

Report To: Inverclyde Health & Social Care Committee **Date:** 24 February 2022

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Inverclyde Health & Social Care Partnership **Report No:** SW/15/2022/AG

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Subject: The Implementation of the 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 implementation of the Age of Criminal Responsibility (Scotland) Act 2019.

2.0 SUMMARY

- 2.1 The intention of the Act is to protect children from the harmful effects of early criminalisation while ensuring that incidents of harmful behaviour by children under 12 years can be investigated effectively, and responded to appropriately.
- 2.2 The Act was fully implemented, on 17th December 2021. The Act raises the age of criminal responsibility in Scotland from 8 to 12 years of age. This means that children younger than 12 will no longer be treated as criminal suspects.

3.0 RECOMMENDATIONS

- 3.1 For the Health and Social Care Committee to note the enactment of the Age of Criminal Responsibility (Scotland) Act 2019 on 17th December 2021.

4.0 BACKGROUND

- 4.1 The intention of the Act is to protect children from the harmful effects of early criminalisation, while ensuring that children and their families receive the right support. The child's wellbeing is a primary consideration. Interventions must aim to protect children, reduce stigma and ensure better future life chances. There is also a duty to protect the safety and meet the needs of those involved in an incident including any victim(s) and the community.
- 4.2 The ethos of the Act is rights respecting and reflects Scotland's commitment to international human rights standards:
- children under 12 will no longer be stigmatised by being criminalised at a young age, due to being labelled as an 'offender';
 - children under 12 are not disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life;
 - the position for care experienced children improves (since adverse childhood experiences leading to care proceedings may increase the likelihood of a child finding themselves in situations of risk)
 - the new age of criminal responsibility aligns with longstanding presumptions around maturity, rights, and participation
 - the Act also brings a trauma informed approach to the centre of child justice
- 4.3 The Act provides powers to Police to investigate incidents of serious harm. Children under investigation have access to independent advice, support and assistance. Things must be explained to them in an age appropriate way. Forensic samples and prints cannot be kept unnecessarily.
- 4.4 It is anticipated that numbers affected across Scotland will be very small, no more than 20 in an average year. Inverclyde has not experienced a child in this situation for well over a decade.
- 4.5 The Act limits the power of Police to question a child under 12 where a constable has reason to believe that the child: by behaving in a violent or dangerous way, has caused or risks causing serious physical harm to another person OR by behaving in a sexually violent or sexually coercive way has caused or risk causing harm (whether physical or not) to another person. The child can be interviewed (under strict conditions see below) but cannot be arrested, charged, or subject to processes via criminal justice.
- 4.6 Whilst the Act provides the police with the power to remove a child to a place of safety, the guidance is clear that police officers must consult with local authorities to identify an appropriate place of safety to best meet the needs of the child whilst taking the situation into account. Removal to a place of safety must only be used as a measure of last resort. The child can only be kept in a place of safety for as long as it is necessary to put in place arrangements for the care and protection of the child. The Act requires Scottish Ministers to compile, maintain and publish a list of places of safety across Scotland. The child's home may be designated the place of safety so long as this would not subject either the child or others to harm. A Police station should only be used as a last resort. A child can not be held in a place of safety for more than 24 hours.
- 4.7 In the pursuit of information relevant to situation, a child can be subject to interview. However an interview can only take place with the agreement of the child, the parents, or where a Sheriff grants a Child Interview Order, or where there is risk of loss of life. The purpose of the interview is to help the police establish what has happened, and to help identify any additional support or protection needs that the child may have. Police must liaise with the Local Authority regarding the conduct of interview(s). An Interagency Referral Discussion will take place prior to interview to enable services to share information. A child who is under 16, or who is 16-17 and on a Compulsory Supervision Order (via the Children's Hearing system) may be interviewed as long as the behaviour investigated relates to when they were under 12 years of age and after the act commences.
- 4.8 The Act establishes the role of the Child Interview Rights Practitioner (ChIRP), who must be a

solicitor registered with the Children’s Legal Assistance Scheme. A child should not be interviewed without a ChIRP & they take part in the interview planning.

