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**To:** Education and Children's Services Policy Board

**On:** 20 May 2021

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**Report by:** Director of Children's Services

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**Heading:** Age of Criminal Responsibility (Scotland) Act 2019

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## **1. Summary**

- 1.1. [The Age of Criminal Responsibility \(Scotland\) Act 2019](#) was passed unanimously by the Scottish Parliament on 7 May 2019 and received Royal Assent on 11 June 2019. The 2019 Act has been implemented on an incremental basis. From November 2019 a child under the age of 12 couldn't be referred to a children's hearing on offence grounds but could still be charged at that time of a criminal offence.
  - 1.2. The next stage of the implementation of the 2019 Act will increase the age of criminal responsibility from 8 to 12 in Scotland and aligns with the current minimum age of criminal prosecution in Scotland. The target date for implementation is scheduled for the autumn of 2021. This implementation means that children under 12 will no longer be charged with criminal offences.
  - 1.3. The change means that children under the age of 12 will no longer be stigmatised by being criminalised at a young age, be labelled as "offender" or disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life.
  - 1.4. The number of children under the age of 12 charged in Renfrewshire has historically been low. Approximately 20 children under the age of 12 have been charged with criminal offences each year for the past 4 years. Whilst these numbers are low there will be changes in practice to address situations where these children come to the attention of the police and this could have significant impact on social work locality teams. Staff training will be undertaken and multi-agency professional guidance will be undertaken to support the change in legislation and practice.
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## **2. Recommendations**

### **2.1. The Policy Board is asked to note:**

- a) the Age of Criminal Responsibility (Scotland) Act 2019 received Royal Assent on 11 June 2019;
  - b) that since 29 November 2019 children under the age of 12 can no longer be referred to a children's hearing on offence grounds;
  - c) the age of criminal responsibility will increase from 8 to 12 in the autumn of 2021; and
  - d) multi-agency professional guidance and training will be provided to assist staff in discharging the change in practice.
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## **3. Background**

- 3.1. The Age of Criminal Responsibility (Scotland) Act 2019 came into force on 29<sup>th</sup> November 2019 and is being implemented incrementally. The next stage of implementation will see the age of criminal responsibility increase from 8 to 12.
- 3.2. Prior to the 2019 Act, the age of criminal responsibility in Scotland was two years younger than the rest of the UK, the lowest figure in Europe and one of the lowest in the world. The cut-off point of eight years of age dates back to the Children and Young Persons Act 1933, which raised the age of criminal responsibility from seven to eight across the UK.
- 3.3. Prior to this legislation children as young as eight could be charged with a criminal offence, referred to the Scottish Children's Reporters Administration and could then be referred to a children's hearing on offence grounds. If the grounds of referral were accepted or proven at the children's hearing the child could then have a criminal record which could have compromised their childhood and limited opportunities and life chances in adulthood, particularly around employment.
- 3.4. Since November 2019, children could no longer be referred to a children's hearing on the ground that they committed an offence when that behaviour took place when they were under the age of 12. It is also no longer possible for children under 12 to obtain new criminal convictions.
- 3.5. The 2019 Act also makes changes to the law on the disclosure of criminal records obtained as a child and of other information relating to individuals working or seeking to work with children or certain adults. It provides the Police with additional powers in relation to taking certain children to a place of safety who are suspected of serious criminal behaviour. It also confers additional powers to the Police on the search of certain children; on police interviews with certain children; and on the taking of forensic samples from certain children.
- 3.6. The 2019 Act aligns with longstanding presumptions around maturity, rights, and participation. The age of 12 also has other existing significance in Scots' law. It also has particular significance for care-experienced children (especially those looked after away from home), whose behaviours are more

likely to have been reported to police (and therefore to attract a criminalising state response) than Scotland's child population in general.

