



# Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th May 2019 and received Royal Assent on 11th June 2019**

An Act of the Scottish Parliament to raise the age of criminal responsibility to 12 years and to make consequential changes to the law on the disclosure of criminal records and of other information relating to individuals working or seeking to work with children or certain adults; on the provision of information by the Principal Reporter to persons adversely affected by the behaviour of children; on the taking of certain children to a place of safety by the police; on the search of certain children by the police; on police interviews with certain children; and on the taking of forensic samples from certain children by the police; and for connected purposes.

VALID FROM 29/11/2019

## PART 1

### AGE OF CRIMINAL RESPONSIBILITY

VALID FROM 17/12/2021

#### **1 Raising the age of criminal responsibility**

For section 41 of the Criminal Procedure (Scotland) Act 1995 substitute—

#### **“41 Age of criminal responsibility**

A child under the age of 12 years cannot commit an offence.”.

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**Changes to legislation:** *Age of Criminal Responsibility (Scotland) Act 2019 is up to date with all changes known to be in force on or before 25 April 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 17/12/2021

**2 Raising the age of criminal responsibility: consequential repeal and saving**

- (1) Section 41A of the Criminal Procedure (Scotland) Act 1995 is repealed.
- (2) Despite that repeal, section 41A continues to have effect in relation to offences committed before the day on which this section comes into force.

**3 No referral of child under 12 to children's hearing on offence ground**

For the purposes of section 66(2)(a) (investigation and determination by Principal Reporter) of the Children's Hearings (Scotland) Act 2011 (the "2011 Act"), the Principal Reporter may not determine that the ground in section 67(2)(j) (the offence ground) applies where the child—

- (a) committed the offence before the day on which section 1 came into force, and
- (b) was under 12 years of age when the offence was committed.

VALID FROM 31/03/2020

**PART 2**

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

VALID FROM 30/11/2020

**CHAPTER 1**

**DISCLOSURE OF CONVICTIONS ETC.**

*Pre-12 convictions etc. not be treated as convictions*

**4 Amendment of the Rehabilitation of Offenders Act 1974**

- (1) The Rehabilitation of Offenders Act 1974 (the "1974 Act") is amended as follows.
- (2) In section 1 (rehabilitated persons and spent convictions)—
  - (a) in subsection (1C), for “, (5) and (6)” substitute “ and (5) to (8) ”,
  - (b) after subsection (6) insert—

“(7) This Act does not apply to any conviction of an offence committed when the individual was under 12 years of age.

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(8) Accordingly, references in this Act to a conviction do not include references to any such conviction.”

(3) In section 3 (certain disposals of children's hearing treated as conviction), after subsection (2) insert—

“(3) This section does not apply where the acts or omissions constituting the ground mentioned in subsection (1) occurred when the child was under 12 years of age.”

(4) In section 8B (protection afforded to spent alternatives to prosecution: Scotland), after subsection (2) insert—

“(2A) This section does not apply where the acts or omissions constituting the offence mentioned in subsection (1) occurred when the person was under 12 years of age.”

(5) In section 9B (unauthorised disclosure of spent alternatives to prosecution: Scotland), after subsection (9) insert—

“(10) This section does not apply where the acts or omissions constituting the offence mentioned in subsection (1)(b) occurred when the person was under 12 years of age.”

#### *Disclosure of information about relevant behaviour*

### **5 Disclosure of information about convictions etc. relating to time when person under 12**

(1) Sections 6 to 8 apply to behaviour (“relevant behaviour”) of a person which occurred when the person was under 12 years of age and—

- (a) which resulted in the person being—
  - (i) convicted of an offence, or
  - (ii) given an alternative to prosecution (within the meaning of section 8B(1) of the 1974 Act), or
- (b) in relation to which—
  - (i) the person was taken to a place of safety by virtue of section 28,
  - (ii) an order under section 36 authorising a search in relation to the person was applied for,
  - (iii) the person was interviewed by virtue of section 40(2),
  - (iv) a child interview order was applied for in respect of the person,
  - (v) the person was questioned by virtue of section 54,
  - (vi) an order under section 63 authorising the taking of relevant physical data or a relevant sample from the person was applied for,
  - (vii) relevant physical data or a relevant sample was taken from the person by virtue of section 59(1)(b) or 69.

