

**ANGUS COUNCIL**

**CHILDREN AND LEARNING COMMITTEE – 21 SEPTEMBER 2021**

**IMPLEMENTATION - AGE OF CRIMINAL RESPONSIBILITY ACT (SCOTLAND) 2019**

**REPORT BY KATHRYN LINDSAY, DIRECTOR OF CHILDREN, FAMILIES AND JUSTICE**

**ABSTRACT**

The purpose of this report is to inform the Children and Learning Committee of developments relating to the Age of Criminal Responsibility (Scotland) Act 2019 and the arrangements for local implementation of new duties.

**1. RECOMMENDATIONS**

It is recommended that the Committee:

- (i) note and approve the operational changes detailed in this report
- (ii) note the assessed financial and operational implications of any further revision to the age of criminal responsibility in Scotland

**2. ALIGNMENT TO THE COUNCIL PLAN**

This report contributes to the following local outcomes contained within the Angus Community Plan:

The best start in life for children  
Improved physical, mental and emotional health and wellbeing  
More opportunities for people to achieve success

Angus Council Plan 2021- 2024: Priority 2: We want to maximise inclusion and reduce inequalities

**3. BACKGROUND**

3.1 The Age of Criminal Responsibility (Scotland) Act 2019 (The Act) has the effect of increasing the age of criminal responsibility (ACR) from 8 to 12 years and aligns this with the current minimum age of criminal prosecution in Scotland. The change reflects Scotland's progressive commitment to international human rights standards so that:

- children under 12 are no longer stigmatised by being criminalised at a young age, due to being labelled as "offender";
- children under 12 are not disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life;
- the new age of criminal responsibility aligns with longstanding presumptions around maturity, rights, and participation. The age of 12 also has other existing significance in Scots law; and
- to improve the position of care-experienced children (especially those 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.

3.2 The Act sets out measures to ensure that action can still be taken by the police and other statutory agencies when children under the age of 12 years are involved in serious incidents. These measures will ensure that harmful behaviour by children under 12 can continue to be investigated, and that authorities respect, and respond to, the needs of victims.

3.3 Although the implementation date has not yet been confirmed, it is expected that the measures in The Act will come into place in October 2021. Partners are working locally to put necessary arrangements in place.

3.4 The most operationally significant parts of the act are contained in Part 4 and relate to:

*Chapter 1 - Power to take a child under 12 to a place of safety*

This sets out that police officers may take a child to a place of safety in the most serious of cases where they believe that it is necessary to manage an immediate risk of significant harm to another person. The child must be kept in a place of safety for as short a time as possible, up to a maximum of 24 hours. Statutory guidance is being developed at a national level with partner agencies to support and guide police officers on the use of this power, within the context of other existing powers and duties.

*Chapter 3 - Questioning of Children*

This sets out that a police officer may question a child who is under the age of 12, to seek information from a child in relation to an incident which is the subject of a police investigation. The police can only interview a child under 12 if:

- it is necessary to prevent loss of life **and** there is a risk of loss of life if the child is not questioned immediately; or
- by agreement if it is necessary to properly investigate the child's behaviour and the circumstances surrounding it; or
- by obtaining a child interview order – sheriff needs to be satisfied:
  - the child's behaviour meets the threshold test
  - the interview is necessary to properly investigate the child's behaviour and the circumstances surrounding it

*Chapter 5 – General provision*

This Chapter sets out that the safeguarding and promotion of the wellbeing of the child must be a primary consideration in exercising any function conferred by this Part of the Act. It also makes changes to children's legal aid for proceedings under this Part; sets out additional powers and duties of constables; and offences relating to the Act.

#### **4. CURRENT POSITION**

4.1 The developments detailed in section 3 have operational implications for the Local Authority. The local authority must provide a Place of Safety when required. We have proposed that rather than naming a single Place of Safety for automatic use, should a Place of Safety be sought, we will assess the needs of the individual child and seek to find a suitable placement.

4.2 The Act creates a new requirement for social work services to become involved in the interviewing of a child. Usually, our involvement in a joint interview has been related only to child protection referrals. The Act extends the requirement for a Joint interview to include a wider range of scenarios for children up to the age of 12 years. This will place some additional demand on social work capacity. Training will be required for both Police Officers and Social Workers prior to commencement and we are liaising with colleagues at a national level to clarify the arrangements for this.

