

The Age of Criminal Responsibility (Scotland) Act 2019

**Learning Event - 26 January 2023
Report on key findings**

November 2023

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Purpose

The Age of Criminal Responsibility (Scotland) Act 2019 ('the Act') places a duty on Ministers to review the operation of the Act with a view to considering a future age of criminal responsibility within 3 years of commencement.

The three-year review period started on 17 December 2021, the day that Section 1 came into force. In carrying out the review, Scottish Ministers must consult such persons as they consider appropriate.

The Learning event was established to support the statutory review, highlight and consolidate learning generated to date, and prepare the way for consulting with relevant stakeholders at the appropriate time.

Key stakeholders

There were key stakeholders from a number of organisations including:

- Children and Young People's Centre for Justice (CYCJ)
- Police Scotland
- Social Work Scotland
- Representatives from a number of local authority Social Work departments (East Lothian, North and South Lanarkshire, Fife, Ayrshire, North and South Ayrshire, Falkirk, Highland, Orkney, Aberdeenshire, Dumfries and Galloway, Angus, East Dunbartonshire and Inverclyde)
- Scottish Children's Reporter Administration (SCRA)
- Convention of Scottish Local Authorities (COSLA)
- Scottish Government
- Child interview rights practitioners (ChIRPs)
- Children's Hearings Scotland (CHS)
- Scottish Legal Aid Board (SLAB)
- Crown Office and Procurator Fiscal Service
- Scottish Courts and Tribunals Service
- Victim Support Scotland
- Action for Children

Summary of programme

The full day programme consisted of round table discussions on what lessons have been learned from pre and post-commencement of the Act. There were keynote speaker contributions from:

- Beth-Anne Logan from CYCJ who spoke about her [report on young peoples views on ACR](#).
- Dr Aaron Brown, from CYCJ who spoke about the learning from other countries regarding their age of criminal responsibility (ACR).

- Alison Penman from Social Work in Dumfries and Galloway and DSU Martin MacLean from Police Scotland reflected on lessons learned from pre-commencement of the Act.
- Sharon Coats from Social work in North Lanarkshire and DS Carolyn Stephen from Police Scotland reflected on lessons learned from post-commencement of the act.
- Fiona Dyer from CYCJ and Tony Bone, Child Interview Rights Practitioner (ChIRP) spoke about their experiences and the role of ChIRPs.
- Ian Donaldson, Deputy Director for Youth Justice in Scottish Government outlined what is next for government in terms of ACR.
- Clare Haughey, Minister for Children and Young People closed the event, and reflected on both pre and post-commencement experiences, and what is next for ACR.

Section 1: Overarching reflections and intentions of the Act

One of the main aspirations of the Scottish Government is to protect and promote the rights and interests of children and young people and to prevent and address offending behaviour by young people; this is one of the main drivers to the legislation under the Age of Criminal Responsibility (Scotland) Act 2019.

The Act intentions are to make a positive difference to the lives of children in Scotland. The Act protects children under 12 from the harmful effects of early criminalisation, while ensuring they receive the right support and reduce stigma.

After one year of the Act being fully commenced, data shows that the number of children aged under 12 causing serious or significant harm is very rare.

[A research report by the Scottish Children's Reporter Administration](#) (SCRA) on children aged 12 to 15 years involved in offending and who were referred to the Children's Reporter and Procurator Fiscal in Scotland, shows that many children who display early harmful behaviours are themselves highly vulnerable and may have experienced trauma, neglect, abuse and other adverse childhood experiences in their own lives, which may be expressed through their behaviour.

Communication & Engagement

In developing the Age of Criminal Responsibility Bill and through to full commencement the Scottish Government worked with a variety of stakeholders, including, Police Scotland, Children and Young People's Centre for Justice (CYCJ), Action for Children, members of the Scottish Youth Parliament, young offenders in Polmont, school pupils, children in secure care, looked after children, children involved in minor offending, vulnerable girls and young women, and child victims. There was an extensive consultation completed before the bill progressed through Parliament with a total of 74 responses were received (47 organisations and 29 individuals) 95% agreed the minimum age of criminal responsibility should be raised to 12.