(2) For the purposes of sections 6 to 8, circumstances ancillary to relevant behaviour includes—

- (a) where the behaviour resulted in the person being convicted of an offence, any circumstances of—
  - (i) the offence which was the subject of the conviction,

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- (ii) the conduct constituting the offence,
  - (iii) any process or proceedings preliminary to the conviction,
  - (iv) any sentence imposed in respect of the conviction,
  - (v) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or sentence,
  - (vi) anything done in pursuance of, or undergone in compliance with, any such sentence,
- (b) where the behaviour resulted in the person being given an alternative to prosecution, any circumstances of—
- (i) the offence in respect of which the alternative to prosecution is given or the conduct constituting the offence,
  - (ii) any process preliminary to the alternative to prosecution being given (including consideration by any person of how to deal with the offence and the procedure for giving the alternative to prosecution),
  - (iii) any proceedings for the offence which took place before the alternative to prosecution was given (including anything that happened after that time for the purpose of bringing the proceedings to an end),
  - (iv) any judicial review proceedings relating to the alternative to prosecution,
  - (v) anything done or undergone in pursuance of the terms of the alternative to prosecution.
- (3) For the purposes of subsections (1)(a)(i) and (2)(a)—
- (a) the acceptance or establishment (or deemed establishment), in relation to the person, of the ground of referral to the children's hearing referred to in section 3(1) of the 1974 Act is to be treated as a conviction, and
  - (b) any disposal of the case by the children's hearing is to be treated as a sentence.
- (4) The Scottish Ministers may, by regulations, modify the meanings in subsections (1) and (2) of relevant behaviour and circumstances ancillary to such behaviour.
- (5) Regulations under subsection (4) may modify any enactment (including this Act).

## **6 Disclosure of information about relevant behaviour: judicial proceedings**

- (1) No evidence is admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland (“judicial proceedings”) to prove relevant behaviour of the person, or circumstances ancillary to such behaviour.
- (2) The person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to relevant behaviour of the person or circumstances ancillary to such behaviour.
- (3) In this section and sections 7 and 9, “judicial proceedings” includes, in addition to any court proceedings, proceedings before any tribunal, body or person having power by virtue of any enactment, rule of law, arbitration agreement, rules, custom or practice—

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- (a) to determine any question affecting the rights, privileges, obligations or liabilities of any person, or
- (b) to receive evidence affecting the determination of any such question.

## **7 Disclosure of information about relevant behaviour: non-judicial proceedings**

- (1) Where a question is put to a person, other than in judicial proceedings, seeking information with respect to relevant behaviour of the person or of any other person—
  - (a) the question is to be treated as not relating to that behaviour or to any circumstances ancillary to it (and the answer to the question may be framed accordingly), and
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that behaviour or, as the case may be, any circumstances ancillary to it in answering the question.
- (2) Any obligation imposed on any person by any enactment or rule of law, or by the provisions of any agreement or arrangement, to disclose any matters to any other person is not to extend to requiring the disclosure of relevant behaviour or any circumstances ancillary to it.
- (3) Relevant behaviour or any circumstances ancillary to it, or any failure to disclose relevant behaviour or any such circumstances, is not to be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.

## **8 Disapplication of sections 6 and 7**

- (1) Subsection (2) applies where a referral is made to the independent reviewer for a determination under section 18 as to whether information with respect to relevant behaviour ought to be included in—
  - (a) an enhanced criminal record certificate under section 113B of the Police Act 1997 (the “1997 Act”), or
  - (b) a scheme record under section 52 of the Protection of Vulnerable Groups (Scotland) Act 2007 (the “2007 Act”).
- (2) Sections 6 and 7(1) and (2) do not apply—
  - (a) for the purpose of the referral (including any appeal under section 20), and
  - (b) in relation to the relevant behaviour which is the subject of the referral.
- (3) Subsection (4) applies where—
  - (a) the independent reviewer has determined, on a review under section 18, that information with respect to relevant behaviour ought to be included in an enhanced criminal record certificate or, as the case may be, a scheme record, and
  - (b) such information is so included.
- (4) Sections 6 and 7 do not apply—

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- (a) in relation to the purpose for which the certificate or, as the case may be, scheme record is provided, and
  - (b) in relation to the relevant behaviour with respect to which information is included in the certificate or record.
- (5) In subsection (4)(a)—
- (a) the purpose for which an enhanced criminal record certificate is provided means the prescribed purpose mentioned in section 113B(2) of the 1997 Act, and
  - (b) the purpose for which a scheme record is provided means the purpose mentioned in disclosure condition C in section 55 of the 2007 Act.
- (6) Subsection (7) applies where information with respect to relevant behaviour is included in a certificate or, as the case may be, scheme record as mentioned in subsection (3)(b).
- (7) Subject to subsections (1) and (2), the application of sections 6 and 7 is not excluded in relation to that relevant behaviour, or any circumstances ancillary to it, during the period before the certificate or record was provided.

