

**Child Rights and Wellbeing Impact Assessment**

**CRWIA for the Age of Criminal  
Responsibility (Scotland) Bill**

**March 2018**

## CRWIA for the Age of Criminal Responsibility (Scotland) Bill

Date of publication: 14 March 2018

### Executive Summary

The main purpose of the Bill is to raise the age of criminal responsibility (ACR) in Scotland from 8 to 12 to align it with the current age of prosecution and reflect Scotland's progressive commitment to international human rights standards so that:

- Children under the ACR are not stigmatised by being criminalised at a young age due to being labelled an "offender".
- Children under the ACR are not disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life.
- The new ACR aligns with longstanding presumptions around maturity, rights, and participation and improves the lives of children with care experience (especially children looked after away from home) whose behaviours are more likely to have been reported to police - and therefore to attract a criminalising state response - than Scotland's child population in general.

In consequence of the change to the ACR, the Bill also provides for a number of measures to ensure that action can still be taken by the police and other authorities when children under the age of 12 are involved in serious incidents of harmful behaviour, to protect the child's rights and best interests, and the interests and rights of anyone harmed.

These measures include specific investigatory powers for the police. The Bill makes provision for the sharing of information with victims in respect of actions taken by the children's hearings system. A child under the ACR thought to be responsible for a serious incident will have the right to have access to a supporter and to an advocacy worker during a formal police interview. The Bill also makes changes to the disclosure system, removing the automatic disclosure of convictions for the behaviour of under 12s and putting in place independent review of information to be included in response to a disclosure check, when that check may disclose non-conviction, but potentially adverse, information dating back to when the applicant was under the ACR.

	<p>The Bill has potential consequences for children under eight who will be subject to a wider range of police powers than they are currently. However anecdotal evidence indicates that it would be unusual for a child under eight to display such behaviour as would require these powers to be enacted and the Bill does not reduce the ability of the children’s hearing system to respond to children’s behaviour and circumstances.</p> <p>The aim of this Child Rights and Wellbeing Impact Assessment (CRWIA) is to identify, consider and record the anticipated impact of the Bill on children’s rights and wellbeing in Scotland.</p> <p>The provisions in the Bill were informed by the recommendations contained in the Report of the Advisory Group on the Minimum Age of Criminal Responsibility and have been considered and assessed for:</p> <ul style="list-style-type: none"> <li>• Compliance with/advancement of the articles of the UNCRC;</li> <li>• How they will protect and promote the wellbeing of children and young people who may be affected by the provisions in the Bill, using the child wellbeing indicators.</li> </ul>
<b>Background</b>	<p>The background to the Bill is set out in the Policy Memorandum published alongside the Bill on the Scottish Parliament website.</p>
<b>Scope of the CRWIA</b>	<p>The CRWIA considers whether any of the Bill’s provisions impact on the rights and wellbeing of children and young people in Scotland. The Scottish Government are of the view that the provisions will advance the realisation of children’s rights and wellbeing in Scotland.</p> <p>The CRWIA should be read in conjunction with the other impact assessments conducted for the Bill.</p> <p>The Privacy Impact Assessment considers the impact of the Bill’s provisions on an individual’s right to privacy. The Equality Impact Assessment considers the potential impact of the Bill’s provisions on each of the protected characteristics which includes age.</p>
<b>Children and young people’s views and experiences</b>	<p>A public consultation based on the recommendations of the Advisory Group commenced on 18 March and ran until 17 June 2016.</p>

	<p>While the official consultation period ran until 17 June 2016, wider engagement, focused on young people, victims and other key interest groups, continued until the end of July. Events were held across Scotland from May to July based on the issues raised in the formal public consultation but with methods tailored to the needs of each group.</p> <p>We engaged with children and young people aged from 8 to 22, targeting those affected by current legislation and those that have experienced negative life experiences from being connected with the criminal justice system from an early age. We met with children and young people from the Scottish Youth Parliament, Children’s Parliament, Who Cares? Scotland, Youth Advantage Outreach, Up-2-Us, YOI Polmont, Good Shepherd Secure Unit and Sacro. The methods used to elicit and record views ranged from scenario storytelling to quizzes, timelines, discussion groups, voting cards and artwork.</p>
<p><b>Key Findings</b></p>	<p>Key messages from this engagement were:-</p> <ul style="list-style-type: none"> <li>• While children and young people had a mixed understanding of the law surrounding criminal responsibility, overwhelming support was expressed for raising the age of criminal responsibility.</li> <li>• Children expressed concern for future prospects, the effectiveness of punishing children who didn’t fully understand what they had done wrong, and the appropriateness of such harsh consequences when compared to other day-to-day responsibilities and consequences for children.</li> <li>• Children all agreed that there should be some consequences for harmful or law breaking behaviours. They strongly suggested that other consequences which explored addressing issues connected to a child’s environment and home life might be a more effective and appropriate way of responding.</li> </ul>
<p><b>Conclusions and Recommendations</b></p>	<p>While the Bill focuses on the behaviour of 8 to 11 year olds, it also has potential consequences for: (a) children under eight (who will be subject to a wider range of police powers than they are currently); (b) all children and young people, because information can be shared with victims (including child victims) about the actions taken by the children’s hearing system in respect of an offence committed by a child aged 12 and over, and harmful behaviour by a child under 12; and (c) people of all ages,</p>

