



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Northern Ireland Assembly on the List of
Amendments to the Justice Bill**

June 2026

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1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to sections 69(1) and 69(4) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in NI. The NIHRC is also required under section 78A(1), 78A(5) and 78A(6) to monitor the implementation of Article 2(1) of the Windsor Framework¹. Windsor Framework Article 2 is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018.
- 1.2 The Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022 amended the Northern Ireland Act 1998 following the New Decade New Approach agreement. This requires the Standing Orders of the NI Assembly to be changed in order to make provision for the implementation of paragraph 2.2.7 NDNA, which allows for a 14-day consideration period, including reports on conformity with the ECHR and advice under Standing Order 30(6)².
- 1.3 The NIHRC is not aware of any amendments to the Assembly Standing Orders, and so presents this advice pre-emptively, in order to assist the Northern Ireland Assembly in relation to the Amendments to the Justice Bill (the Bill) Marshalled List of Amendments Consideration Stage which were published on 2 June 2026.³
- 1.4 The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant regional and international treaties in this context include:
 - CoE European Convention on Human Rights 1950 (ECHR);⁴

¹ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol in this document have been updated to reflect this change. See Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

² Section 42(6)(d), Northern Ireland Act 1998.

³ Northern Ireland Assembly, 'Justice Bill Marshalled List of Amendments Consideration Stage', 2 June 2026 <https://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/mandate-2022-2027/justice-bill/ml-1---fpv.pdf>.

⁴ UK ratification 1951 and given further domestic effect by the Human Rights Act 1998.

- CoE European Social Charter 1961;⁵
- UN Convention on the Rights of the Child 1989 (UN CRC);⁶

1.5 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas:

- UN Committee on the Rights of the Child (UN CRC Committee) General Comment No 10;⁷
- UN Committee on the Rights of the Child General Comment No 20;⁸
- UN CRC Committee General Comment No 24;⁹
- UN CRC Committee Concluding Observations on the UK 2016;¹⁰
- UN CRC Committee Concluding observations on the UK 2023;¹¹
- UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK 2024;¹²
- UN Committee Against Torture Committee Concluding Observations on the Sixth Periodic Report of the UK 2019;¹³
- CoE's European Committee of Social Rights 2019 Conclusions on UK;¹⁴
- CoE's European Committee of Social Rights 2016 Conclusions on UK;¹⁵
- Guidelines of the Committee of Ministers of the CoE on child-friendly justice;¹⁶
- United Nations Standard Minimum Rules for the Administration of

⁵ UK ratification 1962. The UK has signed, but not ratified, the CoE Revised European Social Charter 1991.

⁶ UK ratification 1991.

⁷ CRC/C/GC/10, 'UN CRC Committee General Comment No. 10: Children's rights in juvenile justice', 25 April 2007.

⁸ CRC/C/GC/20, 'UN CRC Committee General Comment No. 20: The implementation of the rights of the child during adolescence', 6 December 2016.

⁹ CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System', 18 September 2019.

¹⁰ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016.

¹¹ CRC/C/GBR/CO/6-7, 'UN Committee on the Rights of the Child, 'Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland', 2 June 2023.

¹² CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 3 May 2024.

¹³ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019.

¹⁴ Council Of Europe, 'European Committee of Social Rights, Conclusions on United Kingdom 2019,' March 2019.

¹⁵ Conclusions XX-4 (2015), Council of Europe, 'European Committee of Social Rights, Conclusions on Czech Republic, Denmark, Germany, Greece, Poland, Spain, United Kingdom,' January 2016.

¹⁶ Council of Europe, Committee of Ministers, 'Guidelines on Child-Friendly Justice', adopted 17 November 2010.

- 1.6 The NIHRC's advice focuses on the amendments concerning the minimum age of criminal responsibility, specifically amendments 79, 81,82, 86.

