

# Equalities, Human Rights and Civil Justice Committee

10th Meeting, 2021 (Session 6), Tuesday 30 November 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/Draft: The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021](#)

### 2021/Draft: The Independent Reviewer (Modification of Functions) (Scotland) Regulations 2021

2. The draft SSI is being laid before the Scottish Parliament under section 82(3)(c) of the Age of Criminal Responsibility (Scotland) Act 2019. The affirmative instrument is subject to approval by resolution and due to come into force on 17 December 2021.
3. The Independent Reviewer (IR) was established under the Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”). The IR’s functions include reviewing information which relates to behaviour which took place when a person was under the age of 12 and determining whether or not that information ought to be included on an enhanced disclosure certificate or a Protection of Vulnerable Groups scheme record.
4. The policy intention is that information relating to behaviour that occurred when an individual was under the age of 12 may be disclosed but only following approval by the IR. The purpose of these Regulations is to modify the functions of the IR so that they can effectively carry out their duties in respect of information which is received from other jurisdictions of the UK.

## Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on [26 October 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 together with links to any associated documents.

## Equalities, Human Rights and Civil Justice Committee Consideration

### Procedure for Affirmative instruments

7. The draft instrument was laid on 7 October 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 Children and Young People has, by motion [S6M-01632](#), proposed that the Committee recommends the approval of the instrument. **The Committee is therefore required to report to the Parliament by 1 December 2021.**
9. The Minister for Children and Young People is due to attend the meeting on 30 November to answer any questions on the instrument and to move the motion for approval.

### Recommendation

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  
25 November 2021

## Annexe A

### Scottish Government Policy Note

## The Independent Reviewer (Modification of Functions) (Scotland) Regulations 2021

The above instrument was made in exercise of the powers conferred by section 24(1) and 82(1)(b) of the Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”). The instrument is subject to affirmative procedure.

### Purpose of the instrument

Part 2 of the Act sets out details about the procedure for the independent review of disclosure information. The policy intention is that information relating to behaviour that occurred when an individual was under the age of 12 may be disclosed but only following approval by the independent reviewer (IR). The purpose of these Regulations is to modify the functions of the IR so that they can effectively carry out their duties in respect of information which is received from other jurisdictions of the UK.

### Policy objectives

The policy intention behind Part 2 of the Act is that information which relates to a time when a person was under the age of 12 can only be disclosed on an enhanced disclosure certificate or Protecting Vulnerable Groups (PVG) scheme record if the IR determines that it ought to be included. The Act sets out details about the procedure for review of information prior to disclosure. This includes a requirement that any such information must be reviewed and disclosure authorised by the IR before Police Scotland are permitted to disclose it to the Scottish Ministers. This is provided for under Part 2, Chapter 2 of the Act.

The Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021 will come into force in December 2021 and will allow effective cross border operation of the IR’s functions throughout the UK, including in relation to the sharing of information. The purpose of these regulations is to modify the functions of the IR under the Act to ensure that the IR is able to operate effectively as a result of these changes. This will ensure that where information about pre-12 behaviour is proposed for disclosure to the Scottish Ministers by a police force in England, Wales or Northern Ireland the IR has the appropriate powers to review the information and then determine if disclosure should occur.

## Consultation

The IR is in agreement with the proposed changes which are a technical change in consequence of The Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021.

## 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 Bill for the Act. No impact issues were identified. The following links show the relevant documentation:

- [Equalities Impact Assessment](#)
- [Privacy Impact Assessment](#)
- [Children's Rights and Wellbeing Impact Assessment](#)

## Financial effects

The Minister for Children and Young People confirmed that a BRIA is unnecessary as the instrument has no financial effects on the Scottish Government, local government or on business.