



# The age of criminal responsibility

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## RESEARCH PAPER

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## 1. Introduction

The age of criminal responsibility (ACR) is the age at which young people can be legally arrested and charged with a crime in a court of law.<sup>1</sup>

This paper outlines the age of criminal responsibility legislation in place within various British jurisdictions, as well as a brief history of changes to the ACR which have occurred in the past five years.

## 2. Isle of Man

### 2.1. Background

In the Isle of Man, the current age of criminal responsibility is ten years.<sup>2</sup> This falls under the [Children and Young Persons Act 2001](#), which outlines that no child can be found guilty of an offence before the age of ten. Those over ten also “cannot be presumed as incapable of committing an offence” according to the Act.

The development of the Manx law in the past 90 years has for the most part followed England and Wales. However, there was a period from 1963 to 2001 in which the age of criminal responsibility was lower in the Island than in England, as shown in the following table.

England	ACR		Isle of Man
<b>Children and Young Persons Act 1933</b>	8	8	<b>Children Amendment Act 1936</b>
<b>Children and Young Persons Act 1963</b>	10	8	<b>Children and Young Persons Act 1963</b>
<b>Crime and Disorder Act 1998</b> (also abolished <i>doli incapax</i> )	10	10	<b>Children and Young Persons Act 2001</b> (also abolished <i>doli incapax</i> )

Young offenders must be separated from adults in both police stations and courts, and their cases are not to be reported on by the media. They may face remand to care homes, or secure accommodation in the form of Cronk Sollysh.

Overall, the Isle of Man follows the ACR across most of the British Isles, being set at ten. However, there are some exceptions (see sections 4 & 6).

### 2.2. Parliamentary Activity

#### [1996 - Law and Order – Select Committee Report](#)

Mr Waft explains that one purpose of The Children and Young Persons Act 1969 was to raise the age of criminal responsibility from 10 to 17 years of age, transferring youth justice from central to local government.

<sup>1</sup> See e.g. POSTNOTE Number 577, June 2018, <https://researchbriefings.files.parliament.uk/documents/POST-PN-0577/POST-PN-0577.pdf>

<sup>2</sup> See Isle of Man Children’s Services Procedures Manual, 16.10 Youth Justice Legal Framework, February 2022, [http://isleofmanchildcare.proceduresonline.com/chapters/p\\_vj\\_legal\\_fw.html#:~:text=or%20young%20person.-,70.,incapable%20of%20committing%20an%20offence.](http://isleofmanchildcare.proceduresonline.com/chapters/p_vj_legal_fw.html#:~:text=or%20young%20person.-,70.,incapable%20of%20committing%20an%20offence.)

### **2001 - Children and Young Persons Bill – Consideration of Clauses**

Mr Cannell informs the Court that within clause 70 of the Bill, a restating of the ACR at 10 is made in line with the UK. Prior to this, there was a presumption that children under twelve were not capable of forming the guilt intent necessary for conviction within certain offences.

Mrs Hannan raises her concern for the pressures placed on children in modern day society when they are not being provided for by society:

*"It seems to be saying to children 'We are doing less for you, we are putting so many more pressures on you, but here you are, you are responsible for anything after the age of 10'."*

She argued against the ACR being set at ten, with children not being sophisticated, nor understanding the ways of the world enough, to be responsible for their actions.

Mr Cannell argued against this, claiming that at ten children are "mentally capable of absorbing the responsibility" and that they have developed a conscience by this age. He stated the Bulger Case as an example of why presumptions of innocence at the age of 10 or over could no longer stand.

### **2001- Children and Young Persons Bill – Second Reading**

Mrs Christian: "Part 8 is principally re-enactment of part 3 of the Children and Young Persons Act 1966 dealing with protection of children and young people in court proceedings and in the hands of the police".

### **2020 - Domestic Abuse Bill 2019 – First Reading**

Mrs Lord-Brennan states that she wishes to look into the ACR further on the Island.

### **2020 - Domestic Abuse Bill 2019 – Consideration of clauses**

Mrs Lord-Brennan: "In terms of child-to-parent abuse, it was established that in any case this existing offence of assault would be relevant and can apply to those aged 10 upwards, as our age of criminal responsibility, like the UK, is 10. In terms of teenage intimate relationship abuse, some aspects of this will be dealt with in the upcoming [Sexual Offences Bill](#)."

