

Privacy Impact Assessment

**The Age of Criminal
Responsibility (Scotland) Bill**

March 2018

Privacy Impact Assessment (PIA)

1. Introduction

A PIA is a tool to identify and reduce the privacy risks of a project. A PIA can reduce the risks of harm to individuals through the misuse of their personal information. The Information Commissioner's Office, as the public body chiefly concerned with data protection, has produced guidance on PIAs. Their guidance, including PIA screening questions, has been used in the development of this PIA.

This PIA explores the implications for confidentiality and privacy of information as a consequence of the Age of Criminal Responsibility (Scotland) Bill. It provides:-

- background information setting out the statutory framework within which the disclosure regime and Scottish Children's Reporter Administration's (SCRA) Victim Information Service operates.
- the PIA screening process questions and answers, conclusions and information flows.
- details of how information is passed to the Scottish Government.
- the legal basis for gathering and storing information and the mitigations in place to safeguard that information.

2. Document metadata

Name of Project –	Age of Criminal Responsibility (Scotland) Bill
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Date for review of Privacy Impact Assessment (PIA) -	November 2018

3. Background

The Age of Criminal Responsibility (Scotland) Bill

On 1 December 2016 the Minister for Childcare and Early Years announced in the Chamber of the Scottish Parliament that the Scottish Government would bring forward legislation this term to raise the age of criminal responsibility (ACR) from 8 to 12 years of age.

The main purpose of the Bill is to raise the ACR in Scotland from 8 to 12 to align it with the current minimum age of criminal prosecution and reflect Scotland's progressive commitment to international human rights standards so that:

- Children under the ACR are not stigmatised by being criminalised at a young age due to being labelled an “offender”;
- Children under the ACR are not disadvantaged by having convictions for the purposes of disclosure, which can affect them later in life;
- The new ACR aligns with longstanding presumptions around maturity, rights and participation, and improves the position of children with care experience (especially children looked after away from home) whose behaviours are more likely to have been reported to police and therefore to attract a criminalising state response, than Scotland’s child population in general.

In consequence of the change to the ACR, the Bill also provides for a number of measures to ensure that action can still be taken by the police and other authorities when children under the age of 12 are thought to have been involved in serious incidents of harmful behaviour. These measures include specific investigatory and public safety powers for the police; information about behaviour that occurred when a child was under the age of 12 being disclosed on an enhanced disclosure certificate or PVG scheme record following a review by an independent reviewer (IR); provisions for victim information; and a right for a child to have access to children’s advocacy services during a police interview conducted under a child interview order.

This PIA explores the implications for confidentiality and privacy of information as a consequence of the Age of Criminal Responsibility (Scotland) Bill with regards to the provisions relating to disclosure and information to victims.

Disclosure

Policy in this area balances the rights of ex-offenders (or those who have committed harmful acts as children), where their behaviour was not so serious that it must be disclosed forever, to have their past consciously moved into the private realm after the passage of an appropriate time period, with the essential requirement that the police, employers and other safeguarding organisations continue to have the information necessary to keep Scotland’s people – particularly the vulnerable – safe from harm.

The Criminal Procedure (Scotland) Act 1995

This Act sets out two rules in relation to the age at which a child can be held criminally responsible. The first is the age below which a child is considered to lack the capacity to commit a crime. This age is currently eight in Scotland. This rule is contained in section 41 which states that it “shall be conclusively presumed that no child under the age of eight years can be guilty of an offence.” The second is the age of prosecution. This is currently 12, although children below the age of 16 can be prosecuted only on the instructions of the Lord Advocate or at his instance by virtue of sections 41A and 42(1).

The Police Act 1997

This Act and the Protection of Vulnerable Groups (Scotland) Act 2007 provide the basis for Disclosure Scotland to discharge the Scottish Ministers' functions by carrying out criminal record checks for recruitment and other purposes. Under the 1997 Act, the criminal conviction certificate, criminal record certificate and enhanced criminal record certificates are available. These certificates are commonly referred to as the basic, standard and enhanced disclosure. Under the 2007 Act, which established the Protection of Vulnerable Groups ('PVG') Scheme in Scotland, a scheme record, a short scheme record, and a scheme membership statement are available.

Section 113A of the 1997 Act requires a criminal record certificate to be issued to any person who makes an application and who pays, in the prescribed manner, any prescribed fee. That certificate gives details of every relevant matter relating to the applicant which is recorded in the UK's central records of convictions. A "relevant matter" includes:-

- (a) a conviction which is not a protected conviction;
- (b) a caution which is not spent by virtue of schedule 3 to the 1974 Act; and
- (c) a prescribed court order.

The terms of section 3 of the Rehabilitation of Offenders Act 1974 means that the acceptance by the child and parent or other relevant person or the establishment (or deemed establishment) by a sheriff of the offence ground of referral to a children's hearing is defined as a 'conviction'.