2.0 Part 1: Proposed Amendments to Current Minimum Age of Criminal Responsibility

- 2.1 Amendments 79, 81, 82 and 86 each propose amendments to Article 3 of the Criminal Justice (Children) (Northern Ireland) Order 1998, which provides that "it shall be conclusively presumed that no child under the age of 10 can be guilty of an offence."¹⁸
- 2.2 Amendment 79 raises the minimum age at which a child may be charged with an offence to 14, with the exception that a child 10 or over may still be charged with murder, manslaughter, rape or assault by penetration.
- 2.3 Amendment 81 raises the minimum age at which a child may be charged with an offence to 16.
- 2.4 Amendment 82 raises the minimum age at which a child may be charged with an offence to 12. In addition, amendment 82 proposes an exception in relation to children aged 12 or 13. It proposes that no child aged 12 or 13 can be guilty of an offence other than murder, attempted murder, manslaughter, rape assault by penetration.
- 2.5 Amendment 86 raises the minimum age at which a child may be charged with an offence to 12 years and that a child aged 10 or 11 may be prosecuted where the Director of Public Prosecutions decides that there is a compelling reason to require prosecution in the public interest, having regard to the seriousness of the alleged offence, the risk of harm to the public, and the best interests of the child.

¹⁷ A/RES/40/33, 'UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"): adopted by General Assembly, 29 November 1985.

¹⁸ Criminal Justice (Children) (Northern Ireland) Order 1998.

- 2.6 Northern Ireland has one of the lowest ages of criminal responsibility in the world and the lowest in Europe, the same as in England and Wales. By contrast, Scotland raised its age from 8 to 12. Aside from the UK jurisdictions, Switzerland is the only other country in Europe with the age set as low as 10.
- 2.7 Given the robust evidence accumulated on cognitive development, the susceptibility to acquire a criminal record at 10 years old is very difficult to justify. That is particularly so “bearing in mind the facts of emotional, mental and intellectual maturity”.¹⁹
- 2.8 In 2011, a Department of Justice review concluded that “the minimum age should be increased to 12 [years old] forthwith and, following a period of review and preparation, perhaps to 14 [years old], which has some historical and current significance for criminal law in NI”.²⁰
- 2.9 In 2022, the Department of Justice consulted on raising the age of criminal responsibility to 14 years old.²¹ Over 83 per cent of respondents to the consultation supported an increase to the minimum age of criminal responsibility beyond ten years old, with the majority supporting an increase to 14 years old.²²
- 2.10 While the NIHRC welcomes the proposal to raise the minimum age, it recommends that any reform should align with the applicable human rights standards.

3.0 International and Regional Human Rights Standards Relevant to the Minimum Age of Criminal Responsibility

Council of Europe Standards and Guidance

- 3.1 Across the States in the Council of Europe (CoE) the minimum age of

¹⁹ A/RES/40/33, ‘UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)’, adopted by the General Assembly, 29 November 1985.

²⁰ Department of Justice, ‘Public Consultation on Increasing the Minimum Age of Criminal Responsibility in NI from 10 Years to 14 Years’ (DoJ, 2022). See also Department of Justice, ‘Strategic Framework for Youth Justice 2022-2027’ (DoJ, 2022), at 47.

²¹ Department of Justice, ‘Public Consultation on Increasing the Minimum Age of Criminal Responsibility in NI from 10 Years to 14 Years’ (DoJ, 2022). See also Department of Justice, ‘Strategic Framework for Youth Justice 2022-2027’ (DoJ, 2022), at 47.

²² Department of Justice, ‘Increasing the Minimum Age of Criminal Responsibility in NI from 10 Years to 14 Years: Summary of Consultation Responses’ (DoJ, 2023), at 25.

criminal responsibility is diverse. Most of the States have set relatively higher minimum ages than NI with more than half of the countries setting it at 14.

3.2 A minimum age of 12 is found in States such as Ireland²³, Scotland²⁴, Netherlands²⁵, Turkey²⁶ and Andorra.²⁷ Several States including Italy²⁸, Hungary²⁹, Spain³⁰, Germany³¹, Austria³², Bulgaria³³, Bosnia and Herzegovina³⁴ Croatia³⁵, set the age of 14. The following States set their minimum age of responsibility at 15, Denmark³⁶, Sweden³⁷, Finland³⁸, Iceland³⁹ Czech Republic⁴⁰ and Norway⁴¹. Portugal⁴² sets the age at 16, a position broadly shared by states such as Armenia⁴³, Moldova⁴⁴, Azerbaijan⁴⁵, Armenia⁴⁶, Lithuania⁴⁷, which apply some exceptions. France⁴⁸ and Luxembourg⁴⁹ sets the minimum age at 18 with some exceptions.

23 World Health Organisation, European Region, Minimum age of criminal responsibility - European Health Information Gateway Persons under the age of 12 cannot generally be held liable for any criminal offence, but children aged 10 or 11 can be held criminally liable for murder, manslaughter, rape, rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 or aggravated sexual assault.