- 4.9 Responding proportionately to the needs of a child who has caused harm does not diminish the rights of victims. They will still be the victim of a crime and have the right to have that crime fully investigated by Police and offered the support that is available to all victims of crime.

5.0 PROPOSALS

- 5.1 For Health and Social Care Committee to accept the implications of the Act as detailed.

6.0 IMPLICATIONS

Finance

- 6.1 Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

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

Legal

- 6.2 N/A

Human Resources

- 6.3 N/A

Equalities

- 6.4 Equalities

- (a) Has an Equality Impact Assessment been carried out?

x	YES EQIA completed by Scottish Government (attached as appendix 2)
	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?

x	YES
	NO

Children under ACR will not be stigmatised by being criminalised or disadvantaged by having convictions for the purposes of disclosure that can adversely affect them in later in life.

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES –.
x	NO

Repopulation

6.5 N/A

7.0 CONSULTATIONS

7.1 N/A

8.0 BACKGROUND PAPERS

8.1 See attached – Appendix 1 (briefing note)

1 Background

The intention of the Act is to protect children from the harmful effects of early criminalisation while ensuring that incidents of harmful behaviour by children under 12 can be investigated effectively, and responded to appropriately. Once fully implemented, on **17th December 2021**, the Act will raise the age of criminal responsibility in Scotland from 8 to 12 years of age, and children younger than 12 will no longer be treated as criminal suspects.

2 Powers and duties

The Act provides powers to Police to investigate incidents of Serious harm. Promotion and safeguarding of the child's Wellbeing is a primary consideration. Children under Investigation have access to independent advice, support and assistance. Things must be explained to them in an Age appropriate way. Forensic samples and prints Cannot be kept unnecessarily. Small numbers – estimate is around 20 cases a year across Scotland.

3 Scope

The Act limits the power of Police to question a child under 12 where a constable has reason to believe that the child: By behaving in a violent or dangerous way, has caused or risks causing serious physical harm to another person OR By behaving in a sexually violent or sexually coercive way has caused or risk causing harm (whether physical or not) to another person

4 Place of safety (1)

Whilst the Act provides the police with the power to remove a child to a place of safety, the guidance is clear that police officers must consult with local authorities to identify an appropriate place of safety to best meet the needs of the child whilst taking the situation into account. Removal to a place of safety must only be used as a measure of last resort. The child can only be kept in a place of safety for as long as it is necessary to put in place arrangements for the care and protection of the child.

5 Place of safety (2)

The Act requires Scottish Ministers to compile, maintain and publish a list of places of safety across Scotland. Inverclyde are working with WOS partners to identify a POS.

The child's home may be designated the place of safety so long as this would not subject either the child or others to harm. A Police station should only be used as a last resort. A child can not be held in a place of safety for more than 24 hours

6 Investigative interviews

An interview can only take place with the agreement of the child, the parents, or where a Sheriff grants a Child Interview order, or where there is risk of loss of life.

The purpose of the interview is to help the police establish what has happened, and to help identify any additional support or protection needs that the child may have. Police must liaise with the LA re the conduct of interview(s). An IRD will take place prior to interview and in Inverclyde the SCIM process will be utilised.

A child who is under 16, or who is 16-17 and on a CSO may be interviewed as long as the behaviour investigated relates

7 Child interview rights practitioners

The Act establishes the role of the child interview rights practitioner (ChIRP), who must be a solicitor registered with the Children's Legal Assistance Scheme. A child should not be interviewed without a ChIRP.

Age of Criminal Responsibility (Scotland) Act 2019



Appendix 2

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	The Age of Criminal Responsibility (Scotland) Bill
Summary of aims and desired outcomes of Policy	<p>The main purpose of the Bill is to raise the age of criminal responsibility (ACR) in Scotland from 8 to 12, to align it with the current age of prosecution, and reflect Scotland’s progressive commitment to international human rights standards so that:</p> <ul style="list-style-type: none"> • Children under the ACR are not stigmatised by being criminalised at a young age due to being labelled an “offender”; • Children under the ACR are not disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life; • The new ACR aligns with longstanding presumptions around maturity, rights, and participation and improves the lives of children with care experience (especially children looked after away from home) whose behaviours are more likely to have been reported to police - and therefore to attract a criminalising state response - than Scotland’s child population in general. <p>In consequence of the change to the ACR, the Bill also provides for a number of measures to ensure that action can still be taken by the police and other authorities when children under the age of 12 are involved in serious incidents of harmful behaviour, to protect the child’s rights and best interests, and the interests and rights of anyone harmed.</p> <p>While these measures include specific investigatory powers for the police, the Bill also makes provision for the sharing of information with victims in respect of actions taken by the children’s hearings system and a right for a child under the ACR thought to be responsible for a</p>

