

# PERTH AND KINROSS COUNCIL

## Lifelong Learning Committee

30 March 2022

### AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

Report by Executive Director (Education and Children's Services)

(Report No 22/68)

#### PURPOSE OF REPORT

This report sets out the main new duties arising from the commencement of the Age of Criminal Responsibility (Scotland) Act 2019 (ACRA) on 17 December 2021. This Act raises the age of criminal responsibility in Scotland from 8 to 12 years of age and provides new and specific investigative powers for police investigating the most serious cases of harmful behaviour and new duties for local authorities.

The report alerts elected members to the duties and responsibilities of the legislation and its implementation in Perth and Kinross.

#### 1. BACKGROUND/MAIN ISSUES

- 1.1 The Scottish Government introduced the [Age of Criminal Responsibility \(Scotland\) Act in 2019](#) (the Act). The Act is underpinned by the key principle that a child cannot be held criminally responsible for harmful behaviour that amounts to a crime or offence which occurred when the child was aged under 12 years of age. The child cannot be arrested or charged with offences.
- 1.2 The Act creates powers and duties designed to ensure that serious harmful behaviour by any child under the age of 12 can be investigated and for this to be carried out in a child-centred way that is in keeping with the ethos of removing children from criminal justice processes. The Act is supported by statutory and operational guidance [Age of Criminal Responsibility \(Scotland\) Act 2019 \(ACRA\) Operational Guidance For Social Work and Police](#) which has been produced by the Scottish Government in consultation with Social Work Scotland, COSLA and Police Scotland.
- 1.3 A three-year review period is embedded within the full implementation of the Act, stipulating that Ministers have a responsibility to evaluate the legislation to consider the future age of criminal responsibility. This does not mean an automatic increase in age; however, a Ministerial Advisory Group is currently reviewing national evidence on an increase to 14 years of age.
- 1.4 The Scottish Government has taken a phased approach to the full implementation of the Act as follows:

- On 29 November 2019, the offence ground of referral to Children's Hearings was removed for children under the age of 12. From this date, the Children's Reporter could no longer convene a Children's Hearing on offence grounds where the child was under 12 years;
- The guidance-making and regulation-making powers of the Act commenced on 31 March 2020, making changes to the legal aid system in respect of appeals;
- An independent reviewer was appointed in March 2020 whose role is to consider whether information in relation to behaviour that took place when a child was under 12 should be disclosed or not;
- The disclosure provisions in the Act came into effect on 30 November 2020;
- Regulations associated with the provision of information to victims' organisations, came into force in February 2021; and
- The final part of the Act, in relation to the decriminalising of children under 12 years in Scottish Law, came into effect on 17 December 2021.

## **2. POLICY INTENTION**

2.1 The ethos of the Act is to protect children from the harmful effects of early criminalisation, whilst also ensuring that any incidents of serious harmful behaviours by children under 12, can be investigated appropriately and timeously to safeguard the community.

2.2 These changes, via new legislation, are aimed at promoting the following outcomes:

- To create cultural change in the way Scotland views children whose behaviour causes serious harm. Increasing the age of criminal responsibility has the potential to bring about a positive cultural shift in Scotland's understanding of how the harmful behaviour of children towards others can be linked with early childhood trauma and abuse;
- To protect children from the harmful effects of early criminalisation, while ensuring that children and their families receive the right support;
- The child's wellbeing is the primary consideration and interventions must aim to protect children, reduce stigma, and ensure better life chances; and
- To protect the safety and meet the needs of those involved in an incident, including any victim(s) and the community.

## **2.3 Implementation and Impact**

2.4 The Act has been introduced gradually over two years and, although the law did not change until 17 December 2021, children under 12 stopped being criminalised via the Children's Hearing on 29 November 2019.

2.5 The Act will have a significant impact on when and how agencies respond to serious and harmful incidents by children under 12 years old. It is anticipated that the introduction of this legislation will bring positive changes in practice. All investigative and planning activity triggered by a child who may have engaged in harmful behaviour (serious physical harm or otherwise) must have that child's wellbeing as a primary consideration. All interventions must focus on protecting children.

