

Age of Criminal Responsibility (Scotland) Bill

[As Amended at Stage 2]

Supplementary Financial Memorandum

Introduction

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

2. This supplementary Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with amendments made at Stage 2. It does not form part of the Bill and has not been endorsed by the Parliament.

Background

3. Of the new provisions introduced to the Bill at Stage 2 the only one likely to give rise to more than marginal costs is the new section 63A.

4. Section 63A imposes a requirement for a children's hearing or a pre-hearing panel, when coming to a decision about a matter relating to a child, to consider if the child's ability to determine or control the conduct to which the hearing relates was, at the time the conduct took place, substantially impaired by abnormality of mind or developmental immaturity. A report from an approved medical practitioner¹ is required in order to assess developmental immaturity. The section does not impose any equivalent requirement in relation to assessment of abnormality of mind.

Costs on The Scottish Administration/Scottish Children's Reporter Administration

5. It is not clear from section 63A whether costs will fall on the Scottish Government or the Scottish Children's Reporter Administration (SCRA). To estimate costs, it is necessary to estimate the number of assessments that

¹ Within the meaning of section 22 of the Mental Health Care and Treatment (Scotland) Act 2003 – these practitioners are psychiatrists.

will require to be carried out under section 63A and the cost of an assessment.

Number of Assessments Required to Be Carried Out Under Section 63a

6. It is unclear whether reference to “conduct” in section 63A is intended to refer only to conduct by the child which gave rise to the child’s referral to a children’s hearing or whether it is intended to apply more widely to any hearing where the child’s conduct is a material consideration (for example, regarding the conduct of the child in the period between a compulsory supervision order first being made and the holding of a children’s hearing to review that order). It is therefore necessary to consider the minimum and maximum number of assessments that might be required per year.

7. On the first, narrower reading, one assessment report per child per referral to a children’s hearing on a new “conduct” ground² might be sufficient. That report would relate to an assessment of the child’s developmental immaturity at the time the conduct that forms the basis of the referral took place. Although section 63A requires these matters to be considered by every children’s hearing or pre-hearing panel that takes place in relation to that case, it is possible that the initial report could be used each time. An assumption has been made that this report will remain relevant for consideration by subsequent hearings unless there is a material change in the conduct of the child. In 2017/18, there were 950 hearings with substantive outcomes on “conduct” grounds. The Scottish Government considers that it is reasonable to use this figure as an estimate of the minimum number of assessments that might be required under section 63A per year.

8. In relation to the second, broader reading, it is not possible to quantify how many reports would be required to meet the obligations under section 63A. It may be that, in many cases, the child’s conduct in the period in question is such that a previous report can be used to carry out the consideration required by section 63A in coming to a decision. But the possibility that a new assessment under section 63A might be required every

² 2011 j. Offence

2011 k. Misuse of alcohol

2011 l. Misuse of a drug

2011 m. Child's conduct harmful to self or others

2011 n. Beyond control of a relevant person

2011 o. Failure to attend school without reasonable excuse

time a children's hearing or pre-hearing panel takes place cannot be ruled out. In 2017/18, a total of 18,180 children's hearings came to a substantive decision regarding a child. Section 63A has the potential to apply to any one of these decisions, however it is unlikely to apply to all because of the low age of many of the children referred. For illustrative purposes, if one assessment under section 63A was required for half of the substantive decisions to be taken in 2017/18, this would have required 9,090 reports.

Cost of Assessment

9. As noted in paragraph 4, section 63A requires a report assessing the child's developmental maturity to be obtained from an approved medical practitioner. Practitioners have indicated that a basic assessment of this type may require in excess of 10 hours work. It is understood from NHS sources that the clinical cost of a child psychiatrist is approximately £95 per hour, so the likely cost of these assessments will be £950.

10. Discussions with approved medical practitioners and other mental health professionals have also indicated that assessments of developmental maturity are not commonly carried out by approved medical practitioners, and that approved medical practitioners may not be the correct group of professionals to carry out these assessments. In addition, there are only a relatively small number of approved medical practitioners³. Full assessment of developmental maturity might therefore require the assistance of other professionals. Children's hearings already have power to commission reports from relevant professionals (commonly child or educational psychologists) in appropriate cases⁴. Such reports, which are considered an appropriate comparator for the purposes of this Financial Memorandum, often cost in excess of £4,000.

11. For the purpose of estimating the costs of section 63A, the Scottish Government therefore considers that the minimum cost of an assessment would be £950 and that the maximum cost might be around £4,000.

Estimated Annual Cost

³ There are 144 AMPs with a child, adolescent or family specialism currently working in Scotland. However, we understand that only a small proportion work in Child and Adolescent Mental Health Services, and an even smaller number, possibly as few as four individuals, have a dual specialism in forensic psychiatry which may be required for a number of these assessments.

⁴ Children's Hearings 2013 Procedural Rules under Rule 61(1) (b).

12. Based on the assumptions set out above, the Scottish Government's estimate of the annual costs arising from section 63A will be a minimum of £902,500, as shown in table 1 below. Should section 63A apply to 50% of all substantive decisions taken by a children's hearing, as discussed above, there would be a potential cost of between £8.64 million to £36.36 million.

Table 1: Range of Minimum Annual Costs

		Cost per assessment	
		£950	£4,000
Number of assessments required per year	950	£902,500	£3.8 million
	9,090	£8.64 million	£36.36 million

These Figures Are, However, Subject to High Margins of Uncertainty:

- as already noted, there is a lack of clarity about which cases section 63A is intended to cover and how it would be interpreted in practice;
- the cost of assessing each child will undoubtedly vary in practice;
- section 63A does not specify how abnormality of mind is to be assessed. The Scottish Government considers that children's hearings and pre-hearing panels would also require professional input to assist their consideration of this issue. Whether this was covered in the same report as the child's developmental maturity or required a separate report would have a significant influence on costs;
- additional costs might arise in the first year or two if section 63A was implemented in full immediately (as opposed to being implemented only in relation to new cases as they arise);

- indirect costs might arise (for example, if more approved medical practitioners were required) (although this might lower the maximum possible cost per assessment in the medium to longer term);
- the carrying out of significantly more assessments might cause delays in the consideration of cases⁵, which might give rise to additional administrative costs for SCRA.

Costs on Local Authorities

13. Should section 63A result in delays to children's hearings, there would likely be costs on local authorities. Additional foster or residential placements may need to be funded by local authorities while a report was obtained to allow a hearing to make decisions regarding the child's care. It is also likely that in periods of delay, social work services might have additional concerns for the welfare of a child. This might result in additional measures having to be taken to protect children or otherwise ensure their safety or welfare. These costs are very difficult to quantify, and estimates are not available.

Costs on Other Bodies, Individuals And Businesses

14. Organisations which provide advocacy services, legal aid, and support to vulnerable children and victims are also likely to incur costs. There will be additional time required for practitioners to read and respond to these reports. Any delays to children's hearings will also result in additional support being needed from other organisations. These costs are also very difficult to quantify, and estimates are not available.

⁵ Reports are estimated to take approximately 6 to 8 weeks

This document relates to the Age of Criminal Responsibility (Scotland) Bill (SP Bill 29A) as amended at Stage 2

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