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## Ministerial Policy briefing: Evidence in support of raising the minimum age of responsibility in Scotland

Professor Lesley McAra and Professor Susan McVie, University of Edinburgh



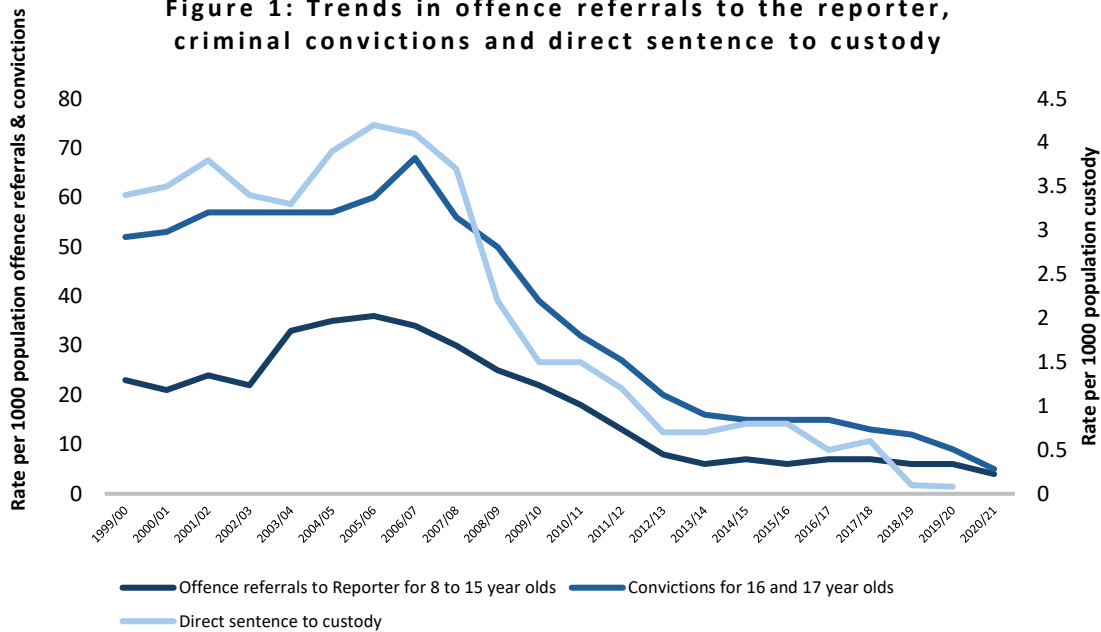
## Scotland's MACR in international context

- The Age of Criminal Responsibility (Scotland) Act 2019, which commenced in full on 17<sup>th</sup> December 2021, raised the minimum age of criminal responsibility (MACR) in Scotland from 8 (one of the lowest ages internationally) to 12.<sup>i</sup>
- Prior to this, in 2018, the UN Committee on the Rights of the Child (UNCRC) General Comment No. 24 had encouraged States to increase the MACR to at least 14, and commended States with a MACR of 15 or 16 years of age.<sup>ii</sup>
- So, despite a radical increase, Scotland's MACR still fails to meet internationally agreed standards and sits well below that of other progressive European countries against which it often compares itself (e.g. Nordic countries) which have set the MACR at age 15 or 16.<sup>iii</sup>
- To meet its objectives of making Scotland the best place to grow up and ensure every child has an equal chance to succeed<sup>iv</sup>, there is an ethical imperative to increase the MACR in Scotland so that it is in keeping with National Outcomes.<sup>v</sup>

## Positive impacts of wider Scottish policy changes

- Over the last 20 years, the prevailing trend in Scottish policy making has been to implement rights-based, well-being focused and trauma informed approaches to deal with children and young people who offend.
- The introduction of policy frameworks such as GIRFEC (2006) and the Whole System Approach (2011) paved the way for fundamental reform of child-centred justice policy and practice in Scotland.
- Legislative improvements which raised the age of prosecution via the Management of Offenders (Scotland) Act 2010, and abolished criminal convictions for offences admitted at Children's Hearings via the Children's Hearing (Scotland) Act 2011, also provided greater legal protections for children involved in offending.
- In the wake of these progressive Scottish policy changes, there has been an 89% reduction in the rate of 12-15 year olds coming into the Children's Hearing System on offending grounds (see Figure 1).
- Preventing 12-15 year olds from coming into the Children's Hearings System has also had a positive knock on effect on the adult criminal justice system, with fewer 16 and 17 year olds being brought to court.
- There has been a 93% reduction in the rate of conviction and a 98% reduction in the rate of custodial sentences for 16-17 year olds since 2006/07 (see Figure 1).