4.3 Our intention is that Joint Interviews under The Act will be undertaken by Social Workers within our Investigations Team who already work closely with the Police and are trained in Joint Interviewing techniques, albeit in a different context. These staff are based alongside police colleagues at Bellevue House in Arbroath where there is an interviewing suite on site. Police Scotland have confirmed that they also intend for their team based at Bellevue to lead on this new area of work. We will utilise our existing Child Protection referral arrangements to ensure a robust response to any requests made.

4.4 The Act introduces a requirement to have each interview attended by a Child Interview Rights Practitioner (CHIRP). These are solicitors recruited by the Scottish Government to ensure that the child's rights are upheld. There is no barrier to the family, or child, instructing their own legal representative in addition.

## **5. PROPOSALS**

- 5.1 It is proposed that any requirement for Joint Interviews with the Police are met from within the Angus Council Investigations Team, this team currently work closely with the Police in Child Protection matters, are co-located with the Police and in addition to be qualified Social Workers are Joint Investigative Interview trained.
- 5.2 Members are asked to note that no additional funding has been offered to support this legislative change and although the number of children likely to be involved is low and should be able to be met from within current capacity this is likely to change if the age of criminal responsibility is raised to fourteen as is currently mooted.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 At present there are no direct financial implications anticipated with the resources required for implementation being managed within the existing Children, Families and Justice Directorate revenue budget for 2021/22. This is because based on data, we expect the number of children requiring to be engaged with under these arrangements is likely to be very small at a local level.
- 6.2 No additional monies have been provided to local authorities to support implementation of The Act. The service will continue to monitor the impact of implementation and will raise any emerging capacity issues as required. While arrangements have been agreed with local Police Services it appears the expectation from the Police Scotland Rights & Justice Legislative Programme Team exceeds this and if implemented would result in additional expenditure. The matter has been escalated to the Scottish Government implementation team and we await further guidance.

## **7. OTHER IMPLICATIONS**

- 7.1 There are no further implications at this stage, due to the small numbers of children that The Act will apply to. However, it is understood that the Scottish Government may seek to increase the age of criminal responsibility further in future years. In this event, there is likely to be a significant increase in the demand for Joint Interviews and Places of Safety which would require additional resource.

## **8. EQUALITY IMPACT ASSESSMENT**

- 8.1 An Equality Impact Assessment has been completed, there are positive impacts on children and young people noted.

## **9. CONSULTATION**

- 9.1 The Directors of Finance and Legal and Democratic Services have been consulted in the preparation of this report.

**NOTE:** No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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List of Appendices:



## Equality Impact/Fairer Scotland Duty Assessment Form

(To be completed with reference to Guidance Notes)

### Step 1

**Name of Proposal** Age of Criminal Responsibility Act (Scotland) 2019(

### Step 2

Is this only a **screening** Equality Impact Assessment no

**(A)** If Yes, please choose from the following options **all** reasons why a full EIA/FSD is not required:

- |  |    |
|--|----|
| (i) It does not impact on people   | No |
| (ii) It is a percentage increase in fees which has no differential impact on protected characteristics | No |
| (iii) It is for information only   | No |
| (iv) It is reflective e.g. of budget spend over a financial year                                       | No |
| (v) It is technical  | No |

If you have answered yes to any of points above, please go to **Step 16**, and sign off the Assessment.

**(B)** If you have answered No to the above, please indicate the following:

Is this a full Equality Impact Assessment	yes
Is this a Fairer Scotland Duty Assessment	No

If you have answered Yes to either or both of the above, continue with Step 3.

If your proposal is a **strategy** please ensure you complete Step 13 which is the Fairer Scotland Duty Assessment.

### Step 3

(i)Lead Directorate/Service: Children Families and Justice

(ii)Are there any **relevant** statutory requirements affecting this proposal? If so, please describe.

Age of Criminal Responsibility Act (Scotland) 2019

(iii)What is the aim of the proposal? Please give full details.