### **2020 - Domestic Abuse Bill - Evidence Taken by Legislative Council**

Mrs Horman: "The age of criminal responsibility is 10; I do not see why it should be any different in a domestic abuse situation. I think it is the stalking protection orders that do not cover under 18s and I think they should, because I do not see a distinction between any other crime."

Mrs Horman also agreed that the notices and orders within the new Domestic Abuse Act should apply to under 16s.

### **2020 - Domestic Abuse Bill 2019 – Conference Report received and amendments agreed to**

Miss August-Hanson: "First we found that establishing minimum ages to fit crimes with an age of criminal responsibility set at 10 is a subjective matter between Departments to begin with. May be issued as an intervention for persons as young as 14 years old, and that age was tied to the CYP Act 2001. In practice, I have some assurance from the Department that it would not reduce it below 14 years of age. Coercive and controlling behaviour offence, clause 36: the age is adjusted back to 16 with no power to change the age by order – so a slight difference there."

### **2020 - Justice Reform Bill 2020 – Clauses considered**

Mrs Barber: "Clause 54 makes provisions for cautions to be administered with conditions attached that must be complied with by the offender. Such a caution may be given to a child or a young person over the age of criminal responsibility, or to an adult if all the five requirements as set out in clause 55 are

satisfied. If the person being cautioned is a child or young person, then an appropriate adult must be present”.

### **2021 - Justice Reform Bill 2020 – First Reading**

Mrs Sharpe: “I still believe the age of criminal responsibility is set far too low and I believe that with time this will change”

### **2021 - Justice Reform Bill 2020 – Consideration of clauses**

Mrs Lord-Brennan: “The age of criminal responsibility is a matter that myself and some other Members have picked up with the Department of Home Affairs and I had intended to raise it at this point because we are dealing with children and young people. The age of criminal responsibility on the Isle of Man is 10, and it is recognised that this sits quite low compared to lots of other jurisdictions. So it is not something that is going to be pursued in this Bill, but I understand that the Department are going to look at addressing this and consulting on this at a later date.”

## **3. England and Wales**

### **3.1. Background**

In England and Wales, the current age of criminal responsibility stands at ten years old.<sup>3</sup> Those under ten years old are not exempt from the law, but would be handed different forms of punishment and not charged with committing a criminal offence.<sup>4</sup> Written by Coram Children’s Legal Centre, a summary of legislative changes in England and Wales is as follows:

*“The age of criminal responsibility in England and Wales is 10, under section 50 of the [Children and Young Persons Act 1933](#) as amended by section 16 of the [Children and Young Persons Act 1963](#). Until 1998, there was also a legal presumption (known as “doli incapax”) that children aged under 14 did not know the difference between right and wrong and were therefore incapable of committing an offence. This presumption was rebuttable if the prosecution could satisfy the court that the child knew that what they were doing was seriously wrong, not merely naughty or mischievous. However, the doli incapax presumption was abolished by section 34 of the [Crime and Disorder Act 1998](#) and so is no longer in operation. Criminal law therefore now treats children aged 10 to 13 in the same way as those aged 14 or over.”<sup>5</sup>*

This ACR remains one of the lowest in Europe, with ACRs in countries such as Germany and Spain being fourteen years old.<sup>6</sup>

Those between 10-17 years of age who are caught committing a crime, or being involved with criminal behaviour, can be taken to youth courts. They differ from adult courts by not using defendant’s name in the courtroom, lawyers not having to wear wigs and gowns, and children being allowed to sit close to their lawyer or an appropriate adult. After conviction, different forms of sentencing are given, with secure detention centres replacing the function of adult prisons. According to the BBC:

*Since 1995, it is estimated that over 7,000 children aged 10-14 have been tried at Crown Courts in England and Wales<sup>7</sup>*

<sup>3</sup> ‘Age of criminal responsibility’, GOV.UK, <https://www.gov.uk/age-of-criminal-responsibility>