## **9 Further limitations on sections 6 and 7**

- (1) Section 6 does not apply to the determination of any issue, or to the admission or requirement of any evidence, relating to relevant behaviour of a person, or to circumstances ancillary to such behaviour, in any proceedings for the time being mentioned in subsection (2).
- (2) Those proceedings are—
- (a) any criminal proceedings (including any appeal or reference in a criminal matter),
  - (b) any proceedings under Part 2 of the Sexual Offences Act 2003, or on appeal from any such proceedings,
  - (c) any proceedings on an application under section 2, 4 or 5 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 or in any appeal under section 6 of that Act,
  - (d) any proceedings relating to parental responsibilities or parental rights (within the meaning of section 1(3) and section 2(4) respectively of the Children (Scotland) Act 1995), guardianship, adoption or the provision by any person of accommodation, care or schooling for children under the age of 18 years,
  - (e) any proceedings under Part II of the Children (Scotland) Act 1995 or under the Children's Hearings (Scotland) Act 2011,
  - (f) any proceedings in which the person is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, the person consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence despite the provisions of section 6,
  - (g) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc.).
- (3) Despite the provisions of section 6, a judicial authority in judicial proceedings (not being proceedings mentioned in subsection (2))—

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- (a) may admit or, as the case may be, require evidence relating to relevant behaviour of a person or to circumstances ancillary to such behaviour, and
  - (b) may determine any issue to which that evidence relates,
- if the judicial authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may subsequently be put before it), that justice cannot be done in the case except by admitting or requiring that evidence.
- (4) The Scottish Ministers may by regulations—
- (a) modify subsection (2) to—
    - (i) add proceedings to those mentioned in that subsection,
    - (ii) vary a description of such proceedings,
    - (iii) remove proceedings from that subsection,
  - (b) make provision excluding the application of section 6 in relation to such other proceedings as may be specified in the regulations to such extent and for such purposes as may be so specified,
  - (c) make provision excluding or modifying the application of section 7(1) in relation to questions put in such circumstances as may be specified in the regulations,
  - (d) provide for such exceptions from the provisions of section 7(2) and (3) as seem to them appropriate, in such cases or classes of case, and in relation to relevant behaviour of such a description, as may be specified in the regulations.

## CHAPTER 2

### INDEPENDENT REVIEW OF DISCLOSURE OF INFORMATION

VALID FROM 30/11/2020

#### *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

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(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.”.



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### *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,

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- (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.

VALID FROM 30/11/2020

### *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

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- (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—

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- (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—

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- (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*

VALID FROM 30/11/2020

## **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,

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(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.

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VALID FROM 30/11/2020

## CHAPTER 3

### GENERAL PROVISIONS

#### 25 Amendments consequential on Chapter 2

- (1) The 1997 Act is amended as follows.
- (2) In section 117 (disputes about accuracy of certificates)—
  - (a) in subsection (3), at the beginning insert “ Subject to subsection (3A), ”,
  - (b) after that subsection insert—

“(3A) But an application under this section may not request a review of information contained in a certificate by virtue of section 113B(4) which was or could have been the subject of an appeal under section 20 of the Age of Criminal Responsibility (Scotland) Act 2019.”,
  - (c) in subsection (4), for “such a request” substitute “ a request mentioned in subsection (3) ”.
- (3) The 2007 Act is amended as follows.
- (4) In section 51 (correction of inaccurate scheme record)—
  - (a) in subsection (4), at the beginning insert “ Subject to subsection (4A), ”,
  - (b) after that subsection insert—

“(4A) But a scheme member may not request a review of information included in a scheme record by virtue of section 49(1)(c) which was or could have been the subject of an appeal under section 20 of the Age of Criminal Responsibility (Scotland) Act 2019.”,
  - (c) in subsection (5), for “such a request” substitute “ a request mentioned in subsection (4) ”.

#### 26 Interpretation of Part 2

In this Part—

- “1974 Act” means the Rehabilitation of Offenders Act 1974,  
“1997 Act” means the Police Act 1997,  
“2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007,  
“applicant” means the person who applies under section 113B of the 1997 Act for an enhanced criminal record certificate,  
“chief constable” means the chief constable of the Police Service of Scotland,  
“enhanced criminal record certificate” has the meaning given by section 113B(3) of the 1997 Act,  
“independent reviewer” means the independent reviewer appointed under section 12,

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“regulated work” has the meaning given by section 91 of the 2007 Act,  
 “relevant behaviour” and “circumstances ancillary to relevant behaviour”  
 have the meanings given by section 5,  
 “scheme member” has the meaning given by section 45(2) of the 2007 Act,  
 “scheme record” has the meaning given by section 48 of the 2007 Act,  
 “the scheme” has the meaning given by section 44 of the 2007 Act.

