



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 20 September 2022

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
23rd Meeting 2022, Session 6

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Pam Duncan-Glancy (Glasgow) (Lab)

*Pam Gosal (West Scotland) (Con)

*Rachael Hamilton (Etrick, Roxburgh and Berwickshire) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Clare Haughey (Minister for Children and Young People)

Lynsey McKean (Scottish Government)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 20 September 2022

[The Convener opened the meeting at 14:30]

Subordinate Legislation

Age of Criminal Responsibility (Reports on Use of Places of Safety) (Scotland) Regulations 2022 [Draft]

The Convener (Joe FitzPatrick): Good afternoon and welcome to the 23rd meeting in session 6 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies for this afternoon's meeting.

Item 1 is consideration of an affirmative instrument. I welcome Clare Haughey, the Minister for Children and Young People. She is accompanied by Lynsey McKean, who is police powers team leader in the Scottish Government—you are both very welcome.

I refer members to paper 1 and invite the minister to speak to the draft regulations.

The Minister for Children and Young People (Clare Haughey): Good afternoon, and thank you for your invitation to address the committee in relation to this Scottish statutory instrument.

The SSI sets out the information that will be contained in the annual report to Parliament on the use of the place-of-safety power in section 28 of the Age of Criminal Responsibility (Scotland) Act 2019. Section 28 provides Police Scotland with the power to take a child who is under the age of 12 to a place of safety when they consider that the child

“is behaving or is likely to behave in a way that is causing or risks causing significant harm to another person.”

The SSI has been developed since the 2019 act's commencement on 17 December 2021, which means that it has been informed by the first few months of the legislation operating in practice. The police have used the power on only four occasions since December.

In developing the SSI, I have taken account of the fact that the power has been required only infrequently, and of the risk that is therefore posed in relation to compromising a child's identity when information is reported to Parliament. The information that will be reported to Parliament, as set out in the SSI, will not contain the same level of detail as the information that Police Scotland records and provides to ministers. The essential

difference is that it will not focus on the specific date, time and location of a child being taken to a place of safety; instead, the report will contain detail on the length of time that a child was at a place of safety, how many times in a month a place of safety was used, and the number of times each place of safety included in the 2019 act was used within the reporting period.

The SSI has been designed to ensure that the reports that are laid in Parliament safeguard children's identity while furnishing Parliament with information on the safe and proper use of the power. I believe that the SSI does that without materially altering the intent or the information that ministers receive.

We collaborated with Police Scotland on the development of the instrument, to ensure that its terms are appropriate, deliverable, proportionate and underpinned by the principles of the 2019 act. We also informally consulted with stakeholders, including organisations that have a strong focus on children's rights.

The 2019 act requires ministers to carry out a review of its operation and to consider the future age of criminal responsibility. Should the age of criminal responsibility be raised or the frequency of the power's use increase, the regulations can be modified to require reports to include further information.

Scottish ministers will look to provide Parliament with the first report in early 2023, after the end of the first year of the 2019 act's implementation.

I hope that that provides the committee with a helpful overview of the draft regulations.

The Convener: Thank you, minister. I give the floor to members who have questions.

Pam Duncan-Glancy (Glasgow) (Lab): Thank you, minister, for setting out the detail of this affirmative instrument.

I was pleased to hear you make the point about raising the age of criminal responsibility, because, as you are aware, the current age of criminal responsibility in Scotland is lower than is recommended by the United Nations Committee on the Rights of the Child. Is the Government considering raising the age?

The child rights and wellbeing impact assessment says:

“the Regulations are UNCRC compliant.”

However, the legislation to which the regulations relate—the 2019 act—is not UNCRC compliant, given its incompatibility with the UNCRC in relation to the age of criminal responsibility. Will you comment on that?

Clare Haughey: I will take the first part of that question and then I will hand over to Lynsey McKean on compliance.

The 2019 act placed a duty on the Scottish ministers to review its operation in general and with a view to considering the future age of criminal responsibility. The three-year review period started on 17 December last year, which was the day that section 1 of the act came into force. In carrying out that review,

“the Scottish Ministers must consult such persons as they consider appropriate”

and must lay a report before the Parliament within 12 months of the completion of the review period.

An advisory group has been established to support that work and it has met since summer 2019. The review will ensure that the operational learning and experience from the implementation of the act will inform the discussions that we have about the future age of criminal responsibility in Scotland.

I hope that that gives the member an overview of some of the work that is going on. I am sure that we will come back to the matter in future as the review reports.

Lynsey McKean (Scottish Government): I can provide a slight overview on the CRWIA. The impact assessments were specifically for the SSI and, therefore, concerned the use of the place of safety power rather than the act in general. The age of criminal responsibility is currently under the UNCRC age. As the minister explained, there will be a review and we will consider whether the age of criminal responsibility can and should be increased. The CRWIA is simply about the use of the place of safety power. That is why our analysis of the SSI says that the regulations are UNCRC compliant.

Pam Duncan-Glancy: That is helpful. Thank you.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Like Pam Duncan-Glancy, I welcome the talk about the possibility of the age of criminal responsibility being increased because, when we scrutinised the Age of Criminal Responsibility (Scotland) Bill, that was a major talking point for the committee members who were involved in it. The same is true for the place of safety power, which is what the regulations are about. I welcome the explanation that the minister gave, in that the power has been used only four times.