<sup>4</sup> ‘What happens if a child under 10 breaks the law?’, GOV.UK, <https://www.gov.uk/child-under-10-breaks-law>

<sup>5</sup> ‘Age of Criminal Responsibility’, Children & Young People Now, 2 Jan 2020, <https://www.cypnow.co.uk/other/article/age-of-criminal-responsibility>

<sup>6</sup> Corker Binning, ‘Old enough to know better? The minimum age of criminal responsibility’, 18 Feb 2018, Lexology, <https://www.lexology.com/library/detail.aspx?q=10d0295c-0ff5-49ec-bbac-8cfaa212f9bf>

<sup>7</sup> ‘Responsible Child: Can a 10-year-old be a cold-blooded murderer?’, BBC News, 16 Dec 2019, <https://www.bbc.co.uk/news/newsbeat-50763713>

## 3.2. James Bulger Case

On Friday 12<sup>th</sup> February 1993, two-year-old James Bulger was abducted from a shopping centre in Bootle, Merseyside, by two 10-year-old boys.<sup>8</sup> Two days later, the deceased body of the infant was found on railway tracks behind Walton Lane police station. His body was extensively injured, having been tortured and then brutally murdered by the older children. The two boys, Robert Thompson and Jon Venables, underwent public trials in the Magistrates court as adults, and were sentenced to fifteen years in custody for their actions.

This case raised many questions about the ACR. The abolition of *doli incapax* in 1998 came as a result of the Bulger murder. Support for the currently legislated ACR is often tied to the Bulger case, as the boys were only just covered under the current law to be held criminally responsible for the murder. They were tried as adults, seen as having competency in the acts they committed. However, from alternative perspectives, children do not receive the same rights and freedoms at the age of ten as adults because they are not seen as mature enough to understand what they are doing (e.g. marriage, employment, driving).<sup>9</sup> Therefore, it is argued to be illogical and hypocritical to seek criminalisation of these same children, and to argue they are competent in their criminal actions.<sup>10</sup>

## 4. Scotland

### 4.1. Background

In Scotland, the current age of criminal responsibility is twelve.<sup>11</sup>

Children between the ages of 12-17 can be arrested, charged and prosecuted for a crime. However, they will only go to court for serious crimes. Most receive early interventions such as warnings, help from supporting organisations, or Children's Hearings. Those over twelve years old can be stopped and searched by the police, and arrested, but are given extra rights (e.g. immediate contacting of their parents).<sup>12</sup> Places of custody are reserved for serious offences, and must be a 'place of safety' such as children's care homes or secure units.

Children under the age of 12 who commit harmful behaviours may instead be sent to a Children's hearing, but face no criminal conviction.<sup>13</sup>

### 4.2. Legislative changes in 2019

Prior to [The Age of Criminal Responsibility \(Scotland\) Act 2019](#), which was legislated by the Scottish Executive, the ACR in Scotland was set at eight years. This was the lowest in Europe.<sup>14</sup> The 2019 Act was passed by Scottish Parliament on 7<sup>th</sup> May 2019, and fully commenced in December 2021, rising the

<sup>8</sup> 'The James Bulger Case', Crime and Investigation, <https://www.crimeandinvestigation.co.uk/crime-files/james-bulger>

<sup>9</sup> Sean Creaney et al, 'The James Bulger case should not set the age of criminal responsibility', 8 Feb 2018, The Conversation, <https://theconversation.com/the-james-bulger-case-should-not-set-the-age-of-criminal-responsibility-91342>

<sup>10</sup> Harriet Pierpoint, 'Why ten-year-old children should not be held criminally responsible', 18 Nov 2021, University of South Wales, <https://www.southwales.ac.uk/news/news-2021/why-ten-year-old-children-should-not-be-held-criminally-responsible/>

<sup>11</sup> 'If a young person gets in trouble with the police', last updated 25 Apr 2022, mygov.scot, <https://www.mygov.scot/young-people-police>

<sup>12</sup> 'Young people and vulnerable adults', last updated 15 May 2021, mygov.scot, <https://www.mygov.scot/arrested-your-rights/young-people-and-vulnerable-adults>

