
Report To:	Health & Social Care Committee	Date:	9 January 2020
Report By:	Louise Long Corporate Director, (Chief Officer) Inverclyde HSCP	Report No:	SW/08/2020/SMcA
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Subject:	Age of Criminal Responsibility (Scotland) Act 2019		

1.0 PURPOSE

- 1.1 The purpose of this report is to inform the Health and Social Care Committee of the Age of Criminal Responsibility (Scotland) Act 2019 and the implications of this.

2.0 SUMMARY

- 2.1 The Age of Criminal Responsibility (Scotland) Act 2019 was passed unanimously by the Scottish Parliament on 7th May 2019 and given Royal Assent on 11th June 2019.
- 2.2 The Act raises the age of criminal responsibility in Scotland from eight to twelve years of age.
- 2.3 The Act does provide Police with a range of powers for young people under 12 who display serious harmful behaviour, with a strong emphasis on a child-centred, non-criminalising approach.
- 2.4 Central to the Act is the principle that we “must treat the need to safeguard and promote the wellbeing of the child as a primary consideration”.
- 2.5 The implementation of the Act will be undertaken in a phased manner, commencing at the end of November 2019 whereby children under twelve years of age will no longer be referred to a Children’s Hearing on offence grounds, and will only be referred on their need for care or protection.
- 2.6 Guidance to accompany the legislation is being developed and will be issued in due course.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Health and Social Care Committee notes the content of the report and agrees changes required to the service to ensure young people are given appropriate support.

**Louise Long
Corporate Director (Chief Officer)
Inverclyde HSCP**

4.0 BACKGROUND

- 4.1 The Scottish Government established an expert advisory group in 2015 to identify the key issues arising from an increase in the age of criminal responsibility from eight to twelve years. This group made a number of recommendations and an extensive consultation followed. Legislation was introduced to the Scottish Parliament in 2008 and the Age of Criminal Responsibility (Scotland) Act was passed and given Royal Assent on 11th June 2019.
- 4.2 Article 40 of the United Nations Convention of the Rights of the Child calls on States to include “the establishment of a minimum age of criminal responsibility below which children shall be presumed not to have capacity to infringe the penal law”.
- 4.3 There will be a phased implementation of provisions in the Act. The first phase will include that from the end of November 2019 children under twelve years of age will no-longer be referred to a Children’s Hearing on offence grounds and will only be referred on their need for care or protection. A fundamental impact of this on such children is that they will not acquire a criminal conviction on the basis of behaviour that occurred when they were under twelve years of age.
- 4.4 There is strong evidence that shows early involvement in the formal criminal justice system can be severely detrimental to children and their future behaviour. Central to the Act is the principle that we “must treat the need to safeguard and promote the wellbeing of the child as a primary consideration”. Any child involved in harmful behaviour will have their needs met without being treated as a criminal.
- 4.5 There are a range of other related provisions in the Act. This includes a new disclosure regime which will be commenced in the summer of 2020. From this point there will be no disclosure about children under twelve years of age outlining convictions accrued before the age of criminal responsibility changed. Instead, information relating to behaviour that occurred when an individual was under the age of twelve may be disclosed as “Other Relevant Information” (ORI). This will only happen if the Chief Constable considers that the ORI is relevant to the purpose of the disclosure and that it ought to be disclosed.
- 4.6 The Act also introduces a new role of “Independent Reviewer” who must agree to disclosure of “Other Relevant Information”. Disclosure will only be possible on an enhanced disclosure or PVG scheme record. This role provides additional protection while also ensuring that information can still be released when necessary for public protection reasons.
- 4.7 Other provisions in the Act include providing victims with an opportunity to request information on what action may have been taken in relation to the offence or behaviour of the child.
- 4.8 Part 4 of the Act provides a special set of Police powers for young people under 12 who display serious harmful behaviour, with a strong emphasis on a child-centred, non-criminalising approach.
- 4.9 Children under 12 will no longer be dealt with as criminal suspects by the Police; any involvement children under 12 have in an investigation will not be on a criminal basis. The police powers designed in the Act allow for proportionate and effective interventions to prevent and manage serious and harmful behaviour. The Police powers in the Act are to be used only in exceptional circumstances. These powers are outlined as follows.
- 4.10 Building on a recommendation of the original Advisory Group, the power provides that Police officers may take a child to a place of safety in the most serious of cases where they believe that it is necessary to manage an immediate risk of significant harm. The child must be kept in a place of safety for as short a time as possible, up to a maximum of 24 hours. Statutory guidance will be developed with partner agencies to support and guide police officers on the use of this power – in the context of their other current powers and duties.
- 4.11 The Police currently have a range of statutory powers to stop and search children under 12 without a warrant on the same basis as any other person who can commit an offence. In certain