The aim of the proposal is to increase the age of criminal responsibility from 8 to 12 years old

(iv)Is it a new proposal?      Yes/No      Please indicate      OR

Is it a review of e.g. an existing budget saving, report, strategy, policy, service review, procedure or function?      Yes/No      Please indicate

### Step 4: Which people does your proposal involve or have consequences for?

Please indicate all which apply:

Employees	No
Job Applicants	No
Service users	Yes/
Members of the public	Yes/

**Step 5: List the evidence/data/research that has been used in this assessment (links to data sources, information etc which you may find useful are in the Guidance). This could include:**

**Internal data** (e.g. customer satisfaction surveys; equality monitoring data; customer complaints).

**Internal consultation** (e.g. with staff, trade unions and any other services affected).

Consultation with Police and staff concerned

**External data** (e.g. Census, equality reports, equality evidence finder, performance reports, research, available statistics)

Evidence from Scottish Children's Reporters administration on referral rates for offence grounds

**External consultation** (e.g. partner organisations, national organisations, community groups, other councils).

The Scottish Government completed significant consultation

**Other** (general information as appropriate).

**Step 6: Evidence Gaps.**

Are there any gaps in the equality information you currently hold?      No

If yes, please state what they are, and what measures you will take to obtain the evidence you need.

**Step 7: Are there potential differential impacts on protected characteristic groups?** Please complete for each group, including details of the potential impact on those affected. Please remember to take into account any particular impact resulting from **Covid-19**.

**Please state if there is a potentially positive, negative, neutral or unknown impact for each group. Please state the reason(s) why.**

Age 8 - 12

**Impact**

A child of this age can no longer be criminalised

Disability

**Impact**

none

Gender reassignment

**Impact**

none

Marriage and Civil Partnership

**Impact**

**none**

Pregnancy/Maternity

**Impact**

**none**

Race - (includes Gypsy Travellers)

**Impact**

**none**

Religion or Belief

**Impact**

none  
Sex

**Impact**

none

Sexual orientation

**Impact**

**none**

**Step 8: Consultation with any of the groups potentially affected**

If you have consulted with any group potentially affected, please give details of how this was done and what the results were.

If you have not consulted with any group potentially affected, how have you ensured that you can make an informed decision about mitigating action of any negative impact (Step 9)?

**Step 9: What mitigating steps will be taken to remove or reduce potentially negative impacts?**

**The purpose of the act is to mitigate the negative impacts of child criminalisation**

**Step 10: If a potentially negative impact has been identified, please state below the justification.**

n/a

**Step 11: In what way does this proposal contribute to any or all of the public sector equality duty to:** eliminate unlawful discrimination; advance equality of opportunity; and foster good relations between people of different protected characteristics?

Decriminalising children allows for support to be offered in a non stigmatic way that promotes equality of opportunity

**Step 12: Is there any action which could be taken to advance equalities in relation to this proposal?**

no

### **Step 13: FAIRER SCOTLAND DUTY**

This step is only applicable to **strategies** which are key, high level decisions. If your proposal is **not** a strategy, please leave this Step blank, and go to Step 14.

Links to data sources, information etc which you may find useful are in the Guidance.

**Step 13(A) What evidence do you have about any socio-economic disadvantage/inequalities of outcome in relation to this strategic issue?**

**Step 13(B) Please state if there are any gaps in socio-economic evidence for this strategy and how you will take measures to gather the evidence you need.**

**Step 13(C) Are there any potential impacts this strategy may have specifically on the undernoted groupings?** Please remember to take into account any particular impact resulting from **Covid-19**.

**Please state if there is a potentially positive, negative, neutral or unknown impact for each grouping.**

**Low and/or No Wealth** (e.g. those with enough money to meet basic living costs and pay bills but have no savings to deal with any unexpected spends and no provision for the future.

#### **Impact**

**Material Deprivation** (i.e. those unable to access basic goods and services e.g. repair/replace broken electrical goods, warm home, leisure and hobbies).

#### **Impact**



**Area Deprivation** (i.e. where people live (e.g. rural areas), or where they work (e.g. accessibility of transport)).

**Impact**

**Socio-economic Background** i.e. social class including parents' education, people's employment and income.

**Impact**

**Other** – please indicate

**Step 13(D) Please state below if there are measures which could be taken to reduce socio-economic disadvantage/inequalities of outcome.**

**Step 14: What arrangements will be put in place to monitor and review the Equality Impact/Fairer Scotland Duty Assessment?**

**Step 15: Where will this Equality Impact/Fairer Scotland Duty Assessment be published?**

**Step 16: Sign off and Authorisation.** Please state name, post, and date for each:

Prepared by: Alan Hope 25/08/21

Reviewed by:

Approved by: Kathryn Lindsay 30/8/21

NB. There are several worked examples of separate EIA and FSD Assessments in the Guidance which may be of use to you.

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