

Equalities, Human Rights and Civil Justice Committee

4th Meeting, 2021 (Session 6), Tuesday, 21 September 2021

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following draft affirmative instrument:
 - [2021/XXX: The Children's Legal Assistance \(Miscellaneous Amendments and Consequential Provisions\) \(Scotland\) Regulations 2021](#)

2021/XXX: The Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021

2. The draft SSI is being laid before the Scottish Parliament under section 37(2) of the Legal Aid (Scotland) Act 1986. The affirmative instrument is subject to approval by resolution.
3. The purpose of this instrument is to support the implementation and commencement of the Age of Criminal Responsibility Act 2019. The 2019 Act provides for orders in relation to children to allow for the investigation of their actions notwithstanding that they will not have committed offences. These orders, when granted, largely permit the sort of interventions the police would otherwise be able to do in respect of suspects – searches, interviews and the taking of prints and samples etc. The legal aid provisions are to allow for representation in respect of applications for these orders, to ensure the rights of the children (and others in some cases) in the course of those proceedings.
4. This instrument makes children's legal assistance available in relation to proceedings under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019; in particular, for a child to have legal representation before the sheriff and

any appeal from the sheriff, and for the other persons eligible for children's legal assistance in connection with such proceedings and appeals, to be specified along with the eligibility criteria to be applied.

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on [7 September 2021](#). The DPLR Committee agreed that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit.
6. A copy of the Scottish Government Policy Note is included at Annexe A, including links to other associated documents.

Equalities, Human Rights and Civil Justice Committee Consideration

7. The draft instrument was laid on 30 August 2021 and referred to the Equalities, Human Rights and Civil Justice Committee. The instrument is subject to affirmative procedure (Rule 10.6). It is for the Equalities, Human Rights and Civil Justice Committee to recommend to the Parliament whether the instrument should be approved.
8. The Minister for Community Safety has, by motion S6M-00998, proposed that the Committee recommends the approval of the instrument. **The Committee is therefore required to report to the Parliament by 8 October 2021.**
9. The Minister for Community Safety is due to attend the meeting on 21 September to answer any questions on the instrument and to move the motion for approval.
10. **It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument.**
11. **The Committee is asked to delegate to the Convener authority to approve a short, factual report on the instrument for publication.**

Clerks to the Committee
16 September 2021

Annexe A

Scottish Government Policy Note

The Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021

The above instrument was made in exercise of the powers conferred by sections 9(2)(a), 28C(3), 33(2) and 36(1) and (2)(c) of the Legal Aid (Scotland) Act 1986 and section 83 of the Age of Criminal Responsibility (Scotland) Act 2019. The instrument is subject to **affirmative** procedure.

Purpose of the instrument

Prior to implementation of the 2019 Act, where a child aged eight or over was behaving in a way that was causing or risked causing significant harm to another person, a police constable was able to arrest the child on suspicion that the child had committed an offence. Once section 1 of the 2019 Act (which raises the age of criminal responsibility from 8 to 12) comes into force, this power will not be available in relation to eight to 11 year olds. This is because children in this age group will no longer be considered as able to commit an offence, and therefore the police will not be able to arrest them on suspicion of committing an offence.

The purpose of this instrument is to support the implementation and commencement of the Age of Criminal Responsibility Act 2019. The 2019 Act provides for orders in relation to children to allow for the investigation of their actions notwithstanding that they will not have committed offences. These orders, when granted, largely permit the sort of interventions the police would otherwise be able to do in respect of suspects – searches, interviews and the taking of prints and samples etc. The legal aid provisions are to allow for representation in respect of applications for these orders, to ensure the rights of the children (and others in some cases) in the course of those proceedings.

Policy objectives

This instrument makes children's legal assistance available in relation to proceedings under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019; in particular, for a child to have legal representation before the sheriff and any appeal from the sheriff, and for the other persons eligible for children's legal assistance in connection with such proceedings and appeals, to be specified along with the eligibility criteria to be applied.

These regulations specify when children’s legal assistance is available automatically or available on application to the Scottish Legal Aid Board, and state the conditions that must be met for children’s legal assistance to be made available. They also provide that first instance and appellate proceedings are not to be treated as distinct for the purposes of applications for children’s legal assistance and detail when work may be undertaken on the basis of special urgency.

Consultation

The instrument was prepared in consultation with the Scottish Legal Aid Board. Draft regulations have been shared with the main representative bodies of the legal profession: the Law Society of Scotland and the Faculty of Advocates.

Impact assessments

An Equality Impact Assessment, a Privacy Impact Assessment, and a Children’s Rights and Wellbeing Impact Assessment were completed in relation to the Age of Criminal Responsibility (Scotland) Act 2019. No impact issues were identified. The following links show the relevant documentation:

- Children’s Rights and Wellbeing Impact Assessment: [Age of Criminal Responsibility \(Scotland\) Bill: children's rights and wellbeing impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/child-rights-and-wellbeing-impact-assessment)
- Equalities Impact Assessment: [Age of Criminal Responsibility \(Scotland\) Bill: children's rights and wellbeing impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/equalities-impact-assessment)
- Privacy Impact Assessment: [Age of Criminal Responsibility \(Scotland\) Bill: privacy impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/privacy-impact-assessment)

For the purpose of these regulations, screening exercises have been undertaken for Fairer Scotland Duty, Strategic Environmental, Data Protection Impact, and have concluded that full impact assessments are not required.

The following impact assessments were considered:

Child Rights & Wellbeing Impact Assessment
Equality Impact Assessment

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has also been completed and is available at the following link:

- Business and Regulatory Impact Assessment (BRIA): [The Children’s Legal Assistance \(Miscellaneous Amendments and Consequential Provisions\) \(Scotland\) Regulations 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)