

In response, Lord Faulks, then Minister of State at the Ministry of Justice, said that the Government had “no plans to raise the age of criminal responsibility from ten to twelve”.¹³ He stated that:

The Government believe that children aged ten and above are, for the most part, able to differentiate between bad behaviour and serious wrongdoing and should therefore be held accountable for their actions. Where a young person commits an offence, it is important they understand that it is a serious matter. The public must also have confidence in the youth justice system and know that offending will be dealt with effectively.¹⁴

Lord Faulks also set out the Government’s position that “having the age of criminal responsibility set at ten years allows flexibility to deal with young offenders”.¹⁵ He pointed out that multi-agency Youth Offending Teams could refer the child on to other statutory services for further investigation and support if particular needs, such as education or health needs, were identified, and this could include referring parents for parenting courses. Other possible outcomes included youth cautions, youth conditional cautions and referral orders of three to twelve months based on restorative justice principles.¹⁶ He assured the House that “custody of any sort is always very much the last resort”, and that “very often the destination [...] is one that is reached in the interests of the child, whether it comes by welfare provision or via the criminal justice system”.

UN Convention 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 below the age of twelve years as “not internationally acceptable”.¹⁷ The CRC encouraged States Parties to increase their lower minimum age of criminal responsibility 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 minimum age of criminal responsibility in line with the 2007 General Comment.¹⁸ In its most recent periodic report to the CRC, submitted in 2014, the UK Government stated that its position had not changed, arguing that “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”.¹⁹ In 2015, the CRC published a report covering a list of issues arising from the UK’s periodic report; this included a request for further information on progress made in raising the minimum age of criminal responsibility.²⁰ In response, the UK Government reiterated that it had no plans to change the minimum age of criminal responsibility in England and Wales.²¹ The CRC published its concluding report for this periodic reporting round in July 2016. It recommended that the UK should: “Raise the minimum age of criminal responsibility in accordance with acceptable international standards”.²²

A number of other organisations have also called on the Government to raise the minimum age of criminal responsibility, including the UK Children’s Commissioners (2016), the All Party Parliamentary Group on Women in the Penal System (2012), the Centre for Social Justice think tank (2012), and the All Party Parliamentary Group for Children (2010).²³ In 2011, the Law Society and the Royal Society both suggested that a case could be made for raising the minimum age of criminal responsibility.²⁴

Further information about the arguments put forward by these organisations is given in the House of Commons Library briefing [The Age of Criminal Responsibility](#) (15 August 2016).

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”. This Act was amended in 2010 to raise the age of criminal prosecution to twelve; this means that under twelves are not prosecuted or sentenced in the criminal courts and are instead dealt with through the Children’s Hearing System.²⁵ Criminal offences committed between the ages of eight and twelve may be included on a child’s criminal record, even though a prosecution may not take place.²⁶ The Scottish Government announced in December 2016 that it would raise the minimum age of criminal responsibility to twelve.²⁷ It intends to bring forward a bill to implement this change in time for Scotland’s Year of Young People in 2018.

In Northern Ireland, an independent review in 2011 recommended raising the minimum age of criminal responsibility from ten to twelve with immediate effect, with consideration given within three years to raising the age to 14.²⁸ The UK Government reported to the UN CRC in 2015 that there were “no plans to do so at present as cross-party support would be needed for such a change”.²⁹

The table below shows the minimum age of criminal responsibility in other European Union member states.

10	Ireland (for murder, manslaughter, rape or aggravated sexual assault)
12	Belgium Hungary (for homicide, voluntary manslaughter, battery, robbery and plundering) Ireland (for offences other than murder, manslaughter, rape or aggravated sexual assault) Netherlands
13	France (minimum age of criminal sentencing; there is no absolute minimum age set at which children become able to be held criminally responsible, but a child will usually be considered to have “discernment” between the ages of 8 and 10)
14	Austria; Bulgaria; Croatia; Cyprus; Estonia; Germany; Hungary (for offences other than homicide, voluntary manslaughter, battery, robbery and plundering) Italy; Latvia; Lithuania (for murder; serious impairment to health; rape; sexual harassment; theft; robbery; extortion of property; destruction of or damage to property; seizure of a firearm, ammunition, explosives or explosive materials; theft, racketeering or other illicit seizure of narcotic or psychotropic substances; damage to vehicles or roads and facilities thereof) Malta; Romania; Slovakia; Slovenia; Spain
15	Czech Republic; Denmark; Finland; Greece; Poland; Sweden
16	Lithuania (for offences other than for murder; serious impairment to health; rape; sexual harassment; theft; robbery; extortion of property; destruction of or damage to property; seizure of a firearm, ammunition, explosives or explosive materials; theft, racketeering or other illicit seizure of narcotic or psychotropic substances; damage to vehicles or roads and facilities thereof) Luxembourg; Portugal