including children, as restrictions will be placed on the disclosure of information about a conviction accrued when they were under 12.

The current system of disclosure of convictions relating to offences committed while in the 8 to 11 age group is not considered justified since a young child could not have reasonably foreseen the impact the disclosure system could have on their lives at the time, and the child may no longer pose a risk by the time they reach adulthood. By ending the automatic disclosure of “convictions” that occurred before the age of 12 the Bill will assist children (and subsequently when they become adults) to put most childhood harmful behaviour behind them, to get on with their lives and to contribute to society. The Bill provides that if disclosure of information about a pre-12 incident(s) is proposed, it will only happen after independent review.

The Bill ensures that the potential negative impact on a person who received a conviction while under the age of 12 as a result of these powers is proportionate. There will not be arbitrary or automatic disclosure of such information to a third party such as a prospective employer. Any proposed disclosure will be subject to an independent review in which the applicant for the disclosure will have the right to make representations before the proposed disclosure is made. The range of powers which the Bill creates to enable the police to investigate concerns about harmful behaviour by children under 12 impacts on the civil liberties of those children so the use of those powers must, therefore, be clearly justifiable, proportionate, and sit coherently with the fact that children under 12 will not be criminally responsible or subject to the criminal justice system. That is why the Bill only makes those powers available to the police in the most serious cases – that is, where it is believed that a child’s behaviour has caused (or is reasonably likely to cause) death or serious injury, or that the child has been sexually violent or sexually coercive. The most recent statistics available show that, broadly speaking, one child a week in Scotland aged 8 to 11 is referred to the Principal Reporter for an incident in one of those categories which suggests that use of the powers will be extremely limited.

Anecdotal evidence suggests it would be extremely rare for any child under eight to be referred to the Principal Reporter as a result of such behaviour. However, should this be necessary, the Bill does not reduce the wide current powers of the children’s hearings system to respond to children’s behaviour and its circumstances.

	<p>The Bill also includes powers to disclose limited information to victims of offences by children aged 12 and over, and victims of harmful behaviour by children aged under 12. The existing powers to disclose information to victims of offending behaviour by a child are being repealed and re-enacted with some additional restrictions on the power to disclose. The Bill ensures that any potential negative impacts on a child's rights as a result of these powers is proportionate by balancing the interests of the victim in the disclosure of information against the interests of the child in maintaining privacy. This is achieved by the creation of a range of protections against the arbitrary or automatic disclosure of information about the behaviour of a child.</p> <p>The range of powers in the Bill have potential to impact positively on all children and young people who are victims of harmful behaviour by a child under 12. The Bill ensures that harm caused by children under 12 has been taken seriously, fully investigated and that measures have been considered to address the behaviour and try and ensure it is not repeated.</p>
<b>Monitoring and review</b>	<p>A review will be undertaken after the Act has been implemented and the measures introduced have been in operation for a suitable period of time.</p>

