



HM Prison &
Probation Service



Learning
Together

Keeping connected: introducing ThinkLets

Learning Together builds educational communities that bring together people who live, study and work in universities and criminal justice organisations. Together, we want to use the power of education to improve lives, institutions and communities.

Covid-19 is a major challenge to our health and wellbeing. It means that we cannot physically come together as a community to learn with and from each other. But we can still keep learning and supporting each other to stay hopeful, positive and engaged.

Members of the Learning Together Network have created ThinkLets to help us all keep connected. Each ThinkLet contains resources that will help us to think about new ideas and develop new skills together, even from afar.

Each week, for the next eight weeks, two ThinkLets will be shared across our national community. We hope you enjoy them and find them helpful.

**Keep well. Keep hopeful. Keep connected.
And keep Learning Together.**

Please note:

The following resource was created with love and care by a member of the Learning Together Network. We sincerely hope that the creator's work will be respected by distributors, readers and users, and will not be subject to plagiarism or other forms of academic misconduct. Thank you for your cooperation.

ThinkLet #7

The Minimum Age of Criminal Responsibility

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First of all, and most importantly, I hope that this finds you safe and well during these quite surreal times.

This ThinkLet focuses on the minimum age of criminal responsibility.

It draws from a blog piece entitled 'Congratulations, You're Ten! Now you can be arrested'

I wrote for *The Conversation*, published towards the end of 2018.



I believe this is the first of the ThinkLets to have a criminological flavour. It is designed to get us thinking about a fundamental element of our criminal justice system that has been somewhat overlooked in England and Wales for decades. The minimum age of criminal responsibility has been taken for granted by many people, partly because it has stayed the same for so many years.

Not so long ago, my then nine-year-old daughter wandered into my office at home. She saw a book on a shelf: ***Children Behind Bars* by Carolyne Willow**.

"Children Behind Bars, Daddy? What does that mean?!" she exclaimed. I replied that this refers to children under the age of 18 held in prison. She then asked how many children there are in prison in the UK, guessing at 50. "Well, it's almost 1,000," I replied. The figure is actually 875 (or 969 if 18-year-olds are included), according to data compiled in August 2018 (source: www.gov.uk/government/statistics/youth-custody-data).

My daughter was very surprised at this and asked me how old these children were. I explained that most are 16 or 17, but some can be younger: as young as ten. This was the last straw: "Ten years old! But I'm nearly ten!" The following month, I congratulated her on her significant birthday – although something stopped me from mentioning the newly acquired eligibility for arrest.

This conversation with my daughter helped remind me of the importance of the issue, and that children often ask some of the most useful questions. The age of criminal responsibility refers to the minimum age that a child can be prosecuted and punished by law for a criminal offence. In England and Wales, this is ten years. Scotland recently introduced legislation to raise the age of criminal responsibility from 8 to 12: The Age of Criminal Responsibility (Scotland) Act, 2019.

What about other countries?

By international standards, this age of criminal responsibility is very low, falling below the United Nation's internationally recommended absolute minimum of 12 years. Excluding the other jurisdictions within the United Kingdom, the age of criminal responsibility in England and Wales is the lowest in the European Union. It is, for example, 14 years in Bulgaria, Spain, Italy, Germany and Austria, and 16 in Portugal and Romania.

And when jurisdictions outside of Europe are considered, England and Wales remain outliers. In Cuba, Chile, the Russian Federation and Hong Kong, the age is 16; in Mongolia, Korea, Azerbaijan and Zambia it is 14; and in Canada, Costa Rica, Lebanon and Turkey, it stands at 12 years. A comparison of 90 countries in 2008 for the Youth Justice Board found that the most common age (adopted by around a quarter of the sample) was 14 years. The findings are presented in the table and graph below:

