

THE REPORT OF THE INDEPENDENT REVIEWER

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

Introduction

1. This is the second report of the independent reviewer for the Scottish Ministers. This report covers the period from 1 April 2022 to 31 March 2023.
2. The independent reviewer is appointed by the Scottish Ministers under section 12(1) of the Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”) for a period of 3 years. The current appointment began on 2 March 2020 and the independent reviewer devotes up to two days per month to performing the functions of the role as and when required. The independent reviewer is provided with administration support by the Disclosure Scotland Policy Team under section 13 of the Act.

Background

3. The role of independent reviewer introduces a fairer and more proportionate approach to the disclosure of information. It provides significant additional protection for people who have caused harm when under the age of 12, while ensuring that information can still be released when necessary for public protection reasons. The independent reviewer will also be involved in the implementation of the Disclosure (Scotland) Act 2020.
4. Part 2 of the Act makes changes to the disclosure system to ensure that information relating to harmful behaviour that occurred when a person was under the age of 12 cannot automatically be disclosed by the State. Whilst such information may be disclosed as “Other Relevant Information” (ORI) on an enhanced disclosure or Protecting Vulnerable Groups (PVG) scheme record, this can only take place following a determination by the independent reviewer.
5. Implementation of Part 2 of the Act is supported by:
 - [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Independent Review of Disclosure of Information\) Regulations 2020](#), which set out the timescales for provision of information from the chief constable to the independent reviewer, timescales for the independent reviewer to notify the applicant or scheme member that information has been received for review, and the timescale within which the applicant or scheme member must make representation to the independent reviewer. These regulations came into effect on 30 November 2020;
 - [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021](#), which modifies the functions of the independent reviewer so that they can effectively carry out their duties in respect of information which is received from other jurisdictions of the UK. These regulations implement cross-border powers for the purposes of disclosure, and came into force on 17 December 2021; and

- [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Consequential Provisions and Modifications\) Order 2021](#) provides for cross-border operation of powers set out in Parts 2 and 4 of the Act. This is the section 104 Order, which came into force on 17 December 2021.

Cases

6. This report covers the reporting period covers 1 April to 2022 to 31 March 2023. From 17 December 2021, information about behaviour under the age of 12, proposed for disclosure to the Scottish Ministers by police forces in England, Wales or Northern Ireland became subject to review by the independent reviewer. There were no cases referred to the independent reviewer during the reporting period.

Stakeholder Engagement

7. In April 2022 I was involved in consultations with Disclosure Scotland on the Statutory Guidance for the Independent Reviewer under ACR.

8. Over the reporting period I have been involved in ongoing work with Disclosure Scotland in the preparation of their decision-making framework and guidance on the inclusion of childhood information and removable convictions on Level 2 disclosures under the Disclosure (Scotland) Act 2020. On 20th May 2022 I attended the offices of Disclosure Scotland to meet in person with colleagues from Disclosure Scotland to consult on continuing work on the decision-making framework. I commend Disclosure Scotland on their ongoing work in this area.

9. In January 2023 I attended the Age of Criminal Responsibility (Scotland) Act 2019 Learning Event in Edinburgh. This was an excellent event which provided an opportunity to network and to discuss and reflect on commencement of the legislation.

Recommendations

10. I recommend that Disclosure Scotland continues to consult with myself and external stakeholders as they continue to work on implementation of the Disclosure (Scotland) Act 2020.

Conclusions

11. I would like to thank my colleagues in Disclosure Scotland who have supported me over the past year and would like to thank them for all their hard work and support over the past year.

12. It has been my pleasure to carry out the role of independent reviewer. I look forward to continuing my working relationship with Disclosure Scotland under the Act and to assist them as they continue to carry out their duties to implement the Disclosure (Scotland) Act 2020.

Caroline Conway
Independent Reviewer