	serious incident to have access to a supporter and to an advocacy worker during a formal police interview. The Bill also makes changes to the disclosure system, removing the automatic disclosure of convictions for the behaviour of under 12s and putting in place independent review of information to be included in response to a disclosure check, when that check may disclose non-conviction, but potentially adverse, information dating back to when the applicant was under the ACR.
Directorate: Division: team	Directorate for Children and Families: Care, Protection and Justice Division: Youth Justice and Children's Hearings Unit

Executive summary

An equality impact assessment (EQIA) was undertaken in connection with the Age of Criminal Responsibility (Scotland) Bill to consider potential impacts across the protected characteristics for the provisions included in the Bill.

The Bill will make provision to raise the age of criminal responsibility from 8 to 12. This means:

- Children aged 8 to 11 involved in harmful behaviour will no longer be referred to a children’s hearing on the ground that they have committed an offence. The behaviour can still be dealt with one of the sixteen existing non-offence referral grounds.
- No child will receive a criminal record for harmful behaviour committed when under 12.

In designing provisions consequential to raising the ACR, a special set of measures have been developed for young people under 12 who display serious harmful behaviour. These have a strong emphasis on both public protection and a child centred approach reflecting the Getting It Right for Every Child (GIRFEC) imperatives.

The Bill will provide for a number of measures to ensure that action can still be taken by the police and other authorities when children under 12 are involved in serious incidents. These measures will ensure that the harmful behaviour of children under 12 can continue to be investigated, and that authorities respect, and respond to, the needs of victims. These measures will include:

- changes to the disclosure system to ensure that non-conviction information relating to harmful behaviour that occurred when children were under the new ACR can still be disclosed as Other Relevant Information (ORI) on two types of disclosure, namely the enhanced disclosure under the Police Act 1997 and

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the scheme record under the Protection of Vulnerable Groups (Scotland) Act 2007, but only following independent review;

- the ability for a victim of a serious incident to receive information about the children's hearing disposal in respect of that incident;
- police powers to investigate suspected seriously harmful behaviour on the part of a child under 12, generally authorised by a sheriff or by a senior police officer unconnected with the investigation (although some immediate powers will be available in circumstances of urgency, emergency or risk to life);
- local authority social work services' involvement in planning and conducting investigative interviews with children under 12; and
- measures when a child is being formally interviewed, including a right to information, a right not to answer questions, assistance from an advocacy worker and a right to have a supporter present (usually an adult known to the child).

While the reform is aimed at providing children under 12 involved in harmful behaviour with an opportunity to change unencumbered by early criminal stigma, it is also designed to protect the rights of children and others who may be victims of harmful behaviour. Proposals in the Bill are, therefore, designed to ensure the change of age will augment public safety and retain public confidence.

The Scope of the EQIA

A variety of sources was used to help understand the likely impact of the proposed policies, and to refine those policies. In addition to ongoing engagement with a wide range of stakeholders, the sources of information that informed the EQIA included:

- The report of the Advisory Group on the Minimum Age of Criminal Responsibility, published in March 2016, which examined the implications for children and young people of raising the age of criminal responsibility.
- A public consultation based on the recommendations of the Advisory Group on the Minimum Age of Criminal Responsibility. This ran from 18 March until 17 June 2016, and was complemented by a programme of engagement with key interest groups such as young people and victims.
- Targeted engagement with children and young people aged from 8 to 22, focussing on those affected by current legislation and those that have experienced negative life experiences from being connected with the criminal justice system from an early age. This included meeting children and young people from the Scottish Youth Parliament, Children's Parliament, Who Cares? Scotland, Youth Advantage Outreach, Up-2-Us, YOI Polmont, Good Shepherd Secure Unit and Sacro. The methods used to elicit and record

views ranged from scenario storytelling to quizzes, timelines, discussion groups, voting cards and artwork.