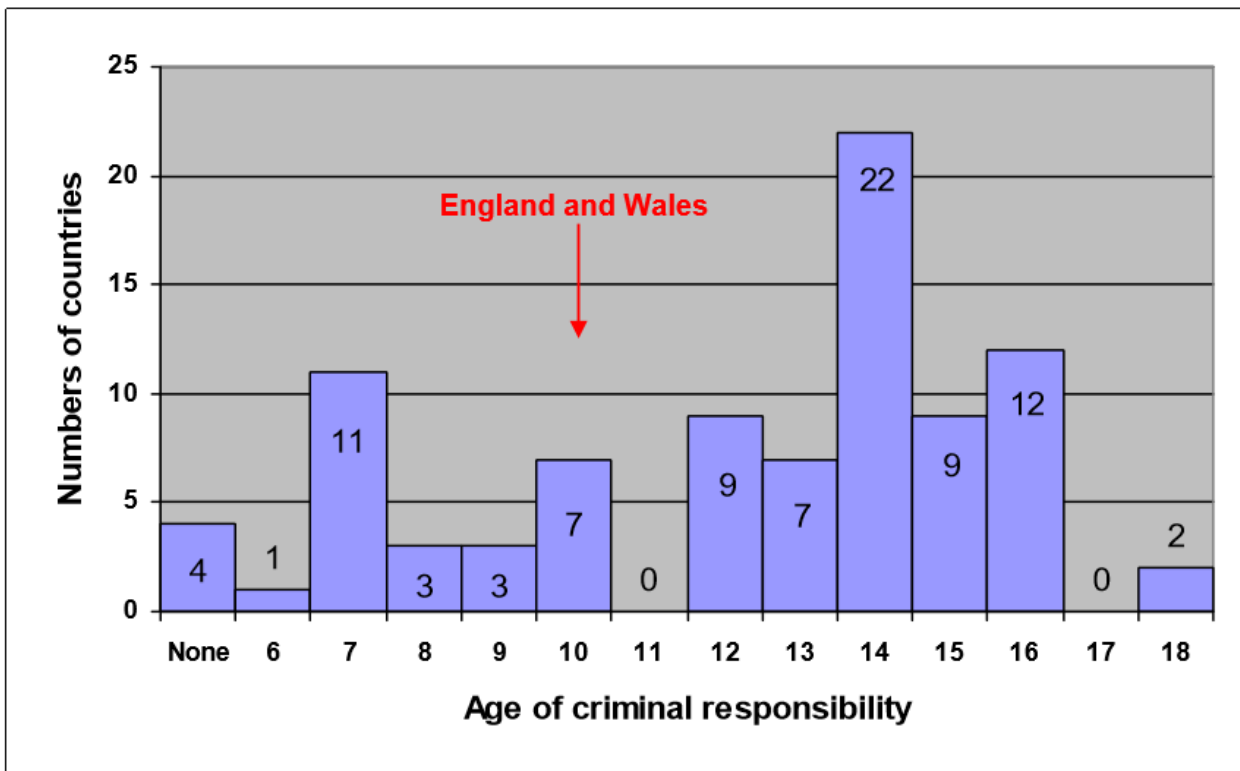
(source: https://dera.ioe.ac.uk/7996/1/Cross_national_final.pdf)

Table 5.1: Age of criminal responsibility (CR)

Country	Age of CR	Country	Age of CR	Country	Age of CR
England and Wales	10	Germany	14	Namibia	10
Algeria	13	Greece	13	Netherlands	12
Andorra	16	Honduras	12	New Zealand	10
Argentina	16	Hong Kong	16	Northern Ireland	10
Armenia	14	Hungary	14	Norway	15
Australia	10	Iceland	15	Panama	None
Austria	14	India	7	Philippines	9
Azerbaijan	14	Iraq	9	Poland	13
Barbados	7	Ireland	12	Portugal	16
Belarus	14	Israel	13	Romania	16
Belgium	16	Italy	14	Russia	16
Bosnia	14	Jamaica	7	San Marino	12
Brunei	None	Japan	14	Saudi Arabia	None
Bulgaria	14	Kazakhstan	14	Scotland	8
Canada	12	Kenya	7	Senegal	13
Cayman Islands	8	Korea	14	Singapore	7
Chile	16	Kuwait	7	Slovakia	15
China	14	Latvia	16	Slovenia	14
Columbia	18	Lebanon	12	South Africa	10
Costa Rica	12	Libya	8	Spain	14
Croatia	14	Liechtenstein	7	Sweden	15
Cuba	16	Lithuania	14	Switzerland	7
Cyprus	7	Luxembourg	18	Tanzania	15
Czech Republic	15	Macedonia	14	Thailand	7
Denmark	15	Malaysia	10	Togo	13
Egypt	15	Mauritius	14	Turkey	12
Estonia	16	Mexico	6	Ukraine	14
Finland	15	Moldova	16	USA	6+/N
France	13	Mongolia	14	Zambia	14

Sources: Winterdyk, 2005; Winterdyk, 2002; Calvadino and Dignall, 2006; Muncie, 2005; Muncie, 2006; Rutter et al, 1998; Hallett and Hazel, 1998; Asquith, 1996; United Nations, 1998; Almir, 2004; Dunkel, 2004. Where sources differed, the most recent figure was normally used.

