

# Age Of Criminal Responsibility (Scotland) Bill

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## Financial Memorandum

### Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Age of Criminal Responsibility (Scotland) Bill, introduced in the Scottish Parliament on 13 March 2018.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 29-EN);
- a Policy Memorandum (SP Bill 29-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 29-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### The Bill

4. Scotland's age of criminal responsibility, which at age eight is currently the lowest in Europe, has been the subject of criticism by the United Nations Committee on the Rights of the Child. The Age of Criminal Responsibility (Scotland) Bill ("the Bill") will raise the lowest age at which a child can be held criminally responsible from eight to 12 years old. Currently, no child under the age of 12 can be prosecuted in court, but the current age of criminal responsibility (ACR) means that children aged eight and over can be held responsible for criminal offences in the children's hearings system, potentially affecting them in the years thereafter.

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5. The policy of the Bill is to better protect children from the harmful effects of early criminalisation, while ensuring that incidents of harmful behaviour by those aged under 12 can continue to be effectively investigated and responded to. Harmful behaviour involving children under 12, most of whom are at primary school, will continue to be fully investigated to find the facts of what happened and to ensure that victims and others affected by that behaviour continue to be protected.

6. The Bill creates necessary and appropriate police powers to enable this. In the most harmful incidents involving children aged under 12, Police Scotland will have the power to:

- take the child to a place of safety where they believe that is necessary to manage an immediate risk of significant harm, to allow enquiries to be made in relation to the child's needs, including where the support of a parent or carer is not forthcoming.
- interview the child with appropriate safeguards (when authorised by a sheriff, except in certain urgent cases), in accordance with guidance that will be based on the principles of child protection procedures and Joint Investigative Interviews.
- obtain forensic samples from the child (when authorised by a sheriff, except in certain urgent cases).

7. The Bill ensures the powers to interview and to obtain forensic samples from children under 12 in relation to the most serious cases are engaged only when necessary and proportionate. Police Scotland will be required to apply for a court order prior to the taking of samples (except in cases of urgency), and a sheriff must agree that their taking is necessary. In planning and conducting interviews with children under the age of criminal responsibility in connection with their involvement in harmful behaviour, Police Scotland and local authority social work services will also require to have regard to statutory guidance which will be produced in conjunction with the wider review of the approach to Joint Investigative Interviews for child victims and witnesses.

8. The Bill will end the automatic disclosure of information relating to behaviour which took place when an individual was under the age of 12, which was previously regarded as a conviction. Children under 12 will no longer be treated as having convictions for the purposes of disclosure on a disclosure certificate. Information about the behaviour of a child under 12 will only be disclosed as part of a subsequent disclosure application as

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“other relevant information” following independent review of this decision. This change will not only affect young people, as individuals are more likely to be affected by these changes as they come into adulthood seeking employment or further education opportunities.

9. The Bill also amends current legislation to ensure that victims of seriously harmful behaviour by under 12s can continue to receive relevant information under the Scottish Children’s Reporter Administration’s (SCRA) Victim Information Service.

## Projected impact

10. Data provided by SCRA illustrates the number of offence ground referrals relating to children aged eight to 11. Analysis of this data shows that, in the four years to March 2017, 130 referrals would potentially be of sufficient seriousness to engage the Police powers in the Bill. A breakdown of the annual figures is shown at **Table 1**.<sup>1</sup>

Table 1: SCRA offence ground referrals for children aged eight to 11

Year	2013/14	2014/15	2015/16	2016/17
<b>Number of offence ground referrals for children aged eight to 11</b>	212	213	210	204
<b>Number of referrals for offences engaging police powers</b>	30	31	39	30

11. These figures are the most effective available representation of the number of cases potentially affected by the Bill. While not all children will be referred to the Reporter following a police investigation, it is understood that in the vast majority of serious cases Police Scotland will refer the child to the Reporter. In order to calculate estimates of the financial impact of the Bill, we have therefore taken an average number of referrals over these four

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<sup>1</sup> There will be some cases in which, following investigation, the police conclude that the child was not involved in carrying out the incident, and therefore do not refer the child to the Reporter. These cases will not be captured by the figures in Table 1, however we expect numbers to be low and have a negligible impact on costs.

