

THE AGE OF CRIMINAL RESPONSIBILITY IN ENGLAND AND WALES

*“There can be no keener revelation of a society’s soul than the way it treats its children”-
Nelson Mandela*

At the age of 10, England and Wales have the lowest minimum age of criminal responsibility (MACR) in the EU. It means that from the penultimate year of primary school, children can stand trial in an adult criminal court.

Children below the MACR do not have impunity to behave as they wish. There is power to make Local Child Curfew and Child Safety Orders. A parent may be held accountable and in an appropriate case a Care Order can be made. However, from the age of 10 the child is deemed to grow up fast.

How does our MACR compare with other jurisdictions? In Portugal the age is 16 while in Luxembourg it is 18. Turkey has chosen 12 but China and North Korea have settled on 14.

Although not legally binding on our courts, some argue that our MACR offends both the spirit and steer of the provisions of the United Nations Convention on the Rights of the Child because it fails to have proper regard for the best interests of the child.

How does our MACR contrast with other age thresholds applicable in England and Wales?

It matters not how desperate a child might be to buy a hamster he must first wait until he is 16. If he wants to buy alcohol or cigarettes, he must wait until he is 18. He cannot consent to having sex until he has reached the age when he can also buy a hamster. Yet in the preceding six years he can be tried if he commits a sexual offence against another.

Presumably these age differentials are judged to reflect society’s view that children lack sufficient maturity to care for an animal or for their own well-being but are accountable, irrespective of their level of maturity or sense of responsibility, if their conduct impacts on third parties of whatever age.

What is the position over the border in Scotland? Their MACR is 8 and from that age a child can be arrested and charged. However, only if the child is 12 can he be prosecuted in a criminal court. Between the ages of 8 and 11 a child may face a “Children’s Hearing” (CH); a tribunal tasked with acting in the best interests of the child.

However, even on reaching 12 whether there will be a prosecution or a CH will turn on the decision of the Procurator Fiscal who retains a measure of discretion informed by the circumstances of the case.

So there is a marked absence of consistency in our approach to age thresholds and the approach of other jurisdictions including one closest to home.

It might be argued that the brain of a 10 year old is not fully formed and thus applying adult levels of responsibility and accountability are misplaced. Or objection might also be taken because of the inconsistency of the operation of our various age thresholds.

“Responsible Child” (BBC 2 - 16 December 2019 at 21.00) exposed concerns about trying children in an adult court as well as wider considerations about the age of criminal responsibility. Filmed at Croydon Crown Court it is directed by Nick Holt who expressed himself as surprised at the little he had previously known about this aspect of the law.¹

What prospect for change? In political terms it is a hot potato. Two 10 year old boys were convicted by a jury of the murder of James Bulger; a most horrific crime involving the torture and beating to death of a two year old. Its horror still resonates 16 years on.

Thus, it is a brave politician who chooses to shine an objective and dispassionate torch on our MACR to test its fitness for purpose.

It is to be hoped that “Responsible Child” will prompt debate and provide a gateway for a review of the age at which a child should be deemed to have criminal responsibility and if or when he should ever stand trial in an adult court or whether he should face an alternative tribunal.

Such a review ought to identify where the balance lies between meeting the best interest of the child and the public’s proportionate desire for offenders to be brought to justice.

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¹ See the Art review of “Responsible Child” (“The Times” 3 December 2019) which inspired this Article.)