

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

Equality Impact Assessment results

December 2021



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EQUALITY IMPACT ASSESSMENT- RESULTS

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| Title of Policy | Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021 |
| Summary of aims and desired outcomes of Policy | <p>To prescribe the information to be recorded by police when the power in section 28 of the 2019 Act is used to take a child to a place of safety.</p> <p>The policy intention is to ensure accountability and an audit trail for use of the power to take a child to a place of safety.</p> <p>The information recorded under the Regulations may also support the delivery of a statutory responsibility to lay reports before the Scottish Parliament on the use of this power.</p> |
| Directorate: Division: team | Safer Communities: Police: Police Powers |

Executive summary

This is a summary of the full Equality Impact Assessment conducted in relation to the Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021 ("the Regulations).

These regulations will prescribe particular pieces of information to be recorded by police when they exercise 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).

The information to be recorded under the Regulations includes information about the particular circumstances which led to police taking the decision to exercise the section 28 power, and how the power was exercised.

This EQIA has considered the effects of the Regulations on people with one or more protected characteristics. The Scottish Government has concluded that the Regulations have the potential to impact children under 12 years old in relation to whom the section 28 power has been used, The power can only be used in relation to children under 12, and so the obligation to record information can only apply in relation to situations involving children in that age group.

Statistics on referrals to the Children's Reporter on offence grounds suggests that boys may be more likely to be the subject of the section 28 power than girls. That could mean that information recorded under the Regulations may be more likely to be required as a consequence of the behaviour of a boy rather than a girl.

Background

The Act will raise the age of criminal responsibility in Scotland from 8 to 12 years old, reflecting the

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 power in section 28 for police to take a child to a place of safety in certain limited circumstances

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 this high bar, the Scottish Government does not expect this power to be frequently used.

The UK Government is progressing in the UK Parliament an Order 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). This means that these non-territorial forces will also be able to use the section 28 power. However, in practice the Scottish Government notes that Police Scotland will take the lead in dealing

with any relevant situation and the power will have no practical implications for the non-territorial forces.

The Scope of the EQIA

The Regulations set out the information to be recorded by police when they use the section 28 power. The scope of this EQIA is to assess and highlight any direct or indirect impact of the Regulations on people with protected characteristics under the Equality Act 2010 (Age, Disability, Sex, Pregnancy and Maternity, Gender Re-Assignment, Sexual Orientation, Race, Religion or Belief, and Marriage or Civil Partnership).

Key Findings

Equality impact analysis has been a key part of the Scottish Government's work on developing the Regulations. Our findings are that the Regulations will have neither a positive nor negative impact on age or sex. No other protected characteristics were identified as being potentially affected by the Regulations.

As noted above, the Scottish Government concluded that the Regulations could have an impact on the age protected characteristic, as follows:

1. The section 28 power can only be used in relation to a child under 12. Accordingly the obligation to record information under the Regulations will only be engaged in relation to a child under 12.
2. The obligation to record information in relation to the use of the power is intended to provide accountability and an audit trail. This could have positive implications for a child in relation to whom the power has been used. However, this is an indirect benefit which flows from the act of record keeping generally and does not appear to have a strong link to the key equality aims of eliminating unlawful discrimination, harassment and victimisation, advancing equality of opportunity and promoting good relations among and between different age groups.

The Scottish Government has also considered whether the Regulations could have an impact on the sex protected characteristic, as follows:

1. Statistics published by the Scottish Children's Reporter Administration shows that boys are more likely than girls to be referred to a children's hearing on offence grounds. This might that the section 28 power is more

likely to be used in relation to a boy than to a girl, and consequently, that information recorded under the Regulations is more likely to relate to a situation involve a boy than a girl.

2. However, those offence grounds are not direct parallels to the significant harm test to be met for the use of the section 28 power. This means that the referral statistics may not necessarily be indicative of how the section 28 power will be used in practice, and what this could mean for differential impact based on sex when information is recorded under the Regulations.

3. On balance the Scottish Government has concluded that there is insufficient evidence to support the conclusion that the Regulations will have a differential impact based on the sex protected characteristic. However, mindful of the need to take into account emerging evidence on equality considerations as part of monitoring and reviewing new legislation, it will carefully consider evidence from experiences with the section 28 power and the Regulations, and consider any appropriate mitigations.

Recommendations and Conclusion

The Equality Impact Assessment for the Regulations has concluded that it could have a positive impact on those with the protected characteristic of age. While the Scottish Government has carefully considered differential impact based on the sex protected characteristic, it has concluded that no positive or negative benefit can be made.

Accordingly the Scottish Government has not identified the need for any mitigating measures to be put in place.

In line with usual practice and the statutory obligation to review the operation of the Act in section 78, the Scottish Government will review the section 28 power and the Regulations, including reconsideration of equality impacts as necessary.

Authorisation

I confirm that the impact of the Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021 has been sufficiently assessed against the needs of the equality duty.

Don McGillivray
Director, Safer Communities
Date this version authorised: 18 November 2021



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