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years as a reasonable indication of the projected number of relevant serious cases per year, i.e. 33.<sup>2</sup>

## Costs on the Scottish administration

### Scottish Government

12. There are one-off costs on the Scottish Government associated with publishing the statutory guidance on investigative interviews. Based on a project of comparable size (publishing the “Stop and Search Code of Practice” and two explanatory supporting documents) the total publishing cost of this guidance is expected to be approximately £2,000. This cost will be met from existing budgets.

13. The Bill gives a child under 12, interviewed under a child interview order, the right to support and assistance from children’s advocacy workers. This is achieved by an expansion to children’s advocacy services under section 122 of the Children’s Hearings (Scotland) Act 2011. The Supplementary Financial Memorandum for the Bill for the 2011 Act indicated that the average cost of advocacy in Scotland was £513 per child. Adjusted for inflation, the average cost per case today would be £625. Provision of advocacy under the Bill for the estimated 33 cases per year is therefore likely to cost approximately £20,600. The delivery model for the national establishment of children’s advocacy services is currently in development. The provision of support for children under 12 subject to investigative interviews will be one component included within planned costs for the wider children’s advocacy service, and will not require a commitment to additional funding.

### Disclosure Scotland

14. The Bill aims to limit disclosure of information relating to behaviour by children under 12, and that where disclosure is proposed it must be subject to independent review. Following commencement of the Bill, disclosure of this information will only be possible on a higher level disclosure as police “other relevant information” (ORI). The Bill will make provision for the appointment of an independent reviewer, who will be required to review all ORI relating to behaviour committed when the subject was under 12.

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<sup>2</sup> It should be noted that these figures do not include serious cases involving children aged under eight years old. In the absence of any formal recording, anecdotal evidence suggests such incidents are extremely rare, and are therefore not thought to have any bearing on our estimates.

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15. The number of relevant cases with a conviction (where the applicant was under 12 years of age at the time of the offence) processed by Disclosure Scotland has been in decline over the past three years. Of 22,634 applications in 2014, there were 72 relevant cases, but there were only seven relevant cases out of 15,381 applications in 2016. This trend can be attributed to increasing numbers of children being responded to outwith formal systems, for example through early and effective intervention (EEI), and it is expected that 2016 now represents a typical year. Disclosure Scotland therefore does not expect to see any significant increase in these figures in the coming years and, due to these low numbers, the impact on Disclosure Scotland is expected to be minimal. Changes to the way these cases are processed will not significantly affect the staff time spent on cases within Disclosure Scotland. Disclosure Scotland officials have advised they do not expect ongoing additional staffing costs as a result of the Bill.

Table 2: Applications for higher level disclosure with a conviction accrued while applicant was under 12

<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Total number of applications with a conviction</b>	22,634	19,172	15,381
<b>Convictions where individual was aged under 12</b>	72	20	7
<b>%</b>	0.32%	0.10%	0.05%

16. For the assessment of the potential costs associated with the independent review of this information, a conservative estimate of one relevant case per month has been used. Due to the Police Scotland policy on the disclosure of ORI, it is highly likely that, in practice, numbers would be significantly lower.

17. The independent reviewer will require a brief induction and training delivered by Disclosure Scotland staff. Disclosure Scotland have advised that this will last no more than five days at a daily rate of approximately £500 (£2,500), plus potential travel and subsistence costs up to £1,500 total. The maximum cost of this training will therefore be £2,500 + £1,500 = £4,000, and will be subsumed within Disclosure Scotland's existing training budget.

18. It is anticipated that the independent reviewer will work no more than one day per month at a daily rate of approximately £500, equating to an estimated annual cost of £6,000. Disclosure Scotland's IT services have

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advised that costs to support the process will be a one-off cost of £1,500 for equipment, and then annual costs of approximately £1,200 for maintenance and consumables. These costs will be met from existing IT and operational budgets. Administrative support will also be required for the independent reviewer, which will be provided by Disclosure Scotland. Provision of this support will not require additional staff, and associated costs are expected to be negligible.

19. Disclosure Scotland staff will require initial training to ensure awareness of, and compliance with, the change to processes and procedures. Disclosure Scotland have advised that there is no requirement to backfill for training, and that existing training arrangements will be adapted to include the necessary material. Any additional training costs will be negligible, and subsumed within the existing Disclosure Scotland training budget.