The combination of section 3 of the 1974 Act and section 113A of the 1997 Act means that offence-based disposals from children's hearings come within the scope of Disclosure Scotland.

ACR Bill Sections 4 – 21: Disclosure of convictions and other information relating to time when person under 12

Raising the ACR to 12 will mean it is no longer possible to refer a child under that age to a children's hearing on the ground that they have committed an offence. The age for criminal prosecution is already 12 (see above) so there is no possibility of court conviction for a child under 12. This means that the only way information could be disclosed about a person's conduct when aged below 12 is through 'Other Relevant Information' (ORI) included by the chief constable on an enhanced disclosure or a PVG Scheme Record (ORI cannot be included on basic or standard disclosure). Whilst it is possible that such a disclosure might occur whilst the individual was still a child, it is more likely that it would occur at a later stage, for example when the individual was applying for a college/university course or seeking a disclosure for employment purposes.

Prior to disclosure of ORI about conduct which occurred when the individual was under the age of 12, an assessment will be made by the IR – a new appointment.

The IR's function is to review the chief constable's decision to provide ORI about conduct which occurred when the individual was under the age of 12 for inclusion on the enhanced disclosure or PVG scheme record. The IR will be able to gather information from the individual and certain public bodies in Scotland to inform their review. Only if the IR agrees with the chief constable will the ORI be released. The IR's decision will be final. An appeal to a sheriff, but only on a point of law, will be available to the individual and the chief constable.

Victim Information

Criminal Justice (Scotland) Act 2003 – Scottish Children's Reporter Administration Victims Information Service

Currently, under Section 53 of the Criminal Justice (Scotland) Act 2003, the Principal Reporter has the power to tell victims of offences committed by children certain limited information about how a case has been disposed of via the children's hearings system. The reporter may only provide information to victims, relevant persons (where the victim is a child) and other persons prescribed by order of the Scottish Ministers. In practice, the Scottish Children's Reporter Administration (SCRA) delivers this through its Victim Information Service (VIS).

The Principal Reporter may only provide basic information about the reporter's decision (i.e. whether or not to bring the child to a hearing) and whether or not the hearing has made a Compulsory Supervision Order (CSO). This information can only be provided where: the information is requested and the Principal Reporter considers disclosure is appropriate in the circumstances; and that it would not be detrimental to any child involved in the case. The identity of the child perpetrator is not revealed nor confirmed. If the child was referred on multiple grounds then the victim would only be entitled to know about the specific ground in which they are identified as the victim.

Currently, these rights are engaged only where the Principal Reporter receives information about a case where it appears that a child has committed an offence. Raising the ACR would therefore remove victims of harmful behaviour by children aged 8 to 11 from the scope of these provisions and those victims would no longer be able to receive information.

ACR Bill Section 22: Provision of information to persons affected by child's behaviour

The Bill therefore aims to ensure that where a child under the ACR engages in conduct which causes harm to a victim, the current rights of that victim should not be diminished and there should continue to be appropriate information and support provision for victims of the harmful conduct of children under the ACR.

Section 22 of the ACR Bill sets out powers which allow the Principal Reporter to disclose information to victims of offences by children aged 12 and over and victims of harmful behaviour by children aged under 12.

This disclosure regime will continue to be delivered by SCRA under the VIS. Consistent with the existing legislation, the Bill ensures that where the Principal Reporter has received information that a child may have committed an offence, a

victim of that offence may request and receive information about the disposal of that case. In addition, the Bill sets out new powers to allow the Principal Reporter to provide information to victims of the most harmful behaviour by children under the ACR. To ensure information that is shared about a child under ACR is proportionate and justified, the Bill makes these powers available to the Principal Reporter only in serious cases, that is, where the Principal Reporter has received information which suggests that a child under ACR has caused harm to another person by engaging in behaviour which is:

- physically violent;
- sexually violent or coercive; or
- dangerous, threatening or abusive.

The Bill seeks to balance the needs and rights of victims with the best interests of the child responsible for the harm, which are the paramount concern of the children's hearings system. This is to be achieved by restricting the group of persons who can access information, restricting the information that can be disclosed and restricting the circumstances when information can be disclosed. The Principal Reporter will continue to have discretion to disclose information and will only be able to disclose information where disclosure would not be detrimental to any child involved and would not otherwise be inappropriate. This enables the Principal Reporter to ensure that any decision to disclose under the statutory provisions balances the needs of the victim and the interests of the child involved.

