

ABERDEEN CITY COUNCIL

COMMITTEE	Public Protection Committee
DATE	27 October 2021
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Implementation of the Age of Criminal Responsibility (Scotland) Act 2019 in Aberdeen City
REPORT NUMBER	OPE/21/233
DIRECTOR	Rob Polkinghorne
CHIEF OFFICER	Graeme Simpson
REPORT AUTHOR	Alison McAlpine
TERMS OF REFERENCE	1.1, 1.1.4

1. PURPOSE OF REPORT

- 1.1 To provide assurance to committee of the planning in place within Aberdeen City on the implementation of changes to practice required in line with the imminent commencement of the Age of Criminal Responsibility (Scotland) Act 2019.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 notes the positive implications for all children under 12 years of age whose behaviour may currently see them participate in an adult justice system, largely designed for adults;
- 2.2 notes that on 16 September 2021, ministerial agreement was given to delay the commencement of Part 1 of Age of Criminal Responsibility (Scotland) Act 2019. A confirmed date for full implementation has not been identified; and
- 2.2 notes the localised plans in place, referred to in section (3.2) below are meeting the needs of the vulnerable children that the Act seeks to protect

3. BACKGROUND

3.1 Key Changes brought about by full implementation of Age of Criminal Responsibility (Scotland) Act 2019

- 3.1.1 Work has been ongoing nationally for several years to review and amend the policy and legislation in relation to protecting and promoting the rights and interests of children and young people. This has included a focus on preventing and addressing offending behaviour by young people. It is recognised that Scotland has one of the youngest ages of criminal responsibilities in Europe (14yrs - Germany, 15 years – Norway and Sweden, 16 years - Portugal.) The

Age of Criminal Responsibility (Scotland) Act 2019 will raise the age of criminal responsibility in Scotland from 8 years to 12 years when Section 1 of the Act is implemented.

- 3.1.2 The Act provides the police with specific powers to investigate incidents of serious harmful behaviour which took place when a child was under 12 in a manner which ensures that the child's well-being is always treated as a primary consideration. This means that at all stages of an investigation social workers and police officers will be alert to the child's individual needs and will take a trauma-informed approach in their interactions with the child. It is significant to note that children under 12 whose behaviour causes significant harm will often have experienced trauma and neglect and recognising and responding to their needs is at the core of this legislation. A new role of Child Interview Rights Practitioner (ChIRP) has been established to act in accordance with this approach, which is reflected in the competencies and standards of conduct required for registration.
- 3.1.3 The questioning of a child in relation to serious harmful behaviour which takes place when a child is under 12, is by way of an investigative interview. Other than in urgent cases, an investigative interview must be jointly planned by social work and police. Planning will take place in an Age of Criminal Responsibility (ACR) Interagency Referral Discussion (IRD).
- 3.1.4 Within a context of falling numbers of youth offending, and scrutiny of localised data on how many under 12's are currently involved in behaviour that would otherwise be seen as offending behaviour, it is noted that the number of children meeting the threshold for use of specific Police powers such as Investigative Interviews, will be very low. That said, the changes brought about by this key piece of legislation will require careful adapting and enhancing of knowledge and expertise of social work professionals to ensure compliance with the changes.
- 3.1.5 Involvement of a prospective ChIRP at the stage of the development of the interview plan is recognised to be beneficial so they are aware of the child's needs and preferences and any adaptations which are needed for the interview with the child. ChIRPs are to be legally qualified and to have undertaken specific training for this role and work on this is currently taking place at a national level.
- 3.1.6 A child who is taking part in an investigative interview is not a suspect. The approach taken by professionals involved in the process must reflect the non-criminal nature of the interview. The investigative interview is not an interrogation and will be carried out in an age-appropriate setting, with every effort being made by the professionals to ensure the child feels safe and comfortable to speak. The ChIRP will have a role to help the child communicate their own needs, wishes and concerns in relation to the conduct of the interview. The intention behind the interview is to understand what happened, and to enable the right supports to be put in place for the child, so it will be important to hear the child's own perspectives about the incident of concern.