20. It will be necessary for public facing material to be updated to reflect the change in the age, and the effect this has on the disclosure system. Disclosure Scotland estimates that this will require a one off expenditure of approximately £2,000 to allow for information to be drafted, revised and updated as required.

21. There are potentially indirect benefits to the proposed changes to the disclosure system. By removing the significant barrier to employment that a criminal conviction presents, the Scottish Government will be improving the life chances of those whose offences occurred when they were under the age of 12.

## Scottish Courts and Tribunal Service

22. There will be a cost on the Scottish Courts and Tribunal Service (SCTS) as a result of the creation of three new court orders: child interview order, forensic samples order, and general search order. These have a procedural, administrative similarity to existing child assessment orders, and SCTS have advised that the cost of processing these is approximately £105 per order. It is assumed that the cost of the orders created in the Bill will be similar, and it is estimated that approximately 33 cases per year will be of sufficient seriousness to result in an application for their use.

23. Data provided by SCRA shows that 53% of serious cases (16) resulted in an interview in 2016/17, and only 3% (1) required forensic samples to be taken. Police Scotland has advised that only 10 children

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under 12 were searched in this period. Under the Bill's provisions, this would mean that in 2016/17 there was a potential need for 27 separate court orders, at an approximate cost of £2,800 (27 x £105).

24. The potential effects of introducing formal judicial oversight are difficult to predict. It is possible that these procedures will result in fewer interviews, samples and searches, because they will require a thorough assessment of the necessity and proportionality of these actions before making an application. Conversely, it is possible that these procedures will bring a consistency in approach and Police Scotland will seek court orders in the majority of cases. In the hypothetical scenario that 33 serious cases required applications for each of the three orders, this would cost approximately £10,400.<sup>3</sup> However, as it is extremely unlikely that each of the orders would be required in every case, this should be regarded as an upper limit in terms of costs to SCTS. It is anticipated that any additional costs as a result of the Bill will be subsumed within the existing SCTS budget.

25. The independent reviewer, appointed as part of the changes to the disclosure system, will be able to request relevant information from SCTS. There will be ongoing costs on SCTS for responding to these requests. It is anticipated that this will be required not more than two days per month for administrative staff to compile the information requested. This will not require additional staff, and associated costs are expected to be negligible.

## Costs on local authorities

26. We do not expect extensive training to be required for every professional who may work with children under 12 in Scotland. Instead, the provision of awareness raising material will be proportionate and effective in ensuring a widespread understanding of the impact of the Bill.

27. Costs are anticipated for local authorities in respect of awareness raising and training for social work professionals. It is currently envisaged that up to one half day of training will be required to raise awareness of the Bill among the approximately 2,500 Children and Families social workers across Scotland (based on SSSC children and families fieldwork head

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<sup>3</sup> This calculation does not account for differences in costs of orders which are contested, varied or discharged.

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count, December 2016) with an associated backfill cost of £170,000. **Table 3** below illustrates how this estimate has been calculated.

**Table 3: Estimated cost of training for Children and Families social work professionals**

	<b>Estimated numbers</b>	<b>Estimated rate (half day)*</b>	<b>Total cost for staff requiring backfill</b>
<b>Children and Families social work professionals</b>	2,500	£68	£170,000

\* Based on daily rate of pay of a social worker employed by Glasgow City Council at £136.

28. Awareness raising amongst education professionals, for deputy head teachers and head teachers of all 32 local authorities, is anticipated to be delivered via online resources developed as part of the Bill’s publicity campaign. Officials from COSLA have advised that this method is appropriate as it would proportionately target educational professionals to ensure awareness of matters arising from the Bill. Costs associated with these online resources are expected to be negligible and will be included as part of the Bill publicity budget.

29. The Bill includes provisions on the planning and conduct of interviews with children under 12 in respect of the most harmful incidents. This will be undertaken by Police Scotland and local authority social work staff. The training of a specialist cohort of staff, or the development of any guidance relating to these proposals, will be incorporated into the ongoing review of Joint Investigative Interviews (JIIs), and the proposals specific to this Bill are expected to constitute one component of that broader guidance and training for child victims and witnesses. The significant overlap in the approach to JIIs and interviews under this Bill will help to ensure a consistent, principle-based approach to all interviews of children under the age of criminal responsibility. The costs associated with those interviews – including minor costs associated with the relevant provisions in this Bill – will be met from the budgets of that wider review, and are therefore not covered here.