- The data collected by the Scottish Children's Reporter Administration (SCRA) on the age of children referred to the children's reporter and the ground(s) on which referral is made.
- The research published by SCRA in March 2016 which looked at the circumstances and outcomes of 100 children aged 8 to 11 referred for offending in 2013-14.

During the EQIA process, the potential impact on each of the protected characteristics was considered. However, our assessment identified that the policy was only likely to have a direct impact in relation to age and sex. This impact is discussed in more detail below.

The other protected characteristics - maternity and pregnancy; gender reassignment; sexual orientation; disability; race; religion or belief; and marriage and civil partnership – do not have a direct bearing on the conduct of children's hearings proceedings, police investigations or disclosure checks, and we did not encounter evidence that suggested people in these groups would be disproportionately affected by the changes in the Bill. Indeed, some of these characteristics are unlikely to be relevant for children under 12.

Key findings

Age

By raising the age of criminal responsibility and removing the automatic disclosure of a "conviction" that occurred before the age of 12, the Bill will impact on children under 12 and on persons over 12 if they have been involved in certain types of behaviour when they were under 12 years of age at the time.

The changes to the disclosure regime will mean that the disclosure of ORI about harmful behaviour that occurred while under 12 will be treated differently from harmful behaviour that occurred when aged 12 or over. Individuals of all ages will benefit from this change as their age at the time of their enhanced disclosure, or PVG scheme record application will not affect how any pre-12 behaviour that the chief constable proposes to disclose as ORI will be treated. In all cases, that proposed ORI will be subject to independent review. The distinction in treatment is derived for disclosure purposes from the principal change in the Bill, namely the increasing of the age of criminal responsibility for 8 to 12 years of age. The only way information about a person's conduct when aged under 12 will be disclosed will be through the 'Other Relevant Information' (ORI) process and only then on the enhanced disclosure, or the PVG scheme record. Such information will only be disclosable as ORI following an independent review of the chief constable's proposed ORI disclosure. The Independent Reviewer's decision will be final. An

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appeal to a sheriff, but only on a point of law, will be available by the person or the chief constable.

There is the possibility of an impact for those individuals who committed harmful behaviour while under eight. Under the proposed amended disclosure regime there is a possibility that information about harmful behaviour while under eight could now be disclosed as ORI by the police. However, this impact is expected to be minimal: Police Scotland has stated they have not disclosed any information about conduct committed when under eight since at least 2011. As such, we believe the overall impact for disclosure of behaviour under the age of eight will be neutral.

Under existing powers the Principal Reporter can tell victims of offences committed by children certain limited information about how a case has been disposed of via the children's hearings system. As a result of raising the age of criminal responsibility, victims of harmful behaviour by children aged 8 to 11 would no longer be able to receive information. To ensure victims' rights are not diminished, the Bill provides powers which allow the Principal Reporter to disclose information to victims of offences by children aged 12 and over, and to victims of harmful behaviour by children under 12. The persons who can access information and the information that can be disclosed are the same regardless of the age of the child but the description of the behaviour of children aged under 12 (harmful behaviour) is different to that of children aged 12 and over (offending behaviour). This distinction in the treatment of children on the basis of age is derived from the principal change in the Bill, namely the increasing of the age of criminal responsibility from 8 to 12 years of age and whether a child can commit an offence.

As a result of raising the age of criminal responsibility to 12, the police will treat children under 12 in a different way to children 12 and over. The behaviour of children under 12 will not be criminal, and therefore the police will not be able to use their criminal justice powers to investigate. That is why the Bill creates a bespoke package of powers that the police can use to investigate children under 12 whom they suspect have carried out seriously harmful behaviour. These new powers are designed to be appropriate for the child's age and stage of development, and the fact that their behaviour is not criminal.

