



Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

PART 2

DISCLOSURE OF CONVICTIONS AND OTHER INFORMATION RELATING TO TIME WHEN PERSON UNDER 12

CHAPTER 2

INDEPENDENT REVIEW OF DISCLOSURE OF INFORMATION

Review of information prior to disclosure

14 Referral of information to independent reviewer

- (1) This section applies where—
- (a) the chief constable, having been requested to do so by the Scottish Ministers under section 113B(4) of the 1997 Act, has identified information which relates to a time when the applicant was under 12 years of age and which, in the chief constable's opinion, ought to be included in an enhanced criminal record certificate issued under section 113B(1) of that Act, or
 - (b) the chief constable, as a result of an enquiry or arrangements made under section 47 of the 2007 Act, has identified information which relates to a time when the scheme member was under 12 years of age and which, in the chief constable's opinion, ought to be included in a scheme record by virtue of section 49(1)(c) of that Act.
- (2) The chief constable must, before providing that information to the Scottish Ministers, refer that information to the independent reviewer together with the following—
- (a) in the case of information falling within subsection (1)(a), information about the purpose described in the statement under section 113B(2) of the 1997 Act in relation to which the enhanced criminal record certificate is required,

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- (b) in the case of information falling within subsection (1)(b), information about the regulated work in relation to which the scheme member to whom the scheme record relates participates in the scheme,
- (c) an explanation of why the chief constable considers the information ought to be included in the enhanced criminal record certificate or, as the case may be, scheme record, and
- (d) any other information the chief constable considers relevant to the exercise of the independent reviewer's functions.

Commencement Information

II [S. 14](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

15 Notification of referral under section 14

Where the chief constable refers information to the independent reviewer under section 14, the chief constable must, at the same time as doing so, notify the Scottish Ministers of that fact.

Commencement Information

I2 [S. 15](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

16 Notification to applicant or scheme member

[^{F1}(A1) This section applies where information falling within subsection (A2) or (A3) is referred to the independent reviewer for review.

(A2) Information falls within this subsection if—

- (a) it has been referred to the independent reviewer following a request for information made by the Scottish Ministers under section 113B(4) of the 1997 Act,
- (b) it relates to a time when the applicant was under 12 years of age, and
- (c) it ought, in the opinion of the person who referred the information to the independent reviewer, to be included in an enhanced criminal record certificate issued under section 113B(1) of that Act.

(A3) Information falls within this subsection if—

- (a) it has been referred to the independent reviewer as a result of an enquiry or arrangements made under section 47 of the 2007 Act,
- (b) it relates to a time when the scheme member was under 12 years of age, and
- (c) it ought, in the opinion of the person who referred the information to the independent reviewer, to be included in a scheme record by virtue of section 49(1)(c) of that Act.]

(1) The independent reviewer must notify the applicant or, as the case may be, the scheme member to whom the information relates that information has been received for review.

(2) A notice under subsection (1) must include details of—

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- (a) the information relating to the applicant or scheme member which has been referred to the independent reviewer for review,
 - (b) how the applicant or scheme member can make representations to the independent reviewer about whether the information ought to be included in the enhanced criminal record certificate or, as the case may be, scheme record,
 - (c) the period within which any representations may be made.
- (3) A notice under subsection (1) may include details of—
- (a) any information the independent reviewer believes the applicant or scheme member holds and which the reviewer requests the applicant or scheme member to provide to the reviewer,
 - (b) the period within which the information may be provided.

Textual Amendments

- F1** [S. 16\(A1\)-\(A3\)](#) inserted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(2)**

Commencement Information

- I3** [S. 16](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

17 Provision of information to the independent reviewer

- (1) The independent reviewer may by notice require any person mentioned in subsection (3) to provide the reviewer with information which the reviewer believes the person holds and which the reviewer considers is necessary to carry out the review.
- (2) A notice under subsection (1) must specify the information sought and the period within which it must be provided.
- (3) The persons referred to in subsection (1) are—
 - (a) the chief constable,
 - (b) the Principal Reporter,
 - (c) the Scottish Courts and Tribunals Service,
 - (d) a local authority,
 - (e) any other person the independent reviewer considers appropriate.

