

Data Protection Impact Assessment (DPIA) – Children’s Interview Right’s Practitioner

October 2022

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1. Introduction

The purpose of this document is to report on and assess against any potential Privacy Impacts as a result of the implementation/use of the Register of Child Interview Rights Practitioners (ChIRPs).

Section 56 of [the Age of Criminal Responsibility \(Scotland\) Act 2019](#) (“the Act”) sets out Scottish Ministers’ requirement to establish and maintain a register of legally-qualified persons who will provide independent advice, support and assistance to children under 12 who attend an investigative interview.

The Age of Criminal Responsibility (Scotland) Act 2019 (Register of Child Interview Rights Practitioners) Regulations 2021 set out the details of the Register of Child Interview Rights Practitioners (ChIRPs) and the requirements for being appointed as a ChIRP; payment of expenses, fees and allowances; and training requirements.

2. Document metadata

2.1 Name of Project: Register of Child Interview Rights Practitioners

2.2 Author of report: Lisa Hay

2.3 Date of report: 15 August 2022

2.4 Name of Information Asset Owner (IAO) of relevant business unit: Tom McNamara

2.5 Date for review of DPIA: bi-annually

Review date - Feb 2023

3. Description of the project

3.1 Description of the work:

The ACR Act raises the age of criminal responsibility in Scotland from 8 to 12 years of age. Whilst the policy intention is to protect younger children from the harmful effects of criminalisation, the Act provides powers for the police to investigate incidents of serious harm. Children whose behaviour is being investigated are to be given access to a child interview rights practitioner (ChIRP).

Section 51 of the Act provides for a child who is involved in an investigative interview to be supported by a ChIRP who will provide the child with advice, support and assistance in connection with, and during an investigative interview.

Section 56 of the Act sets out Scottish Ministers’ requirement to establish and maintain a register of ChIRPs, and regulation-making powers in connection with establishing and maintaining the register of ChIRPs.

The Age of Criminal Responsibility (Scotland) Act 2019 (Register of Child Interview Rights Practitioners) Regulations 2021, which came into force on 30 September 2021, are made in exercise of those regulation-making powers.

The register is maintained by Scottish Ministers and held within the Youth Justice and Children's Hearing Unit of the Scottish Government Children and Families Directorate. The Scottish Government is the data controller and individuals within the Unit process the data collected as a result of establishing the register. The register is limited in the amount of personal data that is collected on ChIRPs and only contains essential details including ChIRP contact details.

3.2 Personal data to be processed.

Variable	Data Source
ChIRP's name	ChIRP
ChIRP's contact details (email and telephone)	ChIRP
ChIRP's bank account details	ChIRP
Details of ChIRP training undertaken / outstanding / completed and passed	SG/ training provider
Details of appointment of ChIRP to register	SG
Reason for ChIRP removal from the register	SG

3.3 Describe how this data will be processed:

Individual ChIRPs provide their details to the Youth Justice and Children's Hearing Unit.

The register is maintained by Scottish Government officials and may only be accessed by identified officials when there is a need to identify a ChIRP for a child who is going to be subject to an investigative interview under section 39 of the Act. Officials ensure that the register is kept up to date and accurate.

Information about pre-registration and refresher training undertaken by ChIRPs is provided to SG by the training provider.

SG's role is to maintain the register and to provide contact details for ChIRPs as required. Police Scotland (PS) request SG to provide the contact details for a ChIRP when operational partners have agreed that there will be an investigative interview. Once SG has provided the contact details, PS then contact the ChIRP directly.

All information is processed through the secure Scottish government IT networks and by the PS pnn secure network. Encrypted email is used to forward information to a named contact.

It is anticipated that the need to share information with PS will happen infrequently. Incidents involving children under 12 which require an investigative interview will be very rare. Prior to commencement of the Act, three 8 – 11 year olds each month would have been referred to the Principal Reporter on average for more serious offending concerns. Whilst it is now not possible for a Reporter to refer a child under 12 to a hearing on offence grounds, not all of those referred will reach the threshold of behaviour that invokes the police powers in the Act. Consequently, not all of those children will require an investigative interview, so will not need a ChIRP.

Data is held on the register only for as long as it is required. We ensure the data is stored and transferred securely, and is shared between SG and PS safely. We also discuss with PS their data handling obligations under DP and FOI legislation. The register is reviewed periodically to ensure it is up to date and correct, ensuring that details of individual ChIRPs are current.

3.4 Explain the legal basis for the sharing with internal or external partners:

The legal basis for processing, retaining and sharing the information is section 56 of the Age of Criminal Responsibility (Scotland) Act 2019 and the Age of Criminal Responsibility (Scotland) Act 2019 (Register of Child Interview Rights Practitioners) Regulations 2021.

As mentioned in section 3.1, section 56(1) of the Act requires Scottish Ministers to establish and maintain a register of persons who are authorised to provide advice, support and assistance to children in relation to their involvement in investigative interviews. Section 56(3) provides that Ministers may by regulations make further provision in connection with the register (including the establishment and maintenance of the register).

