

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

EXPLANATORY NOTES

PART 6: REVIEW OF AGE OF CRIMINAL RESPONSIBILITY

231. **Section 78** requires the Scottish Ministers to carry out a review of the operation of the Act. The review is to cover the operation of the Act generally – looking, for example, at whether the Act has achieved its policy objectives and whether all of the provisions in the Act are operating as intended. In addition, the review is to consider the operation of the Act with a view to considering the future age of criminal responsibility – for example, it could examine whether, in light of any benefits delivered by the Act’s change in approach to harmful behaviour by children under 12, the age of criminal responsibility should be raised beyond 12 and, if so, whether the provisions in the Act would be capable of operating successfully in relation to higher age groups or whether new provision would be required. If the review recommends a change in the age of criminal responsibility, further primary legislation will be required to deliver this change.
232. The review is to take place in the 3 years following section 1 coming into force – see the opening words of subsection (1)(a) and subsection (5). A report requires to be prepared following the review, which must then be published and laid before the Scottish Parliament (subsections (1)(b) and (2)). All of these things must be done within a year of the conclusion of the review (that is, no later than 4 years after section 1 comes into force) (subsection (4)).
233. Subsection (3) requires the Scottish Ministers to consult such persons as they consider appropriate in carrying out the review. Persons consulted might include children affected by the change in the age of criminal responsibility and people affected by harmful behaviour carried out by children aged under 12, as well as partner agencies such as Police Scotland and local authorities.
234. The Scottish Ministers are likely to require information about how different aspects of the Act have been operating in practice in order to carry out the review. Section 79 therefore gives Ministers power to require the bodies listed in subsection (3) to provide them with information about the exercise of functions under Part 4 for this purpose.¹ Information can also be required for the purpose of monitoring the exercise of functions under Part 4 following the review period (which, as noted above, only lasts for 3 years from section 1 coming into force).² Ministers could use these powers, for example, to require the chief constable of Police Scotland to provide them with anonymised information about the number of investigative interviews carried out by agreement and the Scottish Courts and Tribunals Service to provide them with anonymised details

¹ This power is subject to data protection requirements.

² Note that the fact that this provision refers to Part 4 of the Act only does not necessarily mean that the Scottish Ministers will not monitor the exercise of the functions conferred by Parts 2 and 3 of the Act after the end of the review period. But information about the exercise of those functions is likely to be available from other sources – via Disclosure Scotland and the annual reports required to be prepared by the independent reviewer (see section 21 of this Act) and the Scottish Children’s Report Administration (see paragraph 21 of schedule 3 of the 2011 Act).

*These notes relate to the Age of Criminal Responsibility (Scotland)
Act 2019 (asp 7) which received Royal Assent on 11 June 2019*

of how many child interview orders have been applied for and how many granted. Information obtained by virtue of section 79(2)(b) might in particular be used in reporting on the use of the power conferred by section 28 to take children under 12 to a place of safety, as required by section 32.