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
1	This section raises the ACR to 12. It ensures that, from the date the new section comes into force, no child under 12 can commit an offence. The effect is that a child cannot be prosecuted, or referred to a children's hearing on the basis of the offence ground, in relation to pre-12 behaviour.	Children and young people who were involved in harmful behaviour when under the age of 12.	Advances article 4. General Comment No. 10 is also relevant.	This provision should have a positive effect on wellbeing indicators. It seeks to safeguard young children by ensuring that one-off incidents in early childhood do not continue to impact on their life chances into adulthood by for example, preventing them from pursuing their career of choice.
2 and 3	Sections 2 and 3 make provision about a child's behaviour where it occurs before the change in the ACR. They aim to : <ul style="list-style-type: none"> <li>• maintain the current position in relation to prosecution of children for things done while aged 8 to 11 for as long as necessary;</li> <li>• ensure that new cases involving behaviour that occurred prior to the date of the change in the ACR, and while the child was aged 8 to 11, cannot be dealt with on the basis of the offence ground (even though such actions may still, in strict legal terms, be an offence).</li> </ul>	Children and young people who were involved in harmful behaviour when under the age of 12 before the date section 1 comes into force.	As above	As above.
4. Disclosure under the Police Act 1997	To amend the meaning of conviction in the Police Act 1997 with the effect of taking a conviction accrued for an offence when under the age of 12 out of scope for automatic disclosure by Disclosure Scotland on a basic, standard, or enhanced disclosure under the 1997 Act, or the PVG scheme record under the Protection of Vulnerable Groups (Scotland) Act 2007.	A person, whether a child or an adult, in Scotland who has a court conviction, or a deemed conviction from a children's hearing accrued when under the age of 12.	Article 3 – If a decision is being made by any person about a child, then the child's interests must be considered when making the final decision.	The provision should have a positive effect on wellbeing indicators. The change will mean that a person's behaviour when under the age of 12 may no longer be the subject of automatic disclosure by the state (by Disclosure Scotland on behalf of Scottish Ministers).

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
5 to 15. Disclosure of other information independent review	<p>These sections set out:</p> <ul style="list-style-type: none"> <li>the appointment of an independent reviewer by the Scottish Ministers, the functions of the independent reviewer, the terms and length of the appointment, and the administrative support to the appointed person</li> <li>a definition of the type of the information (namely information to be provided by the chief constable) that comes within the scope of independent reviewer, and the right for the individual disclosure applicant and certain public bodies in Scotland to be invited to participate in a review on a case-by-case basis (including a requirement being placed on certain public bodies to respond to requests from the independent reviewer in connection with a review)</li> <li>how cases should be notified to the independent reviewer by the chief constable, and how the independent reviewer will notify their determination of a case</li> <li>that an appeal against the determination will be available only on a point of law to the individual and the chief constable who provided the information</li> </ul>	<p>A person, whether a child or an adult, in Scotland who has a court conviction, or a deemed conviction from a children's hearing accrued when under the age of 12.</p> <p>The provisions will affect the independent reviewer. They may also impact on an organisation that has had involvement with the individual about whom the chief constable is proposing to make the disclosure.</p>	<p>Article 3 – If a decision is being made by any person about a child, then the child's interests must be considered when making the final decision.</p> <p>Article 16 Every child has the right to privacy. The law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation.</p>	<p>The provisions should have a positive effect on wellbeing indicators. The change will mean that if the chief constable is proposing to make a disclosure as other relevant information about a person's behaviour when under the age of 12, the chief constable's decision to make that disclosure must be reviewed by the independent reviewer, before the information is released by Disclosure Scotland to a third party. The person who has made the enhanced disclosure or PVG scheme record disclosure application will be able to contribute to the process of independent review by making written representations should they wish to do so.</p>



Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
16 to 19. General functions of independent reviewer	<p>These sections set out:</p> <ul style="list-style-type: none"> <li>• a requirement for the independent reviewer to make an annual report on their functions and send that to Scottish Ministers, and for laying in the Scottish Parliament</li> <li>• that the Scottish Ministers must issue guidance to the independent reviewer which she or he must have regard to when exercising their functions</li> <li>• regulation-making powers for the Scottish Ministers in connection with procedural aspects of the review, and to modify the independent reviewer's functions</li> </ul>	The provisions will affect the independent reviewer; the Scottish Ministers; the Scottish Parliament; and an organisation that contributes to, or comments on the guidance.	None	None
20 and 21. Amendments consequential to establishment of independent review, and interpretation	<p>Section 20 provides that where information provided by the chief constable is subject to independent review, the applicant (enhanced disclosure), or scheme member (PVG scheme record) cannot dispute that information under the dispute provisions in the 1997 Act or the 2007 Act.</p> <p>The interpretation section 21 sets out meanings for the terms used in relation to the disclosure and independent review provisions.</p>	The applicant for an enhanced disclosure, or the scheme member requesting a PVG scheme record.	Article 3 – If a decision is being made by any person about a child, then the child's interests must be considered when making the final decision.	None

