



T: 0300 244 4000
E: scottish.ministers@gov.scot

Convener of Equalities, Human Rights and Civil Justice Committee
Convener Education, Children and Young People Committee
Copied to the Minister for Parliamentary Business

5 May 2023

Age of Criminal Responsibility (Scotland) Act 2019 – Section 28 – to take a child under 12 to a place of safety.

Dear colleagues

I am writing to inform the committee of the use of the powers within Section 28 of the Age of Criminal Responsibility Scotland (2019) Act, to take a child under 12 to a place of safety.

The Age of Criminal Responsibility (Scotland) Act 2019 was passed unanimously by the Scottish Parliament on 7 May 2019 and received Royal Assent on 11 June 2019.

The Act commenced in phases and fully commenced on 17 December 2021 meaning children under the age of 12 can no longer be charged or arrested.

Part 4 of the Act contains a bespoke package of police investigatory and other powers. These are capable of use only when the behaviour of a child has been exceptionally harmful. Included in this package of powers is a power to take a child to a place of safety under section 28 (“the section 28 power”).

This power is at heart preventative and can be used by police only when necessary to protect someone from coming to significant harm, or from further such harm. The Act provides for a wide variety of places of safety, including a local authority facility, hospital, or police station.

The section 28 power attracted attention in Parliament during the Bill’s passage. Parliament acknowledged that in some cases it might be necessary for a police station to be used; for example, in remote areas where other places of safety might not be readily available.

The Bill was amended at Stage 3 to place the Scottish Ministers under a statutory obligation to report to Parliament on the use of the section 28 power. The first such report is to be laid as soon as reasonably practical after one year has elapsed since section 28 came fully into force (from 17 December 2021) with a fresh report yearly thereafter.

I have attached a report in this letter providing details of the use of the section 28 power from 17 December 2021 to 16 December 2022. During this timeframe the powers within the Act have been used on four occasions. The first instance where the section 28 power was used was in December 2021, the second in March 2022, third in April 2022 and fourth in May 2022. Further detail can be found in the Annex.

The Report will be laid in the Scottish Parliament on 5 May 2023.

If you have any questions about this Report, do not hesitate to get in touch.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Don', written in a cursive style.

NATALIE DON

Annex: Report to Parliament on the section 28 power

Age of Criminal Responsibility (Scotland) Act 2019 – Report on the use of Section 28 - to take a child under 12 to a place of safety

The Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”) increases the age at which a child is considered to have the capacity to commit a crime from age 8 to 12. This means that children younger than 12 cannot accrue convictions or criminal records. Part 4 of the Act contains a bespoke package of police investigatory and other powers. These are capable of use only when the behaviour of a child has been exceptionally harmful. Included in this package of powers is a power to take a child to a place of safety under section 28.

This report provides details of the use of the section 28 power from 17 December 2021 to 16 December 2022.

The number of times the power was used during each month of the reporting period

Section 28 of the Age of Criminal Responsibility (Scotland) Act 2019 to take a child under 12 to a place of safety has been used four times in the time period from 17 December 2021 to 16 December 2022.

The first instance where the section 28 power was used was in December 2021, the second in March 2022, third in April 2022 and fourth in May 2022.

The nature of the behaviour or likely behaviour which was considered to be causing or risk causing significant harm to another person

All four uses of this power were initiated due to violent or significant harmful behaviour.

The length of time for which the child was kept at each place of safety used

One instance of the use of the section 28 power, saw a child taken to their home address and observed for 30 minutes.

One instance of the use of the section 28 power, saw a child taken to their home address for 45 minutes then moved to a hospital setting as the child required medical attention. The child was in a hospital setting for 3 hours.

In two instances of the use of the section 28 power the child was taken to a suitable room at a police station while an alternative place of safety was arranged. One of these two instances, saw the child in a suitable room at a police station for 1 hour 5 minutes before being moved to a Local Authority established place of safety for 6 hours 15 minutes. In the second instance, the child was in a suitable room at a police station for 41 minutes while arrangements were made to take the child to their home address.

The number of times during the reporting period each type of place of safety listed in section 28(11) of the Act was used

A suitable room at a Police Station was used on two occasions.

The child's home address was used on two occasions

A local hospital setting was used as a second place of safety due a child requiring medical attention.

Each occasion on which the power was used to keep a child in a place of safety which was a police station, the reasons why it was not considered reasonably practicable to keep the child in a place of safety other than a police station

One of the occasions where a suitable room at a police station was used as the first place of safety was due to there not being a more practicable alternative available at the time.

On the other occasion where a suitable room at a police station was used as the first place of safety was due to the child's behaviour continuing to pose risk and harm to others.

On both of these occasions an alternative place of safety was arranged quickly.

Each occasion on which the power was used to keep a child in a cell within a police station, the length of time for which the child was so kept.

There were no occasions during the reporting period that a police cell was used as a place of safety.