30. It is difficult to identify how many cases per year would require an investigative interview with a child under the ACR, or an average time



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commitment for social workers involved in investigations. In relation to child protection investigations, the 2014 National Guidance for Child Protection in Scotland stipulates that child protection conferences must take place within 21 calendar days of the notification of the concern. It is anticipated that the investigation will be planned, undertaken, concluded and the outcome assessed within this time. Multiplying the estimated daily rate of a social worker (£136) by a 21 day timescale, and the estimated number of 33 cases per year, indicates a cost of approximately £94,300. This should be regarded as a maximum possible cost as few, if any, investigations will require 100% of a social worker's time for 21 days.

31. The Disclosure System's independent reviewer will also be able to request relevant information from local authorities. This will result in a minimal administrative burden across all 32 local authorities, and the financial impact will be negligible.

## Costs on other bodies, individuals and businesses

### Scottish Children's Reporter Administration

32. The Bill includes provisions for the Principal Reporter to consider providing information to victims of seriously harmful behaviour by under 12s through SCRA's Victim Information Service. However, it is not expected that this aspect of the Bill will create a significant additional burden on SCRA or other public bodies.

33. It is recognised that there may be increased costs arising from the requirement for additional consideration of referrals by the Principal Reporter to ascertain whether there is any identifiable victim and whether information can be provided to them in accordance with the new provisions under section 179A of the Children's Hearings (Scotland) Act 2011. The additional costs for SCRA in relation to this increase in staff time are expected to be negligible and offset by the overall reduction in offence referrals as a result of raising the age of criminal responsibility.

34. In addition, SCRA anticipate that Children's Reporters will require one day of training in relation to the changes provided in the Bill. However, as there is no backfill of posts during training, any staff costs will be met through existing resources. They will not be recurring as the changes will be incorporated into training for new staff. SCRA will also be required to revise staff guidance and public information materials. It is anticipated that these

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costs will be negligible, and subsumed within the existing organisational budgets.

35. The independent reviewer will be able to request relevant information from SCRA. There will be an ongoing administrative cost on SCRA in relation to responding to these requests. Again it is anticipated that this will be required not more than two days per month for administrative staff to compile the information requested. This will not require additional staff, and the additional staff time is expected to be negligible.

## Criminal Injuries Compensation Authority

36. The Criminal Injuries Compensation Authority (CICA) is responsible for assessing and awarding compensation to victims of crime. The CICA will need to update its policy and staff guidance to reflect the changes as a result of the Bill. Implementing these policy changes will create a minimal burden, and costs are anticipated to be negligible.

## Police Scotland

37. Police Scotland anticipates that the Bill will result in additional costs in relation to initial training development and delivery, information and communication technology (ICT) updates, and operational issues. They will also need to invest time in developing new standard operating procedures on responding to children under the ACR, to support and cement officers' training on the Bill.

38. Police Scotland proposes that awareness training be provided to all police officers, police staff and special constables. This would likely be delivered through e-learning, introductory videos and other materials to increase general awareness of the Bill. It is estimated by Police Scotland that one to two hours' awareness training would be required for approximately 23,400 staff.

39. In addition, Police Scotland has initially estimated that approximately 14,000 officers and front line staff, as well as 1,100 special constables, may require dedicated training in the changes under the Bill. This could involve a full day training course delivered at Police Scotland training centres. Optimum classroom capacity is approximately 25 students. On this basis it is assessed that a maximum of 604 courses are required (based on 15,100 staff divided into groups of 25) at eight hours per course. Classroom costs

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are estimated at £27,200 (604 courses x £45 per classroom per day) and printed documents at £15,100 (604 x £25). This provides an approximate total cost of £42,300 for venue and material costs. These costs will not be recurring, as training of new recruits will be updated to include the changes in the Bill.

40. In addition to these direct costs of training, there would be resource implications in terms of the staff time required to undertake the training: as indicated above, one to two hours of awareness training for 23,400 staff, and a full day's training for approximately 15,100. Although no requirement to backfill posts has been identified at this stage, given the scale, any such training exercise would need to be carefully planned and delivered over a period of time to ensure that the delivery of operational police functions was not impaired.