Police powers

ACR Bill Part 4 Chapter 4: Taking of prints and samples from certain children

Currently, children aged 8 to 11 may be arrested if the police suspect them of committing a crime. When a suspect is arrested, the police have the right to take a DNA sample (this is normally a mouth swab). Samples are sent to the Scottish Police Authority's Forensic Services, which analyses the samples. The resulting DNA profiles are stored on the Scottish DNA database. They are also sent to the National DNA Database in Birmingham. All police forces across the UK can search the National DNA Database, to check whether profiles stored there match samples they hold (whether taken from a person or from a crime scene). The police may also take fingerprints from a suspect who has been arrested. These are stored on IDENT1, which is a UK-wide fingerprint database and can be searched by police forces across the UK. Photographs are taken of suspects in custody, too, and stored on Police Scotland's Criminal History System. If the person is not ultimately convicted then the data and samples taken from them (as well as the records of those samples, e.g. the DNA profile) must be destroyed. However, currently if an 8 to 11 year old is referred to a children's hearing on offence grounds and the hearing upholds those grounds, then the samples and records may be retained on the system – for certain sexual and violent offences they may be retained for three years.

The Bill significantly changes this approach for 8 to 11 year olds, heavily limiting the circumstances in which samples may be taken and introducing stricter destruction requirements. The police will only be permitted to take samples, prints, photographs

or other forensic or physical data from children under 12 if they suspect that the child has carried out a seriously harmful act. The police will normally be required to first obtain a court order authorising the sample. In some situations it may be necessary to take a sample more urgently than obtaining a court order would allow for (because the sample needed to investigate the serious act could be lost or destroyed if there is a delay). In these cases a superintendent (or more senior officer) may authorise the taking of the sample if they can satisfy themselves of the same criteria that a sheriff would need to satisfy themselves of to grant an order. The police would then need to apply for an order retrospectively, ensuring that there is always independent judicial oversight of the taking of samples from children under 12. The police would not be permitted to analyse or otherwise process the sample until and unless the order is granted: in the meantime they could only store the sample as necessary to prevent its deterioration.

Under the Bill, any samples taken from a child to investigate behaviour they are suspected of committing while under 12 must be destroyed (along with records derived from the sample) once they are no longer needed for the investigation, or once any resulting children's hearings proceedings have concluded.

It should be noted that these new provisions will apply to all children under 12 – in other words, they will apply not just to 8 to 11 year olds (from whom samples can currently be taken under criminal justice powers) but also from children under eight (who cannot currently be compelled to give samples). It is anticipated that the number of children under eight affected will be exceedingly small: behaviour serious enough to warrant the taking of samples under the Bill is very rare in this age group. However, if – exceptionally – a child under eight is suspected of carrying out a seriously harmful act, it is important that the police are able to investigate that thoroughly to understand what has happened. If a sample confirms that a child has carried out a very harmful act, that information will help ensure that the child's needs and risks are fully understood, so that any appropriate child protection, risk-management and support measures can be put in place. Using a sample to confirm a child's involvement may help the victim to achieve closure as well. A sample also has the potential to conclusively prove that a child was not involved in a serious harmful event, which would allow the investigation to stop focussing on the child.

Samples taken to investigate the behaviour of children under 12 will not be sent to the National DNA Database, and fingerprints taken will not be stored on IDENT1. This means that other police forces in the UK will not have access to data taken from children under the Bill. Data on children under 12 (such as photographs) will not be stored in Police Scotland's Criminal History System.

4. PIA screening process

The main aim of the Bill (raising the age of criminal responsibility) will not involve the handling of personal data. The provisions in the Bill relating to disclosure of ORI and the delivery of SCRA's Victim Information Service will involve handling and sharing personal data under restricted circumstances.

This PIA aims to assess and manage the risks associated with data protection and information privacy under those restricted circumstances. The first stage in the PIA is

the screening process. A screening process was conducted to evaluate whether a full-scale PIA should be conducted. The screening questions and answers are detailed below.

Technology

Does the project apply new or additional information technologies that have substantial potential for privacy intrusion?

Sections 4 – 21 Disclosure:

No.

Section 22 Victim Information:

No.

Part 4 Chapter 4: Taking of prints and samples:

No.

Identity

Does the project involve new identifiers, re-use of existing identifiers or intrusive identification, identity authentication or identity management processes?

Sections 4 – 21 Disclosure:

No, the same identifiers are used as those under the current system. Names, National Insurance (NI) numbers, dates of birth and address/address history are all collected as part of the official collection and recording of information. These are subject to all appropriate safeguards. None of this information could ever be published or released to the general public.

Section 22 Victim Information:

No, the same identifiers will be used as those under the current process for the Victim Information Service. There will be no new changed identity authentication requirements. The Principal Reporter will consider the same identifiers (including information from the Concern Report and Standard Prosecution Report) to determine if information may be disclosed to a victim of harmful behaviour of child under 12 or victim of an offence committed by a child/young person.

Part 4 Chapter 4: Taking of prints and samples:

It is expected that the same identifiers will be used as are currently used.