The police will still be able to refer a child to the reporter but, as a result of the Bill, children under 12 will now only be referred on non-offence grounds (at present, children eight and older can be referred on offence grounds.) If a children's hearing is held, the hearing will have the same options available to it as it does for children aged 12 and over (for example, to put in place compulsory supervision orders). The hearing will also have the same obligation to treat the child's welfare as the paramount consideration, regardless of the child's age.

It should be noted that the police do not currently have powers to investigate the behaviour of children under eight, because that behaviour is not criminal. Under the Bill, the new police powers to investigate non-criminal behaviour in children will apply to all children under 12. In other words, investigatory powers will apply to children under eight for the first time. This is felt to be appropriate, as:

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- The provisions have been designed to take into account the fact that the police powers could theoretically be used with children under eight. Carefully tailored measures have been built in to protect children's interests and wellbeing, even if they are too young to effectively advocate for their own interests.
- A key focus of the investigative process is to identify and understand the child's needs, so that appropriate support or child protection measures can be identified. The aim is ultimately to promote the wellbeing of children rather than punish them – and that can benefit children under eight just as it can children aged 8 to 11.
- In some cases, the fact that current powers do not apply to children under eight arguably creates gaps that could jeopardise the safety of children or the wider public. For example, currently the police do not have the power to search a child under eight who they believe is in possession of a knife (even though an older person might choose to conceal a knife on a young child to evade search). The Bill will create a consistent position by applying powers equally to all children under 12.
- It was not felt justifiable to create a tiered system, in which children ages 8 to 11 were treated differently to children aged under eight, even though all were under the age of criminal responsibility.

Sex

The evidence suggests that boys are more likely than girls to be affected by the fact that it will no longer be possible for children under 12 to be referred to a children's hearing on offence grounds. In 2016-17, 177 boys and 28 girls aged between 8 and 11 were referred to the reporter on offence grounds. Under the Bill, these children would all be referred on non-offence grounds. 24 boys and 6 girls aged 8 to 11 were referred to the reporter for behaviour that would potentially be considered of sufficient seriousness to engage the police powers in the Bill. This suggests that boys are more likely than girls to be affected by the new police powers for this age group.

Under the Bill, children under 12 will no longer receive criminal convictions which would appear on a higher level disclosure should they apply for one later in life. In 2016-17, 224,483 applications for higher level disclosures came from females (this accounted for 68% of the applications received) and 104,159 applications came from males (this accounted for 32% of the applications received). Taking account of the incidence of convictions held by female and males in Scotland, we believe the benefit from the change in ACR will have a slightly bigger positive impact on males.

However, while it is important to understand how males and females may be affected by the legislation in different ways, a person's sex has no direct bearing on children's hearings proceedings, police investigations or disclosure.

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Recommendations and Conclusion

The policy focuses on the behaviour of 8 to 11 year olds, but has potential consequences for children and young people beyond the age of 18. By removing the disclosure of “criminal history” that occurred before the age of 12 the Bill will enable children and adults to put any harmful behaviour behind them, to get on with their lives and to contribute to society.

The current system of disclosure of information relating to harmful behaviour by children in the 8 to 11 age group is not considered justified since a young child could not have reasonably foreseen the impact the disclosure system could have on their lives at the time, and the child may no longer pose a risk by the time they reach adulthood.

It is acknowledged that police powers have the potential to interfere with civil liberties. However, the new powers in the Bill to enable the police to investigate concerns about harmful behaviour by children under 12 have been designed with many procedural safeguards to ensure that they will be used only in the most serious cases, in a way that is justifiable and proportionate to the circumstances, and is welfarist in focus. This is appropriate given that children under 12 will not be criminally responsible or subject to the criminal justice system.

The Bill only makes those powers available to the police where it is believed that a child’s behaviour has caused (or is reasonably likely to cause) death or serious injury, or that the child has been sexually violent or sexually coercive. The most recent statistics available show that, broadly speaking, 33 children per year in Scotland aged 8 to 11 are referred to the Children’s Reporter for an incident of that nature.

The EQIA process has not identified any issues which would have a detrimental impact on any of the protected groups. In the circumstances, the Scottish Government has concluded that no changes to the Bill are necessary.