The Scottish Government consulted with young people directly during implementation of the Act, [including a workshop with the SYP's Justice Committee](#) to

seek young people's views on what a suitable space for an investigative interview should look like.

As part of the data & research subgroup, Beth-Anne Logan developed a survey to seek the views of children and young people on the age of criminal responsibility. The full [report](#) of their findings was published in March 2021.

As part of the community confidence subgroup officials worked with young people to develop an [animation](#) explaining what Age of Criminal Responsibility means for children, young people, their families and communities.

Phased Implementation Approach

Due to the COVID-19 Pandemic, partners were required to reprioritise work and resources to enable them to respond to the pandemic. This led to a phased implementation of the legislation to ensure children benefitted from the reform as quickly and as safely as possible.

The first set of commencement regulations came into force on 29 November 2019. These regulations removed the offence ground of referral, and commenced provisions in relation to information for victims. The removal of the offence ground means that primary school-aged children will no longer be stigmatised from being labelled as an offender at such a young age, which will improve their life chances and well-being, as children younger than 12 cannot accrue convictions or criminal records.

The second set of commencement regulations came into force on 31 March 2020. These regulations commenced the guidance-making and regulation-making powers of the Act, and also commenced provisions that enable children's legal aid to also be available for proceedings before the sheriff which relate to applications for orders under Part 4 of the Act.

The third set of commencement regulations for the Age of Criminal Responsibility (Scotland) Act 2019 came into force on 30 November 2020. These regulations bring into force those provisions in Part 2 of the Act (which relates to disclosure) which had not already been commenced.

The fourth (and final) set of commencement regulations brought into force those provisions which had not already been commenced. These provisions were, essentially Part 4 (which relates to police powers) and sections 1 and 2 (which effectively raise the age of criminal responsibility).

Section 2: Summary of table discussions throughout the day

Communication

The observations mentioned within the table discussions strongly agreed that effective communication and timely information sharing are essential to be able to successfully implement the Act. This included advance warning of available materials

and resources to relevant partners and services, which would help to prepare and plan for full commencement of the Act effectively.

Providing a greater understanding and ethos around the Act would have helped stakeholders and partners to understand the purpose and intentions of the Act, and how it impacts on them. This can help to ensure that everyone involved is working within the same parameters which could help to build a sense of shared responsibility for the success of implementing the the Act.

Collaboration and partnership working

It was noted that partnership working happened by chance rather than design in the pre-commencement stage and how it's important to recognise the benefits of involving all relevant agencies from the early stages. In the pre-commencement stage it appears that early relationships between Social Work and Police Scotland helped to facilitate discussions between other partners. However, having more Social Work involvement from the outset could have provided valuable insights and different perspectives.

Childrens rights approach

Ensuring that children are aware of the processes and understand the options available to them can be particularly challenging. It is necessary to provide age-appropriate information and support to children to ensure that they understand their rights and the implications. It may also be necessary to involve other agencies, such as social work or child advocacy services, to provide additional support to children and their families.

Discussions took place about how important it is to ensure that children are informed of their rights, the procedures and implications. In implementing the Act, it was important to ensure that the rights of the child are being taken into account and that decisions remain child centered while being compliant with the duties in the Act.

There were concerns that the focus on serious harmful behaviour may create a two-tier system which does not adequately address the needs of children who may have caused less serious harmful behaviour to others. It is important to ensure that the Act provides a robust framework for responding effectively to the needs of all children, regardless of the seriousness of their behaviour. Stakeholders to consider Early and Effective Intervention which is a national framework for working with young people of 8 - 17 years who have been involved in offending behaviour. Its purpose is to divert these young people away from statutory measures, where appropriate, and respond to the charge in a timely manner.

A whole-system approach is necessary to ensure that the system meets the needs of children and provides appropriate support and interventions. Children should be given the opportunity to express their views and have those views taken into account in any decision about them. Competing rights can arise in cases where a child has caused harm and a child has been harmed, and it is important to ensure that the rights of both children are being considered in any decision-making process.

