

POLICY NOTE

THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 1 AND TRANSITORY PROVISION) REGULATIONS 2019

SSI 2019/349

1. The above instrument was made in exercise of the powers conferred by section 84(2) and (3) of the Age of Criminal Responsibility (Scotland) Act 2019. The instrument is not subject to any parliamentary procedure.

Purpose of the instrument. This instrument is being made to commence the provisions at sections 3 and 27 of the Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”). Section 3 prevents referral of a child to a children’s hearing, on the ground they have committed an offence, where the behaviour is said to have taken place when the child was below the age of 12. Section 27 provides for victims of a child’s offence or harmful behaviour to request certain information from the Principal Reporter.

Policy Objectives

2. The main purpose of the Act is to raise the age of criminal responsibility from eight to 12, to align it with the minimum age of criminal prosecution. In addition, the Act introduces various measures to protect children, reduce stigma and ensure that children who have engaged in serious harmful behaviour have better life chances.

3. The provisions of the Act are being commenced in several stages. The policy intention is for the use of the offence ground of referral to be removed at the earliest opportunity and this instrument achieves this by commencing section 3 of the Act (which sets out that the Principal Reporter cannot refer a child to a children’s hearing on the offence ground when the child (a) committed the offence before the day on which section 1 came into force, and (b) was under the age of 12 when the offence was committed).

Approach to commencement of section 3

4. We are not yet in a position to commence section 1 as this is dependent on the development and delivery of a raft of secondary legislation, multidisciplinary professional guidance and training but we want to make a positive difference to children’s lives as early as possible. Section 3(a) needs to be disapplied to achieve that policy intention. The instrument achieves this by commencing the whole of section 3, and making transitional provision which disapplies part of subsection (a). This means that the remainder of section 3(a) will come into force automatically when section 1 is commenced, without the need for further regulations.

5. This means that behaviour of 8-11 year olds can still be investigated as a crime, as it is currently, but it will not be possible for the Reporter to refer those children to a hearing on the ground that they have committed an offence. Since such children are also below the age of criminal prosecution, this means that children will no longer receive convictions for behaviour which happened before the age of 12. Commencing section 3 in this way will bridge the gap until other provisions in the Act can be commenced (including section 1).

Section 27

6. Section 27 inserts new sections 179A to 179C into the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”), which provide for victims of a child’s offence or harmful behaviour to request certain information from the Principal Reporter. The new sections detail the type of information that can be provided and the factors the Principal Reporter must consider when deciding whether or not to release the information. Provision is also made for (a) Ministers to specify, by regulations, persons other than victims who may receive information and (b) the repeal of section 53 of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”).

7. Currently, section 53 of the 2003 Act makes similar provision for the provision of information to victims. Under section 53, these rights are engaged only where the Principal Reporter receives information about a case where it appears that a child has committed an offence. The move to referring children under 12 on non-offence grounds only would, therefore, remove victims of harmful behaviour by children aged eight to 11 from the scope of these provisions and those victims would no longer be able to receive information. Consequently, it is important that section 27 of the 2019 Act is commenced at the same time as section 3 to ensure the Scottish Children’s Reporter Administration (“SCRA”) can continue to provide information to victims, where appropriate.

8. At present, the Children’s Hearings (Provision of Information by Principal Reporter) (Prescribed Persons) (Scotland) Order 2003 prescribes persons other than victims who can receive information; namely Victim Support Scotland, Criminal Injuries Compensation Authority, Criminal Injuries Compensation Appeals Panel, and Insurers. The intention is to simply replicate the 2003 Order using the powers in the new section 179(4)(d) of the 2011 Act (as inserted by section 27 of the Act). As section 27 amends the 2011 Act we are unable to lay regulations under the inserted sections until that section comes into force.

9. Further information on the policy objectives can be found in the Policy Memorandum¹ that accompanied the Bill, paragraphs 107 to 129 (note that section 27 was named section 22 on introduction).

Consultation

10. No formal consultation was carried out in relation to these Commencement Regulations. However, engagement with relevant stakeholders took place in the development of the Regulations.

11. Formal consultation also took place before the Bill was introduced. Informal consultation with stakeholders took place during the Bill’s parliamentary passage, and this has continued as the implementation phase of the Act has developed.

12. As regulations under new section 179A (4)(d) of the 2011 Act (as inserted by section 27 of the Act) cannot be laid until section 27 of the Act comes into force, there will be a short period of around eight weeks (to comply with Parliamentary laying conventions) when

¹ <https://www.parliament.scot/parliamentarybusiness/Bills/107986.aspx>

persons other than victims cannot receive information from the Principal Reporter. We have consulted, informally, with those affected - namely the Criminal Injuries Compensation Authority, Victim Support Scotland and SCRA - and they are content that this period will not be problematic. This will not affect information being provided directly to victims.

Impact Assessments

13. An Equality Impact Assessment, a Privacy Impact Assessment, and a Children's Rights and Wellbeing Impact Assessment were completed in relation to the Bill for the Act. No impact issues were identified. The links below show the relevant documentation:

EQIA - <https://www.gov.scot/publications/age-criminal-responsibility-scotland-bill-equality-impact-assessment/>

PIA - <https://www.gov.scot/publications/age-criminal-responsibility-scotland-bill-privacy-impact-assessment/>

CRWIA - <https://www.gov.scot/publications/age-criminal-responsibility-scotland-bill-childrens-rights-wellbeing-impact-assessment/>

Financial Effects

14. At the time that the Bill for the Act was introduced to the Scottish Parliament, the Deputy First Minister confirmed that no BRIA was necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Children and Families Directorate

October 2019