

POLICY NOTE

THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019 (COMMENCEMENT NO. 2) REGULATIONS 2020

SSI 2020/74 (C. 7)

1. The above instrument is made in exercise of the powers conferred by sections 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 sections 22, 23, 24, 29, 30, 31, 32, 33(4), 56(3) and (4), 57, 60(6), 65(2)(b)(iii) and 65(3), 66(9), 73 and 80-83 of the Age of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”). These provisions essentially enable Ministers to make regulations and to produce and issue guidance. The instrument DOES NOT commence provisions which raise the age of criminal responsibility.

Policy Objectives

2. The provisions of the 2019 Act are being commenced in several stages. The policy intention is that the Scottish Ministers should be able to take forward the work needed to consult with stakeholders to develop guidance and make regulations which require to be in place ahead of the general commencement of either Part 2 or Part 4 of the 2019 Act

3. Commencement of the regulation making powers will also require the commencement of section 82. Section 82(2) and (3) make provision as to whether the powers in the 2019 Act are subject to the negative or affirmative procedure. Section 82(1) provides that each power of the Scottish Ministers to make regulations under the 2019 Act includes a power to make different provision for different purposes and to make any incidental, supplementary, consequential, transitional, transitory or saving provision which they consider appropriate. This ensures that each of the powers in the 2019 Act can operate effectively as required.

4. It is also the policy intention to amend the legal aid rules. Section 73 amends the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Part 5A of the 1986 Act currently provides for children’s legal aid to be available in connection with certain proceedings under the Children’s Hearings (Scotland) Act 2011. The amendments made to Part 5A by section 73 allow the Scottish Ministers to make regulations providing for children’s legal aid to also be available in connection with proceedings before the sheriff in relation to applications for orders under Part 4 of the 2019 Act. Such regulations are subject to affirmative procedure (by virtue of the amendment made to section 37 of the 1986 Act by section 73(4)).

5. As indicated in the Policy Note which accompanied the Age of Criminal Responsibility (Scotland) Act 2019 (Commencement No.1 and Transitory Provision) Regulations 2019 (“the 2019 Regulations”), the intention is to replicate the Children’s Hearings (Provision of Information by Principal Reporter) (Prescribed Persons) (Scotland) Order 2003 (“the 2003 Order”) using the powers in the new section 179(4)(d) of the

Children's Hearings (Scotland) Act 2011 (as inserted by section 27 of the 2019 Act) but this could not be done until section 27 had come into force. The 2019 Regulations brought section 27 into force on 29 November 2019.

6. The Provision of Information by Principal Reporter (Specified Persons (Scotland) Regulations are expected to be laid in the Scottish Parliament on 2 April 2020 and to come into force on 26 May 2020. It will, therefore, be necessary to revoke the 2003 Order and this will require the commencement of section 83 of the 2019 Act, which enables Ministers by regulations to (a) make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, or in consequence of, or for giving full effect to, any provision made by or under the 2019 Act and (b) modify any enactment, including the 2019 Act. Commencement of section 83 would leave section 80 (interpretation) and section 81 (Civil jurisdiction of summary sheriffs) from Part 7 of the 2019 Act as remaining to be commenced as section 84 (Commencement) and section 85 (Short title) came into force on the day after Royal Assent. There is no reason to delay the commencement of sections 80 and 81 so they are being brought into force by this instrument.

Consultation

7. As these regulations only bring into force guidance and regulation making provisions of the 2019 Act, no consultation has been carried out in relation to this instrument.

Impact Assessments

8. As these regulations bring into force guidance and regulation making provisions of the Act, no impact assessments have been carried out in relation to this instrument. 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 2019 Act. No impact issues were identified. The links below show the relevant documentation:

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

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

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

Financial Effects

9. At the time that the Bill for the 2019 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.