POLICY NOTE

The Age of Criminal Responsibility (Scotland) Act 2019 (Independent Review of Disclosure of Information) Regulations 2020

SSI 2020/305

1. The above instrument was made in exercise of the powers conferred by section 23(1) of the Age of Criminal Responsibility (Scotland) Act 2019 ("the Act"). The instrument is subject to negative procedure.

Part 2 of the Act sets out details about the procedure for the independent review of disclosure information. The purpose of these Regulations is to set time periods for specific parts of that procedure.

Policy Objectives

2. The policy intention behind Part 2 of the Act is that information which relates to a time when a person was under the age of 12 can only be disclosed on an enhanced disclosure or Protecting Vulnerable Groups (PVG) scheme record if the independent reviewer determines that it ought to be included. The Act sets out details about the procedure for review of information prior to disclosure.

3. The objective behind these Regulations is to provide appropriate time periods within which key parts of the procedure for review are to be carried out. This is to provide clarity to those involved and ensure that applications are not subject to any unnecessary delay.

4. The Regulations provide that:

- when the chief constable, having received a request from Scottish Ministers, is to refer information under 14(1) of the Act, that they have identified and consider ought to be included in an enhanced disclosure or PVG scheme record to the independent reviewer, this must be sent within a time period of 14 days;
- when the independent reviewer is to notify the applicant or scheme member, under section 16(1) of the Act, that the information has been received for review and how they can make representations about whether the information ought to be disclosed, this must be sent within a time period of three days; and
- where the applicant or scheme member wishes to make representations to the independent reviewer, as mentioned in section 16(2) of the Act, they must be made within a time period of 28 days. The independent reviewer may consider representations made by the applicant or scheme member after this time period, on cause shown.

5. Sections 14 and 16 of the Act are due to be commenced on the same day that these Regulations come into force.

6. The Act will be amended in due course in line with changes which will be introduced by the Disclosure (Scotland) Act 2020.

Consultation

7. Discussions about the procedure for review and appropriate timescales took place between the Scottish Government and the Disclosure Delivery Group, a group that was established while the Bill for the Act was in the Scottish Parliament and is made up of stakeholders including Victim Support Scotland, the Centre for Youth and Criminal Justice (CYCJ), Community Justice Scotland, Police Scotland, Who Cares? Scotland and the Scottish Children's Reporter Administration (SCRA).

8. All of the views expressed during these discussions were considered and used to inform the content of the Regulations.

Impact Assessments

9. An Equality Impact Assessment, a Privacy Impact Assessment, and a Children's Rights and Wellbeing Impact Assessment were completed in relation to the Bill for the Act. The procedure for review related to these regulations were assessed and no impact issues were identified. The links below show the relevant documentation:

EQIA - https://www.gov.scot/publications/age-criminal-responsibility-scotland-bill-equalityimpact-assessment/
PIA - https://www.gov.scot/publications/age-criminal-responsibility-scotland-bill-privacyimpact-assessment/
CRWIA - https://www.gov.scot/publications/age-criminal-responsibility-scotland-billchildrens-rights-wellbeing-impact-assessment/

Financial Effects

10. The Minister for Children and Young People confirms that no BRIA is necessary as this instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government

October 2020