

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

**Child Rights Wellbeing Impact Assessment –  
Stage 3**

**June 2022**



**Scottish Government**  
Riaghaltas na h-Alba  
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**CRWIA Title: The Age of Criminal Responsibility (Reports on Use of Places of Safety (Scotland) Regulations 2022**

**Date of publication: June 2022**

**Executive summary**

The Regulations place 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.

The reports to the Scottish Parliament will include the pieces of information to 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**

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.

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. 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”). The purpose of the section 28 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.

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.

**Scope of the CRWIA, identifying the children and young people affected by the policy, and**

Information recorded and reported to the Scottish Parliament 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.

The recording of the information on the use of the section 28 power will allow for monitoring of its use and will provide

<p><b>summarising the evidence base</b></p>	<p>information to Ministers on which to base an accurate report to Parliament, as per the statutory requirement under Section 32 of the Act. Section 32 will ensure that the application of the Place of Safety regulation is both proportionate and justified.</p>
<p><b>Children and young people's views and experiences</b></p>	<p>The Scottish Government has consulted extensively with Police Scotland on both the section 28 and section 32 powers. 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>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>In developing section 32, the Scottish Government informally consulted with a range of stakeholders, including organisations with a strong focus on children's rights:</p> <ul style="list-style-type: none"> <li>• Action for Children</li> <li>• Centre for Youth and Criminal Justice (CYCJ)</li> <li>• Children and Young People's Commissioner Scotland (CYPCS)</li> <li>• Convention of Scottish Local Authorities (COSLA)</li> <li>• Includem</li> <li>• National Youth Justice Advisory Group</li> <li>• Police Scotland</li> <li>• Social Work Scotland (SWS)</li> <li>• Together</li> <li>• Victim Support Scotland</li> </ul> <p>The Scottish Government has also engaged with social work specialists in relation to the operational functioning of the section</p>

	<p>28 power and how this can link to and support the reporting requirements to be established by the Regulations.</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><b>Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing</b></p>	<p>The policy objective of the instrument is to place 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. This will support accountability and an audit trail for use of the section 28 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 reporting requirements 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>The Scottish Government has also considered the potential risk to protecting a child’s anonymity. If the power is used infrequently, there is a potential risk that any reports to Parliament may allow for a child’s identity to be determined. The Scottish Government have considered this risk in detail and will ensure that reports laid in Parliament in performance of the obligation in section 32 of the Act safeguard the rights of any data subjects. It must not be possible for the identity of any child in relation to whom the section 28 power was used to be capable of being construed from a report.</p> <p>Any report laid before Parliament will ensure that its terms have been informed by data protection law and the need to ensure the rights of data subjects.</p>
<p><b>Monitoring and review</b></p>	<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</p>

	that review to involve consideration of the section 28 powers and the Regulations.
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Legislation	Aims of measure	Likely to impact on	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
<p><b>The Age of Criminal Responsibility (Reports on Use of Places of Safety (Scotland) Regulations 2022</b></p>	<p>The Regulations place 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.</p> <p>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.</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.</p> <p>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 <a href="#">GIRFEC</a> approaching to supporting children.</p>

**CRWIA Declaration****Authorisation****Policy lead****Kelly Millar****Police Manager, police powers****Date****17 May 2022****Deputy Director or equivalent****John Somers****Deputy Director, Safer Communities****Date****18 May 2022**



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The Scottish Government  
St Andrew's House  
Edinburgh  
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ISBN: 978-1-80435-554-1 (web only)

Published by The Scottish Government, June 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1096022 (06/22)

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