

The Age Of Criminal Responsibility (Reports on Use of Places of Safety (Scotland) Regulations 2022

Business and Regulatory Impact Assessment

June 2022



Scottish Government
Riaghaltas na h-Alba
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Background

1. The Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”) came fully into force on 17 December 2021, raising the age of criminal responsibility in Scotland from 8 to 12 years old from that date. The Act also contains a bespoke package of police investigatory and other powers, capable of use only where the behaviour of a child under 12 years old has been exceptionally harmful.

2. Included in that package of powers is the power in section 28 to take a child to a place of safety (“the section 28 power”). Section 32 of the Act places Scottish Ministers under an obligation to lay in the Scottish Parliament reports on the use of the section 28 power, and with the power to make regulations prescribing the particulars of those reports. Section 32 requires the first report to be prepared “as soon as reasonably practicable” after one year has passed since section 28 came into force, and after each successive period of one year.

Objectives

3. The Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021 are made under powers in section 30 of the Act. They will prescribe specific pieces of information to be recorded by Police Scotland when they use the power in section 28 of the Act to take a child to a place of safety.

4. In turn, the information recorded pursuant to the Regulations will support delivery of the obligation on the Scottish Ministers in section 32 of the Act to lay reports¹ to Parliament on the use of the section 28 power. The purpose of the Age of Criminal Responsibility (Reports on Use of Places of Safety (Scotland) Regulations 2022 (“the Regulations”) is to require Ministers to lay reports to Parliament on the use of the section 28 power.

¹ The Data Protection Impact Assessment prepared for the Regulations contains information about the legal gateway to support sharing of data recorded pursuant to these regulations with the Scottish Government for the purposes of these reports.

Rationale for Government intervention

5. While the Scottish Government anticipates the power being used only infrequently, we note the need to ensure accountability and an audit trail for the times it is used. The purpose of the Regulations is to deliver those intentions.

6. This is consistent with the Scottish Government's prioritisation of the rights of the child and the principles which underpin the Act itself, and is aligned to the following National Outcomes:

- Children and Young People: the section 28 power is at heart about safeguarding a child by ensuring that an appropriate mechanism is in place to remove that child from certain harmful situations.
- Human Rights: the Act itself is informed by the principles of the United Nations Convention on the Rights of the Child. The section 28 power strikes a balance between the rights of a child and the need for safeguarding, with the Regulations providing a mechanism for accountability and an audit trail should the power be used.

Consultation

7. As part of its work developing both the Act and these Regulations, the Scottish Government has consulted both internal and external partners. The Scottish Government consulted in 2016 on the age of criminal responsibility in Scotland, and has published an analysis² of responses and those responses³ where permission was given to publish. Within Government, this work has involved close collaboration between the Safer Communities Directorate and the Children and Families Directorate.

8. Externally, the Scottish Government has also worked with Police Scotland and the non-territorial forces to develop the Regulations, reflecting that the statutory obligations it creates will fall to these organisations. This collaborative approach ensures that the obligations under the Regulations are deliverable at the same time while making certain that the policy intentions which underpin the Regulations and the Act can be met.

Options

Option 1: Police Scotland collect the data and report it to the Scottish Government

9. The Scottish Government has considered requiring Police Scotland to collect the data and provide it to the Scottish Government. This would require a dedicated resource within Police Scotland to collect and report on the data which they already record.

² [Minimum age of criminal responsibility: consultation analysis - gov.scot \(www.gov.scot\)](http://www.gov.scot)

³ [Published responses for Consultation on the Minimum Age of Criminal Responsibility - Scottish Government - Citizen Space](#)

10. Should Police Scotland be required to collect the data and report it to the Scottish Government, it would result in both organisations holding sensitive information, which is not essential in this instance.

11. Given the additional cost to Police Scotland and the additional storage of sensitive information, the Scottish Government concluded that it would not be appropriate to take up this option.

Option 2: The Scottish Government collect the data from Police Scotland's database directly

12. This option would involve Scottish Government analysts collecting the data directly from Police Scotland's database and creating the reports for Parliament internally.

13. This option would mean that there would be no additional costs to Police Scotland. Police Scotland will continue to record the use of the section 28 power and the costs of this have been set out in the previous [BRIA](#).

14. This option would also mean that there was no unnecessary duplication of sensitive data, as the data would be collected and reported on directly by the Scottish Government.

Sectors and groups affected

15. The Scottish Government expects there to be no direct practical effect on any sectors or groups, as the Scottish Government will be collecting this information and reporting on it internally.

Benefits

16. The Scottish Government considers that the Regulations will deliver the following benefits:

- accountability for use of the section 28 power; and
- the creation of a robust but proportionate body of evidence which can be used to support the delivery of meaningful reports to Parliament on the use of the section 28 power in due course.