24 Age of Criminal Responsibility (Scotland) Act 2019.

25 Code of Criminal Procedure, Section 486.

26 Criminal Code, Article 31(1) and (2).

27 Qualified Law on Juvenile Justice 1999, Article 3.

28 Criminal Code, Articles 97 and 98.

29 From the age of 12 for homicide, voluntary manslaughter, battery, robbery and plundering, provided that the child had the capacity to understand the nature and consequences of his or her act. Criminal Code, Section 16.

30 Organic Law 5/2000 of 12 January, on the criminal responsibility of minors, Articles 1(1) and 3.

31 Criminal Code, Section 19.

32 Jugendgerichtsgesetz (Youth Court Act), Sections 1(1)-(2) and 4(2).

33 Criminal Code, Articles 31(2) and 32(1)-(2).

34 Criminal Code, Article 8.

35 Juvenile Courts Act, Article 44; Criminal Code, Article 10.

36 Criminal Code, Section 15. Please note, the Code has been amended since this translation was produced.

37 Criminal Code, Ch. 1, Section 6. Note, this legislation has been amended since this translation was produced.

38 Penal Code, Ch. 3, Section 4(1); Ch. 6, Section 12.

39 Penal Code, Article 14.

40 Criminal Code, Provision 11.

41 General Civil Penal Code, Section 46.

42 Criminal Code, Article 19; Lei Tutelar Educativa 1999 (Guardianship and Education Law), Articles 1 and 4.

43 Criminal Code, Article 24(1) and (2).

44 Criminal Code, Article 21(1) and (2).

45 Criminal Code, Article 20(1) and (2) and Cipriani, Criminal Liability and the Minimum Age of Criminal Responsibility: A Global Perspective, 2009, p. 98.

46 Criminal Code, Article 24(1) and (2).

47 Criminal Code, Article 13(1) and (2).

48 Criminal Code, Article 122-8; Ministry of Foreign and European Affairs, "Juvenile Justice in France" May 2008.

49 Loi du 10 août 1992 relative à la protection de la jeunesse, Articles 1 and 2.

- 3.3 It is important to note that Denmark lowered the age of criminal responsibility from 15 to 14 in July 2010 in an effort to deter children from committing crimes. However, in March 2012, the age was raised to 15 and subsequent research found no evidence of either general or individual deterrent effects among 14 year olds, while also indicating poorer educational outcomes for those whose cases were processed through the criminal justice system.⁵⁰
- 3.4 The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice state that the minimum age of criminal responsibility should not be too low and should be determined by law.⁵¹
- 3.5 The CoE's European Committee of Social Rights, which monitors State compliance with the European Social Charter has addressed the issue of the minimum age of criminal responsibility through its interpretation of Article 17.⁵² It has repeatedly found that the age of 10 is low and not in conformity with Article 17. In its 2015 conclusions on the United Kingdom, the Committee reiterated its previous finding of non-conformity where it stated that the age of criminal responsibility is 'manifestly low'.⁵³
- 3.6 In 2018, the United Kingdom submitted its 38th report under the European Social Charter, which was assessed by the CoE's European Committee of Social Rights in its 2019 Conclusions.⁵⁴ The Committee found the UK not to be in conformity due to its low age of criminal responsibility, which it had previously noted in 2015. It stated that, "the Committee recalls that the age of criminal responsibility should not be too low and in any event, it should not be lower than 14 years."⁵⁵
- 3.7 In its conclusions on France in 2019, the CoE's European Committee of Social Rights stated that:

50 Anna Piil Damm and Østergaard Larsen, 'Lowering the minimum age of criminal responsibility has no deterrent effects,' Aarhus BSS, Aarhus University, 19 October 2017.

51 Guideline 23.

52 Ratified by the United Kingdom on 11 July 1962.

53 Article 17 Right of mothers and children to social and economic protection (previously and now Article 17 - Right of children and young persons to social, legal and economic protection). Conclusions XX-4 (2015), Council of Europe, 'European Committee of Social Rights, Conclusions on Czech Republic, Denmark, Germany, Greece, Poland, Spain, United Kingdom,' January 2016 at page 28.