Might the project have the effect of denying anonymity and pseudonymity, or converting transactions that could previously be conducted anonymously or pseudonymously into identified transactions?

Sections 4 – 21 Disclosure:

No.

Section 22 Victim Information:

Yes. The Principal Reporter will not disclose the name of the child referred to the children's hearings system. However, the Principal Reporter may disclose limited information about the disposal of a case following a report of certain offending or harmful behaviour on the part of a child. This data may be used where the child's identity is already known.

Part 4 Chapter 4: Taking of prints and samples:

No.

Multiple organisations

Does the project involve multiple organisations, whether they are government agencies (e.g. in 'joined up government initiatives) or private sector organisations (e.g. as out-sourced service providers or as 'business partners')?

Sections 4 – 21 Disclosure:

Yes. As part of their review, the new IR will contact various public bodies (e.g. SCRA, local authorities, etc.) in order to obtain additional information regarding the individual and the behaviour that is proposed to be disclosed. However, all appropriate measures will be taken to ensure data sharing with the various organisations is secure and compliant with the Data Protection Act 1998 (DPA) and the EU General Data Protection Regulation (GDPR). This will follow the same processes and procedures as those under the current system.

Information to support an appeal will need to be provided to a Sheriff and to the Scottish Government's Legal Directorate as part of appeals process.

Section 22 Victim Information:

Yes. However, implementation of the VIS under the new legislation will include the same organisations already involved in the processing of the data under the existing VIS process including SCRA, Police Scotland, Local Authorities, particularly Social Work, Victim Support Scotland and potentially other organisations such as the Criminal Injuries Compensation Authority and insurance bodies. All appropriate measures will be taken to ensure data sharing with the various organisations is secure and compliant with the DPA and the GDPR.

Part 4 Chapter 4: Taking of prints and samples:

Yes. Prints and samples will be taken by Police Scotland, and passed to the Scottish Police Authority Forensic Services for processing and analysis. This will be done in accordance with well-established secure processes and procedures. Samples taken under the Bill (and records derived from them) will not be sent to UK-wide databases, and so will not be accessible by other police forces in the UK.

Data

Does the project involve new or significantly changed handling of personal data that is of particular concern to individuals?

Sections 4 – 21 Disclosure:

No. The process for handling data for appeals to a Sheriff in other circumstances already exists, there is no change caused by this new legislation other than the addition of the IR role, which will be subject to the same strict privacy rules. Disclosure Scotland and Police Scotland already share ORI by secure means.

Section 22 Victim Information:

Yes. The process for handling personal data to deliver the VIS already exists. However, the process of disclosing information under the VIS in relation to the harmful behaviour of children under the ACR is new. As noted above, only basic information is to be disclosed under section 22 of the Bill, explaining what action the Reporter has taken in response to the receipt of information about a child's behaviour but not providing more intrusive information such as the underlying welfare reasons for any action taken. The information will not be disclosed if the Principal Reporter considers that disclosure would be to the detriment to any child involved in the case or that disclosure would be otherwise inappropriate. These safeguards will enable the Principal Reporter to ensure that disclosure is not excessive in relation to the purpose of protecting the interests of victims.

The data handled by SCRA is protected from public access and can only be viewed by authorised personnel. All employees and contractors are prohibited from using personal information for any purpose out with SCRA's remit and legal responsibilities.

Part 4 Chapter 4: Taking of prints and samples:

No. Prints and samples taken will be handled in accordance with existing processes. However, the prints, samples, and any records derived from them must be destroyed once they are no longer needed for the investigation for which they were taken, or once resulting children's hearings proceedings have concluded. This is in contrast to the current position, under which samples taken from a child can be retained on police databases for three years if a children's hearing rules that grounds have been established for certain violent or sexual offences.

Does the project involve new or significantly changed handling of a considerable amount of personal data about each individual in the database?

Sections 4 – 21 Disclosure:

The IR will have the ability to gather additional information regarding an individual and their pre-12 behaviour. However, the processes and systems involved will be subject to the same strict privacy rules as other data held by Disclosure Scotland.

Section 22 Victim Information:

No. The process for handling considerable amounts of personal data by SCRA already exists.

Part 4 Chapter 4: Taking of prints and samples:

As explained above, the Bill creates strict destruction requirements for samples taken from children under these provisions: samples and any records derived from them must be destroyed once they are no longer needed for the investigation for which they were taken, or once resulting children's hearings proceedings have

concluded. Samples and prints taken from children under the Bill will not be recorded on the Criminal History System, or passed to the National DNA Database or IDENT1. This means it will not be possible for the police (whether in Scotland or elsewhere in the UK) to check crime scene samples against samples taken from children under the Bill.

Does the project involve new or significantly changed handling of personal data about a large number of individuals?

