



Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS MONDAY 14 JANUARY

AGE OF CRIMINAL RESPONSIBILITY

The Scottish Law Commission publishes today its Report on Age of Criminal Responsibility (Scot Law Com No 185).

Background

In October 2000 the Commission was asked by the Scottish Ministers to look at the rules on the age of criminal responsibility, including the rule which presumes that a child under the age of eight cannot be guilty of any offence. 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. Our remit excluded a general review of the way in which the courts and children's hearings deal with child offenders.

The present law

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)).

Scotland differs markedly 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. In practice nearly all child offenders below 16 are dealt with by children's hearings 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. In carrying out this project we have assumed that there will continue to be a system of children's hearings or something very like it.

The Commission's recommendations

The Commission published a discussion paper in July 2001. A large number of responses were received from a wide variety of organisations and individuals involved with crime and children. Responses to our provisional proposals are a crucial part of our whole approach to law reform and the responses we received to our discussion paper on age of criminal responsibility were invaluable in the preparation of the report.

The recommendations in the Commission's report are:

- Abolition of the rule that a child has no criminal capacity below a certain age, currently 8. Most of our consultees agreed with our view that the age of criminal responsibility is better thought of as concerning limits on prosecuting children rather than the capacity of children to commit crimes.
- Retention of the existing statutory and other restrictions on the prosecution of children under the age of 16. However we reject the argument that no child below that age should ever be prosecuted. We believe that there will continue to be cases, admittedly exceptional, where the prosecution of children under 16 is in the public interest.

- There should be an absolute bar against prosecuting children under the age of 12. Although opinion on consultation was divided, the majority of those responding favoured a bar. A bar at this age would be consistent with the requirements of the European Convention of Human Rights. 12 is also the age at which a child is presumed to have sufficient maturity and understanding for many civil law purposes, including participating in civil court proceedings.
- 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 a child under 8 is presumed not to be guilty of any offence and it has been held (*Merrin v S* 1987 SLT 193) that such a child cannot be referred to a hearing on the ground of having committed an offence.

What next?

The Scottish Executive will consider the Commission's recommendations in the context of its wider review of the Scottish youth justice system.

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 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.)
3. The report may be viewed on our website at www.scotlawcom.gov.uk or purchased from The Stationery Office Bookshops.