

The Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021

CRWIA – Stage 3

December 2021



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Publication Template

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Executive summary	The Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021 (“the Regulations”) The Regulations will prescribe the pieces of information be recorded by police when they use the power in section 28 of the Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”) to take a child to a place of safety (“the section 28 power”).
Background	<p>As part of the Scottish Government’s commitment to protecting and promoting the rights and interests of children and young people, it took forward a Bill to raise the age of criminal responsibility from 8 to 12 years old in 2018. The Act was passed unanimously by the Scottish Parliament in May 2019.</p> <p>Part 4 of the Act makes provision for a bespoke package of police investigatory and other powers where a child under the age of criminal responsibility commits a harmful act, including the section 28 power.</p> <p>The purpose of this power is to enable a child to be removed from a situation so as to protect others from coming to significant harm due to that child’s behaviour. Due to that high bar, the Scottish Government does not expect this power to be frequently used.</p> <p>The UK Government is progressing in the UK Parliament an Order¹ under section 104 of the Scotland Act 1998 which will make the reserved and cross-border provisions required as a consequence of the Act. That Order provides that the powers in Part 4 of the Act and any regulations made under powers in that Part will apply to non-territorial forces in Scotland (British Transport Police, Civil Nuclear Constabulary and the Ministry of Defence Police).</p> <p>This means that these police forces will also able to use the section 28 power and will be bound by the Regulations although in practice the Scottish Government notes that Police Scotland will take the lead in dealing with any relevant incident (and thus the use of the section 28 power).</p>
Scope of the CRWIA, identifying the children and young people affected by the policy, and	Information recorded under the Regulations will relate only to children under 12 years old; it is only children in this age group in relation to whom the Act provides that the section 28 power is to be capable of use.

¹ [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Consequential Provisions and Modifications\) Order 2021 \(legislation.gov.uk\)](#)

<p>summarising the evidence base</p>	<p>The recording of the information outlined by the SSI will allow for monitoring of its use and ensure that the application of the Place of Safety regulation is both proportionate and justified.</p> <p>It will provide information to Ministers on which to base an accurate report to Parliament as per the statutory requirement under Section 32 of the Act</p>
<p>Children and young people's views and experiences</p>	<p>In line with the statutory duties imposed by the Regulations falling solely on police, the Scottish Government has not consulted children and young people on the development of this instrument. In consulting with police on the development of the Regulations, the Scottish Government has at all times had in mind the policy intentions behind the section 28 power, the implications its use may have for a child, and the need to ensure accountability and an audit trail for when the power is used.</p> <p>However, the views and experiences of children and young people have been at the heart of development of the Act more generally. A public consultation in 2016 agreed with the recommendation of an Expert Advisory Group established to review the age of criminal responsibility in 2015. The public consultation was followed by engagement with over 200 young people who have had negative life experiences from involvement with the criminal justice system from an early age either as the child who caused the harm or as a victim. While those young people had a mixed understanding of the law surrounding criminal responsibility, overwhelming support was expressed for increasing the age of criminal responsibility.</p> <p>There are young person representative members on the ACR Advisory Group, which has been tasked with assisting Scottish Ministers to review the operation of the 2019 Act. These individuals support the work of the Group by providing child- and young-person focussed input and perspectives.</p>
<p>Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing</p>	<p>The policy objective of the instrument is to require police to keep robust and comprehensive records when they use the section 28 power to support accountability and an audit trail for use of the power. Given the benefits of having those things in place, the Scottish Government considers that the Regulations will have a positive impact on children's rights.</p> <p>The Scottish Government further considers that those same policy intentions can effectively contribute to a child's wellbeing. Fundamentally the robust recording keeping required under the Regulations help support an understanding about the proportionate and legitimate use of the power, again noting that it is only to be used in serious situations where there is a risk of significant harm.</p> <p>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 records of the use of the power being kept in a way that benefits parties beyond the child in relation to whom the power has been used,</p>

	<p>supporting public confidence about the section 28 power and how it is used.</p> <p>The approach taken in the Regulations also supports the Scottish Government's Getting It Right For Every Child (GIRFEC) approach. Broadly, this is about ensuring that every child in Scotland receives the right help at the right time.</p>
Monitoring and review	<p>Section 32 of the Act requires the Scottish Ministers to lay reports in Parliament on the use of the section 28 power. Those reports will be an opportunity to monitor how the power is used generally and if the Regulations are functioning as intended by the underlying policy.</p> <p>Section 78 of the Act establishes that the Scottish Ministers must review the operation of the Act and the age of criminal responsibility within three years of commencement. We expect that review to involve consideration of the section 28 powers and the Regulations.</p>

Legislation	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
<p>Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021 (made under powers in section 30 of the Act)</p>	<p>To establish reporting requirements in relation to the use of the power in section 28 of the Act to take a child to a place of safety, so as to ensure accountability and an audit trail for use of that power.</p> <p>The Scottish Government also anticipates that information recorded under the Regulations will inform reports about the use of the power to be laid by Scottish Ministers in Parliament.</p>	<p>Children under 12 years of age in relation to whom the section 28 power has been used</p>	<p>The Scottish Government considers that the Regulations are UNCRC compliant.</p>	<p>The Regulations will support the policy intentions of the Act generally, itself align to the Scottish Government's commitment to the promotion and safeguarding of children's rights and wellbeing. Establishing requirements to report certain pieces of information when the section 28 power is used is also aligned to the principles that underpin the Scottish Government's GIRFEC approaching to supporting children.</p>

CRWIA Declaration

Authorisation

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