



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

Limitation on disclosure of information

10 Disclosure of information relating to time when person under 12

(1) In section 119 (sources of information) of the 1997 Act—

(a) after subsection (2) insert—

“(2A) But the chief constable of the Police Service of Scotland may provide information mentioned in section 113B(4) relating to a time when the applicant was under 12 years of age only where—

(a) the independent reviewer determines, on a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019, that the information ought to be included in the certificate and—

(i) no appeal under section 20 of that Act is taken, or

(ii) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a), or

(b) the sheriff, on an appeal under section 20, determines under section 20(3)(b) that the information ought to be included in the certificate.”,

(b) after subsection (7) insert—

“(7A) In this section, “independent reviewer” means the independent reviewer appointed under section 12 of the Age of Criminal Responsibility (Scotland) Act 2019.”.

(2) In section 113B (enhanced criminal record certificates) of the 1997 Act, after subsection (4) insert—

“(4A) For the avoidance of doubt, information such as is mentioned in subsection (4) may include information with respect to relevant behaviour (within the meaning of section 5(1)(a) of the Age of Criminal Responsibility (Scotland) Act 2019).”.

(3) In section 49 (vetting information) of the 2007 Act, after subsection (1) insert—

“(1A) For the avoidance of doubt, information such as is mentioned in subsection (1) (c) may include information with respect to relevant behaviour (within the meaning of section 5(1)(a) of the Age of Criminal Responsibility (Scotland) Act 2019).”.

(4) In section 75 (sources of information) of the 2007 Act—

(a) after subsection (2) insert—

“(2A) But the chief constable may provide information under subsection (2) relating to a time when the scheme member was under 12 years of age only where—

(a) the independent reviewer determines, on a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019, that the information ought to be included in the scheme member’s scheme record and—

(i) no appeal under section 20 of that Act is taken, or
 (ii) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a), or

(b) the sheriff, on an appeal under section 20, determines under section 20(3)(b) that the information ought to be included in the scheme member’s scheme record.”.

(b) after subsection (5) insert—

“(6) In this section, “independent reviewer” means the independent reviewer appointed under section 12 of the Age of Criminal Responsibility (Scotland) Act 2019.”.

Appointment of independent reviewer

11 Independent reviewer

There is to be an independent reviewer for the purposes of—

- (a) reviewing information concerning behaviour of persons when under 12 years of age before the disclosure of such information—
 - (i) in an enhanced criminal record certificate under section 113B of the 1997 Act, or
 - (ii) in a scheme record under section 52 of the 2007 Act, and

- (b) exercising other functions conferred on the reviewer by or under this Act or any other enactment.

12 Period and terms of appointment

- (1) The Scottish Ministers are to appoint a person as the independent reviewer for a period of 3 years.
- (2) A person is to be appointed as independent reviewer on such terms and conditions as the Scottish Ministers determine.
- (3) A person may be reappointed as independent reviewer for a further period or periods.
- (4) A person is disqualified from appointment, and from holding office, as the independent reviewer if the person is or becomes—
 - (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament,
 - (c) a member of the European Parliament, or
 - (d) a councillor of a local authority.
- (5) The Scottish Ministers may pay such remuneration or allowances to the independent reviewer as they determine.
- (6) Where the office of independent reviewer is vacant or the reviewer is for any reason unable to exercise the reviewer's functions, the Scottish Ministers may designate a person to exercise those functions for such period as Ministers consider necessary.
- (7) The Scottish Ministers may remove a person from the office of independent reviewer, by giving notice to the person in writing, if—
 - (a) the person has, since appointment, been convicted of an offence listed in schedule 8A or 8B of the 1997 Act,
 - (b) the person becomes insolvent, or
 - (c) the Scottish Ministers consider that the person—
 - (i) is unable to exercise the reviewer's functions, or
 - (ii) is unsuitable to continue to hold that office.
- (8) For the purposes of subsection (7)(b), a person becomes insolvent if—
 - (a) the person's estate is sequestrated,
 - (b) the person grants a trust deed for creditors or makes a composition or arrangement with creditors,
 - (c) a voluntary arrangement proposed by the person is approved,
 - (d) the person's application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
 - (e) the person becomes subject to any other kind of order or arrangement analogous to those described in paragraphs (a) to (d) anywhere in the world.

