



# Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS TUESDAY 31 JULY

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AGE OF CRIMINAL RESPONSIBILITY

The Scottish Law Commission publishes today Discussion Paper (No 115) on the Age of Criminal Responsibility.

## **Background**

In October 2000 the Commission was asked by the Scottish Ministers to consider the rules on the age of criminal responsibility. We received this reference at a time when there has been considerable concern about the way society should deal with young people who commit crime.

Scotland markedly differs from England in its approach to these matters by reason of the children's hearings system which deals with the vast majority of children under the age of 16 who commit crimes. The existence of the hearings system in Scotland was a factor which strongly influenced the proposals contained in our Discussion Paper.

Our remit was to examine the rules on the age of criminal responsibility, especially the rule that a child under the age of 8 cannot be guilty of any offence. The remit excluded a general review of the way in which the children's hearings system and the courts deal with child offenders.

## **The present law**

Under the present law the age of criminal responsibility has two meanings. The first is the age below which a child is considered to lack the mental capacity to commit a crime. This age is currently 8 in Scotland in terms of section 41 of the Criminal Procedure (Scotland) Act 1995.

The second meaning is the age at which an offender becomes subject to the adult system of prosecution and punishment. This is 16 as children below this age can be prosecuted only on the instructions of the Lord Advocate (1995 Act, section 42(1)). In practice nearly all child offenders below 16 are dealt with through the children's hearings system and only around 0.5% are prosecuted in the normal criminal courts. And of the few that are prosecuted and found guilty, nearly one third are remitted to a children's hearing for subsequent action.

## **The Commission's provisional proposals**

The Commission's main proposals, which are only provisional at this stage, are:

- Abolition of the rule that a child below a certain age (currently 8) has no criminal capacity.
- Retention of the exceptional procedure of prosecution of children under 16 with the existing statutory and other protections. The Commission is of the view that there will continue to be cases where prosecution is in the public interest. Where a child is prosecuted it will always be the duty of the Crown to show that the child in fact had the mental capacity to commit the crime. Moreover the effect of the European Convention on Human Rights is that when a child is prosecuted the court procedure must be adapted to allow the child to understand the proceedings and to participate effectively in them. We believe that these important protections should be retained for all cases where a child is subject to a criminal prosecution.

The effect of these two proposals would be that Scots law would no longer have any rules on the age of criminal responsibility in the sense of criminal capacity. Instead age of criminal responsibility would be used in the sense of the age below which a child would not normally be prosecuted. In this sense the age of criminal responsibility would remain at 16 but in exceptional cases a child below that age could be prosecuted in the criminal courts. As under the existing law, criminal prosecution of children under 16 would be rare and would happen

only if the Lord Advocate considered that a prosecution was in the public interest. In general terms our proposals would mean in effect that in Scots law the age of criminal responsibility would be 16.

### **Further proposals for consultation**

The Commission also invites consultation on two further proposals:

- The Commission raises the question whether there should be an age limit below which no child can be prosecuted and if so what that age should be.
- The Commission also asks whether a children's hearing should be able to deal with all children who commit offences even if they are too young to be prosecuted. At present because a child under 8 is conclusively presumed not to have criminal capacity, he cannot be referred to a children's hearing on the ground that he has committed an offence. The Commission considers that in such a case it may be in both the public interest and the best interests of the child that he should be referred to a children's hearing on this ground.

### **What happens next?**

Our Discussion Paper sets out our provisional views on reform of the age of criminal responsibility in the law of Scotland. We look forward to receiving responses to the proposals in the Paper from persons and organisations who have an interest in the workings of the children's hearings system, the administration of criminal justice, and children's issues generally. We also welcome responses from political parties and from members of the public on what is clearly a matter of considerable public interest.

Our consultation period extends until the end of October 2001. After that we will consider the points raised in the responses we receive and we will make our final recommendations for reform in a Report. We intend to submit the final Report to the Scottish Ministers by the end of 2001.

### **NOTES TO EDITORS**

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Honourable Lord Gill. The other Commissioners are currently Mr Patrick S Hodge QC, Professor Gerard Maher, Professor Kenneth G C Reid and Professor Joseph M Thomson.
2. Further information can be obtained by contacting Professor Gerard Maher, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, e-mail: [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk).)
3. The paper may be viewed on our website at [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk) or purchased from The Stationery Office Bookshops.