SCOTTISH STATUTORY INSTRUMENTS

2021 No. 476

CHILDREN AND YOUNG PERSONS

The Independent Reviewer (Modification of Functions) (Scotland) Regulations 2021

Made - - - -	*15th December 2021*
Coming into force - -	*17th December 2021*

The Scottish Ministers make the following Regulations in exercise of the power conferred on them by sections 24(1) and 82(1)(b) of the Age of Criminal Responsibility (Scotland) Act 2019(**a**) and all other powers enabling them to do so.

In accordance with section 24(2) of that Act, the Scottish Ministers have consulted with such persons as they consider appropriate.

In accordance with section 82(3)(c) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Independent Reviewer (Modification of Functions) (Scotland) Regulations 2021 and come into force on 17 December 2021.

Modification of the Age of Criminal Responsibility (Scotland) Act 2019

2.—(1) The Age of Criminal Responsibility (Scotland) Act 2019 is modified in accordance with this regulation.

(2) In section 16 (notification to applicant or scheme member), before subsection (1) insert—

"(A1) This section applies where information falling within subsection (A2) or (A3) is referred to the independent reviewer for review.

(A2) Information falls within this subsection if—

(a) it has been referred to the independent reviewer following a request for information made by the Scottish Ministers under section 113B(4) of the 1997 Act,

(b) it relates to a time when the applicant was under 12 years of age, and

(c) it ought, in the opinion of the person who referred the information to the independent reviewer, to be included in an enhanced criminal record certificate issued under section 113B(1) of that Act.

(**a**) 2019 asp 7.

(A3) Information falls within this subsection if—

(a) it has been referred to the independent reviewer as a result of an enquiry or arrangements made under section 47 of the 2007 Act,

(b) it relates to a time when the scheme member was under 12 years of age, and

(c) it ought, in the opinion of the person who referred the information to the independent reviewer, to be included in a scheme record by virtue of section 49(1)(c) of that Act.".

(3) In section 18 (review of information)—

(a) in subsection (1), for "mentioned in section 14(1)(a)" substitute "falling within section 16(A2)",

(b) in subsection (2), for "mentioned in section 14(1)(b)" substitute "falling within section 16(A3)",

(c) in subsection (3)(a)—

(i) in sub-paragraph (i), for "under section 14(2)" substitute "in compliance with any requirement as to information to be provided to the independent reviewer together with the information falling within section 16(A2) or, as the case may be, (A3)",

(ii) in sub-paragraph (iii), for "under section 17" substitute "in response to a notice given by the independent reviewer requiring information in connection with the review".

(4) The section title of section 18 becomes "Review of referred information".

(5) In section 19(2) (persons to be notified of determination), for paragraph (a) substitute—

"(a) the person who referred the information falling within section 16(A2) or, as the case may be, (A3) to the independent reviewer,".

(6) In section 20(1) (persons who may appeal determination), for paragraph (b) substitute—

"(b) the person who referred the information falling within section 16(A2) or, as the case may be, (A3) to the independent reviewer.".

CLARE HAUGHEY
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
15th December 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

The independent reviewer was established under the Age of Criminal Responsibility (Scotland) Act 2019 ("the Act"). The independent reviewer's functions include reviewing information which relates to behaviour which took place when a person was under the age of 12 and determining whether or not that information ought to be included on an enhanced disclosure certificate or a Protection of Vulnerable Groups scheme record.

These Regulations make modifications to the functions of the independent reviewer which are needed as a result of the Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021 ("the Order").

The Order makes provision in relation to the independent reviewer which applies in England, Wales and Northern Ireland. In particular, the order places a requirement on specified persons in England, Wales and Northern Ireland (such as chief police officers) to refer certain information to the independent reviewer. These regulations therefore make provision to require the independent reviewer to review that information and to notify the person to whom the information relates: that it has been received from those specified persons, to give the person a chance to make representations, to notify the person of the outcome of the review and to give the person a right to appeal that review decision.

Regulation 2 achieves this by adding new subsections (A2) and (A3) to section 16 of the Act. It also modifies section 18 of the Act so that the requirement on the independent reviewer to carry out a review extends to the information mentioned in those new subsections (A2) and (A3) of section 16. Those subsections also cover the information mentioned in section 14(1)(a) and 14(1)(b) of the Act.

Regulation 2 also modifies section 19(2) of the Act so that the independent reviewer has to notify the person in England, Wales or Northern Ireland of the determination under section 18(4) of the Act regarding the information.

In consequence of the new subsections (A2) and (A3) of section 16 of the Act, regulation 2 also modifies section 20(1) of the Act so that the right to appeal that determination extends to the person in England, Wales or Northern Ireland.

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