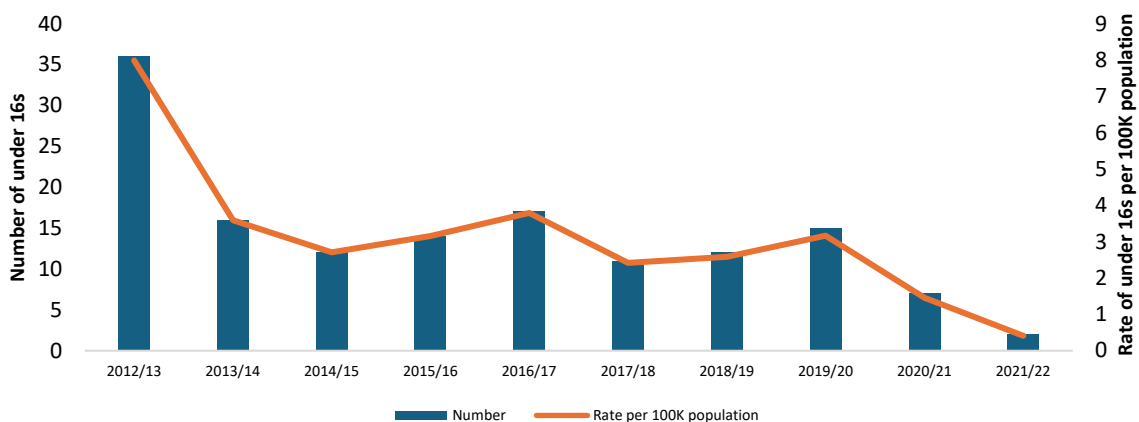
**Figure 1: Trends in offence referrals to the reporter, criminal convictions and direct sentence to custody**



Source: SCRA Dashboard; Scottish Government Criminal Proceedings in Scottish Courts bulletins

- Official data shows that the number of young people in Scotland who are held criminally responsible for their actions (through prosecution and criminal conviction) has gone down in recent years and is now very small, so raising the MACR would make very little difference in terms of formal sanctioning.
- For example, since raising of the age of prosecution to 12, the number of 12-15 year olds convicted in Scottish Courts has fallen by 94% (see Figure 2).
- In addition, over the six years between 2012/13 and 2018/19 (the last full year of published data prior to the Covid-19 lockdowns) there were no convictions for children aged 12 or 13, and only 9 in total for those aged 14.
- Moreover, figures for 2018/19 show that only fifteen young people under the age of 16 were convicted that year, which equates to only 3 children out of 100,000 of that age in Scotland.

**Figure 2: Trend in number and rate of children aged 12-15 convicted in Scottish Courts**



Source: Scottish Government (2023) Criminal Proceedings in the Scottish Courts, 2021/22