<sup>13</sup> 'Children's Hearings', last updated 2 Dec 2019, mygov.scot, <https://www.mygov.scot/childrens-hearings>

<sup>14</sup> House of Commons Library, 'The age of criminal responsibility', Briefing Paper Number 7687, 15 Aug 2016, p. 9, <https://researchbriefings.files.parliament.uk/documents/CBP-7687/CBP-7687.pdf>

age of criminal responsibility from eight years to twelve. Scottish Ministers were given statutory duties with the implementation of the Act:<sup>15</sup>

- Provide guidance on the [use of a place of safety](#) (section 28).
- Provide [a list of places of safety](#).
- Provide statutory guidance on [investigative interview](#) (section 57).
- Establish a register of child interview rights practitioners to support children in relation to their involvement in a crime.

The rise in ACR in Scotland has been welcomed by many of its residents and institutions, including organisation [Clan Childlaw Advocates](#) who said that it “aligned with emergent children’s right thinking”. However, criticisms were made as to whether changes would actually impact the [Children’s Hearing system](#) at all, as it was only used for those over twelve prior to the new Act to begin with.<sup>16</sup>

## 5. Jersey

The age of criminal responsibility in Jersey is ten years old.

Most young people under eighteen who are accused of criminal offences attend a [Parish Hall Enquiry](#) to decide whether a court appearance will be necessary. If decided, a Youth Court is used for those aged 10 to 17. When sentenced for a serious offence, those aged 15 to 20 may enter a Young Offenders Centre on the island, but their sentence cannot exceed six months.<sup>17</sup>

The ACR in Jersey is legislated under the [Children \(Jersey\) Law 2002](#). Under the [Criminal Justice \[Young Offenders\] \[Jersey\] Law 1994](#), the Court may require parents to guarantee the good behaviour of their children and they can face conviction for non-compliance.

## 6. Guernsey

In Guernsey, the age of criminal responsibility lies at twelve years, as is the case in Scotland.<sup>18</sup>

Young offenders are referred in most cases to [The Child, Youth and Community Tribunal](#), so that they are not based in the criminal justice arena but instead within their community.<sup>19</sup> However, serious and persistent offenders are dealt with by the Juvenile Courts. This also includes traffic offences carried out by young people, which may result in disqualification from driving.

The ACR, which increased from ten to twelve, is legislated under [The Criminal Justice \(Children and Juvenile Court Reform\)\(Bailiwick of Guernsey\) Law 2008](#), which came into effect in January 2010.

<sup>15</sup> ‘Age of criminal responsibility’, Scottish Government, <https://www.gov.scot/policies/youth-justice/raising-age-criminal-responsibility/>

<sup>16</sup> ‘Raising the age of criminal responsibility – a step in the right direction’, Clan Childlaw, <https://www.clanchildlaw.org/blog/advocacy-raising-the-age-of-criminal-responsibility-a-step-in-the-right-direction>

<sup>17</sup> ‘Young People and the Law – The Jersey Youth Criminal Justice System Flowchart’, last updated 5 Nov 2021, Citizens’ Advice Jersey, <https://www.citizensadvice.je/young-people-and-the-law-the-jersey-youth-criminal-justice-system-flowchart/#:~:text=15%20%E2%80%93%20of%20yrs-,Age%20of%20Criminal%20Responsibility,good%20behaviour%20of%20their%20children>

<sup>18</sup> ‘Children Law’, ISCP, <http://iscp.gg/article/153174/Children-Law#:~:text=The%20age%20at%20which%20a,need%20of%20guidance%20or%20control>

<sup>19</sup> Kathleen Marshall, ‘Guernsey: Children Law Review’, November 2015, <https://www.gov.gg/CHttpHandler.ashx?id=103201&p=0>

## 7. Northern Ireland

In Northern Ireland, the age of criminal responsibility is currently ten years old.<sup>20</sup>

Calls for reform are occurring in respect to the Republic of Ireland having a higher ACR of 12 years old. A review into youth justice was carried out in 2011, recommending that after three years of raising the ACR, a further increase to 14 should be made.<sup>21</sup> (See section 8.5 for further details into this review).