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
<p>22 Provision of information to persons affected by child's behaviour</p>	<p>Section 22 provides powers to the Principal Reporter to disclose basic information to victims of offences by children aged 12 and over, and victims of harmful behaviour by children aged under 12.</p> <p>The Bill sets out new powers to allow the Principal Reporter to provide information to victims of harmful behaviour by children under the ACR and ensures that information currently provided to victims of offences by children and young people aged 12 and over, will largely remain the same.</p> <p>Section 22 provides restrictions on the person who can access the information, the information which can be disclosed and the circumstances in which information can be disclosed (this is restricted so that disclosure cannot take place where the Principal Reporter considers that it would be detrimental to any child involved or would otherwise be inappropriate).</p>	<p>Children and young people aged 12 and over, who are referred to the reporter in respect of an alleged offence committed against another person.</p> <p>Children under 12 who are referred to the reporter in respect of behaviour which appears to have caused harm to others.</p> <p>All children and young people who appear to have been harmed by an offence committed by a child or as a result of harmful behaviour by a child under 12.</p>	<p>Article 16 (right to privacy) Every child has the right to privacy. The law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation.</p>	<p>Impacts on: Safe, Respected, and Included.</p> <p>Section 22 ensures that the provision of information to victims about the offending or harmful behaviour of children and young people will be carefully considered, in order to protect both the interests and rights of the child referred to the reporter and the needs of the victim (including child victims).</p> <p>Section 22 should have a positive impact on the wellbeing of children and young people who are victims of an offence by a children and young people aged 12 and over, or harmful behaviour by children under the ACR. Their rights as victims are protected and they can access information about measures being taken to address the harm caused.</p>

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
23 and 24 Emergency place of safety	To allow the police to take a child to a place of safety, if that is necessary to manage an immediate risk of harm the child poses to another person.	<p>Children under 12 who appear to have caused – or appear likely to cause – harm to someone else.</p> <p>All children and young people who appear to have been harmed as a result of harmful behaviour by a child under 12.</p>	<p>Article 3 – If a decision is being made by any person about a child, then the child’s interests must be considered when making the final decision.</p> <p>Article 37 – these provisions reflect the requirements of the article in that the child can only be taken to and kept in a place of safety if that’s necessary to manage an immediate risk of harm, and may only be kept there for the shortest time necessary (and should not exceed 24 hours).</p>	<p>Impacts on: Safe</p> <p>Provisions should have a positive impact on the wellbeing of children and young people who are victims of harmful behaviour by a child under 12 – where they are protected from further harm by these provisions.</p>

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
25-30 Search of children under 12	To preserve existing search powers that, when necessary and proportionate, these powers can still be used in relation to children under 12. In doing so the Bill creates a consistent position for <u>all</u> children under 12, in contrast to the current position which is that some powers (such as the power to search for knives) do not apply to children under eight, while others apply to all children.	<p>Children under 12 whom the police suspect are in possession of an illicit item.</p> <p>For children under eight, some of these search powers will apply for the first time.</p> <p>All children and young people who may otherwise be harmed by dangerous items removed as a result of searches of children under 12.</p>	<p>Article 33: children have the right to be protected from dangerous drugs (this would apply in searches for drugs)</p> <p>Article 36: children have the right to be protected from exploitation (this would apply when an older person was seeking to use a child under 12 to conceal an illicit item)</p>	<p>Impacts on: Safe</p> <p>Many searches are for dangerous items: being able to search for and remove these items reduces risk of harm to, or caused by, the child.</p>

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
31 to 46 Questioning of certain children	<p>To provide that, if the police want to interview a child about a seriously harmful act they suspect the child of carrying out when under 12, they must obtain a court order authorising the interview. In exceptional circumstances – where delay in questioning the child could put someone’s life at risk – the police may interview the child without a court order, if that is authorised by a senior officer (superintendent or above). The officer must apply the same tests that the sheriff would if considering an application for a court order, and the police must still apply for a court order retrospectively.</p> <p>These sections also set out the requirements for interviews conducted under court orders, and the child’s rights and safeguards when being interviewed. Interviews must be planned collaboratively by the police and social work, and planned and conducted in accordance with guidance. The child has a right to be accompanied by a supporter (a responsible adult, who may also be a parent) and to have assistance from a children’s advocacy worker. The child also has a right to information about the interview in an easy-to-understand form, and has the right not to answer questions during the interview.</p>	<p>Children under 12 whom the police suspect have carried out a seriously harmful act.</p> <p>Sections 31 to 43 and 46 will also impact on children under 16 (or 16 and 17 year olds subject to CSOs) whom the police wish to interview on suspicion of carrying out a seriously harmful act when they were under 12.</p> <p>All children and young people who appear to have been harmed as a result of harmful behaviour by a child under 12.</p>	<p>Article 3: this is relevant to the interview provisions because a supporter can only leave the room if it is in accordance with the wellbeing of the child.</p> <p>Article 12: Children have the right to an opinion, and for it to be listened to and taken seriously.</p>	<p>Impacts on: Safe and Respected</p> <p>Provisions should protect children and young people who are victims of seriously harmful behaviour by ensuring that incidents can be investigated to establish what happened, ensuring that the harm caused is recognised and further harm is prevented.</p> <p>When a sheriff is considering an application for a child interview order, he may invite the child to make a representation, so their voice is heard. The child may also appeal an order.</p> <p>When deciding who should be the child’s supporter for an interview, the interviewers must seek the child’s views if possible, and have regard to those views. The advocacy worker assisting the child at interview can help to ensure the child’s voice is heard, communicating on the child’s behalf if necessary, or otherwise supporting the child in communicating with the interviewers.</p>

