POLICY NOTE

THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019 (PLACES OF SAFETY) REGULATIONS 2021

SSI 2021/421

The above instrument was made in exercise of the powers conferred by section 30(1) of the Age of Criminal Responsibility (Scotland) Act 2019 ("the Act"). The instrument is subject to the negative Parliamentary procedure.

Purpose of the instrument

The purpose of this instrument is to prescribe certain pieces of information to be recorded by Police Scotland when they make use of the power in section 28 of the Act to take a child to a place of safety in certain circumstances.

Background

The Act will raise the age of criminal responsibility in Scotland from eight to twelve years old This will means that children under twelve cannot commit an offence, and no child will have a criminal record because of any behaviour or act under that age.

The Act recognises that, in certain limited situations, it will be necessary for police to have the power to intervene to prevent a child under twelve from harming others.. The Act does this by providing Police Scotland with the power to take certain actions when children under twelve are involved in exceptionally serious incidents. These measures will ensure that harmful acts remain capable of triggering an intervention.

Among the powers afforded to Police Scotland in the Act is the power under section 28, which enables a constable to take a child to a place of safety where they have reasonable grounds to believe the child is behaving or is likely to behave in a way that is causing or risks causing significant harm to another person.

In those circumstances, the constable may take the child to a place of safety and keep the child there for a short period (24 hours upper limit) if the constable is satisfied that it is necessary to do so to protect any other person from an immediate risk of significant harm or further such harm.

Policy Objectives

This instrument will prescribe particular types of information to be recorded by Police Scotland when they exercise their power to take a child to a place of safety under section 28 of the Act.

The policy objective of the instrument is to require Police Scotland to keep robust and comprehensive records when they use the section 28 power. This information can then be used for audit purposes and drawn on in the preparation of reports to be laid in the Scottish Parliament by the Scottish Ministers under section 32 of the Act.

With the sensitivity of the information to be collected by police pursuant to this instrument, the Scottish Government has considered the legal gateway that will permit Police Scotland to share information with Ministers so as to support the development of reports under section 32. Section 84[1] of the Police and Fire Reform (Scotland) Act 2012 contains provision which will enable the relevant information to be shared with the Scottish Ministers by Police Scotland. This is explored in further detail in the Data Protection Impact Assessment which is being published on the Scottish Government website to accompany this instrument.

Taking a child to a place of safety has immediate implications for the rights of that child and their wellbeing. There are also immediate implications for the safety and wellbeing of those around that child, given the criteria which must be met for the section 28 power to be engaged. This instrument will support accurate records of the use of the power being kept, facilitating accountability and upholding the principles of the Act.

This instrument will ensure that Police Scotland keep a record of the following factors relating to the use of the section 28 power (noting that all these factors may not require to be noted in each use of this power: the specifics of each use will determine the factors to be recorded):

- the nature and circumstances of the incident which has led to the section 28 power being used (regulation 2(a))

- the nature of the evidence that a constable considered when determining that the child was behaving or was likely to behave in a way that caused, or risked causing, significant harm to another person (regulation 2(b))

- the nature and location of each place of safety used (regulation 2(c))

- the dates and times at which the child arrived at each place of safety (regulation (2)(d))

- the dates and times at which the child left each place of safety, except where the place of safety was the home of a family member or friend of the child (regulation 2(e)). This exception reflects that, where the place of safety used was the home of a family member or friend, there will be limited or no ability to require that family member or friend to advise police of the date and time when the child left, and indeed it is possible (for instance where the child's own home is the place of safety used) that the child remains there long-term.

- if a child was kept in a place of safety which was a police station for any period, the reasons why it was not considered reasonably practicable to keep the child in another place of safety at the time in question (regulation 2(f))

- If the child was kept at any time in a cell in a police station,

    - the reasons why the child could not be kept elsewhere in the police station

[1] Police and Fire Reform (Scotland) Act 2012 (legislation.gov.uk)

- the length of time the child was kept in the cell

(Regulation 2(g))

Consultation

The Scottish Government consulted in 2016 on the minimum age of criminal responsibility. This consultation flowed from a Report[2] to the Scottish Ministers of an Advisory Group on the minimum age of criminal responsibility. The Report recommended (see page 37) that a power similar to a Child Assessment Order be created to enable a child to be taken to a place of safety in exceptional circumstances.

The Scottish Government has published an analysis of the responses[3] received to that consultation, which includes outcomes from engagement with children and young people. Page 6 of the analysis document sets out comments received in response to the question "*What safeguards should be put in place for children aged under 12 in relation to the use of these* [police] *powers* [including the power to take a child to a place of safety]?"

The Scottish Government has regularly engaged with Police Scotland on the implementation of the Act, including in relation to the power in section 28 to take a child to a place of safety. As part of this broader engagement, the Scottish Government has collaborated with Police Scotland on the development of this instrument to ensure that its terms are appropriate, deliverable, proportionate and underpinned by the principles of the Act.

Impact Assessments

The following impact assessments were published on the Scottish Government website for the Age of Criminal Responsibility (Scotland) Bill:

- Equality Impact Assessment[4]
- Privacy Impact Assessment[5]
- Children's Rights and Wellbeing Impact Assessment[6]

The following impact assessments have been completed as part of the development of this instrument. These will be published on the Scottish Government website:

- Business and Regulatory Impact Assessment
- Children's Rights and Wellbeing Impact Assessment
- Equality Impact Assessment
- Data Protection Impact Assessment

[2] The Report of the Advisory Group on the Minimum Age of Criminal Responsibility (consult.gov.scot)

[3] Minimum age of criminal responsibility: consultation analysis - gov.scot (www.gov.scot)
[4] Age of Criminal Responsibility (Scotland) Bill: equality impact assessment - gov.scot (www.gov.scot)
[5] Age of Criminal Responsibility (Scotland) Bill: privacy impact assessment - gov.scot (www.gov.scot)
[6] Age of Criminal Responsibility (Scotland) Bill: children's rights and wellbeing impact assessment - gov.scot (www.gov.scot)

After careful consideration, we have concluded that there are no Fairer Scotland Duty, Island Community or Strategic Environment impact issues inherent to this instrument, for the following reasons:

- **Fairer Scotland Duty**
  The aim of the Fairer Scotland Duty is to help the public sector make better policy decisions and deliver fairer outcomes. The duty focuses on socio-economic inequality issues such as low income, low wealth, and area deprivation. This is because the only legal and practical implications of this instrument are for Police Scotland in terms of recording certain pieces of information when they use the power in section 28 of the Act to take a child to a place of safety.

- **Islands Community**
  The purpose of an Islands Community Impact assessment is to consider how a policy might impact on an islands community. As with the Fairer Scotland Duty, we consider that such issues do not arise, because the legal and practical implications of this instrument fall on Police Scotland only. We note Police Scotland will have representatives in island communities in Scotland, but the same obligations on officers under this instrument in terms of recording information will apply regardless of geographic location, and thus there is no differential impact.

- **Strategic Environment**
  The aim of this impact assessment is to ensure that planners and policy makers consider the likely significant environmental effects of plans, programmes and strategies. Given that Police Scotland will be able to perform their obligations under this instrument with existing processes, systems and mechanisms we have concluded that there will be little or no impact on the environment.

Financial Effects

As stated above a Business and Regulatory Impact Assessment (BRIA) has been completed and is being published on the Scottish Government website. This BRIA explores the cost implications of placing police under a statutory obligation to record certain pieces of information when they use the power to take a child to a place of safety. The Scottish Government has concluded that this statutory obligation has only nominal financial implications for police.

Scottish Government
Safer Communities Directorate

November 2021