I ask the minister to answer a question that has come up through some of my constituency work. Because of the legislation that is now in force, some constituents are under the impression that the police can no longer talk to children under the

age of 12—it is not about charging them but about talking to them. Is the minister able to confirm that that is not the case and that the police can engage with children, as they can with any other member of the community? That is the advice that I gave to my constituent but he asked that I raise it in the Parliament.

Clare Haughey: Yes, I confirm that that is correct. The police can engage with children who are under the age of 12.

Fulton MacGregor: It is really helpful to have that on the record.

Maggie Chapman (North East Scotland) (Green): Thank you, minister, for providing the information that you have provided so far.

I ask for clarity on the types of information that will be reported. Will we be able to connect them? For instance, when a child is being violent or is likely to cause violence to somebody else, then and only then can they be kept in a police cell and there is provision to report that. If their violence is directed at themselves only, will we be able to connect the nature of the behaviour with where they are kept if it is not a police cell?

Clare Haughey: It would be helpful to establish for the committee and for the record that a police cell would be used only in one rare circumstance, which is when a child behaves in an exceptionally violent manner or their behaviour poses extreme risk to someone else.

Under the place of safety power, it would be unusual for the police to take a child to a police station, never mind to take the step of putting them in a police cell. If police had concerns about a child and were using the power, they would contact social work and the local authority to try to identify a relevant place that would best meet the child’s needs for a place of safety. Local authorities could identify various places; it could be a care home, or, if that child had identified medical needs, it could be a hospital. A police station would be the last resort, and the use of a police cell would be in extremis.

Maggie Chapman: Given what you say, which is a welcome clarification, it will be possible to identify the types of behaviour that are connected with the use of a cell as a place of safety. Will it be possible to identify the types of behaviour that are associated with other places of safety?

Clare Haughey: I am sorry. Could you—

Maggie Chapman: —I am trying to think.

Clare Haughey: There would be only one reason for a child to be kept in a cell as a place of safety, and that would be, as I outlined earlier, if they were behaving in an exceptionally violent

manner or posing an acute threat to someone else.

On why someone would go to another place of safety, the police would liaise with social work, which would take a holistic view using a getting it right for every child approach to consider what is in the best interest of that child and where would best suit their needs. Social work would consider the situation from a child protection and child safeguarding point of view in relation to whether the child needed to go to a place of safety until they were able to be returned home or to another appropriate adult.

Maggie Chapman: Okay. My question was about connecting the numbers with the different locations.

Clare Haughey: Lynsey McKean will be able to tell you about that.

Lynsey McKean: There is a provision in the SSI that talks about

“the nature of the behaviour or likely behaviour which was considered to be causing or risk causing significant harm to another person”.

In essence, that provision asks for a report to be produced stating why a child has been taken to a place of safety and what the nature of their behaviour was. Police Scotland records will have dropdown menus. The information will be quite high level and will not go into too much detail, so that we do not risk identifying a child.

Maggie Chapman: Of course; that is where I was going with the question.

Lynsey McKean: However, there will be a connection in relation to why a child is in a place of safety.

The Convener: Do members have any further points or questions?

As there are no further indications, we move on to agenda item 2, which is consideration of the motion to approve the affirmative instrument. I invite the minister to move motion S6M-04890.

Motion moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that The Age of Criminal Responsibility (Reports on Use of Places of Safety) (Scotland) Regulations 2022 [draft] be approved.—[*Clare Haughey*]

Motion agreed to.

The Convener: I invite the committee to agree to delegate to me the publication of a short, factual report on our deliberations on the affirmative SSI that we have considered today. Is that agreed?

Members indicated agreement.

The Convener: That concludes consideration of the affirmative instrument. I thank the minister and her officials for attending; you are good to go.

Sheriff Court Fees Amendment Order (SSI 2022/214)

The Convener: The next item on our agenda is consideration of a negative instrument, and I refer members to paper 2. Do members have any comments on the SSI?

Pam Duncan-Glancy: I am keen to know how the errors happened and how and when they were identified.

The Convener: We do not have a minister here, but the annex of the note probably has that information. There is no time for us to come back to ask questions, but there will be opportunities for members to seek that information. It is probably best that members who have such questions on a negative instrument give them to the clerks beforehand, and we can make an effort to get those answers. The Parliament has decided that the instrument is taken under the negative procedure.

Pam Gosal (West Scotland) (Con): The letter fails to mention why the issue was not identified by the Scottish Courts and Tribunals Service. Why is that the case?

The Convener: As I said, there is no time in the process for us to bring the instrument back to a future meeting.

If a number of members would be keen to get an answer to those questions, we could write to the Scottish Government, but if any member has an issue with the instrument, they can lodge a motion to annul, which would be taken in the chamber. That would be the process. There is not a process that involves things coming back to the committee but, if members feel that that is something that they want to do, they can.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Without being as dramatic as lodging a motion to annul, would there be an opportunity at the point of voting to ask for clarification in terms of a statement? Could that be done?

The Convener: This is a negative instrument, so we have the opportunity to make comments and put them on the record. If there had been more time, we could have asked the minister to come back, but there is no time for that in relation to this particular instrument. Do members wish to write to the Government?

Members indicated agreement.

The Convener: Okay; we will ask to clerks to do so, and we will get a response back.

I encourage members to ask such questions in advance if possible, then clerks can try and get the information if it is not in the annexes that we receive from the Government. Of course, it may be in there somewhere and we are just not seeing it.

We have agreed to write to the Government, and we will make no further comments on the instrument. That being the case, that concludes consideration of the SSI. We move into private session for our final agenda items.

14:46

Meeting continued in private until 17:35.

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