POLICY NOTE

THE AGE OF CRIMINAL RESPONSIBILITY (REPORTS ON USE OF PLACES OF SAFETY) (SCOTLAND) REGULATIONS 2022

SSI 2022/XXX

The above instrument was made in exercise of the powers conferred by section 32(1)(a) of the Age of Criminal Responsibility (Scotland) Act 2019 ("the Act[i]"). The instrument is subject to the affirmative Parliamentary procedure.

Purpose of the instrument

The purpose of this instrument is to specify the information to be included in reports on the use of the place of safety power contained in section 28 of the Act, which are to be prepared by the Scottish Ministers under section 32 of the Act.

Background

The Act raised the age of criminal responsibility in Scotland from eight to twelve years old. This 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 came fully into force on 17 December 2021, raising the age of criminal responsibility in Scotland from 8 to 12 years old from that date. The Act also contains a bespoke package of police investigatory and other powers, capable of use only where the suspected behaviour of a child under 12 years old has been or risked being exceptionally harmful. Among the powers afforded to Police Scotland in the Act is the power under section 28, which enables a constable to take a child under 12 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 and where this is necessary to protect another person from an immediate risk of signficant harm or further significnt harm.

Section 32 of the Act places the Scottish Ministers under an obligation to lay in the Scottish Parliament reports on the use of the section 28 power, and provides them with the power to make regulations prescribing the particulars of those reports. Section 32 requires the first report to be prepared "*as soon as reasonably practicable*" after one year has passed since section 28 came into force, and after each successive period of one year.

Policy Objectives

The policy objective of section 32 is to ensure the Scottish Parliament are sighted on the use of the section 28 power. A number of concerns were raised about the section 28 power as the Bill made its way through Parliament, and this instrument will ensure the Scottish Parliament are able to monitor the use of the power effectively.

Regulations under section 30 of the Act[1] ("the section 30 regulations") already require Police Scotland to record a variety of information about each use of the place of safety power.

Given the sensitivity of the information to be collected by Police Scotland under the section 30 regulations, 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[2] 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 (DPIA), which notes that the place of safety power is likely to be used infrequently, resulting in a potential risk that any reports to Parliament may allow for a child's identity to be determined. The DPIA sets out that reports to Parliament will need to safeguard the rights of any data subject, and this might be particularly important if the power is not frequently used. This impact assessment does not require to be published and is considered a living document, which will be updated as necessary over time.

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 reports of the use of the power being kept, facilitating accountability and upholding the principles of the Act.

This instrument will ensure that reports to Parliament on the use of the section 28 power will include the following pieces of information:

- The number of times in each month of the relevant reporting period that the power has been used.
- The number of times each of the different types of places of safety listed in section 28(11) of the Act was used.
- The nature of the behaviour or likely behaviour which was considered to be causing or risk causing significant harm to another person in each case.
- Where a police station was used as a place of safety, the reasons why that was the case.
- Where the child is kept in a cell at a police station under the place of safety power, the length of time the child was kept in a cell. A cell will only be used as a place of safety in the rarest of circumstances and for one reason only, when a child is behaving in an exceptionally violently manner and their behaviour poses extreme risk of injury to others. This is provided for in Police (Scotland) internal guidance and training materials.
- The length of time for which a child was kept at a place of safety. Police Scotland will often be reliant on third parties for this information. The data is normally obtained via

[1] The Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021 (legislation.gov.uk)

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

a post-incident case-management process and this may result in a time-lag between recording by the occupier of the place of safety (such as a local authority) and reporting to the police.

Consultation

The Scottish Government consulted in 2016 on the minimum age of criminal responsibility. This consultation flowed from a Report[3] 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[4] 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. In developing this instrument, the Scottish Government also informally consulted with a range of stakeholders, including organisations with a strong focus on children's rights.

Impact Assessments

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

- Equality Impact Assessment[5]
- Privacy Impact Assessment[6]
- Children's Rights and Wellbeing Impact Assessment[7]

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

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

[4] Minimum age of criminal responsibility: consultation analysis - gov.scot (www.gov.scot)
[5] Age of Criminal Responsibility (Scotland) Bill: equality impact assessment - gov.scot (www.gov.scot)
[6] Age of Criminal Responsibility (Scotland) Bill: privacy impact assessment - gov.scot (www.gov.scot)
[7] 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 the Scottish Ministers in requiring to publish reports containing particular information, and Police Scotland in providing them with that information from amongst that which they are required to record by the section 30 regulations.

- **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 obligations on Ministers under this instrument in terms of reporting information will apply regardless of the geographic location of the incident, 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 and the Scottish Governemnt 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 Ministers under a statutory obligation to produce reports on the use of the section 28 power. The Scottish Government has concluded that this statutory obligation has only nominal financial implications for police and the Scottish Government.

Scottish Government
Safer Communities Directorate

June 2022

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[i] Age of Criminal Responsibility (Scotland) Act 2019 (legislation.gov.uk)