- 3.7. Previously acquired convictions still exist as does the police's power to retain information relating to a time when a child was under 12. Under Part 2 of the Act, which came into force on November 30, 2020, convictions for children under 12 will no longer be automatically disclosed on any disclosure certificate. However, information about behaviour that took place when a child was under 12 can be disclosed, if appropriate, as Other Relevant Information, on an enhanced disclosure or PVG scheme record.
- 3.8. The number of children under the age of 12 charged in Renfrewshire has historically been low. Approximately 20 children under the age of 12 have been charged with criminal offences each year for the past 4 years. Whilst these numbers are low there will changes in practice to address situations where these children come to the attention of the police could have significant impact on social work locality teams. Staff training will be undertaken and multi-agency professional guidance will be undertaken to support the change in legislation and practice.
- 3.9. The 2019 Act creates a specific power authorising a police constable to take a child to a place of safety in cases where the child is behaving (or is likely to behave) in a way that is causing or risks causing significant harm to another person and the child's removal is necessary to protect the other person from an immediate risk of such harm.
- 3.10. Once removed to a place of safety, the child can be looked after there for a maximum of 24 hours. Places of safety include:
  - residential or other establishments provided by local authorities
  - hospitals or surgeries
  - the dwelling of any suitable person
  - police stations.
- 3.11. The child can only be kept in the place of safety for as long as one of the following reasons applies:
  - arrangements have not yet been made for the child's care or protection, such arrangements may be as simple as returning the child to his or her home or to a relative's home, but in other cases might involve steps such as a child protection order being applied for
  - an order authorising the taking of an intimate sample is being sought by police.
- 3.12. Local authorities will need to identify premises for places of safety. Although it is not anticipated that the Police will make requests to access a Place of Safety on a regular basis, the Local Authority area will need to have identified appropriate options and have a process in place on how to access these via a point of contact when this is required. This may place pressure on our residential children's houses if suitable alternatives cannot be identified.
- 3.13. The Act authorises the conduct of an investigative interview if certain tests are met the first test is that a constable has reasonable grounds to suspect that a child by behaving in a violent or dangerous way, caused or potentially

causing *serious* physical harm to another person or, by behaving in a sexually violent or sexually coercive way, caused or risked causing *harm* (whether physical or not – so including psychological harm) to another person.

- 3.14. The second test is that the constable considers that an investigative interview is *necessary* to fully investigate the incident which involved suspected harmful behaviour by the child. A child and a parent can agree to an investigative interview being conducted or a Child Interview Order (CIO) can be sought by police.
- 3.15. Historically Social Workers have not been involved in the interviewing of children who are accused of criminal acts but instead have been used to act as an Appropriate Adult when a parent cannot attend or as an additional support for the child during the interview process. This will change with full implementation of the Act and will be a significant change for Social Workers in Renfrewshire and across Scotland. Not least of all since should a child over 12 commit a serious offence this joint investigative interview in which the Social Worker participates could form a significant part of the evidence in any prosecution. The professional body Social Work Scotland and Scotland's Chief Social Work Officers have agreed that these processes will be closely aligned with existing Child Protection Processes going forward and only Social Workers who are trained in Joint Investigative Interview techniques will participate in these interviews.
- 3.16. It is anticipated that the elements of the Act outlined above will be implemented in late Autumn 2021. Key points to note;
- ministerial Guidance is currently being developed
  - Police and Social Work Scotland are currently developing operational guidance in relation to joint investigative interviews where children have been involved in offending type behaviour.
- 3.17. This is important and significant legislation which has the potential to change for the better the lives of the very small number of children who commit crimes in Scotland. Notwithstanding this, it will bring additional responsibilities for Local Authorities in terms of the provision of places of safety and the involvement of social workers in Joint Investigative Interviews. John Trainer, Head of Child Care and Criminal Justice in Children's Services is Social Work Scotland's National Lead for the Age of Criminal Responsibility implementation. A local multi-agency group is working to ensure that as an area Renfrewshire is ready to implement the next stage of the 2019 Act.

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## Implications of this report

1. **Financial**  
None.
2. **HR and Organisational Development**  
Staff training on a multi-agency basis will be delivered to support the implementation of the new duties and change in legislation.

### **3. Community/Council Planning**

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| Our Renfrewshire is safe                        | - The new legislation will require services to work together on a multi-agency basis to meet the welfare needs of children under the age of 12 who are involved in offending as well as working to support victims. |
| Building strong, safe and resilient communities | - The new legislation will require services to work together on a multi-agency basis to meet the welfare needs of children under the age of 12 who are involved in offending as well as working to support victims  |
| Working together to improve outcomes            | - The new legislation will require services to work together on a multi-agency basis to meet the welfare needs of children under the age of 12 who are involved in offending as well as working to support victims  |

### **4. Legal**

Significant change in legislation to increase the age of criminal responsibility from 8 to 12 years.

### **5. Property/Assets**

None.

### **6. Information Technology**

None.

### **7. Equality and Human Rights**

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report.

### **8. Health and Safety**

None.

### **9. Procurement**

None.

### **10. Risk**

None.

### **11. Privacy Impact**

None.

### **12. Cosla Policy Position**

None.

**13. Climate Risk**  
None.

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**List of Background Papers**

(a) Background Paper 1: None

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**Children's Services**  
JT/MMcC 14/04/21

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