## 8. Calls for Change

### 8.1. UN Committee on the Rights of the Child

The United Nations Committee on the Rights of the Child ([UNCRC](#)) [General Comment](#) published in 2007 suggests a revised minimum recommendation of 14 years old for the age of criminal responsibility, stating scientific findings may even raise this to fifteen or sixteen years old in coming years.<sup>22</sup> In their [general comment number 24](#), the UNCRC stresses a need for the minimum acceptable age at which children can be held criminally responsible, to be raised to fourteen worldwide. This system should comply with [Article 40 of the UNCRC](#), which states that where appropriate, judicial proceedings should be a last resort when addressing a child in conflict with the law. Their human rights must be respected during the process if deemed as necessary, and the child must be safeguarded.

### 8.2. Private Members Bill 2017 (England and Wales)

In the House of Lords, a [Private Members Bill](#) was introduced by Lord Dholakia OBE PC DL, who had previously tabled similar proposals,<sup>23</sup> in regards to increasing the age of criminal responsibility from ten up to twelve years old in England and Wales. A first reading occurred in the House of Lords in June 2017, followed by debate in September 2017.<sup>24</sup> After being passed by the House of Lords and sent to the House of Commons in June 2019 for a first reading, no further progress was made with the Bill before the December 2019 General Election.<sup>25</sup>

A new version of the Bill was introduced to the House of Lords in February 2020, and underwent a first reading, but no further progress was made.<sup>26</sup>

### 8.3. Children's Commissioners and CYPB

In 2020, the Children's Commissioner for England released a report titled '[Injustice or In Justice](#)' surrounding the current youth justice system. Within this, there was a call for 'Scandinavian-style' reforms, including raising the ACR to 14 in line with UNCRC recommendations.<sup>27</sup>

<sup>20</sup> 'New report calls for minimum age of criminal responsibility to be raised in Northern Ireland', 23 Nov 2021, BelfastLive, <https://www.belfastlive.co.uk/news/northern-ireland/new-report-calls-minimum-age-22247240>

<sup>21</sup> 'Report calls for minimum age of criminal responsibility to be raised in North', 23 Nov 2021, The Irish Times, <https://www.irishtimes.com/news/ireland/irish-news/report-calls-for-minimum-age-of-criminal-responsibility-to-be-raised-in-north-1.4735764>

<sup>22</sup> 'Minimum Age of Criminal Responsibility', Children and Young People's Commissioner Scotland, <https://www.cypcs.org.uk/positions/age-of-criminal-responsibility/>

<sup>23</sup> Sandra Paul, 'Youth Justice: time to change the age of criminal responsibility?', 6 Sep 2017, Kingsley Napley, <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/youth-justice-time-to-change-the-age-of-criminal-responsibility>

<sup>24</sup> House of Lords Library, 'Age of Criminal Responsibility Bill [HL]: Briefing for Lords Stages', 18 Aug 2017, <https://lordslibrary.parliament.uk/research-briefings/lln-2017-0054/>

<sup>25</sup> 'Age of Criminal Responsibility Bill [HL]', UK Parliament, <https://bills.parliament.uk/bills/1992>

<sup>26</sup> 'Age of Criminal Responsibility Bill [HL]', UK Parliament, <https://bills.parliament.uk/bills/2613>

<sup>27</sup> 'Injustice or In Justice', 22 Dec 2020, Children's Commissioner, <https://www.childrenscommissioner.gov.uk/report/injustice-or-in-justice/>

The Children and Young People Board (CYPB) published a [report in 2021](#) regarding raising the ACR.<sup>28</sup> This report explains the current statistics of youth offending in England and Wales, reasons why children are not competent to stand trial in a criminal justice environment at the age of ten, and alternative arrangements that could be used to deal with young offenders.

#### 8.4. UK Justice Committee

In November 2020, the Justice Committee of the UK House of Commons wrote a report into [Children and Young People in Custody](#).<sup>29</sup> Recommendations included:

- That the Ministry of Justice should review raising the ACR from ten, in line with UN recommendations.
- Changes in law to prevent those turning 18 before their trial, but after their arrest, from being tried as adults.
- Exploring why a disproportionate number of black and minority ethnic (BAME) children are in custody.

