POLICY NOTE

THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 4) REGULATIONS 2021

SSI 2021/449 (C. 32)

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 84(2) of the Age of Criminal Responsibility (Scotland) Act 2019 ("the Act"). The instrument is not subject to any parliamentary procedure.

Summary Box

These Regulations commence the remaining provisions of the Age of Criminal Responsibility (Scotland) Act 2019. This includes all of the remaining provisions which were not brought into force by The Age of Criminal Responsibility (Scotland) Act 2019 (Commencement No. 1 and Transitory Provision) Regulations 2019, The Age of Criminal Responsibility (Scotland) Act 2019 (Commencement No. 2) Regulations 2020, and The Age of Criminal Responsibility (Scotland) Act 2019 (Commencement No. 3) Regulations 2020. This instrument raises the age of criminal responsibility.

Policy Objectives

1. The Act raises the age of criminal responsibility in Scotland from 8 to 12 years. This means that harmful behaviour of children under 12 years will not be treated as commission of a criminal offence. The Act provides that children under 12 years can no longer be referred to the children's hearing on an offence ground, but only on welfare and protection grounds. The Act provides for an Independent Reviewer to review whether information in relation to harmful behaviour of persons when they were under 12 years should be disclosed to Disclosure Scotland for enhanced disclosure or protection of vulnerable groups scheme disclosure.

2. The Act provides specific powers for police to investigate seriously harmful behaviour involving children under 12 years. These will enable incidents to be fully investigated, and to ensure that victims and others affected by that behaviour continue to be protected and responded to.

3. In addition, the Act provides for information to victims, establishes the role of the child interview rights practitioner, places a duty on a children's hearing to consider the need for further reports, and puts a duty on Scottish Ministers to review operation of the Act; both in general, and with a view to considering a future age of criminal responsibility.

4. The Act has been commenced in several stages. These Regulations are the fourth and final set of commencement Regulations and will commence the following provisions on 17 December 2021:

Section	Provision
1	raising the age of criminal responsibility

2	raising the age of criminal responsibility – consequential repeal & savings
28	power to take a child under 12 to a place of safety
33(1) – (3)	search of child under 12 without warrant under existing enactment
34	application for order authorising search in relation to child under 12
35	Consideration of application for order under section 36
36	Order authorising search in relation to child under 12
37	Notification of order under section 36
38	Appeal against decision under section 36
39	Limitation on police questioning of certain children
40	Investigative interview by agreement
41	Information to be provided following agreement to investigative interview
42	Application for child interview order
43	Consideration of application for child interview order
44	Child interview order
45	Notification of child interview order
46	Appeal against decision under section 44
47	Planning of investigative interview
48	Conduct of investigative interview
49	Right not to answer questions
50	Right to have supporter present
51	Right to have child interview rights practitioner present
52	Child not to be questioned while unaccompanied
53	Information to be provided to child
54	Questioning of child in urgent cases
55	Procedure following authorisation of questioning under section 54
56(1), (2) & (5)	Register of child interview rights practitioners
58	Limitation on taking prints and samples from children under 12
59	Limitation on taking prints and samples from children aged 12 and over
60	Key definitions
61	Application for order authorising taking of prints and samples from child
62	Consideration by sheriff of application for order under section 63
63	Order authorising taking of prints and samples from child
64	Notification of order under section 63
65	Taking of intimate samples
66	Destruction of prints and samples taken under section 63
67	Appeal against decision under section 63
68	Treatment of prints and samples where appeal taken against making of order under section 63
69	Taking of prints and samples in urgent cases
70	Procedure following taking of prints and samples under section 69
71	Destruction of prints and samples taken from children aged 12 and over with consent
72	Wellbeing of child
74	Additional powers and duties of constables
75	Offences
76	Interpretation of Part 4
77	Children's hearings: duty to consider need for further reports

78	Review of age of criminal responsibility
79	Provision of information

Further policy detail on the sections which are being commenced by the Regulations are set out below.

Sections 1 and 2 – raise the age of criminal responsibility from 8 years to 12 years.

Section 28 – permits a police constable to take a child aged under 12 years, who is behaving (or likely to behave) in a way that is causing or risks causing significant harm to another person, to a place of safety.

Section 33(1) to (3) – sets out that certain statutory search powers that depend on a child being suspected of an offence still apply in relation to the suspected behaviour of a child under 12 years.

Sections 34 to 38 – permit a constable to apply to a sheriff for an order authorising a search in relation to a child under 12 years.

Sections 39 to 46 – sets out that a police constable does not have power to question a child under 12 years otherwise than in accordance with the Act.

Sections 47 to 55 – provides rules about investigative interviews of children under 12 years (either by agreement or as authorised by a child interview order) and for questioning of a child under 12 years in urgent cases.

Section 56(1), (2) and (5) – sets out the requirements for a register of child interview rights practitioners.

Sections 58 to 71 – sets out the rules about the taking and destruction of physical data and samples from children under 12 years and from children 12 years and over in relation to conduct which occurred when they were under 12 years.

Section 72 – requires that a person or a court, when exercising relevant powers under part 4 of the Act, must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.

Sections 74 to 76 – authorises a constable to use reasonable force when exercising relevant powers under Part 4 of the Act. Section 75 creates an offence of obstruction of a constable exercising such powers.

Section 77 – amends section 91 of the Children's Hearings (Scotland) Act 2011 to require a children's hearing to consider the need for further reports, in deciding whether to defer a decision to a subsequent hearing.

Sections 78 and 79 – require Scottish Ministers to carry out a review of the operation of the Act within 3 years of when section 1 comes into force, and with a view to considering the future age of criminal responsibility, subject to consultation with appropriate persons.

Consultation

5. The policy objectives of the Act were subject to parliamentary scrutiny as a part of the legislative process. The Policy Memorandum for the Bill that preceded the Act outlined the

consultation undertaken on the proposals. As these Regulations bring into force provisions of the Act, no further consultation has been carried out in relation to this instrument.

Impact Assessments

6. All necessary impact assessments were carried out during the Act's passage through the Scottish Parliament. These Regulations are commencing legislation, and it is considered that no further impact assessments are required.

Financial Effects

7. The financial effects of the Act are detailed in the Financial Memorandum**1** prepared in respect of the Bill that preceded the Act and the supplementary Financial Memorandum**2** prepared after stage 2 of the Bill.

Scottish Government
Children and Families Directorate

25 November 2021

1 SPBill29FMS052018.pdf (parliament.scot)
2 Financial Memorandum (parliament.scot)