

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

Equality Impact Assessment - Results

June 2022



Scottish Government
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EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	The Age of Criminal Responsibility (Scotland) Act 2019 (Reports on Use of Places of Safety) Regulations 2022
Summary of aims and desired outcomes of Policy	<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 (17 December 2021), and after each successive period of one year.</p> <p>The recording of the information on the use of the section 28 power will allow for monitoring of its use and 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. Section 32 will ensure that the application of the Place of Safety regulation is both proportionate and justified.</p>
Summary of aims and desired outcomes of Policy	Safer Communities: Police: Police Powers

Executive summary

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.

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.

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 and report information can only apply in relation to situations involving children in that age group.

Background

The Act will raise the age of criminal responsibility in Scotland from 8 to 12 years old. 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 and Section 32, which places a requirement on Scottish Ministers 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.

The purpose of this power is the recording of the information on the use of the section 28 power, which will allow for monitoring of its use and 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. Section 32 will ensure that the application of the Place of Safety regulation is both proportionate and justified.

On 17 December 2021, an Order under section 104 of the Scotland Act 1998 commenced to ensure effective and proper cross-border operation of its provisions. This is specifically in relation to the powers of the police to deal with harmful behaviour by children under the age of 12 and the disclosure of conviction and other information relating to when a person was under the age of 12.

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 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. 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. 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 32 powers will require Scottish Ministers to report the use of the section 28 power to the Scottish Parliament. 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 and report 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.

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. A potential negative impact was identified if the power is used infrequently, which may result in a risk that any reports to parliament allow for a child's identity to be determined. This could have considerable repercussions for the child, for any person who was protected from harm via use of the section 28 power, for public confidence in the Act, and for the Scottish Government itself. We note that reports to Parliament will need to safeguard the rights of any data subject, and this might be particularly important if the power is not frequently used.

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 (Reports on Use of Places of Safety Scotland) Regulations 2022 has been sufficiently assessed against the needs of the equality duty.

John Somers
Deputy Director, Police Division

Date this version authorised: 18 May 2022



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