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LIVING IT

CHILDREN, YOUNG PEOPLE AND JUSTICE

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Take Five

Scottish Justice Matters asks our politicians to respond to questions about crime and justice. We asked:

In a recent lecture, Professor Lesley Mcara said that it was a 'national disgrace' that the age of criminal responsibility in Scotland is still eight years old. What is your view?"

Kenny MacAskill MSP, Scottish National Party



THE AGE at which we, as a society, judge our children to be able to understand the difference between right and wrong is an important mark of the type of society we want for Scotland.

This Government has already raised the age of criminal prosecution to 12, meaning that no child under the age of 12 can ever be prosecuted in court. As Justice Secretary, I believe that this strikes the right balance between the age a young person understands that their behaviour is harmful and their ability to understand court proceedings. The evidence shows prosecution at an early age increases the chance of reoffending, so this change was about preventing crime and means that young people are now held to account in a way that is appropriate for their stage of development. Of course, only the most serious offences involving 12-16 year olds are prosecuted through criminal court, in line with the Lord Advocate's guidelines, with less serious offences referred to the Children's Hearing System.

I absolutely recognise that the age of criminal responsibility in Scotland also needs to be looked at though, which is why we have given a commitment to do just that and we are considering this alongside our commitment to give better effect in Scotland to the UN Convention of the Rights of the Child (UNCRC).

Clearly, there is a lot to consider in terms of the practical implications of such a change, including for example, the impact on police investigatory powers and ensuring that appropriate and robust interventions can still be taken where children are involved in offending behaviour. This is particularly the case where children under 12 are involved in serious sexual or violent offences. These considerations are on-going and we intend to make an announcement on the way forward in the coming year.

Graeme Pearson MSP, Scottish Labour



SINCE the 1970's, and in my own view the more enlightened approach introduced alongside the Children's Hearings, the prosecution of children in our courts has thankfully become relatively rare. Young people under the age of 16 years and in some cases under 18 years of age are for the most part referred to the Children's Hearing system to enable a child centred response. Even in those rare circumstances when a child is prosecuted at Solemn Procedure the referral to the Children's Reporter to identify an adequate disposal of the circumstances is acknowledged as an effective conclusion to the case in terms of legal process.

Largely due to the acknowledged success of this system of disposal, the issue of the age of criminal responsibility has rarely featured in the public's interests in Justice issues. In my view however, eight years of age is no longer a sustainable bench mark against which to judge a child's ability to act with criminal intent. Although not currently a subject area in terms of the Scottish Labour Party's manifesto commitment I have, on a personal basis, come to acknowledge a move towards 12 years as an appropriate extension to that period we currently identify as being below the age of criminal responsibility is desirable and sustainable with the public.

I realise there are those who would like to see public policy extend that barrier further but I feel inclined to say that in many communities vulnerable to criminal acts such a change would be resisted and seen as unreasonable. I do however think that when and if this issue is examined with an intention to reform, politicians should be willing to listen to the evidence on this subject before confirming what, if any, change in the age limits applying can take place.

Margaret Mitchell MSP, Scottish Conservatives



THE general rule in Scots Law is that a child becomes an adult and has legal capacity at the age of 16 (Age of Legal Capacity (Scotland) Act 1991). There are however, a myriad of exceptions to this rule.

In particular, the age at which a child is 'responsible' changes according to the subject and circumstances in question. For example, when instructing a solicitor or making a medical decision, 12 years old is presumed to be old enough. Conversely, it is 18 to serve on a jury.

Furthermore, a child under 12 cannot be prosecuted in court for a crime but as the age of criminal responsibility in Scotland is 8, a child between the age of 8 and 12 can be referred to the welfare-based Children's Hearing System on offence grounds, which may result in the child obtaining a criminal record.

To add further confusion, the proposed Criminal Justice (Scotland) Bill instructs the police to treat anyone under the age of 18 as a child. Most recently parliamentary debate has focused on the voting age, with all parties in Scotland calling for it to be lowered to 16.

Clearly there needs to be a radical overhaul in this area of law and the issue needs to be looked at as a whole. A balance needs to be struck between understanding the average child's decision-making capabilities, while acknowledging that there will always be exceptions to the rule at both ends of the spectrum. If a child is old enough to wreak misery on a community and inflict huge damage on people's lives, it is imperative they understand the consequences of this behaviour.

Moreover, in addition to the technicalities involved in increasing the age of criminal responsibility, the crucial question which needs to be asked in this debate is: "Where do the parents and parental responsibility feature?"

If parents are struggling to ensure that their children don't embark on the wrong path or if they have already done so, the appropriate support must be available to try to reverse the trend.

What isn't acceptable, in these circumstances, is for parents to merely absolve themselves completely from any responsibility for their children and this too must be a factor taken into consideration.

Alison McInnes MSP, Liberal Democrats



WITH vulnerability difficult to define, "at what age..." is a question often posed by legislators seeking to provide for the emotional, mental and intellectual maturity of children. The law is inconsistent in its perceptions of their capacity to make decisions, sufficiently understand or be deemed responsible for their actions. In this case, it is also woefully outdated.

Scotland has the youngest age of criminal responsibility in Europe and has fallen behind best practice. Criminalising children as young as eight has "long tarnished" our international reputation according to Scotland's Commissioner for Children and Young People. Indeed, increasing the limit to 12 is "the absolute minimum" the UN Committee on the Rights of the Child expects.

Early and effective intervention is appropriate for those who do engage in offending behaviour. The age of criminal prosecution increased to 12 in 2010, reflecting extensive opinion that children shouldn't come into contact with the criminal justice system any earlier. Raising the age of criminal responsibility is therefore unfinished business.

While rare in practice, Barnardo's tell us there are occasions when referrals to children's hearings on offence grounds cause a child of just eight or nine to obtain a criminal record. This could limit their opportunities for life and is an inappropriate and destructive response the law should prevent. Anything less would be incompatible with the Scottish Government's "getting it right for every child" agenda.

The Criminal Justice Bill presented the ideal opportunity, perhaps even the last, for this Scottish Government to raise the age of criminal responsibility. Like many children's organisations, Scottish Liberal Democrats were dismayed it was omitted. When pressed, the Cabinet Secretary told me this was because it hadn't been consulted upon yet.

I hope we can overcome this lack of political will and ensure the rights of all children are protected.

Patrick Harvie MSP, Scottish Green Party

Patrick has been unable to file a response to this issue's question following post-referendum pressures and commitment.

UK Justice Policy Review:

Volume 2

6 May 2011 to 5 May 2012

UK Justice Policy Review:

Volume 3

6 May 2012 to 5 May 2013

By Richard Garside, Arianna Silvestri
and Helen Mills

UK Justice Policy Review:

Volume 1

6 May 2010 to 5 May 2011

By Richard Garside and Helen Mills

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UK Justice Policy Review: Volume 1 (May 2010 to May 2011), *UK Justice Policy Review: Volume 2* (May 2011 to May 2012) and *UK Justice Policy Review: Volume 3* (May 2012 to 5 May 2013) are now online and available to download from: www.crimeandjustice.org.uk/project/uk-justice-policy-review