Costs

17. The Scottish Government published a Financial Memorandum⁴ to accompany the Age of Criminal Responsibility (Scotland) Bill. The costs of the Bill generally to Police Scotland are set out in paragraphs 37 to 43, but these did not take into account the terms of the Regulations (the power to make these Regulations having been added to the Bill at Stage 3).

⁴ [SPBill29FMS052018.pdf \(parliament.scot\)](#). A [supplementary Financial Memorandum](#) was also prepared to reflect the amendments made to the Bill at Stage 2, but this does not contain material relevant to the Regulations.

18. The Scottish Government has now explored with Police Scotland the cost implications of the Regulations, noting that they are not expected to have practical implications for non-territorial forces and so no costs are expected to arise as a consequence of the Regulations for those forces.

19. As the Scottish Government will be collecting the data directly from the Police Scotland database, there is not expected to be any additional costs to Police Scotland.

20. Scottish Government Analytical resources will be required to collect this data and produce the reports to parliament. While this will require resource, we do not anticipate that this will involve an extensive amount of work. As a result, we do not anticipate any additional costs.

Scottish Firms Impact Test

21. Given the nature of the Regulations and the affected organisations as set out above, the Scottish Government has concluded that the Regulations will have no impact on Scottish Firms and has therefore conducted no consultation with these organisations.

Competition Assessment

22. The Scottish Government considers that no competition assessment is required because businesses that compete to deliver services and products to consumers will not be affected by the Regulations.

Consumer Assessment

23. The Scottish Government does not consider that consumers will be affected by the Regulations because they will not affect anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future.

Test run of business forms

24. The Regulations will not require the introduction of any new business forms. Rather, the existing recording processes and systems can be used to deliver the statutory obligations under the Regulations.

Digital Impact Test

25. As part of its work developing the Regulations, the Scottish Government has taken into account the IT systems used by Police Scotland so as to ensure that the Regulations will remain deliverable in the future. The Regulations are framed in such a way to be fully capable of functioning in a digital context and in the event of system change in the future.

Legal Aid Impact Test

26. The Scottish Government considers that the Regulations will not give rise to increased use of legal processes or create new rights or responsibilities which might have an impact on the legal aid fund.

Enforcement, sanctions and monitoring

27. In 2019, the then Minister for Children and Young People announced that an advisory group⁵ was to be formed to review the operation of the Act and to consider future potential ages of criminal responsibility in Scotland. The group includes the Action for Children, the Crown Office and Procurator Fiscal Service, Police Scotland and Social Work Scotland. The Scottish Government anticipates that the future work of the group could consider the section 32 power, and as part of that, the operation of the Regulations.

28. The Scottish Government chairs a Programme Board⁶ comprised of key stakeholders which is overseeing implementation of the Act generally. That Board will be able to consider the Regulations as part of its ongoing work overseeing the implementation programme.

29. As explained above, section 32 of the Act places a statutory duty on Ministers to report to Parliament on use of the section 28 power. These reports will support Parliamentary monitoring of the power, as well as enhancing public awareness and understanding about how it is used. The Scottish Government does however note that, in line with its expectation that the power will be infrequently used, such reports will need to safeguard the data rights of any child in relation to whom the section 28 power has been used.

Implementation and delivery plan

30. As stated above, existing systems and processes can be used to deliver the recording obligations under the Regulations.

31. The Scottish Government notes that the section 28 power is not expected to be frequently used. As of May 2022, the section 28 power has been used 4 times, since commencement of the Act in 17 December 2021. Scottish Government officials liaise with Police Scotland to explore the details of any situation where the power has been used, as is operationally appropriate, bearing in mind the operational independence of Police Scotland. Such discussions involve consideration of the practicalities of delivering the recording obligations under the Regulations as necessary.

⁵ [Age of Criminal Responsibility Advisory Group - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁶ [Age of Criminal Responsibility Programme Board - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Summary and recommendation

Option	Total benefit per annum – economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Option 1: Police Scotland collect the data and report it to the Scottish Government	This option provides the same outcome as the below but with no additional benefits.	There would be costs to Police due to the additional requirement for them to collect and report on data gathered on the use of the section 28 power.
Option 2: The Scottish Government collect the data from Police Scotland's database directly	This option will have cost savings for Police Scotland and will also limit the collection of sensitive data to one organisation.	There will be no additional costs to any organisations, including the Scottish Government.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: **Clare Haughey**

Date: 25/05/2022

Minister's name: Clare Haughey MSP

Minister's title: Minister for Children and Young People



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