POLICY NOTE

THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019 (REGISTER OF CHILD INTERVIEW RIGHTS PRACTITIONERS) REGULATIONS 2021

SSI 2021/233

1. The above instrument was made in exercise of the powers conferred on the Scottish Ministers by section 56(3) of the Age of Criminal Responsibility (Scotland) Act 2019 (the 2019 Act) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Summary Box

Section 51 of the 2019 Act provides for a child who is involved in an investigative interviewto be appointed a child interview rights practitioner ("ChIRP"). A ChIRP must be appointed whether the child is being interviewed under a child interview order which has been granted under section 44 or by agreement under section 40. The role of a ChIRP is to provide children with advice, support and assistance in relation to their involvement in such interviews.

Section 56(1) requires the Scottish Ministers to establish and maintain a register of child interview rights practitioners

These regulations are made under sections 56(3) and (4) and make provision in relation to the appointment to the register (including period of appointment) potential disqualification of ChIRPs), training of ChIRPs and fees (including expenses and allowances).

Policy Objectives

2. Prior to implementation of the 2019 Act, where a child aged eight or over was behaving in a way that was causing or risks causing significant harm to another person, a police constable was able to arrest the child on suspicion that the child had committed an offence. Once section 1 of the 2019 Act (which raises the age of criminal responsibility from 8 to 12) comes into force, this power will not be available in relation to eight to 11 year olds. This is because children in this age group will no longer be considered as able to commit an offence, and therefore the police will not be able to arrest them on suspicion of committing an offence.

3. The 2019 Act provides the police with specific powers to question children who (i) by behaving in a violent or dangerous way are suspected of causing (or risked causing) serious physical harm to another person, or (ii) by behaving in a sexually violent or sexually coercive way, are suspected of causing (or risked causing) harm (whether physical or not) to another person.

4. Section 51 of the Act, provides for a child who is involved in an investigative interview to have a ChIRP appointed to them. The ChIRP will provide the child with advice, support and assistance in connection with, and during an investigative interview.

5. The regulations will apply when the behaviour being investigated relates to when a child was under 12 years of age, and will apply to children who are under 16 years of age or who are 16 or 17 years of age and are subject to a compulsory supervision order or an interim compulsory supervision order at the time of the interview. A constable must have reasonable grounds to suspect that the child (while under the age of 12) either:

(a) behaved in a violent or dangerous way which caused or risked causing serious physical harm to another person, or
(b) behaved in a sexually violent or sexually coercive way which caused or risked causing harm (whether physical or not) to another person.

6. The ChIRP must be a solicitor registered with the Scottish Legal Aid Board's Children's Legal Assistance Scheme, thereby drawing on the skills and knowledge of a solicitor required to be registered with that scheme. The role of the ChIRP is to provide '*advice, support and assistance*' to a child under the age of criminal responsibility (ACR) during an investigative interview.

7. The provision of "advice, support and assistance" includes the ChIRP:-

(a) helping the child to understand:-
(i) the purpose of the interview,
(ii) the child's rights in relation to the interview (including the child's right to refuse to answer questions), and
(iii) what may happen as a result of the interview,
(b) making recommendations to the child about the exercise of the child's rights in relation to the interview,
(c) being present with the child in the room in which the interview is being conducted,
(d) communicating on the child's behalf with the person conducting the interview or otherwise supporting the child in communicating with that person,
(e) questioning whether the interview is being conducted:-
(i) in accordance with any child interview order authorising the interview or otherwise fairly,
(ii) in a way that treats the need to safeguard and promote the wellbeing of the child as a primary consideration.

8. Due to the age of the children involved, and the potential impact of the investigation on the life of the child (despite the investigative interview being non-criminal in nature) , the role requires a legal qualification and a degree of specialism in working with young children in an age-appropriate manner, to ensure that a child's rights and their interests are protected and promoted in the best way possible for that child. The ChIRP will not receive instructions from the child, but must ascertain and have regard to the views of the child, taking into account the child's age and maturity. The ChIRP has a duty under section 72 of the 2019 Act to treat the well-being of the child as a primary consideration.

9. The 2019 Act sets out that a ChIRP will be a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980 and will be drawn from the Children's Legal Assistance Scheme, which means - where appropriate - they may also represent the child at any subsequent children's hearing as a legal representative rather than a ChIRP. This recognises and respects the fundamental importance of relationships for young children navigating these processes.

Consultation

10. In developing the policy for ChIRPs, we have consulted and engaged with representatives of the legal profession in Scotland, including: the Scottish Legal Aid Board, Clan Childlaw, the Law Society of Scotland, Millard Law, the Child Law Centre, Livingstone Brown, the Faculty of Advocates, Keegan Smith, and McCarry's Solicitors. We have engaged with the Children's Legal Assistance Scheme peer review group, and have consulted with children and young people in relation to their expectations from ChIRPs.

11. Since the ChIRP role is new, feedback from children and young people has been more general in nature, focusing on the need for ChIRPs to demonstrate empathy, and be skilled in building rapport and trust, helping the child being interviewed to feel comfortable and reassured. We will continue to engage with children and young people as the policy is implemented, learning from their experience of investigative interviews.

12. We held a wider consultation exercise on the policy (1 December 2020-19 January 2021) and received responses from Police Scotland, COSLA, Social Work Scotland, Aberdeen City Council, Argyll & Bute Council, Dumfries & Galloway Council, City of Edinburgh Council, South Lanarkshire Council, West Lothian Council, Edinburgh Child Protection Committee, CELCIS, Scottish Courts and Tribunals Service, SCRA, Together Scotland, Victim Support Scotland.

Impact Assessments

13. 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. No impact issues were identified. The following links show the relevant documentation:

- Children's Rights and Wellbeing Impact Assessment: Age of Criminal Responsibility (Scotland) Bill: children's rights and wellbeing impact assessment - gov.scot (www.gov.scot)
- Equalities Impact Assessment: Age of Criminal Responsibility (Scotland) Bill: children's rights and wellbeing impact assessment - gov.scot (www.gov.scot)
- Privacy Impact Assessment: Age of Criminal Responsibility (Scotland) Bill: privacy impact assessment - gov.scot (www.gov.scot)

14. For the purpose of these regulations, screening exercises have been undertaken for Fairer Scotland Duty, Strategic Environmental, Equality and Children's Rights Impact Assessments, and have concluded that full impact assessments are not required.

15. Work is ongoing to establish whether an Island Communities Impact Assessment is required.

16. A Data Protection Impact Assessment has not been undertaken, as the original policy intention was for the register to be held and maintained on Ministers' behalf by an external organisation. However, the 2019 Act does not contain provision to allow that. Instead, the register will be held within the Youth Justice Unit of the Scottish Government. As specific individuals within the Unit will be acting as data controllers for the data collected as a result of establishing the register, an operational DPIA covering the collection and use of data will be required. Work on this is underway.

Financial Effects

17. The Minister for Children and Young People confirmed that a BRIA is unnecessary as the instrument has no financial effects on the Scottish Government, local government or on business.

18. The expected costs associated with ChIRPs were detailed in the Financial Memorandum to the Age of Criminal Responsibility (Scotland) Bill, introduced to the Scottish Parliament in March 2018: SPBill29FMS052018.pdf (parliament.scot)

19. At the time of introduction, reference in the Bill was for advocacy workers; the nomenclature was changed at Stage 3 to child interview rights practitioners, with no change in policy intention).

Scottish Government
Children and Families Directorate

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