

## The Shortcomings of the (New) Diminished Responsibility Defence in England and Wales for children: A Neuroscientific Perspective

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In criminal law, the idea of developmental immaturity that has been accepted by contemporary legal theorists is that it is relevant to determinations of criminal responsibility of children that commit crimes. The latest neuroscientific evidence of brain development confirms developmental immaturity has the effect of reducing or completely impairing the person's capacities to satisfy the mental elements of the offence. As a result, developmental immaturity should be applied and represented in criminal law. However, in English legal practice, developmentally immaturity is not uniformly represented. In homicide law, developmental immaturity is irrelevant as a precondition of "abnormality of mental functioning" under the defence of diminished responsibility. It does not consider developmental immaturity at all and children who kill lacking legally relevant capacities (falling short of a formal medical diagnosis) are convicted of murder and sentenced to the mandatory term of 12 years in detention.

The Government anticipated that there would be interpretational flexibility with the inclusion of the phrase "a recognised medical condition" (e.g., physical, psychiatric, and psychological conditions) within the current defence. With this flexibility, the term could be broadly interpreted to extend to existing and emerging "conditions such as learning disabilities and autistic spectrum disorders which can be particularly relevant in the context of juveniles." The Government's vision for the defence having interpretational flexibility with the inclusion of the phrase "a recognised medical condition" has not been realised in legal practice. The DSM has accredited developmental immaturity as having a role in the development of neurodevelopmental disorders, a category of disorders characterised "by the onset of personal, social, academic, and job-related functioning impairments in the "developmental period." The scientific evidence reveals that a child with developmental delays will lack legally relevant capacities like the abnormal developing child.

### Partial defence to murder: diminished responsibility

#### 52 Persons suffering from diminished responsibility (England and Wales)

- (1) In section 2 of the Homicide Act 1957 (c. 11) (persons suffering from diminished responsibility), for subsection (1) substitute—  
“(1) A person (“D”) who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—  
(a) arose from a recognised medical condition,  
(b) substantially impaired D’s ability to do one or more of the things mentioned in subsection (1A), and  
(c) provides an explanation for D’s acts and omissions in doing or being a party to the killing.  
(1A) Those things are—  
(a) to understand the nature of D’s conduct;  
(b) to form a rational judgment;  
(c) to exercise self-control.  
(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D’s conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.”

Although, a child or young person who suffers a high degree of developmental immaturity than the norm for a person of their age might lack legally relevant capacities. The problem is that their degree of incapacity is not significant enough to warrant a diagnosis of "a recognised medical condition." This means they cannot successfully plead the defence of diminished responsibility because they cannot prove that they suffer an "abnormality of mental functioning" arising from "a recognised medical condition." This is because developmental immaturity is not accepted as a medical disorder, illness, or condition and thus falls outside the scope of "a recognised medical condition." The Law Commission subsequently raised and considered whether a new complete defence of "not criminally responsible by reason of developmental immaturity" for children who kill under 18 years of age should be introduced in English criminal law in 2013. However, the Law Commission's proposal has not been introduced in criminal law.

Juveniles (10-17 years) found guilty of murder and manslaughter by reason of diminished responsibility in England and Wales