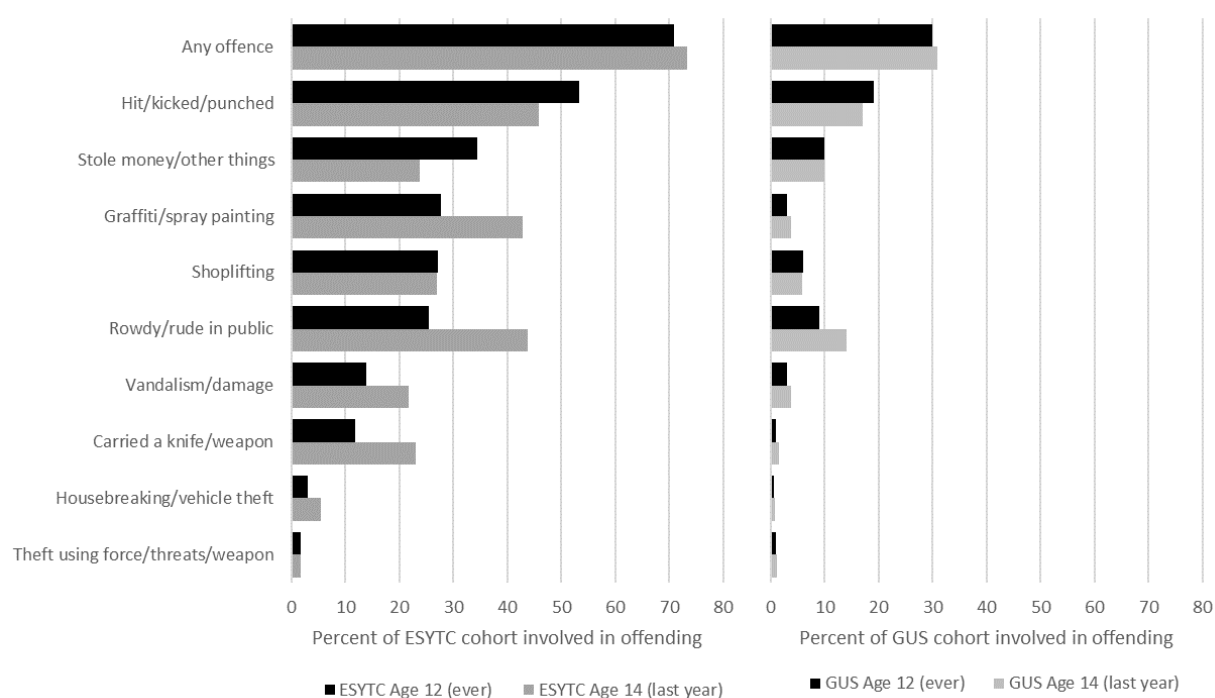
## Arguments for further raising MACR in Scotland

- There is a wealth of criminological, developmental, sociological and neurological evidence in support of raising the MACR beyond 12.
- Young people who get involved in offending in early adolescence are significantly more likely than others to be: growing up in poverty; exposed to adverse childhood experiences; subject to victimisation and other harms; care experienced; and vulnerable in many other ways that are well outwith their control.<sup>vi</sup>
- Vulnerable and deprived young people who offend are more likely to be identified by the police and dealt with through formal justice system processes than those who are not, which often perpetuates their vulnerability and deprivation.<sup>vii</sup>
- Once a young person gets formally involved with justice systems they are less likely to desist from offending and more likely to have a long term criminal career.<sup>viii</sup>
- Developmental processes that occur between age 12 and 15 are particularly important in shaping outcomes for young people, and less justice system contact during this period can help reduce the likelihood of moving from the juvenile into the adult criminal justice system when they reach the age of 16.<sup>ix</sup>
- The period of transition out of adolescence has extended in recent decades and there is increasing evidence that young people are not fully mature and integrated into adult life until the mid to late 20s.<sup>x</sup> This has been recognised by the Scottish Sentencing Council in their guidance on sentencing young people aged under 25.<sup>xi</sup>
- Advances in developmental psychology and neuroscience show that full brain maturity is not reached until at least age 25 due to protracted development of the prefrontal cortex.<sup>xii</sup>
- Adolescent maturation is likely to be hindered by brain injury, substance use, adverse childhood experiences and neurodevelopmental disorders, all of which are more likely amongst those who get involved in offending behaviour.<sup>xiii</sup>
- The aim of the Care and Justice (Scotland) Bill is “to introduce trauma-informed, age-appropriate support for children involved with care and justice services”, so this must take account of the developmental needs of young people and the inadvertent impact of a low MACR on longer term outcomes and life chances.<sup>xiv</sup>

## Benefits of a higher MACR and next steps

- By raising the age of criminal responsibility to 15 or 16, Scotland would align with international standards and would be demonstrating leadership in the context of the other UK jurisdictions which retain age 10 as the MACR.
- Removing the stigma of early criminal conviction opens up life chances and increases opportunities in terms of access to education and employment<sup>xv</sup>.
- Taken together, the evidence suggests that avoiding the criminalisation of children, as recent Scottish policy initiatives have attempted to do, has not resulted in increased crime as measured by official statistics. Indeed, there is some evidence of reductions in offending by young people.
- Comparing the Edinburgh Study cohort at age 14 (2000/01) with the Growing up in Scotland Cohort at age 14 (2019/20), shows more than a 50% reduction in likelihood of involvement in a range of types of offending using the same measures (see Figure 3)<sup>xvi</sup>.

