

**Final Children's Rights and Wellbeing
Impact Assessment**

**The Criminal Justice (Scotland)
Act 2016 (Modification of Part
1 and Ancillary Provision)
Regulations 2017**

October 2017



Scottish Government
Riaghaltas na h-Alba
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Final CRWIA - Web version of Policy CRWIA

The Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017 – Final Children’s Rights and Wellbeing Impact Assessment March 2016	
Policy/measure	The Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017
Summary of policy aims and desired outcomes	This instrument modifies Part 1 of the Criminal Justice (Scotland) Act 2016 (the Act) to ensure that enhanced rights brought in through the Act apply to people arrested other than on suspicion of an offence
Directorate; Division; Team	Directorate for Safer Communities, Police Division, Police Powers and Finance
Executive Summary	<p>The Scottish Government consulted to seek feedback on how Part 1 of the Criminal Justice (Scotland) Act 2016 (the Act) should apply to arrest not relating to criminal offences, including certain warrant arrests. The feedback received during the consultation was used to shape the final regulations under section 60 of the Act. A draft set of regulations was included in the consultation paper which enabled the reader to see what amendments were proposed and why they were seen as necessary.</p> <p>The Criminal Justice (Scotland) act 2016 contains procedures and protections which will apply to all arrests. While the majority of arrests in Scotland are of people suspected of a criminal offence, there are arrests for other reasons allowed in various statutes. For example an arrest for a breach of a protective court order or a witness arrested under warrant to ensure they attend court. For these arrests, not all the procedures and protections set out in the Act are appropriate. Section 60 of the Act allows Scottish Ministers to make regulations to modify or dis apply the Act to arrests that do not relate to criminal arrests. These regulations will ensure that arrests which do not relate to criminal offences and certain warrant arrests can be catered for within the new arrest and custody procedures brought in by the Act.</p> <p>Although the regulations are of a very technical nature a full public consultation was considered appropriate to ensure that proper consideration was given to views regarding the rights which people arrested in these circumstances should be given.</p> <p>If regulations are not produced then the rights a person is entitled to whilst in police custody would be derived both from Part 1 of the CJ(S)A and other relevant statutes. Some of the provisions in Part 1 of the CJ(S)A assume the arrested person is suspected of a criminal offence, for example, it sets outs that the</p>

	<p>police must make custody decisions based on a test to determine whether a persons continued detention in custody is necessary and proportionate and that there are reasonable grounds for suspecting that a person has committed an offence or has been charged with an offence. The Act also governs the rules around interviewing suspects for offences. These tests and rules would not be relevant in circumstances where an individual was arrested under an interdict where no criminal offences were present, but there is still a requirement to bring a person before a court. The regulations will make it clear and transparent as to how individuals arrested under non-offence base arrests should be dealt by the police and what rights they will be entitled to whilst in police custody.</p> <p>These regulations are appropriate and proportionate and ensure that protections set out in the Act are extended to children and young people. Our CRWIA consideration has supported this view.</p>
<p>Background</p>	<p>The Scottish Government consulted on draft regulations between 24 October 2016 and 16 January 2017. A total of eight responses were received. One response was received from and individual who did not want their name to be published. In addition seven responses were received from organisations;</p> <ul style="list-style-type: none"> • The Scottish Council on Deafness • Police Scotland • Scottish Women’s Aid • The Finance and Leasing Association • The Law Society of Scotland • The Glasgow Bar Association • East Renfrewshire Health and Social Partnership <p>Provisions in Part 1 of the Act are specifically designed to have a positive impact on children and young people by ensuring the highest standard of protection is offered to children who are arrested and/or taken into custody. While defining a child as being under 18 years of age, the provisions reflect the Scottish Government’s preferred approach, which is to support 16 and 17 year olds to make their own decisions (in recognition of the age-based laws which operate here) with safeguards for all under 18 year olds and particular protections for those aged under 16 and 16 and 17 year olds who are subject to compulsory supervision. Part of those protections are the provisions in section 22-24 (which replace those currently in the Criminal Procedure (Scotland) Act 1995) which require that under 18’s must be kept in a place of safety (which is not a police station unless that is certified as being appropriate) prior to being brought to court, and that appropriate notice is passed to parents and local authorities that a person under 18 is to be brought before a court.</p>