(Source: Child Rights International Network, [‘Minimum Ages of Criminal Responsibility in Europe’](#), accessed 20 July 2017)

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- ¹ Joint Committee on Human Rights, [Children's Rights](#), 20 November 2009, HL Paper 157 of session 2009–10, Ev 69. This evidence was submitted by the Commission on Families and the Wellbeing of Children, a commission established by the Family and Parenting Institute and National Children's Homes with support from the Joseph Rowntree Foundation.
- ² Home Office, [No More Excuses: A New Approach to Tackling Youth Crime in England and Wales](#), November 1997, para 4.4.
- ³ GOV.UK, ['What Happens if a Child Under 10 Breaks the Law?'](#), accessed 20 July 2017.
- ⁴ [HC Hansard, 28 April 2011, col 586W](#).
- ⁵ Author's correspondence with the Ministry of Justice, 28 January 2016.
- ⁶ GOV.UK, ['Age of Criminal Responsibility'](#), accessed 20 July 2017.
- ⁷ Ministry of Justice, [Youth Justice Annual Statistics 2015 to 2016: Supplementary Tables](#), 26 January 2017, [Table 3.1](#).
- ⁸ *ibid*, [Table 7.7](#). Youth custody figures for ten-to 14-year-olds are given as a single group to reduce the risk of identification of young people; figures for young people in youth custody at ages 15, 16 and 17 are reported as three separate age groups.
- ⁹ [HL Hansard, 29 January 2016, col 1575](#).
- ¹⁰ *ibid*, col 1554.
- ¹¹ *ibid*, col 1555.
- ¹² *ibid*, col 1556.
- ¹³ *ibid*, col 1573.
- ¹⁴ *ibid*, col 1574.
- ¹⁵ *ibid*, col 1575.
- ¹⁶ *ibid*, cols 1575–6.
- ¹⁷ UN Committee on the Rights of the Child, *General Comment No. 10 (2007), Children's Rights in Juvenile Justice*, 25 April 2007.
- ¹⁸ UN Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, 20 October 2008, para 78.
- ¹⁹ UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention—Fifth Periodic Reports of States Parties due in 2014: United Kingdom*, submitted 27 May 2014, published 6 March 2015, para 248.
- ²⁰ UN Committee on the Rights of the Child, *List of Issues in Relation to the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, 11 November 2015, para 20.
- ²¹ UN Committee on the Rights of the Child, *List of Issues in Relation to the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland—Addendum: Replies of the United Kingdom of Great Britain and Northern Ireland to the List of Issues*, 11 April 2016, para 90.
- ²² UN Committee on the Rights of the Child, *Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, 12 July 2016, para 79.
- ²³ UN Committee on the Rights of the Child, *Examination of the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland—UK Children's Commissioners Recommendations May 2016*, May 2016, p 15; All Party Parliamentary Group on Women in the Penal System, [Keeping Girls out of the Penal System](#), March 2012, p 6; Centre for Social Justice, [Rules of Engagement: Changing the Heart of Youth Justice](#), January 2012, pp 24–5; and All Party Parliamentary Group for Children, [Children and Young People in the Youth Justice System](#), 2010, p 15.
- ²⁴ Law Society, *Law Commission Consultation Paper No 197 'Unfitness to Plead'—Law Society Response to the Law Commission's Summary of Provisional Proposals and Questions*, January 2011 in Law Commission, [Unfitness to Plead Consultation Responses](#), 10 April 2013; and Royal Society, [Brain Waves Module 4: Neuroscience and the Law](#), December 2011, p 13.
- ²⁵ Scottish Government website, ['Minimum Age of Criminal Responsibility'](#), 1 December 2016.
- ²⁶ Child Rights International Network, ['Minimum Ages of Criminal Responsibility in Europe'](#), accessed 20 July 2017.
- ²⁷ Scottish Government website, ['Minimum Age of Criminal Responsibility'](#), 1 December 2016.
- ²⁸ Northern Ireland Youth Justice Review, [A Review of the Youth Justice System in Northern Ireland](#), September 2011, p 107.
- ²⁹ UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention—Fifth Periodic Reports of States Parties due in 2014: United Kingdom*, submitted 27 May 2014, published 6 March 2015, para 249.
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