cases they can confiscate items they find. Part 4 of the Act preserves these existing powers of search for children under 12 to ensure that when necessary and proportionate these powers can still be used in relation to children under 12. Section 34 of the Act provides for a situation whereby the police do not have an existing statutory power to search without warrant. In this scenario police must apply to the Sheriff for a search order.

- 4.12 The Act provides for situations where a Police officer may question a child who is under the age of 12, and where consent has or has not been provided for questioning. The questioning is by way of an investigative interview, either by agreement (i.e. with consent), or following application for a child interview order. The way in which the investigative interview is conducted would be the same.
- 4.13 In situations where a child interview order is applied for, the Act sets out the matters on which a sheriff must be satisfied before granting an order. There must be reasonable grounds to suspect that the child carried out the act being investigated, and also that it is necessary for the interview to be conducted in order to properly investigate the incident.
- 4.14 If the Sheriff is satisfied that that the circumstances surrounding the act are clear from information that is already available, then they may refuse the application. In that situation, Police officers would not be permitted to question the child and a local authority "interview" of the child to consider the child's welfare needs may be more appropriate.
- 4.15 The role of Child Interview Rights Practitioner was created by the Act and will provide a child with access to legally qualified individuals who will be able to give them advice, support and assistance during an investigative interview.
- 4.16 The Scottish Ministers will develop and retain a register of practitioners, who will need to have appropriate skills and knowledge of working sensitively with children, their rights and the children's hearings system.
- 4.17 The Act allows samples to be taken from children under 12 when the Police have a statutory power to do so, or where the child is considered to be a victim. The power to take samples from children suspected of harmful behaviour applies in only very serious circumstances.
- 4.18 Overall the legislative changes are viewed as a positive step in terms of children's rights. It is likely that social work services will have a significant role in cases where children under the age of twelve are being interviewed, however it is not expected that the numbers of children in this category will be high.

5.0 PROPOSALS

- 5.1 Guidance to accompany the legislation is being developed by Scottish Government and will be issued in due course. This will be followed up with briefing sessions at local level which can focus on the interface between protecting children and young people and implementing the legislation.

6.0 IMPLICATIONS

Finance

- 6.1 There are no financial implications.

Financial Implications:

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (If Applicable)	Other Comments
N/A					

Legal

6.2 This Act introduces a change in legislation

Human Resources

6.3 No implications

Equalities

6.4 Has an Equality Impact Assessment been carried out?

	YES The EQIA did not find any detrimental impact on any protected group
	NO –

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

<input checked="" type="checkbox"/>	YES – This legislation ensures that children are not stigmatised by becoming an offender at an early age and disadvantaged by having a conviction for disclosure purposes that may have an adverse impact in later life.
<input type="checkbox"/>	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

<input type="checkbox"/>	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
<input checked="" type="checkbox"/>	NO

Repopulation

6.5 No implications

7.0 CONSULTATIONS

7.1 None

8.0 LIST OF BACKGROUND PAPERS

8.1 EQIA