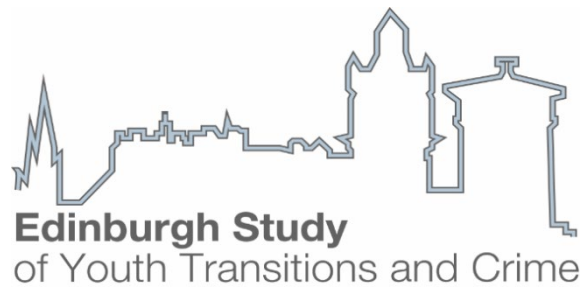
Figure 3: Comparing self-reported offending using the same measures in two cohorts almost twenty years apart



Sources: Data for ESYTC based on analysis of study data by authors (see Smith et al. 2001); Data for Growing Up in Scotland based on analysis published in Scottish Government (2022) and Vosnaki et al. (2019).

- Sustaining downward trends in official and self-reported crime statistics requires continued investment in early years work and youth services as well as tackling child poverty. Investment in positive supports for children and young people will pay far greater dividends than formally sanctioning those who offend.
- The evidence that exists suggests that the MACR in Scotland could be raised to 16 with very little impact on prosecutorial or court services. However, if this was done, thought would have to be given to ways of dealing with the very tiny numbers of 12 to 15 year olds who commit the most serious crimes. (In 2018/19 there was only one conviction for a non-sexual crime of violence and no convictions for sexual crimes).
- Consideration should be given to whether a process such as an examination of the facts (as used in mental health procedure) might be appropriate for the most serious cases (such as murder or rape), as well as a community home for older children/young adults, along the lines of the community custody units for women.
- We recommend that the Scottish Government considers setting up a developmental risk management authority to keep under review all cases of young people who are involved in the most serious and harmful behaviours as they mature into adulthood so that appropriate measures can be taken to manage individual and public protection.

## Sources of Evidence



This briefing paper draws heavily on findings from the Edinburgh Study of Youth Transitions and Crime (ESYTC). The ESYTC is a programme of research that has been running for over 25 years. The overarching purpose of the study is to examine the causes and consequences of young people's involvement in crime and anti-social behaviour. The core of the programme is a major longitudinal study of a single cohort of around 4,300 young people who started secondary school in the City of Edinburgh in the autumn of 1998. The study also involves a complex set of administrative data linkages which allows it to explore the lives of study members in significant detail. It is the only study of its kind in Scotland, and one of the most influential longitudinal studies internationally.

The study has been conducted over a number of phases: The first six phases tracked the cohort from age 12 to age 17, when they were eligible to attend secondary school (1998 to 2004). Over this period, the study collected information using questionnaires completed by the cohort members and administrative data from official records including education, social work and criminal conviction records. The seventh phase of the study involved updating the criminal conviction records and conducting in-depth interviews with a sub-sample of the cohort at age 24 (2011/12). The eighth phase of the study at age 35 has recently been completed. This involved further updating the criminal conviction records a short online survey with all cohort members and in-depth interviews with a sub-sample at age 33 (2019/20).

The study has been funded by the ESRC (grant numbers R000237157 and R000239150), the Scottish Government and the Nuffield Foundation. We acknowledge the important contribution made by all members of the research team involved in collecting data for the study over the last 25 years; and extend grateful thanks to the 4,300 cohort members who made the Edinburgh Study possible.