#### 8.5. Youth Justice Review NI

In 2011, the Youth Justice Review (YJR) in Northern Ireland recommended the ACR should be raised to twelve years, followed by a raise to fourteen after a three-year review of progress.<sup>30</sup> During this transition stage, the YJR recommended the development of local services and programmes to support children who would otherwise enter the criminal justice system.

In 2021, a further examination of progress made into the YJR recommendations was made by academics in the [‘Tracing the Review’](#) report.<sup>31</sup> Recommendations to raise the ACR have not been implemented, contravening UNCRC guidelines, and meaning that further support services had also not been developed. However, the issue remains on the agenda, with questions asked of the Justice Minister in 2020 surrounding the department’s commitment to YJR recommendation implementation. It was clarified that this issue could be looked into again post-pandemic and more traction built into its implementation in the future.

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<sup>28</sup> Local Government Association – Children and Young People Board, ‘Raising the Age of Criminal Responsibility’, 12 Jan 2021, [https://lga.moderngov.co.uk/documents/s30712/Age%20of%20Criminal%20Responsibility\\_Revisited\\_FINAL.pdf](https://lga.moderngov.co.uk/documents/s30712/Age%20of%20Criminal%20Responsibility_Revisited_FINAL.pdf)

<sup>29</sup> ‘Children and Young People in Custody’, 12 Nov 2020, <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/306/30602.htm>

<sup>30</sup> ‘Report calls for minimum age of criminal responsibility to be raised in North’, 23 Nov 2021, The Irish Times, <https://www.irishtimes.com/news/ireland/irish-news/report-calls-for-minimum-age-of-criminal-responsibility-to-be-raised-in-north-1.4735764>

<sup>31</sup> Nicola Carr and Siobhan McAlister, ‘Tracing the Review: Developments in Youth Justice in Northern Ireland 2011-2021, May 2021, <https://nottingham-repository.worktribe.com/output/6790021>

## 9. Further Reading

- Briefing paper written by the House of Commons Library surrounding 'The age of criminal responsibility'. Published in 2016, so is no longer accurate, but the further reading remains of interest: <https://researchbriefings.files.parliament.uk/documents/CBP-7687/CBP-7687.pdf>
- Children and Young People's Commissioner Scotland website on minimum age of criminal responsibility. Provides concise summary of UNCRC action and recommendations on ACR, with specific relation to Scotland: <https://www.cypcs.org.uk/positions/age-of-criminal-responsibility/>
- Isle of Man Youth Justice Legal Framework, explaining the Children and Young Persons Act 2001: [http://isleofmanchildcare.proceduresonline.com/chapters/p\\_yj\\_legal\\_fw.html#:~:text=or%20young%20person.-,70.,incapable%20of%20committing%20an%20offence](http://isleofmanchildcare.proceduresonline.com/chapters/p_yj_legal_fw.html#:~:text=or%20young%20person.-,70.,incapable%20of%20committing%20an%20offence)
- Hansard from 1935 detailing Manx legislation changes which would increase age of criminal responsibility to eight. This provision became law in Section 8 of the Children Amendment Act 1936: <https://www.tynwald.org.im//business/hansard/19201940/LC-19351105-v0053.pdf#page=3>
- Criminologist Phil Scraton explains why the ACR remains too low, in relation to the James Bulger case: <https://www.thedetail.tv/articles/the-case-which-changed-the-face-of-youth-justice>
- Data compiled by the Guardian from the UK Government and Parliament into youth justice offenses, and how the age of criminal responsibility varies across countries, with the UK system criticised for being too harsh: <https://www.theguardian.com/society/2019/nov/04/age-of-criminal-responsibility-must-be-raised-say-experts>
- Centre for Crime and Justice Studies publication on resistance and support for raising ACR in England and Wales, from academic perspective: <https://www.crimeandjustice.org.uk/publications/cjm/article/keeping-tough-appearances-age-criminal-responsibility>
- MP's calls for ACR to be raised in England and Wales, with information collected by the Guardian from Psychiatrists around young person's inability to comprehend their actions: <https://www.theguardian.com/society/2020/nov/12/review-age-criminal-responsibility-england-and-wales>