It was noted that trauma can have a significant impact on a child's response and their ability to participate effectively in court proceedings. It is important for partners to have a trauma informed response.

Definitions and language within the act

It was noted that there are concerns about the clarity and consistency of language and definitions in the Act, which has led to confusion and misinterpretation of the Act when being fully implemented. It was highlighted the importance of clear and consistent language and definitions throughout the legislation to ensure clarity over what constitutes "significant harm."

Also clear defined roles and responsibilities for those involved, such as Police Scotland, social work services, and ChIRPs.

Victim Support

Discussions around victim support included the need for more information and support for victims and their families. There have been concerns about the lack of information available regarding community support and supports for victims who have experienced lower level harmful behaviour.

Stakeholders have emphasised the importance of making victim rights clear throughout the legislation and providing guidance and links to other agencies. This could include pathways for children who have caused harm and support for victims, such as a victim care card.

Community confidence

The issue of community confidence was discussed and the need to raise awareness of the Act as well as ensuring that the public have an understanding of the youth justice system as a whole. It was noted that it is important for everyone including the public to have a clear understanding of the legislation and how it is intended to function in practice. This understanding can be particularly challenging when the legislation involves children who are believed to have caused harm to others.

Training and resources

Training and resources for practitioners was identified as a learning point as part of the implementation of the Act. There had been concerns raised about the insufficient time available to train practitioners, Police Scotland and Social Work. To address this, there is a need for ongoing workforce development training and support for continuous professional learning, including age of criminal responsibility specific training, e-learning materials and Scottish Child Interview Model (SCIM) training. Additionally, language changes should be made more visible, to ensure consistent and clear communication across stakeholders and local authorities across Scotland.

It is likely if the ACR age is raised there will be a requirement to have a higher volume of resources, particularly as the number of cases considered under the Act would likely increase. Additional resources may be required for training, education,

and support for practitioners, as well as for victim support services. The resource requirements will depend on various factors, such as the number of cases, the complexity of cases, and the extent of the harm caused. It will be important to ensure that adequate resources are available to support agencies if the age increases.

Places of safety

There were concerns raised about the availability of appropriate places of safety. It was strongly agreed that a Police Station is not the most appropriate place of safety and should be avoided if possible, however this would then have a knock on effect on the limited resources available at the moment. There was further concern over the appropriate places of safety in rural areas, where there are even more limited resources and services available. This could be an issue in cases where a child is deemed to pose a risk of harm to themselves or others, and therefore requires a safe and secure environment quickly.

Independent reviewer

Stakeholders agreed that there was a need for more knowledge and understanding of the role of the independent reviewer within the Act.

Investigative Interviews

The role of a Child Interview Rights Practitioner (ChIRP) is to support and advocate for the rights and needs of children during investigative interviews. ChIRPs are trained professionals who work with children, their families, and other stakeholders to ensure that the interview process is conducted in a manner that is fair, respectful, and sensitive to the needs of the child.

SCIM is a specific approach to conducting investigative interviews with children that is used in Scotland. It is designed to be child-centered and to prioritise the needs and rights of the child, while also ensuring that the interview is effective in obtaining accurate and reliable information.

The ACR investigative interview is another approach to conducting interviews with children. While there may be some similarities between the SCIM and ACR approaches, there are also important differences in terms of the techniques used and the overall focus of the interview.

It was noted that while there may be some overlap between child protection procedures and ACR, the procedures and protocols used are distinct and serve different purposes.

Discussion took place about how a ChIRP can be involved in the Inter-Agency Referral Discussion (IRD) process, however, the specific role and responsibilities of the ChIRP in this context would need to be clarified to partners and stakeholders.

The learning so far of investigative interviews within the ACR Act shows that these have been extremely time consuming and complex to deliver. This has the potential to cause unnecessary anxiety to children and their families.

3 year review period

There were concerns raised related to the 3 year review period. The main concern is that the age limit is too low, and there is a risk of unnecessarily criminalising children. It may be necessary to raise the age limit sooner to avoid this issue.