3.1.7 Statutory guidance relating to police powers in the Age of Criminal Responsibility (Scotland) Act 2019 was published on 2 September 2021 – See Appendices. Operational Guidance is in final draft but has yet to be circulated.

3.2 Aberdeen City's Implementation Planning

3.2.1 All 32 Local Authorities were invited to respond to a survey on the new legislation, with consideration given to the anticipated impact of further raising the age of criminal responsibility from 12 to 14 or 16 years in the future. This anticipated progression will align Scotland further with the UN Convention on the Rights of the Child (UNCRC) and adherence to The Promise.

3.2.2 It is recognised that any increase from 12, to 14, or 16 years in the future would have considerable impact on the numbers of children who would require support under this Act. Increased training opportunities will then be vital to ensure sufficient social work staff are trained and competent to undertake the investigative interviews that would be required.

3.2.2 An implementation working group has been established in Aberdeen City, involving social work professionals currently involved with children and young people whose behaviour is causing significant concern. As well as social work staff, membership involves 3rd sector partners as well as the city's out of hours service. Meetings are scheduled monthly, allowing close collaboration and planning. This group will continue post implementation, to support and monitor the new arrangements.

3.2.3 As noted, the role of the IRD has been recognised as pivotal to ensure the correct interpretation and planning of intervention linked to ACR legislation. The Joint Inspection of Children's Services 2019 recognised that our response to children who may be at risk of significant harm is a practice evidenced considerable strength. The role of the IRD within this element of child protection procedures has been crucial. Our IRD process has seen robust review, scrutiny and quality assurance over the past few years. Following some adaptations initiated initially as a response to Covid 19 restrictions, our process has been further streamlined and sees Aberdeen City aligning closely to the new National Guidance for Child Protection in Scotland 2021.

3.2.4 Whilst there has been some indications of the different considerations in both IRDs relating to ACR duties, and those IRDs relating to child protection concerns, the approach and principles will be the same.

3.2.5 The work of the local implementation group is inextricably linked to other areas of development, notably the preparation for the new Scottish Child Investigation Model (SCIM). This will see an overhaul of the training and ethos of our interviewing of children who have suffered or witnessed significant harm. There are also clear links to Scottish Governments' commitment and vision for a 'Bairns' Hoose' in Scotland by 2025, with the aim that *'All children in Scotland who have been victims or witnesses to abuse or violence, as well as children under the age of criminal responsibility whose behaviour has*

caused significant harm or abuse will have access to trauma informed recovery, support and justice' and that such will be under one roof and be as streamlined as it can be.

- 3.2.6 A workplan for implementation has been established with training being a key element of focus, given the imminent implementation date of all aspects of this legislation. An experienced social worker with extensive knowledge of ACR and who is already involved in the interviewing of children, will join social work, police and ChIRP colleagues for a half day training on the specifics relating to ACR procedures, at the end of September 2021. Thereafter, wider training will be disseminated across the workforce.
- 3.2.7 It is noted that the introduction of this new legislation does not bring any additional funding, with any impact on resourcing having to be met by individual local authorities.
- 3.2.8 Close collaboration with colleagues from Police Scotland has taken place on the local implementation of ACR. This is particularly so in relation to the more contentious areas of the new provisions, notably the statutory duty for a list of Places of Safety. Whilst the Act gives a constable the power to remove a child to a place of safety, local authorities are best placed to identify potential places that will best meet the needs of the child, taking into account the current circumstances. The police must notify the local authority of the need for a place of safety in circumstances where the child's home is not appropriate. Agreement should be sought as to the most suitable and available resource as quickly as possible.
- 3.2.9 It is vital to recognise that children who require provisions under the Act due to concerns of their involvement in serious harmful behaviour, will in most cases, be best placed to be cared for by their families or their usual care setting. Child protection procedures will of course prevail, where there are concerns that a child is at risk of significant harm. Where children cannot be cared for in their usual home setting a range of settings have been identified recognising such decisions need to be considered on a child-by-child basis. What is vital however, is that there is a joint understanding in place between Police Scotland and Children's Social Work as to how to reach the most appropriate decision for each child, especially in an emergency or out with office hours.