- 2.6 The Act does not have staffing implications, but it does add additional responsibilities to the role of social workers when responding to children under 12 years old who have been involved in harmful behaviours. The additional responsibilities will require social workers to access specialist training to ensure that they have the knowledge and skills to respond appropriately and timeously.
- 2.7 The Scottish Government has delivered four basic awareness training sessions nationally and staff from Perth and Kinross Out of Hours Social Work Team and the Child Protection Duty Team have participated. Trauma informed training, specific to investigative interviews, is currently being developed by the Scottish Government and will be on offer nationally, for social workers already trained in joint interviewing, in March 2022.
- 2.8 Data analysis from Police Scotland indicates that in Perth and Kinross, the number of children who are expected to be subject to the new guidance is low, but this is difficult to predict. However, this will require a review if the age of criminal responsibility increases to 14-year-olds.
- 2.9 The Act sets out the police powers of investigation which allows for the removal of a child under 12 years old to a Place of Safety (POS). The use of these powers is limited to circumstances where a constable has reason to believe that a child, whilst aged under 12 is behaving in a violent or dangerous manner which has, or risks causing harm, to another person.
- 2.10 The legislation sets a high bar in relation to risk or harm for this power to be used. When this power is used, the child should only be kept in a POS for a maximum of 24 hours.
- 2.11 The Scottish Government requested that all local authorities provide it with detailed information on locally agreed options for actioning a request for a POS from the Police. The following options were reported to the Scottish Government:
- Family and friends (where appropriate);
  - Support base for young people (non-residential facility which can be made available 24/7);
  - Other social work offices (during the day and or until the support base can be made available);
  - Where necessary, an appropriate Foster Carer;
- 2.12 The child now has a right to have another person present. This person is called the “Supporter”. The Supporter must not be denied access to the child unless it is necessary to safeguard or promote the child’s wellbeing. If the interview is by agreement, the parent who gave agreement must be the Supporter. If the interview is by an Order, the Supporter must be over 18 years old and may be the parent of the child but does not need to be.
- 2.13 The Child Interview Rights Practitioner (ChIRP) is another new role and is central to the investigative interview process. The ChIRP must be a solicitor registered with the Children’s Legal Assistance Scheme.

Every child who is involved in an investigative interview will have an appointed ChIRP. The ChIRP will be providing the child with advice, support and assistance in connection with, and during, the investigative interview. The ChIRP must use a trauma-informed approach with the child and will be required to act in accordance with the [Age of Criminal Responsibility \(Scotland\) Act 2019: child interview rights practitioners – code of practice](#).

2.14 The ChIRP and the Supporter must both be present in the building where the child is being interviewed, but only one needs to be in the room when the interview is taking place.

### 3. CONCLUSION AND RECOMMENDATIONS

3.1 The full implementation of the Act has changed Scottish Law; children under 12 years old are no longer criminally responsible for their behaviour.

3.2 The Act provides powers to ensure that serious and harmful behaviour by a child under the age of 12 can be investigated, but this must be done in a child-centred way.

3.3 The Act is compatible with Getting it Right for Every Child (GIRFEC), the United Nations Convention on the Rights of the Child (UNCRC) as well as aligning with the intentions outlined in The Promise (Independent Care Review 2020).

3.4 It is recommended that the Committee:

- (i) Notes the new duties arising from the commencement of the Age of Criminal Responsibility (Scotland) Act 2019 and the arrangements for implementing this in Perth and Kinross; and
- (ii) Notes that the impact of implementation will be regularly monitored and reviewed.