The Children's Care and Justice Bill Consultation asked "Do you agree that the review of the 2019 Act should take place, as set out, with the 3-year statutory review period?" 65% of respondents felt that the review of the 2019 Act should take place within the current timeframe, whilst 35% disagreed. Further details can be found [here](#).

Another concern is that the lack of use of the powers has made it difficult to learn from the implementation process. However, some of the issues that were raised before implementation have not been addressed during the first year, particularly in part 4 of the Act, Police Investigatory and Other Powers. It may be necessary to extend the review process, given the various changes and challenges faced by social workers, as well as the impact of the pandemic.

It is important to consider whether the learning from all partners has identified issues that will need to be addressed before raising the ACR. It may be beneficial to use the next two years to address the known issues rather than relying solely on limited learning due to low numbers. Despite the work carried out before the implementation to understand and articulate the issues to be addressed, only some progress has been made. These outstanding issues need to be addressed before raising the ACR.

Next Steps

The feedback Scottish Government received showed an overwhelming desire to hold similar events on a yearly basis throughout the review period. Stakeholders commented they have found the event to be valuable and informative, and that there is a need for ongoing engagement and collaboration between all involved in the implementation of the Act as is, but particularly when considering a future age of criminal responsibility in Scotland.

Section 3: Lessons Learned Log

Key aspect

Description or lesson/mitigation

Communication

Effective communication and timely information sharing are key aspects of successful implementation of any new legislation. By providing clear and timely information to all relevant stakeholders and partners, and by building a shared understanding and ethos around the act, it would ensure that everyone is working in partnership together.

Collaboration and partnership working

Collaboration and partnership working between agencies is essential to ensure effective implementation of the Act. It was discussed about how important it is for agencies such as the Social Work Scotland, Scottish Courts and Tribunal Service, the Scottish Civil Justice Council, and Police Scotland to work together to ensure that the Act is implemented in a consistent way.

Collaboration and partnership working

It is important for partners and services to be involved in discussions at the earliest possible stage when new legislation is being developed.

This is particularly the case when the legislation has significant implications on their services. By doing so, partners could provide valuable input that could help shape the legislation and ensure it is workable in practice.

This can help to ensure that all partners have a shared understanding of the legislation and its intended outcomes, and can work together to overcome any barriers to effective implementation.

Children's rights

It is important for agencies to have a comprehensive understanding of the needs of children who have experienced trauma and to provide appropriate support and interventions.

Children's rights/resources

Stakeholders to consider Early and Effective Intervention which is a national framework for working with young people of 8 - 17 years who have been involved in offending behaviour. Its purpose is to divert these young people away from statutory measures, where appropriate.

[Youth justice - early and effective intervention: core elements - framework - gov.scot \(www.gov.scot\)](https://www.gov.scot/youth-justice-early-and-effective-intervention-core-elements-framework)

Definitions and language within the act

Legislation is written in a clear and concise manner, with consistent language and definitions, to facilitate its effective implementation and enforcement.

Victim Support

Ensure that victims and their families are provided with adequate support and information throughout the process. This can help to mitigate the impact of the harm caused and ensure that victims feel supported and heard. Providing clear guidance and information for victims can also improve their engagement, and ultimately help to achieve better outcomes for all involved.

Community confidence

There is a need to improve public perception of the Act, as well as to provide more information about the support available for victims. There was discussions on the need to raise awareness of ACR in schools and how that a public information campaign in early stages pre-commencement may have helped.

Training and resources

There is a need for ongoing workforce development training and support for continuous professional learning, including e-learning materials and Scottish Child Interview Model (SCIM) training. Additionally, language changes should be made more visible, to ensure consistent and clear communication across stakeholders.

Places of safety

It is important to ensure that appropriate places of safety are available, regardless of the location, to ensure that children are not placed at further risk.

Independent reviewer

More knowledge and understanding of the role of the independent reviewer within the Act.

ChIRP

Role and responsibilities of a ChIRP to be clarified to partners and stakeholders.



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