Sections 4 – 21 Disclosure:

No. We anticipate the number of potential ORI disclosures by the police to be very small (less than 10 cases per year).

Section 22 Victim Information:

No. The process for handling personal data by SCRA about large numbers of individuals already exists. Section 22 provides new powers for disclosure of information to victims of harmful behaviour of children under the ACR, which means additional processing of the data in relation to children under eight, however these cases are expected to be few in number. Data provided by SCRA suggests that in 2017, only 53 victims of offences by children aged 8 to 11 opted in to the Victim Information Service. The number of victims of harmful behaviour of children under eight is therefore expected to be even lower.

Part 4 Chapter 4: Taking of prints and samples:

No, it is expected that the numbers of children affected will be very small. As an illustration, it is understood that in the last three years only three children aged 8 to 11 have had biometric data captured and placed on the relevant database.

Does the project involve new or significantly changed consolidation, inter-linking, cross-referencing or matching of personal data from multiple sources?

Sections 4 – 21 Disclosure:

As above, the IR will have the ability to gather additional information regarding an individual and their pre-12 behaviour from a number of public bodies. However, the processes and systems involved will be subject to the same strict privacy rules as other data held by Disclosure Scotland.

Section 22 Victim Information:

No. Implementation of the VIS under the new legislation will include the same organisations already involved in the processing of the data under the existing process including SCRA, Police Scotland, Local Authorities - Social Work, Victim Support Scotland and potentially other organisations such as the Criminal Injuries Compensation Authority and insurance bodies. All appropriate measures will be taken to ensure consolidation, inter-linking, cross-referencing or matching of personal data between multiple sources compliant with the DPA and the GDPR.

Part 4 Chapter 4: Taking of prints and samples:

No. As explained above the opportunities for cross-referencing or matching data will become more limited, because data derived from samples taken from children under the Bill will not be placed on the Criminal History System, IDENT1 or the National

DNA Database, and it will not be possible to match that data with crime scene samples.

Exemptions and exceptions

Does the project relate to data processing which is in any way exempt from legislative privacy protections?

Sections 4 – 21 Disclosure:
No.

Section 22 Victim Information:
No.

Part 4 Chapter 4: Taking of prints and samples:
No.

Does the project's justification include significant contributions to public security measures?

Sections 4 – 21 Disclosure:
No.

Section 22 Victim Information:
No.

Part 4 Chapter 4: Taking of prints and samples:
No.

Does the project involve systematic disclosure of personal data to, or access by, third parties that are not subject to comparable privacy regulation?

Sections 4 – 21 Disclosure:
No.

Section 22 Victim Information:
No.

Part 4 Chapter 4: Taking of prints and samples:
No.

5. Conclusion from Screening

Sections 4 – 21: Disclosure of convictions and other information relating time when person under 12

The answers to the screening process suggest that there are limited concerns in terms of privacy as a result of the additional information and systems that will be set up as a result of the IR and their assessment process. All organisations who will be involved in information sharing and review are subject to the DPA and GDPR.

Section 22: Provision of information to persons affected by child's behaviour

The answers to the screening process suggest that there are limited concerns in terms of privacy as a result of the changes to the handling and processing of data as a result of section 22 of the Bill.

The disclosure of information under section 22 is aimed at protecting the interests of those harmed or adversely affected by a child's behaviour and the restrictions on disclosure allow the reporter to ensure the child's interests are also respected.

The information that may be disclosed is limited and can be further limited, or not disclosed at all, at the discretion of the reporter thereby ensuring that the data disclosed is limited to what is necessary for the purposes of the disclosure. SCRA and all other organisations who will be involved in the processing of information under section 22 are subject to the DPA and GDPR.

In conclusion, based on the answers to the screening exercise we do not believe that a full-scale PIA is required and we have proceeded on the basis that a small-scale PIA is appropriate. A matrix detailing the main privacy risks associated with the data processing and the action being taken to mitigate the risks is detailed at **Annex A**.

6. Consultation

No specific consultation has been carried out as part of this PIA. Specific questions about the disclosure of information - relating to harmful behaviour by under 12 year olds, both i) by SCRA in respect of victims and ii) by police and Disclosure Scotland, were included in the general consultation on the recommendations made by the Age of Criminal Responsibility Advisory Group. The analysis of consultation responses is available at: <http://www.gov.scot/Resource/0051/00510795.pdf>

7. Information flows

Sections 4 – 21 Disclosure:

The standard process for ORI will be followed; however, prior to disclosure it will be reviewed by the IR, along with the other information that has been gathered. The individual will also be approached to allow them to provide representations to the IR, which will be considered along with all other information.