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
<p>47 to 58 Taking prints and samples from certain children</p>	<p>To provide that, if the police want to take prints or samples from a child to investigate a seriously harmful act they suspect the child of carrying out when under 12, they must obtain a court order authorising the taking of samples. In exceptional circumstances – where delay in taking samples could cause important evidence to be lost or destroyed – the police may take samples or prints without a court order, if that is authorised by a senior officer (superintendent or above). The officer must apply the same tests that the sheriff would if considering an application for a court order, and the police must still apply for a court order retrospectively. If that court order is not granted, they must destroy the samples taken and may not use them for their investigations.</p> <p>These sections also provide that any prints or samples taken from children under these powers – and the records of those samples – must be destroyed once they are no longer needed for the purposes of the investigation for which they were taken, and any resulting Children’s Hearings proceedings have concluded.</p>	<p>Children under 16 (or 16 and 17 year olds subject to CSOs) whom the police wish to take samples from on suspicion of carrying out a seriously harmful act when they were under 12.</p>	<p>Article 12: Children have the right to an opinion, and for it to be listened to and taken seriously.</p>	<p>When a sheriff is considering an application for an order to take or authorise the use of forensic samples, he may invite the child to make a representation, so their voice is heard. The child may also appeal an order.</p>

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
59 Wellbeing of child	To require everybody who is carrying out powers or duties under Part 4 (sections 23-63) to treat the need to safeguard and promote the child's wellbeing as a primary consideration.	All children to whom sections 23 to 58 apply.  The police, sheriffs, social workers, advocacy workers, and anyone else carrying out powers or duties	Article 3 – If a decision is being made by any person about a child, then the child's interests must be considered when making the final decision.	This provision is designed to promote and safeguard children's wellbeing in general.
60 Children's legal aid	To create a power that would allow Scottish Ministers to make children's legal aid available for legal advice and representation at hearings or appeals about court orders for interviews, search or the taking of forensic samples.	All children in relation to whom the police have applied for a child interview order, search order or forensic samples order.	Article 40 - when a child or young person gets legal help, they should get it without being discriminated against in any way.	Impacts on: Respected  If used, this power could potentially facilitate children's voices being heard at hearings or appeals for the orders created by the Bill.
61 Additional powers and duties of constables	To empower the police to use force when exercising the powers in the Bill when that is essential, but while making clear that there is a strong presumption against any use of force against a child under 12.	All children to whom sections 23 to 58 apply.	Article 3 – If a decision is being made by any person about a child, then the child's interests must be considered when making the final decision.	Impacts on: Safe. Any use of force has the potential to cause hurt. The Bill places explicit limitations on the use of force against children under 12, to help ensure that force is only used when essential and proportionate, to keep children as safe as possible.

Bill - Section	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to wellbeing indicators
62 Offences	To make it an offence to intentionally obstruct a police investigation into a serious act that is believed to have been carried out by a child under 12.	<p>People 12 or older who try to obstruct or interfere with an investigation into a child who is under 12.</p> <p>Children and young people who may have been harmed as a result of harmful behaviour by a child under 12.</p>	N/A	N/A



**CRWIA Declaration**

Tick relevant section, and complete the form.

**CRWIA required****CRWIA not required**

✓

**Authorisation****Policy lead**

Paul Beaton  
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**Date****9 March 2018**

**Donald Henderson, Deputy Director,  
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**Date****9 March 2018**



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