13 Administrative support

- (1) The Scottish Ministers must provide, or ensure the provision of, such staff and property as they consider the independent reviewer requires for the purpose of carrying out the reviewer's functions.

- (2) The Scottish Ministers must consult the independent reviewer as to the staff and property the reviewer requires for the purpose of carrying out the reviewer's functions.

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,
 - (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.

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.

16 Notification to applicant or scheme member

- (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—
- (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.

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.

18 Review of information referred under section 14

- (1) The independent reviewer, on receiving information mentioned in section 14(1)(a), 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.
- (2) The independent reviewer, on receiving information mentioned in section 14(1)(b), 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 under section 14(2),
 - (ii) any representations made by the applicant or, as the case may be, the scheme member, and
 - (iii) any information provided under section 17,
 - (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.

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—
- (a) the chief constable,
 - (b) the applicant or, as the case may be, the scheme member,
 - (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.

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,
 - (b) the chief constable.
- (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.

General functions of independent reviewer

21 Annual report and recommendations

- (1) The independent reviewer must, as soon as reasonably practicable after the end of each reporting year—
- (a) prepare a report on the exercise of the reviewer’s functions during that year, and
 - (b) send a copy of that report to the Scottish Ministers.

- (2) The Scottish Ministers must lay a copy of each report received under subsection (1) (b) before the Scottish Parliament as soon as reasonably practicable after receiving it.
- (3) The independent reviewer may include in an annual report recommendations to the Scottish Ministers as to—
 - (a) any guidance issued by Ministers under section 22 or which the reviewer considers it would be appropriate for Ministers to issue,
 - (b) any changes to any enactment which the reviewer considers appropriate, and
 - (c) any other matters the reviewer considers appropriate.
- (4) In this section, “reporting year” is—
 - (a) the period beginning with the day on which this section comes into force and ending on 31 March, and
 - (b) each successive year ending on that date.

22 Guidance

- (1) The Scottish Ministers—
 - (a) must issue guidance to the independent reviewer about the exercise of the reviewer’s functions, and
 - (b) may, from time to time, issue revised guidance.
- (2) Before issuing guidance or revised guidance under this section, the Scottish Ministers must consult—
 - (a) the independent reviewer,
 - (b) such other persons Ministers consider appropriate.
- (3) Guidance under this section may not relate to—
 - (a) a specific review being or to be carried out by the independent reviewer under section 18, or
 - (b) the way in which the reviewer is carrying out (or is to carry out) a specific review.
- (4) The independent reviewer, in exercising the reviewer’s functions, must have regard to any such guidance.

23 Regulation of procedure for review

- (1) The Scottish Ministers may by regulations make provision about the procedure for the review under this Part of the inclusion of information in enhanced criminal record certificates and scheme records.
- (2) Regulations under this section may in particular include provision about—
 - (a) the time period within which the chief constable is to refer to the independent reviewer information that the chief constable has identified and considers ought to be included in an enhanced criminal record certificate or, as the case may be, a scheme record,
 - (b) the time period within which the independent reviewer is to notify the applicant or, as the case may be, the scheme member under section 16(1),

- (c) the time period within which the applicant or, as the case may be, the scheme member may make representations under section 16(2) to the independent reviewer,
- (d) the time period within which a person required under section 17(1) to provide information to the independent reviewer is to do so.

24 Modifications of the functions of the independent reviewer

- (1) The Scottish Ministers may by regulations modify the functions of the independent reviewer.
- (2) The Scottish Ministers must, before laying a draft of a Scottish statutory instrument containing regulations under this section before the Scottish Parliament, consult such persons as they consider appropriate.
- (3) Regulations under this section may—
 - (a) modify any enactment (including this Act),
 - (b) include transitional, transitory or saving provision.