Section 22 Victim Information:

The existing data process for the operation of the Victim Information Service will be followed. SCRA receive information about children who are referred to the Principal Reporter in order to exercise their statutory functions to address that behaviour via the children's hearings system. This information can be provided by a Prosecution Report or Concern Report from agencies such as Police Scotland, Local Authority social work and schools, etc. If a child or young person has been referred to the reporter for committing an offence and there is a named victim of the offence SCRA retains information on the victim in order to be able to contact the victim to ask if they

wish to receive information under the VIS and provide information about the disposal of the case. Under section 22 of the Bill, this processing of data will also include cases where a child has been referred to the Principal Reporter as a result of harmful behaviour.

8. How is information passed to Disclosure Scotland?

Proposed ORI will be sent to Disclosure Scotland as is currently the process. Disclosure Scotland will share proposed ORI with IR through the secure Scottish Government IT network. Additional information that the IR has requested will come in to DS from various organisations and representations will come from the individual

How is information passed to the SCRA and victims?

The existing process for the transfer and sharing of information will be followed. Currently information is sent to the SCRA by secure electronic transfer and various other methods such as by correspondence or communication with various organisations involved in the process. Under the Victim Information Service, victims and other relevant persons will be contacted by written correspondence.

9. Legislation

The Data Protection Act 1998 (DPA) is the main piece of legislation that deals with storing and processing information. The Act provides a set of principles to ensure that personal information is used only for legitimate purposes. The principles state that personal data must be:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;
- accurate;
- not kept for longer than necessary;
- processed in accordance with the individual's rights;
- kept secure; and
- not transferred abroad without adequate protection

A DPA compliance check (Annex B) has been carried out as part of this PIA and we are content that this complies with the requirements of the DPA.

Human Rights Act (Article 8). This Article provides that everyone has the right to respect for their private and family life, home and correspondence.

10. Future actions

Sections 4 – 21 Disclosure:

The processes and systems needed for the IR will be based around existing practice so will meet all privacy and data protection requirements.

The IR will be appointed by Scottish Ministers and will agree to all necessary protections for handling sensitive information.

Section 22 Victim Information:

As noted above, the existing processes and systems for the existing Victim Information Service will be used to deliver the new powers provided by section 22 of the Bill. However, some additional training will be provided to staff delivering the VIS and information about the changes will be made available for those directly impacted and the wider public for awareness.

11. Conclusion


We have conducted this PIA to establish the risks and the mitigation of these risks, in terms of privacy, to the information that we will be handling, and storing.

This PIA has identified that any new processes will use the current data handling and storage arrangements and that these arrangements do not pose any significant risks to the privacy of that information.

We believe that the systems that are in place for managing the transfer and storage of data comply with legislative demands, and we will review any further legislative changes to ensure that the arrangements comply with them.

12. Authorisation and publication

I confirm that the impact of the Age of Criminal Responsibility (Scotland) Bill has been sufficiently assessed against the needs of the privacy duty.

 <p>Donald Henderson Deputy Director Directorate for Children and Families</p>	<p>Date each version authorised: 9 March 2018</p>
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Privacy Impact Assessment - Mitigation Summary

Annex A

Questions to identify Privacy Issues	Answer and Risk rating	Mitigation
1. Does the proposal include the use of new or additional technologies with the potential for privacy intrusion?	Section 4-21 No – Low Section 22: No – Low	
2. Identity: Does the proposal include new identifiers, or substantially change or re-use existing identifiers or any intrusive or onerous identification, authentication or identity management processes?	Section 4-21 No – Low Section 22: No – Low	
3. Identity: Does the proposal affect anonymity or pseudonymity; will previously anonymous or pseudonymous transactions be identified?	Section 4-21 No – Low Section 22: Yes – Low	<p>The disclosure of information under section 22 is aimed at protecting the interests of those harmed or adversely affected by a child’s behaviour and the restrictions on disclosure allow the Principal Reporter to ensure the child’s interests are also respected.</p> <p>The information that may be disclosed is limited and can be further limited, or not disclosed at all, at the discretion of the Principal Reporter. This ensures that the data disclosed is limited to what is necessary for the purposes of the disclosure. SCRA and all other organisations who will be involved in the processing of information under section 22 are subject to the DPA and GDPR.</p>
4. Is the justification for the proposal either unpublished or unclear?	Section 4-21 No – Low Section 22: No – Low	
4. a) Does the proposal involve new or changed data collection policies or practices that may be unclear or intrusive?	Section 4-21 No – Low Section 22: No – Low	There will be additional data/information collected by the IR but this will not be unclear or intrusive