4. Stakeholder analysis and consultation

4.1 List all the groups involved in the project, and state their interest.

Group	Interest
Scottish Government: Youth Justice Unit – ACR implementation team	<ul style="list-style-type: none"> Responsible for commencement of section 56 of the Act. Responsible of setting up and maintaining the register and for providing information held in the register to PS.
Police Scotland	<ul style="list-style-type: none"> Compliance with legislation. Compliance with own requirements on securely processing and sharing information.
In developing the policy for ChIRPs, we consulted and engaged with representatives of the legal profession in Scotland, including: <ul style="list-style-type: none"> the Scottish Legal Aid Board (SLAB), Clan Childlaw, the Law Society of Scotland, Millard Law, the Child Law Centre, Livingstone Brown, the Faculty of Advocates, Keegan Smith, and McCarry’s Solicitors. 	The Act sets out that a ChIRP must be a solicitor enrolled on the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980 and must be entitled to provide children’s legal assistance under section 28M of the Legal Aid (Scotland) Act 1986. This means – where appropriate – they may also represent the child at any subsequent children’s hearing as a legal representative rather than as a ChIRP. This recognises and respects the fundamental importance of continuing relationships for young
Children’s Legal Assistance Scheme peer review group	

	children navigating these processes.
Children and young people in relation to their expectations from ChIRPs	Since the ChIRP role is new, feedback from children and young people has been more general in nature, focusing on the need for ChIRPs to demonstrate empathy, and be skilled in building rapport and trust, helping the child being interviewed to feel comfortable and reassured. We will continue to engage with children and young people as the policy is implemented, learning from their experience of investigative interviews.
We held a wider consultation exercise on the policy (1 December 2020 – 19 January 2021) and received responses from: <ul style="list-style-type: none"> • Police Scotland, • COSLA, • Social Work Scotland, • Aberdeen City Council, • Argyll & Bute Council, • Dumfries & Galloway Council, • City of Edinburgh Council, • South Lanarkshire Council, • West Lothian Council, • Edinburgh Child Protection Committee, • CELCIS, • Scottish Courts and Tribunals Service, • Scottish Children’s Reporter Association (SCRA), • Together Scotland, and • Victim Support Scotland. 	Section 57(4) of the Act requires Scottish Ministers to consult on guidance relating to investigative interviews. While doing this, we took the opportunity to seek views on proposed ChIRPs policy and the code of practice.
We wrote to the Information Commissioner’s Office on 4 June 2020 in relation to proposed data processing under the Child Interview Rights Practitioner (Scotland) Regulation. In doing so, we fulfilled our obligation under Article 36(4) of the GDPR to consult the Information Commissioner.	The ICO considered the submission, and with particular reference to the Information Commissioner’s regulatory priorities, did not wish to provide any further input at that time.

4.2 Method used to consult with these groups when making the DPIA.

Written and verbal communication. We have had ongoing discussion with key stakeholders, such as PS, about the need to share data for investigative interview, as well as how PS will access the register and contact details for ChIRPs.

4.3 Method used to communicate the outcomes of the DPIA.

The DPIA will be shared with PS so they will be aware of, and in a position to mitigate any risks identified as far as they are able.
It will also be shared with ChIRPs for general awareness about the information being held.

5. Questions to identify privacy issues

5.1 Involvement of multiple organisations

SG and PS share information and contact details about ChIRPS. The training provider shares information with SG about training undertaken by ChIRPs.

5.2 Anonymity and pseudonymity

N/A. ChIRPs' contact details need to be shared by SG with PS.

5.3 Technology

There are no new or additional information technologies used. Data is transferred by SG secure e-mail.

5.4 Identification methods

E-mail, phone numbers and email addresses for ChIRPs are shared between SG and PS.

5.5 Sensitive/Special Category personal data

Bank account details of ChIRPs are held. This is needed to ensure they are paid for their services. Bank account details will only be shared with those who are maintaining the register, SG Finance [?] and the individual ChIRP.

5.6 Changes to data handling procedures

The data is handled according to the SG [and PS] data handling policy and procedures.

5.7 Statutory exemptions/protection

None. The data processing is not exempt from the Data Protection Act.

5.8 Justification

There is a clear justification for the new data handling and sharing of information held on the ChIRP register. Doing so ensures that SG meets the statutory requirement to maintain the register of ChIRPs and ensures any child who will be subject to an investigative interview is provided with a ChIRP by providing their contact details to PS.

5.9 Other risks

There are no further risks identified.

6. General Data Protection Regulation (GDPR) Principles

Principle	Compliant – Yes/No	Description of how you have complied
6.1 Principle 1 – fair and lawful, and meeting the conditions for processing	Yes	<ul style="list-style-type: none">The data processing is a proportionate response to the need to perform a task carried out in the public interest or in the exercise of official authority – Article 6(1) (e).The legal basis is section 51 and 56 of the Age of Criminal Responsibility (Scotland) Act 2019.