41. The Bill's provisions require the exercise of certain powers (for example, the power to take forensic samples from a child in a situation of urgency) to be authorised by a senior officer. This would typically be given by means of a short telephone call. There is a notional cost of such authorisations in terms of the staff time spent on obtaining the necessary authorisation. Numbers of these authorisations are anticipated to be very low, and there would not be a need to recruit additional officers in order to provide the necessary cover.

42. Police Scotland has advised that it expects necessary changes to ICT to incur additional costs following implementation of the Bill. The behaviour of children under 12 will no longer be appropriately recorded on the criminal history system, and this will have an impact on case reporting mechanisms on a number of systems. These changes will be required to apply retrospectively, to all relevant records currently on Police Scotland systems. The total cost associated with ICT changes is provisionally estimated by Police Scotland to be £256,000. A breakdown of the estimated costs is shown at **Table 4**.

Table 4: Police Scotland ICT costing

Task	Cost
Revision & testing of case reporting mechanisms	£72,000

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Revision & testing of case management systems	£72,000
Revision and Testing of iVPD	£72,000
Revision & Testing of the custody management system	£20,000
Revision & Testing of criminal history systems	£20,000
<b>Total cost</b>	<b>£256,000</b>

43. The independent reviewer will be able to request relevant information from Police Scotland. There will be an ongoing administrative cost on Police Scotland in relation to responding to these requests. Again it is anticipated that this will be required not more than 2 days per month for administrative staff to compile the information requested. This will not require additional staff, and associated costs are currently expected to be minimal.

## Scottish Legal Aid Board

44. The Bill provides a power to make children’s legal aid available in relation to legal advice and representation at hearings or appeals about court orders for interview or search (including the taking of forensic samples). It is difficult to predict how many children might wish to seek this assistance. As orders may only be sought in relation to extremely serious cases, numbers are likely to be small and should prove cost neutral as the same group of children may receive legal advice currently under the criminal duty scheme.

## Children’s hearings Scotland

45. The changes to the children’s hearings system will result in a need for training and awareness raising for Panel members. Children’s Hearings Scotland (CHS) have advised that this could be delivered as part of their wider digital strategy via online practice resources at a cost of approximately £5,000. There will be an additional cost associated with amending information material and updating existing training courses. However, this is not expected to be significant and CHS have advised this will be subsumed within their existing grant-in-aid budget.

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## Victim Support Scotland and other victim support organisations

46. Victim support organisations will need to update information materials to reflect the changes as a result of amending SCRA's Victim Information Service. These costs are not expected to be significant and will be subsumed as part of existing organisational training programmes and internal publications.

## Total costs

### Estimated one-off costs associated with the Bill

Area	Cost	Financial year	Notes
Publication of official documents, statutory guidance	£2,000	2019/20	Paragraph 12
Establishment of the independent reviewer	£5,500	2019/20	Paragraph 17 & 18
Changes to Disclosure Scotland public material	£2,000	2019/20	Paragraph 20
Backfill for Children and Families social workers	£170,000	2019/20	Paragraph 27, Table 3
Police Scotland training costs	£42,300	2019/20	Paragraph 39
Changes to police ICT systems	£256,000	2019/20	Paragraph 42, Table 4
Digital learning for Panel members provided by Children's Hearings Scotland	£5,000	2019/20	Paragraph 45
<b>Total one-off costs</b>	<b>£482,800</b>		

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### Estimated recurring costs associated with the Bill (annual)

<b>Area</b>	<b>Cost</b>	<b>Earliest financial year</b>	<b>Notes</b>
Provision of advocacy for children under 12 at interviews	£20,600	2019/20	Paragraph 13 – estimated maximum annual cost.
Independent reviewer fee	£6,000	2019/20	Paragraph 18
IT maintenance and consumables for the independent reviewer	£1,200	2019/20	Paragraph 18
SCTS administration costs for new court orders	£10,400	2019/20	Paragraph 24 – estimated maximum annual cost.
Potential increased involvement of social workers in investigations	£94,300	2019/20	Paragraph 30 – estimated maximum annual cost.
<b>Total annual cost</b>	<b>£132,500</b>		

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