4. b) Does the proposal involve new or changed quality assurance or security processes or standards that may be unclear and/or unsatisfactory?	Section 4-21 No – Low Section 22: No – Low	
4. c) Does the proposal involve new or changed data access or disclosure arrangements that may be unclear or permissive?	Section 4-21 No – Low Section 22: No – Low	All new procedures and systems will be clear and the individual will be made aware of what their information is being used for. Training will be carried out for staff responsible for the operation of the Victim Information Service. Information about the changes will be made available for those directly impacted and the general public for awareness.
4. d) Does the proposal involve new or changed data retention processes that may be unclear or extensive?	Section 4-21 No – Low Section 22: No – Low	
4. e) Does the proposal involve a new or changed medium or method of disclosure for publicly available information so data is more readily accessible?	Section 4-21 No – Low Section 22: No – Low	
5. Will the proposal involve multiple organisations, either government agencies (e.g. 'joined-up government' initiatives) or the private sector?	Section 4-21 Yes – Low Section 22: Yes – Low	A number of public bodies will be involved (e.g. the police, local authorities, SCRA, Courts etc.); however, they all have strict rules for privacy and data protection.
6. Does the proposal involve personal data of particular concern to individuals?	Section 4-21 Yes – Low Section 22: Yes – Low	The IR will have access to personal data but this will be used to determine disclosure of information about that individual – so will only be used for a positive purpose. Only basic information is to be disclosed under section 22 of the Bill, explaining what

		action the reporter has taken in response to the receipt of information about a child's behaviour but not providing more intrusive information such as the reasons for the action taken. The information will not be disclosed if the Principal Reporter considers that disclosure would be to the detriment of any child involved in the case or that disclosure would be otherwise inappropriate. These safeguards will enable the Principal Reporter to ensure that disclosure is not excessive in relation to the purpose of protecting the interests of victims.
7. Does the proposal involve the linkage of personal data with data in other collections, or any significant change to existing data links or holdings?	Section 4-21 Yes – Low Section 22: No – Low	There will be a new link needed between the Disclosure Scotland IT system used for processing ORI and the Scottish Government network to be used by the IR.
8. Will the proposal handle a significant amount of data about each person, or significantly change existing data-holdings?	Section 4-21 No – Low Section 22: No – Low	Although the IR will have access to additional information this will only be used for the specific purpose of assessing disclosure.
9. Will the proposal handle data about a significant number of people, or change significantly the existing population scope or coverage?	Section 4 -21 No – Low Section 22: No – Low	No, the number of individuals affected is expected to be very low.
10. Does the proposal consolidate, inter-link, cross-reference or match personal data from multiple sources?	Section 4-21 Yes – Low Section 22: Yes – Low	Information for the IR's test will be gathered from multiple sources. The reporter will consider existing information from multiple sources to apply the new powers provided by the Bill.
11. Is the proposal to process any data that is exempt from legislative privacy protections?	Section 4-21 No – Low Section 22: No – Low	

12. Does the proposal's justification include significant contributions to public security measures?	Section 4-21 No – Low Section 22: No – Low	
13. Does the proposal intend to disclose personal data to, or access by, third parties that are not subject to EU or comparable privacy regulation?	Section 4-21 No – Low Section 22: No – Low	

Annex B DPA Compliance Check

1. What type of personal data is going to be processed?

Section 4-21 Disclosure

Names, addresses, date of birth, gender, age NI Numbers.

Section 22 Victim Information

Information about an offence or alleged offence committed by a child and information about the harmful behaviour of a child under 12 – including information about the actions taken by the reporter or disposal of a Children’s Hearing as a result of that behaviour.

2. Which of the grounds in schedule 2 of the DPA will provide a legitimate basis for the processing?

Section 4-21 Disclosure

We consider that Schedule 2 Condition 5 (b) is appropriate. Schedule 2 Condition 5 (b), states that “for the exercise of any functions conferred on any person by or under any enactment,”

Section 22 Victim Information

The condition in paragraph 5(b) of Schedule 2 is satisfied where the processing is necessary for the exercise of any functions conferred on any person by or under an enactment. This condition is satisfied in relation to section 22 of the Bill as the disclosure of personal data is necessary for the exercise of the reporter’s statutory function to provide victims and other specified persons with information about the action taken by the reporter in response to certain behaviour of a child.

3. If sensitive personal data is going to be processed, which of the grounds in schedule 3 (in addition to the schedule 2 grounds) will provide a legitimate basis for that processing?

Section 4-21 Disclosure

In accordance with the Act, information to be received, stored, and processed will be classified as “sensitive personal data”.

To meet the second requirement we consider that Schedule 3

Condition 7(b), will apply, -“for the exercise of any functions conferred on any person by or under any enactment,”

Section 22 Victim Information

As noted above, section 22 allows the disclosure of information about the reporter’s actions following a report of certain offending or harmful behaviour on the part of a child. This data could be used to identify the child and, accordingly, it would constitute personal data for the purposes of the DPA. This data may also be seen as information relating to the commission or alleged commission of an offence in relation to children aged 12 and over and would therefore constitute sensitive personal data for the purposes of the DPA.