54 The United Kingdom submitted it on 19 December 2018 covering 2014–2017. Council Of Europe, 'European Committee of Social Rights, Conclusions on United Kingdom 2019,' March 2019 at pages 26 to 27

55 Council Of Europe, 'European Committee of Social Rights, Conclusions on United Kingdom 2019,' March 2020 at page 27.

There is no minimum age legally set below which children cannot be held criminally responsible. Young persons under the age of 18 “able to understand what they are doing” are criminally responsible for the felonies, misdemeanours or petty offences which they have been found guilty of. The Committee recalls that the age of criminal responsibility should not be too low and in any rate, it should not be lower than 14 years of age. States should seek to progressively raise the minimum age of criminal responsibility.⁵⁶

European Convention on Human Rights and the European Court of Human Rights Jurisprudence

- 3.8 The European Convention on Human Rights (ECHR) does not prescribe a minimum age of criminal responsibility.
- 3.9 In 1999, the issue was considered by the European Court of Human Rights (ECtHR) in *T v United Kingdom*⁵⁷, confirming that there was no common European standard on the age of criminal responsibility at the time of judgment.⁵⁸ It stated that:

the Court observes that, at the present time there is not yet a commonly accepted minimum age for the imposition of criminal responsibility in Europe. While most of the Contracting States have adopted an age-limit which is higher than that in force in England and Wales, other States, such as Cyprus, Ireland, Liechtenstein and Switzerland, attribute criminal responsibility from a younger age. Moreover, no clear tendency can be ascertained from examination of the relevant international texts and instruments (see paragraphs 43-44 above). Rule 4 of the Beijing Rules which, although not legally binding, might provide some indication of the existence of an international consensus, does not specify the age at which criminal responsibility should be fixed but merely invites States not to fix it too low, and Article 40(3)(a) of the UN Convention requires States Parties to establish a minimum age below which children shall

⁵⁶ Conclusions 2019 sur l'application de la Charte sociale européenne révisée par la France , March 2020. 2019/def/FRA/17/1/EN Conclusions 2019 - France - Article 17-1 [Conclusions 2019 - France - Article 17-1](#)

⁵⁷ *T v United Kingdom*, application No 24724/94, judgement of 16 December 1999.

⁵⁸ *T v United Kingdom*, at para 71.

be presumed not to have the capacity to infringe the criminal law, but contains no provision as to what that age should be.⁵⁹

3.10 In addition, the ECtHR went on to state the following:

The Court does not consider that there is at this stage any clear common standard amongst the member States of the Council of Europe as to the minimum age of criminal responsibility. Even if England and Wales is among the few European jurisdictions to retain a low age of criminal responsibility, the age of ten cannot be said to be so young as to differ disproportionately from the age-limit followed by other European States. The Court concludes that the attribution of criminal responsibility to the applicant does not in itself give rise to a breach of Article 3 of the Convention.

3.11 In essence the ECtHR recognised that States have a margin of appreciation when determining the age of criminal responsibility. While this case is an important reference point, it should be noted that, since 1999, European States have generally set ages of criminal responsibility above 10 years.

3.12 This concept of 'margin of appreciation' of the States refers to the operating space which the national authorities enjoy in fulfilling their obligations under the ECHR.⁶⁰

3.13 Closely related to this concept is the concept of 'European consensus', which refers to the level of uniformity present in the legal frameworks of the member States of the CoE on a particular topic.⁶¹ This concept is used by the ECtHR stemming from the evolving nature of the interpretation of the ECHR.⁶² As repeatedly stated by the ECtHR, the ECHR is a living instrument which must be interpreted in the light of present-day conditions.⁶³

3.14 The ECtHR, "uses this principle both to justify a wide margin of

⁵⁹ *T v United Kingdom* at para 72.

⁶⁰ Council of Europe, Human Rights Education for Legal Professionals, 'Interpretative mechanisms in the ECHR case-law: the concept of European consensus', 2015.

⁶¹ Council of Europe, Human Rights Education for Legal Professionals, 'Interpretative mechanisms in the ECHR case-law: the concept of European consensus', 2015.

⁶² Council of Europe, Human Rights Education for Legal Professionals, 'Interpretative mechanisms in the ECHR case-law: the concept of European consensus', 2015.

