



**SASO (GLASGOW BRANCH)
ANNUAL CONFERENCE
11 MAY 2009**

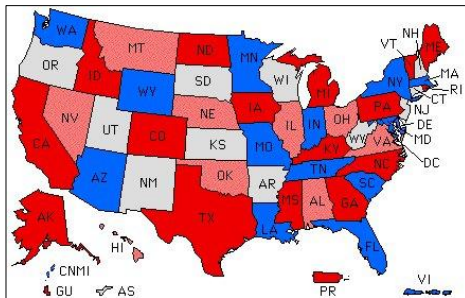
Raising the Age of Criminal Responsibility -
or not?

THE NEW PROPOSAL

- From 8 to 12 for certain purposes
(Criminal Justice and Licensing Bill, s 38)

THE STATUS QUO

- The age is 8
- The age in Scotland is among the lowest in the world



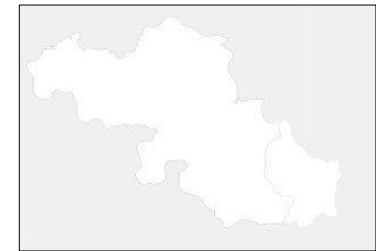
North Carolina (6)
Maryland (7)
Massachusetts (7)
New York state (7)



Scotland (8)



Scandinavia
(15)



Belgium
Luxembourg
(18)

A CONCLUSIVE PRESUMPTION

It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

(Criminal Procedure (Scotland) Act 1995, s
41)

WHAT DOES IT MEAN?



Under 8, children lack criminal capacity. They **cannot** commit crime because their understanding is insufficient.

IMPLICATIONS FOR UNDER-8s

- Children aged 7 and under cannot be prosecuted in the (adult) courts
- Children aged 7 and under cannot be referred, on the offence ground, to a children's hearing

IMPLICATIONS FOR CHILDREN WHO OFFEND

- Children's hearings system – counts as criminal conviction but only for purposes of Rehabilitation of Offenders Act 1974

Or

- Prosecution in court on instructions of Lord Advocate

HISTORICAL POSITION

- Age raised from 7 to 8 in 1932

From the 1932 Parliamentary debate

“Children are much more precocious now than they were in the old days. We have infant schools and nursery schools, and my own experience in education work is that children of five and six know very much more than we did when we were children of ten and eleven. A child of seven or eight years is quite able to know the difference between right and wrong just as well as a child of twelve.” (Joseph Leckie, MP)

SINCE 1932

- Legislative silence
- hostile political and social climate

ROLE OF THE UNITED NATIONS

- Critical in 1995, 2002 and 2008 of low age throughout UK
- Issued “General Comment” in 2002 stating that age should be no lower than 12 anywhere

SCOTTISH LAW COMMISSION

- *Discussion Paper (2001)*
 - draws out distinction between age as lack of criminal capacity and age as point of automatic entry to adult system
 - Floated idea of abolishing former age
- *Report (2002)*
 - proposed immunity from prosecution up to age 12

LORD ADVOCATE'S INTERVENTION

November 2008



- “age of competence of eight ... extremely low.”
- "my policies are quite clear – I do not prosecute children where it can be avoided."

THE CURRENT PROPOSALS

Criminal Justice and Licensing (Scotland) Bill, section 38

- (1) A child under the age of 12 years may not be prosecuted for an offence.
- (2) A person aged 12 years or more may not be prosecuted for an offence which was committed at a time when the person was under the age of 12 years.

EFFECT

- Children aged 7 and under still lack criminal capacity
- Children aged 8, 9, 10 and 11 are immune from prosecution but retain capacity

RATIONALE FOR NOT PROSECUTING

- Lack of capacity gives a reason –
immunity from prosecution does not

IMPLICATIONS

- Children aged 7 and under cannot be prosecuted and cannot be referred on offence ground to children's hearings system
- Children aged 8, 9, 10 and 11 cannot be prosecuted but can be referred to children's hearings system
- No one can be prosecuted for a crime committed when aged under 12

CONCRETISING THE STATUS QUO?

- Scottish Government states that no children aged between 8 and 11 were prosecuted between 2002 and 2007
- Lord Advocate's policy is not to prosecute children

INTERNATIONAL OBLIGATIONS?

- UN Convention on Rights of Child, Article 40(3)(a): States Parties shall seek to promote “the establishment of a minimum age below which children shall be presumed not to have the **capacity** to infringe the penal law”
- 12 carries immunity from prosecution **not** lack of capacity

UNDER-AGE OFFENDERS?

- Is there a benefit in referring under-8s to the children's hearings system on a modified "offence" ground?

RETENTION OF SAMPLES

- Bill makes provision for retention of samples – fingerprints; DNA where offence ground is established in children's hearing
- Serious sexual / violent crime
- Decriminalising children aged 8 to 11?

12 OR MORE?

- *“In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”*

Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice)
Article 4(1)

BEIJING RULES COMMENTARY

“[i]n general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).”

CONCLUSION

- Youth crime policy has to steer course between populist punitiveness and welfare
- the Bill may only concretise status quo; it may not meet UN CRC requirement but it is clear that no child aged 8 to 11 can be prosecuted. That is welcome

IMAGES OF CHILDHOOD (1)



IMAGES OF CHILDHOOD (2)