3.3 Implementation Commencement Date

- 3.3.1 October 2021 had been set as the date for commencement of the final sections of this Act to be implemented. On 16th September 2021, the Programme Board met to consider the submission to Minister about commencement day. Whilst no specific date on commencement has been confirmed, the Minister has agreed that commencement will not be in October 2021, due to significant issues in relation to the development of Court Rules and, out of hours provision.

3.4 Future Considerations

3.4.1 A further advisory group is now in place to consider whether the age of criminal responsibility in Scotland should be raised further, in line with its review of the operation of this Act. Work to scrutinise current data on any further increase and other implications is being progressed in line with national queries on same.

4. FINANCIAL IMPLICATIONS

4.1 No specific funding has been provided to support the implementation of the ACR legislation. While the legislation will place some additional duties on social work staff these reflect best practice and are intended to deliver improved outcomes for children.

- Training and developing social workers awareness of the legislation and guidance will demand resource which will be met from within existing resources.
- The established Implementation group will monitor the embedding of the ACR into practice and is well placed to flag any unanticipated resource demands.

5. LEGAL IMPLICATIONS

5.1 Aberdeen City Children’s Social Work staff will have statutory duty to comply with the Age of Criminal Responsibility (Scotland) Act 2019, ensuring the care and protection of children who fall within the parameters of this legislative change.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic	That the partnership are insufficiently prepared for the changes brought about by the implementation of this new piece of legislation, through practice guidance, training or through lack of confidence and understanding.	L	Close collaboration, supported through the Child Protection Committee in Aberdeen City, as we prepare and plan for implementation, with key operational leads from all agencies involved in working group.

Compliance	The Council has responsibility to comply with its statutory responsibilities.	L	Whilst this sees some changes in practice, the processes in place will be absorbed in line with current practice hence minimal risk.
Operational	Adjustment of systems to ensure embedding of this new legislation at National and local level and for awareness of this across the city, for all key staff members	L	Awareness raising across the partnership is underway to ensure knowledge for all key staff members and targeted training for those who will be specifically involved in decision making and in interviewing of children within scope of the legislation.
Financial	Officer time will not be dedicated to the necessary level of support for the under 12 year olds who require support and intervention via this new Act.	L	No specific funding has been provided to accommodate the changes to practice brought about by this legislation. However, this legislation currently relates to a relatively small number of children at this stage and it is proposed that changes can be absorbed within business as usual, with robust and comprehensive partnership collaboration.
Legal	Aberdeen City Council has statutory responsibilities to children, young people and their families which if we failed to adhere to would render us in breach of these.	L	The changes brought about by this new legislation will be subject to formalised scrutiny by the Care Inspectorate in their evaluation of services for children and young people in Aberdeen.
Employee	Officer time is not afforded to retain current standards of practice and to progress areas for development.	L	The multi-agency nature of work to support children, young people and their families already relies on a collaborative approach where continual improvement and learning has been embedded. This

			work is shaped via the Chief Officer's Group, the Child Protection Committee and via the strategic plans in place, in line with stretch aims contained in the Local Outcome Improvement Plan (LOIP)
Customer	Required improvements and areas for development in practice are not actioned.	L	Children, young people and their families in Aberdeen can be assured that services in Aberdeen City are subject to continual quality assurance, in line with the Child Protection Improvement Programme, the Corporate Parenting Strategy, in line with this years' refreshed LOIP.
Environment	In the spirit of ethos of this legislative change, it is not anticipated that these changes will bring about any specific changes to the care settings of this age group of child.	L	The culture and ethos across our partnership supports children to be supported wherever safe, to remain in their usual care setting. This legislation will ensure that children whose behaviour has caused significant harm are first and foremost treated as children and that they are supported and not criminalised for actions that they may have taken. This will ensure that alternatives are sought, where children cannot remain in their parental home/usual care setting, and that holding in Police cells is by rare exception only.
Technology	If we do not continue to progress our use of advances in technology we will fail to sustain and build on current	L	We are collaborating across the partnership is taking place, as well as using Microsoft cloud to mitigate against this risk.