Principle	Compliant – Yes/No	Description of how you have complied
6.2 Principle 2 – purpose limitation	Yes	<ul style="list-style-type: none"> Information is used only for the intended purposes. Apart from PS, information is not passed to any other individuals or third parties.
Principle	Compliant – Yes/No	Description of how you have complied
6.3 Principle 3 – adequacy, relevance and data minimisation	Yes	<ul style="list-style-type: none"> Only essential required data is collected. The data ingathered is subject to careful consideration to ensure there is a strong need for it to be collected. We do not process/ retain any unnecessary additional information.
Principle	Compliant – Yes/No	Description of how you have complied
6.4 Principle 4 – accurate, kept up to date, deletion	Yes	<ul style="list-style-type: none"> Only data needed to ensure that the ChIRP register is up to date and contains all relevant data about individual ChIRPs is retained (such as training done, status on register, contact details). The register is reviewed periodically to ensure it is up to date and correct, ensuring that details of individual ChIRPs are current. Out of date or irrelevant data will be deleted.
Principle	Compliant – Yes/No	Description of how you have complied
6.5 Principle 5 – kept for no longer than necessary, anonymisation	Yes	<ul style="list-style-type: none"> Information will only be retained for as long as it is necessary. Given the nature of the work and appointments, this is open ended. We will regularly review the need for the data to determine if the information is still required and, if it is not required, it will be destroyed securely in line with the SG information handling protocols. The review will be annually or more frequently done when a ChIRP is removed/added. Anonymisation is not appropriate.
Principle	Compliant – Yes/No	Description of how you have complied
6.6 GDPR Articles 12-22 – data subject rights	Yes	<ul style="list-style-type: none"> Data is collected and held in accordance with the data subject's rights. The register will be updated as needed to ensure the content is correct and up to date. A privacy notice will be provided to all ChIRPs stating what personal information will be held and for what purpose and what their rights are. Right of access – can be actioned by contacting the ACR Team or the SG data protection branch.
Principle	Compliant – Yes/No	Description of how you have complied

6.7 Principle 6 - security	Yes	<ul style="list-style-type: none"> Data is held on the SG SCOTS system and in a file in erdm with access restricted to an ad hoc group of named individuals. Information is shared only via the PS pnn network. All SG staff complete mandatory Data Protection training at least once per year to ensure staff are aware of regulation.
Principle	Compliant – Yes/No	Description of how you have complied
6.8 GDPR Article 44 - Personal data shall not be transferred to a country or territory outside the UK.	Yes	Information will only be transferred within Scotland.

7. Risks identified and appropriate solutions or mitigation actions proposed

Is the risk eliminated, reduced or accepted?

Risk	Ref	Solution or mitigation	Result
ChIRP personal information released inappropriately by SG	ACR01	Mitigation – there will be strict control on who can access/share ChIRP personal data. In SG data will only be available to those in the ad hoc group with access to the restricted erdm file.	Reduce risk
Handling of data rights requests: we may receive data rights requests we are unable to action in full	ACR02	<p>Legal requirement to store personal data is clearly established, and will be explained if rights of deletion, objection or restriction are made.</p> <p>All rights requests should be recognised by the Unit as soon as possible and referred to the Information Assurance and Data Protection Branch, who can advise and take legal advice if necessary.</p>	Reduce risk
Data is not shared in a timely manner, impacting negatively on ChIRPs or children	ACR03	Sharing requirements discussed with Police Scotland and training provider	Reduce risk

8. Incorporating Privacy Risks into planning

Explain how the risks and solutions or mitigation actions will be incorporated into the project/business plan, and how they will be monitored. There must be a named official responsible for addressing and monitoring each risk.

Risk	Ref	How risk will be incorporated into planning	Owner
ChIRP Personal information released inappropriately by SG	ACR01	<ul style="list-style-type: none"> Statutory obligation on SG staff to comply with data protection legislation. Data sharing agreement – progress is being made with to facilitate an agreement between PS and several regulatory bodies. SG are awaiting sight of the final agreement. 	SG/ PS
Handling of data rights requests: we may receive data rights requests we are unable to action in full	ACR02	Legal requirement to store personal data is clearly established, and will be explained if rights of deletion, objection or restriction are made.	SG
Data is not shared in a timely manner, impacting negatively on ChIRPs or children	ACR03	Sharing requirements discussed with Police Scotland and training provider	SG

9. Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action

10. Authorisation and publication

The DPIA report should be signed by your Information Asset Owner (IAO). The IAO will be the Deputy Director or Head of Division.

Before signing the DPIA report, an IAO should ensure that she/he is satisfied that the impact assessment is robust, has addressed all the relevant issues and that appropriate actions have been taken.

By signing the DPIA report, the IAO is confirming that the impact of applying the policy has been sufficiently assessed against the individuals' right to privacy.

The results of the impact assessment must be published in the eRDM with the phrase "DPIA report" and the name of the project or initiative in the title.

Details of any relevant information asset must be added to the Information Asset Register, with a note that a DPIA has been conducted.

I confirm that the impact of [introducing a Child Interview Rights Practitioner's Register](#) has been sufficiently assessed against the needs of the privacy duty:

Name and job title of a IAO or equivalent	Date each version authorised
Tom McNamara, Deputy Director Children's Rights, Protection and Justice Division Children and Families Directorate	



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