⁶³ *Tyler v The United Kingdom*, application No 5856/72, judgement on 25 April 1978 at para 31.

appreciation given to the Member States in the absence of consensus, thus stagnating the development of case law, and to impose new standards, where there is a clear trend in most Member States, thus advancing the interpretation of the Convention.”⁶⁴

- 3.15 The ECtHR determines whether there is a “European consensus” by examining developments and trends across States on the issue in question.⁶⁵ Where there is no uniform approach at the European level, States are granted a wide margin of appreciation, allowing them greater discretion in regulating the matter.⁶⁶ However, if some degree of consensus is identified, this may justify narrowing that margin.⁶⁷ Where a clear and strong consensus exists, any State that departs from the prevailing approach must provide particularly strong and well-reasoned justification for doing so.⁶⁸
- 3.16 Therefore, in determining the minimum age of criminal responsibility, it is important for the NI Assembly to consider whether a consensus exists amongst European States. The ages outlined above suggest that there is a general European consensus of a minimum age of at least 12, with only parts of the UK and Switzerland setting it as low as 10. In addition, the majority of European States have established a higher age of 14 years.

United Nations Standards and Treaty Body Guidance

- 3.17 Article 40(3)(a) of the United Nations Convention on the Rights of the Child (UNCRC) imposes an obligation on States to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.⁶⁹ This provision does not mention a specific minimum age in this regard.
- 3.18 According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), “in those legal

⁶⁴ Council of Europe, Human Rights Education for Legal Professionals, ‘Interpretative mechanisms in the ECHR case-law: the concept of European consensus’, 2015.

⁶⁵ *Fabris v. France*, application number No 16574/08, judgement delivered 7 February 2013.

⁶⁶ *Lautsi v. Italy*, application number No 30814/06, judgement delivered 18 March 2011 at para 70.

⁶⁷ *Lautsi v. Italy*, application number No 30814/06, judgement delivered 18 March 2011.

⁶⁸ Council of Europe, Human Rights Education for Legal Professionals, ‘Interpretative mechanisms in the ECHR case-law: the concept of European consensus’, 2015.

⁶⁹ UNCRC, Article 40 (3) a.

systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity".⁷⁰

3.19 The Beijing Rules have gone further to elaborate that:

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless.⁷¹

3.20 A minimum age of criminal responsibility below the age of 12 years is considered by the UN CRC Committee not to be internationally acceptable.⁷² The UNCRC Committee has made it clear that 12 years should be treated as the absolute minimum age, encouraging States not only to meet this threshold but to continue raising it to a higher level.⁷³ It has stated that:

A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40(3)(b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected.⁷⁴

3.21 The UN CRC Committee has on several occasions stated that the UK raise the age of criminal responsibility. In 2016 it recommended that the State raise the minimum age of criminal responsibility in accordance with

⁷⁰ A Res 40/33 of 29 November 1985, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")', 29 November 1985, Rule 4.1.

⁷¹ A Res 40/33 of 29 November 1985, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")', 29 November 1985, Rule 4.1

⁷² CRC/C/GC/10, 'UN CRC Committee General Comment No. 10: Children's rights in juvenile justice', 25 April 2007 at para 32.

⁷³ CRC/C/GC/10, 'UN CRC Committee General Comment No. 10: Children's rights in juvenile justice', 25 April 2007 at para 32.

⁷⁴ CRC/C/GC/10, 'UN CRC Committee Comment No 10: Children's rights in juvenile justice ', 25 April 2007 at para 33.

acceptable international standards.⁷⁵ In 2019, the UN Committee against Torture (UN CAT) echoed this recommendation.⁷⁶

3.22 Additionally, the UN CRC Committee recommended all States set the minimum age of criminal responsibility to at least 14 years old, in accordance with:

documented evidence in the fields of child development and neuroscience [which] indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings.⁷⁷

3.23 In 2023, the UN CRC Committee, in its Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland, urged the State to bring its child justice system fully into line with the Convention and other relevant standards and to raise the minimum age of criminal responsibility to at least 14 years of age.⁷⁸

3.24 In 2024, the UN Human Rights Committee recommended that the UK Government and NI Executive “raise the minimum age of criminal responsibility, in accordance with internationally accepted standards, throughout the UK”.⁷⁹

3.25 The UN CRC Committee has expressed its concern, “about the practice of allowing exceptions to a MACR which permit the use of a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly

⁷⁵ CRC/C/GBR/CO/5, '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', 3 June 2016 at para 79(a).

⁷⁶ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 23.

⁷⁷ CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System' 18 September 2019, at para 22.

