

## **POLICY NOTE**

### **THE AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019 (SUPPLEMENTARY PROVISION) (JURISDICTION) REGULATIONS 2021**

**SSI 2021/420**

The above instrument was made in exercise of the powers conferred by section 83 of the Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”). The instrument is subject to negative procedure.

#### **Purpose of the instrument**

**This instrument makes provision as to which court has jurisdiction to entertain applications for orders under Part 4 of the Act.**

#### **Background**

The Act will raise the age of criminal responsibility in Scotland from eight to twelve years old. This will mean that children under twelve cannot commit an offence, and no child will have a criminal record because of any behaviour or act under that age.

The Act recognises that, in certain limited situations, it will be necessary to investigate an alleged harmful act carried out by a child under twelve years old. This will ensure that the right support can be put in place for the child who has carried out the act, and the victim. Part 4 of the Act provides Police Scotland with investigative and other powers so as to enable such investigations to take place, and requires Police Scotland to apply to the court for an order to carry out specific investigative actions in relation to a child under the age of criminal responsibility, as follows:

- A search of a child (section 36) (where there is no existing power of search without warrant- see section 33)
- An investigative interview of a child (section 44)
- To take prints and samples from a child (section 63)

#### **Policy Objectives**

The policy objective of this instrument is to establish jurisdiction to entertain applications for orders under sections 36, 44 and 63 of the Act, given that the Act itself does not contain specific provision on jurisdiction for these applications. This clarity on jurisdiction is necessary to enable applications for orders under the said sections of the Act to be heard without question as to the court’s competence to entertain these applications.

The instrument provides that applications for orders under sections 36, 44 and 63 of the Act can be made to a sheriff of the sheriffdom:

- Where the child is habitually resident, but only where the suspected behaviour of the child on which the application for the order is based took place in Scotland; or

- The sheriffdom where that behaviour is suspected to have taken place.

## **Consultation**

The Scottish Government has worked closely with Police Scotland and the Scottish Courts and Tribunals Service (SCTS) on implementation of the Act through the establishment of a programme board, working groups, regular liaison and a collaborative approach to implementation tasks. On the particular subject matter of this instrument, the Scottish Government has ensured that colleagues in Police Scotland and SCTS were involved in discussions about the content of this instrument as it underwent development.

## **Impact Assessments**

The following impact assessments were published on the Scottish Government website for the Age of Criminal Responsibility (Scotland) Bill:

- Equality Impact Assessment<sup>1</sup>
- Privacy Impact Assessment<sup>2</sup>
- Children's Rights and Wellbeing Impact Assessment<sup>3</sup>

After careful consideration, the Scottish Government has concluded that further impact assessments are not required to accompany this instrument, for the following reasons:

- **Business and Regulatory Impact Assessment**

The Scottish Government considered that this instrument will result in little to no business or regulatory impact. It simply establishes a mechanism for determining the jurisdiction to entertain an application for a court order under the Act, with the Act itself containing the provisions that enable such orders to be made.

- **Children's Rights and Wellbeing Impact Assessment**

The Scottish Government notes that while the ability to obtain an order under the Act may affect a child under 12, the jurisdiction provisions in this instrument are likely to have only a nominal and very indirect impact on a child in that age group, in that they will determine the court where an application will be processed. Given that the primary impact stems from the Act, the Scottish Government has concluded that this impact assessment is not needed.

In line with usual practice, the Scottish Government is publishing the Stage 1 screening document for this impact assessment on its website.

- **Data Protection Impact Assessment**

Given that no new data processing requirements or new data processing mechanism will be required as a consequence of this instrument, the Scottish Government has concluded that this impact assessment is not needed.

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<sup>1</sup> Age of Criminal Responsibility (Scotland) Bill: equality impact assessment - gov.scot ([www.gov.scot](http://www.gov.scot))

<sup>2</sup> Age of Criminal Responsibility (Scotland) Bill: privacy impact assessment - gov.scot ([www.gov.scot](http://www.gov.scot))

<sup>3</sup> Age of Criminal Responsibility (Scotland) Bill: children's rights and wellbeing impact assessment - gov.scot ([www.gov.scot](http://www.gov.scot))

- **Equality Impact Assessment, Fairer Scotland Duty Assessment and Island Communities Impact Assessment**

The Scottish Government considers that provisions establishing jurisdiction to entertain applications for court orders under the Act will not have a differential impact on island communities or based on any protected characteristic or socio-economic factors. Accordingly the Scottish Government has concluded that these impact assessments are not required for this instrument.

- **Strategic Environment Assessment**

The Scottish Government considers that the provisions on jurisdiction will have no or exceptionally minimal environmental effects, either directly or indirectly. These provisions enable a determination to be made as to the appropriate court to entertain an application for a court order under the Act, and that determination can be made on the basis of the facts of a particular case without the need to engage any decision-making process or mechanism with environmental implications.

### **Financial Effects**

The Scottish Government has concluded that this instrument has nominal or no financial effects. Provisions on jurisdiction provide a mechanism for determining which court should entertain an application for an order under the Act: they are essentially a zero-financial impact decision making tool which involves no new mechanism or process to be put in place in order to deliver the policy that underpins the instrument.

Scottish Government  
*Safer Communities Directorate*

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