Figure 5.1: Ages of criminal responsibility



Sources: As Table 5.1 above.

England and Wales's low age of criminal responsibility has attracted considerable international criticism from **the UN Committee on the Rights of the Child**. They have suggested that the age should be raised to at least 12 years old and that the government should support the Age of Criminal Responsibility Bill, introduced by Lord Dholakia in the House of Lords in 2017.

The considerable arguments in support of raising the age of criminal responsibility have not influenced policy. Indeed, in 2011 the minister with responsibility for youth justice told parliament: "We have no plans to change the age of criminal responsibility." His main argument was that children aged ten are able to distinguish between "bad behaviour and serious wrongdoing". This may be true for most children. But it is far less clear that children of this age commonly fully understand the consequences that flow from their actions.

A historical view

The law has long recognised that young children should not be held responsible for criminal acts. Before the 20th century, children under the age of seven were considered incapable of crime. Those aged seven to 14 years, meanwhile, were considered to be "*doli incapax*" – incapable of comprehending the criminal wrongfulness of their actions, unless the prosecution could prove otherwise.

The age of criminal responsibility was raised to eight years in 1933. Then the Children and Young Persons Act 1969 legislated to prohibit the prosecution of any child below the age of 14, following advice from the Ingleby Committee. This legislation also contained a strong presumption against the prosecution of those aged 14-16.

But within a short period, the tide had turned, and these provisions were not fully implemented. No government since has given serious consideration to increasing the age of criminal responsibility. There were unhelpful developments in the 1990s following a sustained period of increased police recorded crime, and the associated political rivalry to appear “tough” on crime: the abolition of *doli incapax* in 1998 effectively exposed children aged ten to 14 to the force of the criminal law. We still live with the consequences of that period and the systemic changes it led to. There is nothing inevitable about this. There has been a rather different direction of travel in Scotland, for example, which in 2019 legislated to raise the age to 12 years.

One of the practical consequences of having such a low age of criminal responsibility is that even younger children can also get caught up in the criminal justice net. An all-party parliamentary enquiry reporting in 2014 on children and the police found that more than 1,000 children under the age of ten – and some as young as four – had been stopped and searched by the police in England and Wales over the previous five years.

Thankfully, while my daughter is now old enough to be arrested, she hasn’t had any involvement with the police and I sincerely hope that is the way it stays. But for the sake of children in our society more broadly, we need to debate, and change, something as important as the age of criminal responsibility. It says something about who we are as a society and how we treat the most vulnerable.

A low age of criminal responsibility means that we are responding to welfare issues with criminal justice responses, and potentially damaging the prospects of young people and their potential future contributions to society. To some extent, any age we choose is an arbitrary one. But raising the age in line with international requirements, particularly if accompanied by other system changes, would reduce social harm. Children in conflict with the law are among the most vulnerable people in society, even though that is not how they tend to be depicted in mainstream media.

Below are some **points of discussion**, that you may choose to explore on your own or with others, as well as some questions to consider based on what you have read in this ThinkLet.

- 1) **Some criminologists understand responsibility as a scale – something we might have more or less of depending on the context. But the law cannot readily cope with such a conception, preferring a more binary, black/white view of responsibility. What do you think? Is there a way of resolving this tension?**
- 2) **How do countries with a higher age of criminal responsibility than ours respond to wrongdoing – especially grave wrongdoing - by very young children?**
- 3) **What might a "welfare response" mean in practice? Is this preferable to a ‘punitive response’ administered by a criminal justice system?**

Consider:

- What is the minimum age of criminal responsibility (MACR) in England and Wales?
- Since when have we had this MACR?
- How does this compare with other countries in Europe and further afield?
- Why has the MACR in England and Wales not changed for so many decades?
- Do you think the MACR in England and Wales should stay as it is, or change? Why?
- The National Association for Youth Justice, amongst others, have suggested increasing the MACR in England and Wales. What are the reasons for this?
- What do *you* think are relevant criteria that we *ought* to take account of in order to help bring us to a principled decision about the age of responsibility?