	improvements in data collation in this area.		
Reputational	Children who find themselves involved in behaviour which has caused or is likely to cause significant harm, can bring about considerable media interest and scrutiny of services delivered them can surround this.	M	The public can be assured by the fact that focus will continue to allow Police colleagues to work to minimise the likelihood of continued risk to public, and children's social work will work to ensure the intervention and support is in place to offer the required safety mechanisms here. Further, the Care Inspectorate will have a role in formally scrutinising this area in future strategic inspections.

7. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
	Impact of Report
Aberdeen City Council Policy Statement	The proposals in this report have no direct impact on the Council Delivery Plan.
Aberdeen City Local Outcome Improvement Plan	
Prosperous Economy Stretch Outcomes	No significant impact.
Prosperous People Stretch Outcomes	<p>This Report acknowledges the role that children's social work undertake alongside Police Scotland, to intervene when children may have been involved in behaviour that could result in significant harm. This is carried out with close collaboration with multi agency partners, overseen by the Chief Officers Group and the Child Protection Committee. This ensures delivery on the outcomes of the LOIP – Prosperous People – Children are our Future and that they have the 'best start in life,' they are 'safe and responsible' and that they are 'protected from harm.'</p> <p>Children who are protected from threats to their health, safety and economic wellbeing are more likely to prosper than those who are not.</p>

	<p>LOIP Stretch Outcomes:</p> <p>4. 90% of children and young people will report that they feel mentally well by 2026.</p> <p>5. 95% of care experienced children and young people will have the same levels of attainment in education, emotional wellbeing, and positive destinations as their peers by 2026.</p> <p>6. 95% of children living in our priority localities will sustain a positive destination upon leaving school by 2026.</p> <p>7. Child Friendly City which supports all children to prosper and engage actively with their communities by 2026.</p>
<p>Prosperous Place Stretch Outcomes</p>	<p>Recognition has been given to the benefits to maximising scope for children to remain within their own communities and changes proposed from this new legislation will further embrace this.</p>
<p>Regional and City Strategies</p>	<p>Aberdeen Economic Policy Panel Annual Report</p> <p>The report particularly helps the Council to tackle inequalities amongst our most vulnerable children and families which as the report states “is not just an important objective in its own right, but that doing so is crucial for promoting sustainable economic growth. This is in recognition of the fact that we know that children identified as being amongst our most vulnerable are disproportionately involved in behaviour which can cause harm.</p>
<p>UK and Scottish Legislative and Policy Programmes</p> <p>Children (Scotland) Act 1995, s22, s25, s23, s86.</p> <p>Children and Young People (Scotland) Act 2014 S56</p>	<p>Duties within this legislation place responsibilities on ACC to offer support to children in need, or those who may be in need of compulsory measures of supervision, may be at risk of significant harm or who may otherwise require multi agency support and intervention to reach their potential.</p> <p>The duties in Part 9 of the Children and Young People (Scotland) Act 2014 legally embed the concept of corporate parenting and collectively are <i>‘designed to ensure that the attention and resources of various publicly funded organisations are explicitly focused on the task of safeguarding and promoting the wellbeing of looked after children and care leavers’</i>. (CELCIS, Corporate Parenting Implementation Notes, 2016).</p>

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	Not required
Data Protection Impact Assessment	Not required

9. BACKGROUND PAPERS

N/A

10. APPENDICES

Age of Criminal Responsibility (Scotland) Act 2019 - part 4 – Police Investigatory and Other Powers: statutory guidance on the use of a place of safety

Age of Criminal Responsibility (Scotland) Act 2019 - part 4 – Police Investigatory and Other Powers: statutory guidance on investigative interview

11. REPORT AUTHOR CONTACT DETAILS

Name	Alison McAlpine
Title	Lead Service Manager (acting)
Email Address	amcalpine@aberdeencity.gov.uk
Tel	07824 433179