POLICY NOTE – APPROPRIATE ADULT SUPPORT SSIs

THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 6 AND TRANSITIONAL PROVISION) ORDER 2019
SSI 2019/363 (C. 18)

THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016 (SUPPORT FOR VULNERABLE ADULTS) REGULATIONS 2019
SSI 2019/XXX

1. The Criminal Justice (Scotland) Act 2016 (Commencement No. 6 and Transitional Provision) Order 2019 ("the 2019 Order") is made in exercise of the powers conferred by section 117(2) and (3) of the Criminal Justice (Scotland) Act 2016 ("the 2016 Act") and all other powers enabling Scottish Ministers to make the Order. This instrument is subject to no procedure.

2. The Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Adults) Regulations 2019 ("the 2019 Regulations") are made in exercise of the powers conferred by sections 98(1)(b) and (2), 99, 100(a), 101(a)(i) and (b) and 104(1) and (2) of the 2016 Act. This instrument is subject to affirmative procedure.

Purpose

3. The purpose of the 2019 Order is to commence section 42 of the 2016 Act which places a duty on the police[1] to identify vulnerable adults in custody and to facilitate the provision of communication support for these individuals. The Order also makes provision to commence sections 102 and 103 of the 2016 Act - which relate to the training and quality assessment functions outlined in paragraph 4, below - so that they come into force on the same date as the 2019 Regulations.

4. The purpose of the 2019 Regulations is to place non-statutory Appropriate Adult ("AA") services on a statutory footing by setting out the definition of "appropriate adult support" and conferring functions pertaining to the delivery of AA services, the training of those undertaking the role of AA and the quality assessment of AA provision.

5. The establishment of a statutory AA service, using these powers, is considered necessary for the effective commencement of the duty on the police under section 42 of the 2016 Act and will help ensure high quality and consistent support for vulnerable adults in the Scottish criminal justice system.

Policy Objectives

6. The primary role of an AA is to facilitate communication between the police and vulnerable adults (aged 16 and over) during police procedures. AA services have been delivered in Scotland on a non-statutory basis since the early 1990s, providing support to suspects, accused persons, victims and witnesses who have communication difficulties due to a mental disorder.

[1] Section 42 applies to certain other constables and officials when operating in Scotland by virtue of Article 2 of S.S.I. 2017/465 and Articles 6 and 7 and schedules 2 and 3 of S.I. 2018/46. Cross-border provision is contained in Part X of the Criminal Justice and Public Order Act 1994 (c.33).

7. As part of his review of the Scottish legal system in 2011, Lord Carloway recommended that there should be a statutory definition of a vulnerable adult and that individuals who meet this definition should have a legal right to an AA when in police custody. These recommendations were ultimately incorporated into the 2016 Act, which contains a definition of a "vulnerable person"[2], places a duty on the police to facilitate the provision of communication support for such persons in police custody, and provides Scottish Ministers with regulation-making powers to create a statutory AA service.

Definition of AA Support

8. Regulation 3 in the 2019 Regulations defines AA support to include support at any stage during a police investigation for victims, witnesses and those suspected or accused of committing an offence.

9. Non-statutory AA services currently provide support to victims and witnesses, as well as to suspects and accused persons for non-custody related procedures. The definition in regulation 3 means that local authorities will have a duty to continue providing AA support to all of these groups when the statutory service commences.

10. While duty on the police in section 42 of the 2016 Act relates specifically to vulnerable adults in police custody, the police currently request AA support for all vulnerable adults who require it, including victims and witnesses, during police investigations and will continue to do this when the statutory service commences

Delivering AA Services and Providing Training for AAs

11. The functions of delivering AA services and providing training for AAs are conferred on local authorities by regulations 4 and 6 respectively of the 2019 Regulations.

12. At present, local authorities work in a variety of ways to deliver AA services and train AAs, including partnerships between different local authority areas and with health and justice partners, as well as contracting out to third parties. Regulations 4(2) and 6(2) provide local authorities with the flexibility to continue to tailor their AA service and training provision in order to suit local needs by allowing them to enter into contracts with others.

13. Section 101(a)(ii) of the 2016 Act allows for a function to be conferred to provide training to people in other roles who interact with individuals who require AA support. Such roles include the police, advocacy and support workers, and legal and health professionals. This function is not being conferred at this time as engagement with stakeholders has suggested that a non-legislative approach is more suitable to address these training needs. A stakeholder group comprised of representatives from Scottish Government and the justice, health and third sectors has been established to develop a national training framework for AAs, and part of this group's remit is to explore ways to improve training relating to AA support for these other roles.

[2] A description of a vulnerable person is contained in section 42(1)(c) of the 2016 Act and the definition of "vulnerable person" contained in section 98(3) of that Act largely replicates this description.

14. Section 102(1)(a) of the 2016 Act allows for the AA training provider to make recommendations about the way AA support is provided to the person on whom the function to deliver AA services is conferred. As set out in paragraph 11, local authorities will be responsible for the duties to deliver AA services and to train AAs. The statutory guidance for local authorities which will accompany these regulations sets out how this will work in practice, namely that all AA services will be expected to have a formal management structure in place which will have involvement in the training function and can make recommendations about service provision.

Quality Assessment of AA Support

15. Section 103 of the 2016 Act, places a duty on Scottish Ministers to ensure that a quality assessment function is conferred as part of the statutory AA service. This function is conferred on Social Care and Social Work Improvement Scotland (commonly known as "the Care Inspectorate") by regulation 5 of the 2019 Regulations.

16. In this role the Care Inspectorate will work with local authorities to identify key themes, issues and good practice to help ensure that AA provision is of a high standard and is consistent across Scotland. Section 102(1)(a) of the 2016 Act allows for the Care Inspectorate to make recommendations about AA provision to local authorities, to which local authorities must have regard.

Consultation

17. The model for the statutory AA service was developed by a working group consisting of representatives from the Scottish Appropriate Adult Network and COSLA, as well as health and justice partners, cross-policy Scottish Government officials and statutory bodies including the Care Inspectorate and Mental Welfare Commission. An advisory group of organisations representing service users was established to offer expert opinion on the model developed by the working group.

18. A public consultation on the model developed by these groups took place between 3 April 2018 and 26 June 2018, including workshops held in conjunction with the SOLD Network and Support in Mind Scotland. Responses to the consultation and the analysis of these responses can be accessed on the Scottish Government website https://consult.gov.scot/criminal-justice/appropriate-adult-service/.

Impact Assessments

19. The following impact assessments have been completed:

- Equalities Impact Assessment
- Data Protection Impact Assessment

No equality and privacy issues have been identified by these assessments.

20. Screening has been carried out for other impact assessments (Environmental, Fairer Scotland Duty, Child Rights and Wellbeing) and this has determined that they are not required.

Financial Effects

21. The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

22. As set out above, local authorities currently provide AA services on a non-statutory basis and the 2019 Regulations allow them flexibility to continue delivering AA services to suit local needs. A costing exercise has, however, been undertaken in conjunction with COSLA and additional funding of £1 million per annum has been agreed to help local authorities meet the statutory duties in these regulations.

23. Recurring funding of £180,000 per annum has also been agreed to enable the Care Inspectorate to undertake the quality assessment function.

Criminal Justice Division
Scottish Government

29 October 2019