#### Author

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#### Approved

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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

<b>Strategic Implications</b>	<b>Yes/None</b>
Community Plan/Single Outcome Agreement	<b>Yes</b>
Corporate Plan	<b>Yes</b>
<b>Resource Implications</b>	
Financial	<b>No</b>
Workforce	<b>No</b>
Asset Management (land, property, IST)	<b>No</b>
<b>Assessments</b>	
Equality Impact Assessment	<b>Yes</b>
Strategic Environmental Assessment	<b>No</b>
Sustainability (community, economic, environmental)	
Legal and Governance	<b>Yes</b>
Risk	<b>Yes</b>
<b>Consultation</b>	
Internal	<b>No</b>
External	<b>No</b>
<b>Communication</b>	
Communications Plan	<b>Yes</b>

### 1. Strategic Implications

#### Community Plan/Single Outcome Agreement

1.1 This section sets out how the proposals relate to the delivery of the Perth and Kinross Community Plan/Single Outcome Agreement in terms of the following priorities:

- (i) Giving every child the best start in life;
- (ii) Developing educated, responsible and informed citizens;
- (iii) Promoting a prosperous, inclusive and sustainable economy;
- (iv) Supporting people to lead independent, healthy and active lives; and
- (v) Creating a safe and sustainable place for future generations.

This report relates to Objective No. (i) and (ii).

#### Corporate Plan

1.2 This section sets out how the proposals relate to the achievement of the Council's Corporate Plan Objectives:

- (i) Giving every child the best start in life;
- (ii) Developing educated, responsible and informed citizens;
- (iii) Promoting a prosperous, inclusive and sustainable economy;
- (iv) Supporting people to lead independent, healthy and active lives; and
- (v) Creating a safe and sustainable place for future generations.

This report relates to Objective No. (i) and (ii).

1.3 The report also links to the Education & Children's Services Vision, Values and Priorities in respect of the following key Priority area:

- Health and Wellbeing

## 2. Resource Implications

### Financial

2.1 The Head of Finance has been consulted and any financial implication to the implementation of this Act will be funded from within the Education and Children's Services budget.

### Workforce

2.2 There are no workforce implications to the implementation of this Act. There will be ongoing training implications for some of the work but the Scottish Government is currently funding this from staff within the current staffing compliment.

### Asset Management (land, property, IT)

2.3 Not applicable.

## 3. Assessments

### Equality Impact Assessment

3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.

This section has been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:

- (i) Assessed as **not relevant** for the purposes of EqIA.

### Strategic Environmental Assessment

3.2 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals. However, no action is required as the Act does not apply to the matters presented in this report. This is because the Committee are requested to note the contents of the report only and the Committee are not being requested to approve, adopt or agree to an action or to set the framework for future decisions.

### Sustainability

3.3 Under the provisions of the Local Government in Scotland Act 2003, the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. Under the Climate Change (Scotland) Act 2009 the Council also has a duty relating to climate change and, in exercising its functions must act:

- In the way best calculated to delivery of the Act's emissions reduction targets.
- In the way best calculated to deliver any statutory adaption programmes.
- In a way that it considers most sustainable.

This section is not applicable.

#### Legal and Governance

3.4 Legal services have been consulted and proposed changes have been incorporated into the report.

3.5 The Age of Criminal Responsibility (ACRA) (Scotland) Act 2019 is a national legeslative change to the age of criminal responsibility.

#### Risk

3.6 Nothing other than the information already set out the report.

### **4. Consultation**

#### Internal

4.1 Not applicable.

#### External

4.2 Not applicable.

### **5. Communication**

5.1 The Perth and Kinross Child Protection Committee issued communication to partner agencies internally in December 2021 about what the Age of Criminal Responsibility (ACRA) (Scotland) Act 2019 legeslative changes mean for practice in Perth and Kinross.

## **2. BACKGROUND PAPERS**

- [Age of Criminal Responsibility \(Scotland\) Act in 2019](#)
- [Age of Criminal Responsibility \(Scotland\) Act 2019 \(ACRA\) Operational Guidance For Social Work and Police](#)

## **3. APPENDICES**

3.1 There are no appendices to this report.