The condition in paragraph 7(1) (b) of Schedule 3 is satisfied where the processing is necessary for the exercise of any functions conferred on any person by or under an enactment. This condition is satisfied in relation to section 22 of the Bill as the disclosure of personal data is necessary for the exercise of the reporter's statutory function to provide victims and other specified persons with information about the action taken by the reporter in response to certain behaviour of a child.

4. Are there any special considerations relating to Article 8 of the Human Rights Act that will not be covered by the PIA?

This Article provides that everyone has the right to respect for his private and family life, his home and his correspondence.

Section 4-21 Disclosure

There are no special considerations not covered by this PIA

Section 22 Victim information

Section 22 of the Bill provides a power for the Principal reporter to disclose certain information about the reporter's response to certain behaviours on the part of a child. This disclosure of information may constitute an interference with the child's article 8 rights. The Scottish Government considers that any such interference is justified in terms of legal certainty, purpose and proportionality. Section 22 provides a robust statutory regime which clearly explains when disclosure can take place thereby ensuring the legal certainty of any interference with article 8 rights. The purpose of the interference is to protect the interests of victims of the offending or harmful behaviour of children - ensuring that victims of certain forms of behaviour are informed of the state's response to that behaviour. The provisions ensure the interference is proportionate by restricting the group of persons who can access the information, the information to be disclosed and the circumstances in which information can be disclosed.

5. Will any of the personal data be processed under a duty of confidentiality? If yes, how is that confidentiality being maintained?

Section 4-21 Disclosure

No

Section 22 Victim Information

No

6. How are individuals being made aware of how their personal data will be used?

Section 4-21 Disclosure

Individuals are informed on the "declaration" section when they make their initial application to DS. There is extensive information and guidance on Disclosure Scotland on the mygov.scot website. Information on the ORI process for pre-12 behaviour will be available.

Section 22 Victim Information

Under existing standard procedures, the SCRA will inform individuals about how their data will be used by correspondence as soon as a referral has been received by Principal Reporter.

7. Does the project involve the use of existing personal data for new purposes?

Section 4-21 Disclosure

Yes. The IR will gather existing information regarding the individual and their behaviour to inform their review regarding the disclosure of ORI.

Section 22 Victim Information

Yes. Section 22 will allow the reporter to disclose information about an offence committed by a child or harmful behaviour by a child under ACR - this will be a new process in relation to the disclosure of information to victims about the non-criminal behaviour of a child under 12 and also in relation to the disclosure of information about the harmful behaviour of children under eight.

8. What procedures will be in place for checking that the data collection procedures are adequate, relevant and not excessive in relation to the purpose for which the data will be processed?

Section 4-21 Disclosure

Disclosure Scotland has standard procedures for handling data.

Section 22 Victim Information

The SCRA have standard procedures for handling data.

9. How will the personal data be checked for accuracy?

Section 4-21 Disclosure

Disclosure Scotland has standard procedures for checking data.

Section 22 Victim Information

The SCRA has standard procedures for checking data.

10. Has the personal data been evaluated to determine whether its processing could cause damage or distress to data subjects?

Section 4-21 Disclosure

The individual will have the right to provide representations as part of the IR test as to whether the information should be disclosed. The individual will be aware that the IR's request relates to the proposed disclosure of that individual's personal and sensitive personal data to a third party.

Section 22 Victim Information

Section 22 of the Bill ensures that only basic information is to be disclosed; explaining what action the reporter has taken in response to the receipt of information about a child's behaviour but not providing more intrusive information

such as the reasons for the action taken. The information will not be disclosed if the reporter considers that disclosure would be to the detriment to any child involved in the case or that disclosure would be otherwise inappropriate. These safeguards will enable the reporter to ensure that disclosure is not excessive or causes damage or distress to data subjects.

11. Will there be set retention periods in place in relation to the storage of the personal data?

Section 4-21 Disclosure

Disclosure Scotland holds this information indefinitely. The PVG scheme is one of continuous monitoring. Disclosure Scotland is in the process of reviewing their retention periods.

Section 22 Victim Information

Data is held by SCRA in accordance with its existing standards data protection procedures.

12. What technical and organisational security measures will be in place to prevent any unauthorised or unlawful processing of the personal data?

Section 4-21 Disclosure

Disclosure Scotland has standard security arrangements to prevent any unauthorised or unlawful processing of the personal data.

Section 22 Victim Information

The SCRA has standard security arrangements to prevent any unauthorised or unlawful processing of the personal data.

13. Will you be transferring personal data to a country outside of the European Economic Area? If so where, and what arrangements will be in place to ensure that there are adequate safeguards over the data?

Section 4-21 Disclosure

No.

Section 22 Victim Information

No.



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