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- <sup>i</sup> Scottish Government - <https://www.gov.scot/policies/youth-justice/raising-age-criminal-responsibility/#:~:text=The%20Age%20of%20Criminal%20Responsibility%20%28Scotland%29%20Act%202019,12%20can%20no%20longer%20be%20charged%20or%20arrested.>
- <sup>ii</sup> UNCRC - [https://defenceforchildren.org/wp-content/uploads/2019/01/GeneralComment24\\_Comments\\_Clean\\_Final.pdf](https://defenceforchildren.org/wp-content/uploads/2019/01/GeneralComment24_Comments_Clean_Final.pdf)
- <sup>iii</sup> Evidence submitted to the Scottish Parliament Equalities and Human Rights Committee by Professor Susan McVie (2018) - <https://www.research.aqmen.ac.uk/wp-content/uploads/sites/27/2018/09/SPEHRC-Evidence-6.9.18-002.pdf>
- <sup>iv</sup> Scottish Government's Programme for Scotland 2018-19 - <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2018/09/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/documents/00539972-pdf/00539972-pdf/govscot%3Adocument/00539972.pdf>
- <sup>v</sup> Scottish Government's National Outcome for Children and Young People - <https://nationalperformance.gov.scot/national-outcomes/explore-national-outcomes/children-young-people/about-children-young-people-national-outcome>
- <sup>vi</sup> McAra, L. and McVie, S. (2023) Raising the Minimum Age of Criminal Responsibility: Lessons from the Scottish Experience. *Current Issues in Criminal Justice*. <https://doi.org/10.1080/10345329.2023.2272362>
- <sup>vii</sup> McAra, L. and McVie, S. (2019) Transformations in youth crime and justice across Europe: Evidencing the case for diversion. In B. Goldson (Ed) *Juvenile Justice in a European Context*. pp74-103. Routledge.
- <sup>viii</sup> McAra, L. and McVie, S. (2010) Youth Crime and Justice: Key messages from the Edinburgh Study of Youth Transitions and Crime. *Criminology and Criminal Justice*, 10(2): 179-209. <https://doi.org/10.1177/17488958093609>
- <sup>ix</sup> McAra, L., and McVie, S., (2007) Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending. *European Journal of Criminology* 4(3): 315-345. <https://doi.org/10.1177/1477370807077186>
- <sup>x</sup> Moffitt, T.E. (2018) Male Antisocial Behaviour in Adolescence and Beyond. *Nature Human Behaviour*, 2: 177-186. <https://www.nature.com/articles/s41562-018-0309-4>
- <sup>xi</sup> Scottish Sentencing Council (2022) *Sentencing Young People*. <https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/approved-guidelines>
- <sup>xii</sup> Sawyer, S.M. et al. (2018) The Age of Adolescence. *The Lancet Child and Adolescent Health*, 2(3): 223-228. [https://doi.org/10.1016/S2352-4642\(18\)30022-1](https://doi.org/10.1016/S2352-4642(18)30022-1)
- <sup>xiii</sup> O'Rourke, S. et al. (2020) *The Development of Cognitive and Emotional Maturity in Adolescents and its Relevance in Judicial Contexts: Literature Review*. Scottish Sentencing Council. <https://www.scottishsentencingcouncil.org.uk/media/mi0aavav/20200219-ssc-cognitive-maturity-literature-review.pdf>
- <sup>xiv</sup> Scottish Parliament overview of the Care and Justice (Scotland) Bill: <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2024/4/18/84f7f47e-8218-4c5e-acb8-a7db20fc5e70#Introduction>
- <sup>xv</sup> McAra, L. and McVie, S. (2022) *Causes and Impact of Offending and Criminal Justice Pathways: Follow-up of the Edinburgh Study Cohort at Age 35*. <https://www.law.ed.ac.uk/sites/default/files/2022-03/ESYTC%20Report%20%28March%202022%29%20-%20Acc.pdf>
- <sup>xvi</sup> McAra, L. and McVie, S. (2024, in press), A quiet revolution: What worked to create a 'Whole System Approach' to juvenile justice in Scotland, in C. M. Langton & J. R. Worling (Eds.), *What works with adolescents who have offended: Theory, research, and practice*. Wiley Blackwell.



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This policy briefing was produced by Professors Lesley McAra and Susan McVie. Any responses to the briefind paper should be directed to the paper authors, whose details are provided below.

**Professor Lesley McAra, University of Edinburgh**

Lesley.Mcara@ed.ac.uk

**Professor Susan McVie, University of Edinburgh**

smcvie@ed.ac.uk