VALID FROM 29/11/2019

### PART 3

#### VICTIM INFORMATION

#### 27 Provision of information to persons affected by child's behaviour

(1) After section 179 of the 2011 Act, insert—

##### **“179A Request for information by person affected by child's offence or behaviour**

- (1) This section applies—
- (a) where the Principal Reporter is required to make a determination in relation to a child under section 66(2) and has information which suggests that—
    - (i) the child has committed an offence, or
    - (ii) the child, while under 12 years of age, has acted or behaved in a way that falls within subsection (2), or
  - (b) where, by virtue of section 71(3)(b) or 130, the Principal Reporter is required to arrange a children's hearing in relation to a child who has pled guilty to, or been found guilty of, an offence.
- (2) Action or behaviour falls within this subsection if it—
- (a) is—
    - (i) physically violent,
    - (ii) sexually violent or sexually coercive, or
    - (iii) dangerous, threatening or abusive, and
  - (b) causes harm to another person.
- (3) A person mentioned in subsection (4) may request the Principal Reporter to provide the person with information about the action taken in relation to the offence or, as the case may be, the action or behaviour mentioned in subsection (1)(a)(ii).
- (4) The persons are—
- (a) any person against whom the offence mentioned in subsection (1)(a)(i) or (b) appears to have been committed,
  - (b) any person who appears to have been harmed by the action or behaviour mentioned in subsection (1)(a)(ii),



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- (c) where a person mentioned in paragraph (a) or (b) is a child, any relevant person in relation to that child,
  - (d) any other person or class of persons the Scottish Ministers may specify by regulations (subject to any conditions specified in the regulations).
- (5) The Principal Reporter may inform any person mentioned in subsection (4) (a), (b) or (c) of the person's right to request information under subsection (3).
- (6) Subsection (7) applies where—
- (a) the Principal Reporter is required under section 68(3)(a) to provide information to a person, and
  - (b) that person is entitled to request information under subsection (3).
- (7) A request made by the person for information under subsection (3) is to be treated as relating only to information which the Principal Reporter is not required to provide to the person under section 68(3)(a).

#### **179B Information to which section 179A applies**

- (1) The information about the action taken in relation to the offence or, as the case may be, the behaviour mentioned in subsection (1)(a)(ii) of section 179A which may be requested under subsection (3) of that section is—
- (a) in a case mentioned in section 179A(1)(a), information as to whether or not a children's hearing required to be arranged under section 69(2) for the purpose of deciding whether a compulsory supervision order should be made in respect of the child and—
    - (i) where such a hearing did not require to be arranged, the information mentioned in subsection (2)(a),
    - (ii) where such a hearing did require to be arranged, the information mentioned in subsection (2)(b),
  - (b) in a case mentioned in section 179A(1)(b), the information mentioned in subsection (2)(b).
- (2) The information is—
- (a) information as to—
    - (i) what determination the Principal Reporter made under section 66(2), and
    - (ii) any other action taken by the Principal Reporter (under section 68(5) or otherwise),
  - (b) information as to—
    - (i) whether a compulsory supervision order has been made in respect of the child or, as the case may be, whether a compulsory supervision order which is already in force in respect of the child has been terminated, varied or continued, or
    - (ii) how the referral to the children's hearing was otherwise discharged.

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### **179C Decision by Principal Reporter following request under section 179A**

- (1) The Principal Reporter may comply with a request made under section 179A(3) only if satisfied—
    - (a) that the provision of the information would not be detrimental to the best interests of the child mentioned in section 179A(1) (or any other child), and
    - (b) having regard to the factors mentioned in subsection (2), that it is appropriate in the circumstances of the case to provide the information.
  - (2) The factors are—
    - (a) the age of the child mentioned in section 179A(1),
    - (b) the seriousness of the offence or, as the case may be, the action or behaviour mentioned in section 179A(1)(a)(ii),
    - (c) the circumstances in which the offence or action or behaviour took place,
    - (d) the effect that the offence or the action or behaviour has had on the person mentioned in section 179A(4)(a) or, as the case may be, section 179A(4)(b), and
    - (e) such other factors as the Principal Reporter considers appropriate.
  - (3) The Principal Reporter must not, in providing information under subsection (1), provide any more information than is necessary to inform the person who made the request of the action taken in relation to the offence or, as the case may be, the action or behaviour mentioned in section 179A(1)(a)(ii).”
- (2) In section 68 (determination under section 66: no referral to a children's hearing) of the 2011 Act, after subsection (3) insert—
- “(3A) The Principal Reporter may not, under subsection (3)(b), provide information to a person who is entitled to request that information under section 179A(3).”.
- (3) Section 53 of the Criminal Justice (Scotland) Act 2003 is repealed.