⁷⁸ CRC/C/GBR/CO/6-7, UN Committee on the Rights of the Child, 'Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland*', 2 June 2023, at para 54 (a).

⁷⁹ CCPR/C/GBR/CO/8, 'UN Human Rights Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 3 May 2024, at para 55(b).

recommends that States parties set a MACR that does not allow, by way of exception, the use of a lower age.”⁸⁰

- 3.26 The UN CRC Committee has stated that, “the system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices.”⁸¹ In addition it has stated that, “such practices are usually created to respond to public pressure and are not based on a rational understanding of children’s development.”⁸²
- 3.27 Article 40 (3) b of the UNCRC states that, children in conflict with the law should, wherever possible, be dealt with outside the formal court system, using diversion and supportive measures such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, rather than punishment.⁸³
- 3.28 The evidence demonstrates that the most effective means of protecting others is not by criminalisation and punishment. Quite the contrary; the impact of criminalisation from a young age is more likely to result in a child developing a “criminal identity”, leading to stigma, discrimination, and differential treatment from peers, schools, the police, and the judiciary. As a result, children can experience disruption to education, loss of positive relationships, thereby increasing their exposure to offending communities and drug use. All in all, the evidence is that it leads to an increased likelihood of reoffending, putting others and themselves at greater risk.⁸⁴
- 3.29 The difficulty in identifying an age at which children achieve these capacities is well recognised but 10 years has been considered too low. In general research indicates that, conventional morality, including “law and order” morality is generally not achieved until mid-teens whilst logical thinking and problem-solving abilities develop considerably between 11–15 years, whilst adolescent intellectual abilities are thought to reach adult

⁸⁰ CRC/C/GC/10, 'UN CRC General Comment No 10: Children’s rights in juvenile justice, 25 April 2007 at para 34.

⁸¹ CRC/C/GC/10, UN CRC General Comment No.10: Children’s rights in juvenile justice, 25 April, at para 30.

⁸² CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System' 18 September 2019, at para 25.

⁸³ Article 40(3) b.

⁸⁴ Local Government Association, 'Supporting the youngest children in the youth justice system: what works to reduce offending and improve outcomes?' (LGA, 2022).

levels only by the age of 17 years.⁸⁵

3.30 The UN CRC Committee has emphasised that:

adolescence is a unique defining stage of human development characterized by rapid brain development, and this affects risk-taking, certain kinds of decision-making and the ability to control impulses. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.⁸⁶

4.0 Conclusion

- 4.1 The Commission advises that proposed amendments to the Justice Bill will bring the law in Northern Ireland on the minimum age of criminal responsibility into closer alignment with international human rights standards. There appears to be a general consensus among Council of Europe member States; on balance favouring a minimum age of 12 years. A significant number have however introduced minimum ages higher than 12 years.
- 4.2 The Commission further advises that while the proposed amendments will raise the age to at least 12 years, there are also a number of exceptions being considered that may result in children as young as 10 years still being criminalised. These exceptions do not sit easily alongside human rights standards which attach to the age of the child, rather than the nature of the offending. At the United Nations, the UN CRC Committee has advised that 12 years should be the absolute minimum age, without

⁸⁵ UK Parliament, Parliamentary Office of Science and Technology (POST), 'Age of Criminal Responsibility,' POSTnote No. 577, 2 June 2018.

⁸⁶ CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System', 18 September 2019.

exceptions even for the most serious offences. Member States have a wide margin of appreciation when determining criminal justice legislation in this area, so long as the law and any subsequent policies do not offend against standards prescribed by the ECHR, interpreted where relevant using other international Treaties. One such other treaty is the UN CRC.

- 4.3 The Commission notes that raising the minimum age of criminal responsibility will have operational consequences. Further advice should be taken therefore from relevant partners such as the PSNI and the PPS prior to any changes coming into force. Moreover, the impact of those changes should also be assessed from a victims' perspective and using safeguarding principles. It is clear that there are interests to be balanced; those of the child and those of victims and potential victims.
- 4.4 Evidence and the general consensus across the Council of Europe is that a minimum age of criminal responsibility of 10 years is too low because it is ineffective; is counterproductive to the interests of victims and potential victims; and is never in the best interests of the child. The proposed amendments to the Justice Bill would not remove powers to deal with children who present a risk to others, but rather, would adopt an approach which is human rights compliant for both the children involved and society.

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