	<p>The regulations make modifications to ensure that protections set out in sections 22-24 of the Act apply to a child arrested on non-offending grounds and held for court. The consultation paper contained a specific question regarding these modifications;</p> <p>“Do you agree that the protections in sections 22, 23 and 24 of the 2016 Act should apply to a child arrested on non-offending grounds and held for court?”</p> <p>Consultation responses agreed that it is appropriate for these protections to be applied. One response highlighted the need for information about the new processes to be available in an accessible way. One of the respondents advised that whilst it would be a rare occurrence that a child would be involved in breaching a non-offence based interdict it was necessary to have the provisions contained within sections, 22, 23 and 24 when they did. Another respondent indicated children’s interests should always be a primary consideration and the protections contained in section 22, 23 and 24 would ensure that the children’s interests were being protected.</p> <p>Contact was made with the main children’s groups during the consultation process. The Scottish Government also held specific stakeholder events in relation to the children’s provisions within the Act. Children’s groups have participated in these events which have shaped operational guidance formulated by Police Scotland.</p> <p>In addition the regulations were discussed by the group which was set up to oversee implementation of Part 1 of the Act which includes membership from;</p> <ul style="list-style-type: none"> • Police Scotland • Crown Office and Procurator Fiscal Service • Scottish Legal Aid Board • Scottish Government • Scottish Courts and Tribunals Service <p>The group also agreed that the regulations are appropriate.</p>
<p>Scope of the CRWIA</p>	<p>The regulations have an impact on people who are arrested other than for criminal offences. The regulations are intended to make sure that the procedure followed for these arrests is fair and appropriate. As such it was assessed that a high level CRWIA was required. However as identified by respondents to consultation it would be rare for children to be arrested in these circumstances, although it cannot be ruled out that there could be arrests for breaching these types of interdicts. On the basis</p>

	<p>that it would be rare for a child to be arrested in these circumstances the CRWIA has been kept at a fairly high level.</p> <p>The Scottish Government has identified some data sources which help to provide context for the development of the regulations and the impact assessment process. These include;</p> <ul style="list-style-type: none"> - Reforming Scots Criminal Law and Practice: The Carloway Report - Responses to the ‘Reforming Scots Criminal Law and Practice: The Carloway Report’ Consultation - Statistics regarding convictions from Criminal Proceedings In Scotland 2014-15 - EQIA for the Criminal (Justice) Scotland Act 2016 - Police Scotland Report, ‘Children and Young People 2016/20 – Our Approach’ - Statistical information provided by COPFS
<p>Children and young people’s views and experiences</p>	<p>The Crown Office and Procurator Fiscal service have provided statistical information relating to the total number of individuals arrested for breaching the non-offending interdicts. This information does not however provide information relating to the age of the offender. It is therefore difficult to ascertain how many children are breaching these types of interdict. Consultation respondents from the legal profession has indicated in their responses that in their experience it would be rare for children to be arrested on those types of interdict although it cannot be ruled out that it could occur.</p> <p>Police Scotland’s ‘Policing Approach to Children and Young People 2016/20’ sets out Police Scotland’s commitment to young people to set the tone for engagement with children and young people over the next few years. This approach is linked to the UNCRC and was developed in partnership with the Police Scotland Youth Advisory Panel which brought together young people from across Scotland.</p> <p>This approach sets out Police Scotland priorities and commitments to children and young people. Part of this includes ensuring children and young people understand their rights and treat them fairly. This will be important in implementing the regulations and developing arrest and custody processes.</p>
<p>Key Findings</p> <p>To include impact on UNCRC rights and contribution to wellbeing indicators</p>	<p>There is scope for the Regulations to impact on a significant number of the articles contained within the UNCRC. These include (but are not limited to):</p> <ul style="list-style-type: none"> • Article 2 – Non Discrimination • Article 3 – Best Interest of the Child

	<ul style="list-style-type: none"> • Article 4 – Protection of Rights • Article 23 – Children with Disabilities • Article 37 – Detention and Punishment <p>Policing, and the process of arrest and custody, can also be relevant to the eight wellbeing indicators – Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included (SHANARRI) – developed by the Scottish Government as part of the GIRFEC approach.</p> <p>The regulations are intended to support childrens rights and wellbeing if they are subject to non-offending arrest by ensuring that protections set out in the Act apply appropriately.</p>
<p>Conclusions and Recommendations</p>	<p>The Scottish Government is confident that the regulations will ensure that procedures relating to children arrested and taken into custody for non-offending arrests are appropriate. Provisions relating to arrest and custody in Part 1 of the Act and in these regulations are generally intended to modernise the system ensuring compliance with ECHR in a fair and transparent way.</p>
<p>Monitoring and review</p>	<p>Moving forward, these regulations will be translated into specific operational processes by Police Scotland. It is expected that further impact assessment will be carried out by Police Scotland to support that work.</p>
<p>CRWIA Declaration</p>	
<p>Tick relevant section, and complete the form.</p>	
<p>CRWIA required</p>	<p>CRWIA not required</p>
<p>Yes</p>	
<p>Authorisation</p>	
<p>Policy lead Stephen Tidy Police Division</p>	<p>Date July 2017</p>
<p>Deputy Director or equivalent Don McGillivray Deputy Director Police Division</p>	<p>Date July 2017</p>



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