POLICY NOTE

THE INDEPENDENT REVIEWER (MODIFICATION OF FUNCTIONS) (SCOTLAND) REGULATIONS 2021

SSI 2021/XXX

1. The above instrument was made in exercise of the powers conferred by section 24(1) and 82(1)(b) of the Age of Criminal Responsibility (Scotland) Act 2019 ("the Act"). The instrument is subject to affirmative procedure.

Part 2 of the Act sets out details about the procedure for the independent review of disclosure information. The policy intention is that information relating to behaviour that occurred when an individual was under the age of 12 may be disclosed but only following approval by the independent reviewer (IR). The purpose of these Regulations is to modify the functions of the IR so that they can effectively carry out their duties in respect of information which is received from other jurisdictions of the UK.

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 certificate or Protecting Vulnerable Groups (PVG) scheme record if the IR determines that it ought to be included. The Act sets out details about the procedure for review of information prior to disclosure. This includes a requirement that any such information must be reviewed and disclosure authorised by the IR before Police Scotland are permitted to disclose it to the Scottish Ministers. This is provided for under Part 2, Chapter 2 of the Act.

3. The Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021 will come into force in December 2021 and will allow effective cross border operation of the IR's functions throughout the UK, including in relation to the sharing of information. The purpose of these regulations is to modify the functions of the IR under the Act to ensure that the IR is able to operate effectively as a result of these changes. This will ensure that where information about pre-12 behaviour is proposed for disclosure to the Scottish Ministers by a police force in England, Wales or Northern Ireland the IR has the appropriate powers to review the information and then determine if disclosure should occur.

Consultation

4. The IR is in agreement with the proposed changes which are a technical change in consequence of The Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021.

Impact Assessments

5. 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)

Financial Effects

6. 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.

Scottish Government
Directorate for Children and Families

5th October 2021