

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

EXPLANATORY NOTES

PART 4: POLICE INVESTIGATORY AND OTHER POWERS

Chapter 4: Taking of prints and samples from certain children

Changes made by the Act: what this Chapter of the Act does

Appeals

210. As already noted, section 110 of the 2014 Act provides generally that any decision of the sheriff may be appealed to the Sheriff Appeal Court. That section will apply to a decision of the sheriff under section 63 to make or refuse an order authorising the taking of prints and samples. Sections 111 and 116 of the 2014 Act apply to appeals under section 110 and that the Rules of Court relating to section 110 appeals also apply. So section 111, for instance, provides that the Sheriff Appeal Court may uphold the sheriff's decision or reverse it or vary it.
211. [Section 67](#) provides for a number of aspects of the appeal process as it applies in relation to orders under section 63 authorising the taking of prints and samples (or applications for such orders). It sets out that either a constable or the child (or another person acting on the child's behalf) must, within the time-limits set out in subsection (2), apply to the sheriff for permission to appeal. The appeal may proceed only where the sheriff gives permission. If permission to appeal is given, the appeal must be made on the day on which that permission is given or during the following two working days (subsection (3)). Where an appeal is made, the decision of the Sheriff Appeal Court is final (subsection (4)).
212. The making of an appeal suspends the effect of any order under section 63 originally made by the sheriff. Such an order only authorises the taking of prints and samples within a certain period. By the time an appeal is made and determined, that period may have expired. Section 67 therefore also allows the Sheriff Appeal Court, in a case where it upholds or varies the original order with the result that the taking of prints and samples which have not yet been taken is once again authorised, to specify a new period within which the data or samples may be taken.
213. [Section 68](#) sets out what is to happen to data or samples that have already been taken by virtue of an order under section 63 if an appeal is then made against the order. Subsection (2) provides that no steps (or further steps), other than holding or preserving the data or sample, can be taken until the appeal is decided. If the outcome of the appeal is that the taking of data or sample is no longer authorised (whether because the order is quashed in its entirety or varied so that the taking of particular data or samples is no longer authorised), the constable who originally applied for the order under section 63 is required to ensure that any record of data the taking of which is no longer authorised is destroyed. The same applies to any samples the taking of which is no longer authorised. In addition, all information derived from any such samples must be destroyed.