Commencement Information

- I4** [S. 17](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

18 ^[F2]Review of referred information

- (1) The independent reviewer, on receiving information [^{F3}falling within section 16(A2)], must review—
 - (a) whether the information is relevant in relation to the purpose described in the statement under section 113B(2) of the 1997 Act in relation to which the enhanced criminal record certificate is required, and
 - (b) whether it ought to be included in that certificate.

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- (2) The independent reviewer, on receiving information [^{F4}falling within section 16(A3)], must review—
 - (a) whether the information is relevant in relation to the type of regulated work in relation to which the scheme member to whom the scheme record relates participates in the scheme, and
 - (b) whether it ought to be included in that record.
- (3) The independent reviewer, in carrying out a review under this section, must—
 - (a) take account of—
 - (i) information provided [^{F5}in compliance with any requirement as to information to be provided to the independent reviewer together with the information falling within section 16(A2) or, as the case may be, (A3)],
 - (ii) any representations made by the applicant or, as the case may be, the scheme member, and
 - (iii) any information provided [^{F6}in response to a notice given by the independent reviewer requiring information in connection with the review],
 - (b) have regard to any guidance issued by the Scottish Ministers under section 22.
- (4) Following the review, the independent reviewer must determine either—
 - (a) that the information ought not to be included in the enhanced criminal record certificate or, as the case may be, scheme record, or
 - (b) that the information ought to be so included.

Textual Amendments

- F2** S. 18 heading substituted (17.12.2021) by virtue of [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(4)**
- F3** Words in s. 18(1) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(3)(a)**
- F4** Words in s. 18(2) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(3)(b)**
- F5** Words in s. 18(3)(a)(i) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(3)(c)(i)**
- F6** Words in s. 18(3)(a)(iii) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(3)(c)(ii)**

Commencement Information

- I5** S. 18 in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, **sch.**

19 Notification of determination

- (1) The independent reviewer must notify the persons mentioned in subsection (2) of the determination under section 18(4) and of the reviewer's reasons for it.
- (2) The persons are—
 - [^{F7}(a) the person who referred the information falling within section 16(A2) or, as the case may be, (A3) to the independent reviewer,]
 - (b) the applicant or, as the case may be, the scheme member,

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(c) the Scottish Ministers.

- (3) Notice under subsection (1) must be given before the end of the period of 7 days beginning with the day after the day on which the independent reviewer makes the determination.

Textual Amendments

- F7** S. 19(2)(a) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(5)**

Commencement Information

- I6** S. 19 in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

20 Appeal against determination under section 18

- (1) The following persons may appeal the independent reviewer's determination under section 18(4) to the sheriff on a point of law only—
- (a) the applicant or, as the case may be, the scheme member,
 - [^{F8}(b) the person who referred the information falling within section 16(A2) or, as the case may be, (A3) to the independent reviewer.]
- (2) An appeal under this section must be taken before the end of the period of 28 days beginning with the day on which the independent reviewer's determination was notified under section 19.
- (3) On an appeal under this section, the sheriff must—
- (a) confirm the determination of the independent reviewer, or
 - (b) quash that determination and substitute for it the sheriff's own determination.
- (4) The decision of the sheriff on an appeal under this section is final.
- (5) For the avoidance of doubt, a decision of the sheriff under subsection (4) does not preclude the persons mentioned in subsection (1) from appealing a subsequent determination of the independent reviewer under section 18(4) where it concerns the information in the original appeal.

Textual Amendments

- F8** S. 20(1)(b) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(6)**

Commencement Information

- I7** S. 20 in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(1A) inserted by [2020 asp 13 sch. 5 para. 7\(8\)\(b\)](#)
- s. 20A inserted by [2020 asp 13 sch. 5 para. 7\(9\)](#)