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VALID FROM 31/03/2020

## PART 4

### POLICE INVESTIGATORY AND OTHER POWERS

#### CHAPTER 1

#### EMERGENCY PLACE OF SAFETY

VALID FROM 17/12/2021

#### **28 Power to take child under 12 to place of safety**

- (1) This section applies where a constable finds in any place a child under 12 years of age who the constable has reasonable grounds to believe is behaving or is likely to behave in a way that is causing or risks causing significant harm to another person.
- (2) The constable may take the child to a place of safety and keep the child there if the constable is satisfied that it is necessary to do so to protect any other person from an immediate risk of significant harm or further such harm.
- (3) As soon as practicable after a constable takes a child to a place of safety under this section, the constable must inform a parent of the child.
- (4) A child may be kept in a place of safety under this section—
  - (a) only for so long as is necessary—
    - (i) to put in place arrangements for the care or protection of the child, or
    - (ii) for an order under section 63 authorising the taking of intimate samples from the child to be obtained, and
  - (b) in either case, for no longer than 24 hours.
- (5) A child may be kept in a place of safety that is a police station only if a constable of the rank of inspector or above considers that it is not reasonably practicable to keep the child in a place of safety that is not a police station.
- (6) But a child must not be kept in a cell within a police station.
- (7) Subsection (6) does not apply if (and only for as long as) a constable of the rank of inspector or above considers that it is not reasonably practicable for the child to be kept elsewhere within the police station.
- (8) Where a child is kept in a police station (whether in a cell or elsewhere), the constable must take steps to identify a place of safety that is not a police station and transfer the child to that place as soon as is reasonably practicable.
- (9) Subsection (8) does not apply where subsection (4)(a)(ii) applies.
- (10) This section does not affect any other power by virtue of which a constable may take a child to a place of safety.

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(11) In this section—

“intimate sample” has the meaning given by section 60(4),

“place of safety” means—

- (a) a residential or other establishment provided by a local authority,
- (b) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
- (c) a hospital or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child,
- (d) the dwelling-house of a suitable person who is so willing,
- (e) any other suitable place the occupier of which is so willing, or
- (f) a police station (but see subsections (5) to (8)).

## 29 List of places of safety

- (1) The Scottish Ministers must compile and maintain a list of places of safety.
- (2) For the purposes of compiling this list the Scottish Ministers must consult—
  - (a) the chief constable,
  - (b) each local authority,
  - (c) such other persons as they consider appropriate.
- (3) The Scottish Ministers may modify the list compiled and maintained under subsection (1) by—
  - (a) including a place of safety in the list,
  - (b) removing a place of safety from the list.
- (4) The list must include information on the times at which each place of safety listed will be available for use.
- (5) The Scottish Ministers must—
  - (a) make the list compiled and maintained under subsection (1) available to the persons mentioned at subsection (2),
  - (b) publish the list in such manner as they consider appropriate.

## 30 Place of safety: regulations

- (1) The Scottish Ministers may by regulations make further provision about a child taken to and kept in a place of safety under section 28.
- (2) Regulations under subsection (1) may in particular include provision about—
  - (a) the notice to be given when a child is taken to a place of safety, including—
    - (i) the persons to whom notice is to be given,
    - (ii) the information persons given notice are to receive,
    - (iii) when notice may be dispensed with,
  - (b) the constable's duties to a child taken to and kept in the place of safety, including the information to be given to the child,
  - (c) the information to be recorded in relation to the taking and keeping of the child in a place of safety, including requiring records to be kept as to—

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- (i) the nature of the incident in connection with which the child was taken to and kept in the place of safety,
- (ii) the nature and location of each place of safety to which the child was taken or transferred,
- (iii) the length of time the child was kept at each such location,
- (iv) whether the child was at any time kept in a police station and, if so, the reasons why it was not reasonably practicable to keep the child in a place of safety other than a police station for the time the child was so kept,
- (v) whether the child was at any time kept in a cell within a police station and, if so, the length of time the child was so kept and the reasons why it was not reasonably practicable to keep the child elsewhere within the police station for that time.

### 31 Guidance

- (1) The Scottish Ministers—
  - (a) must issue guidance to the persons mentioned in subsection (3) about such matters relating to the exercise of the power conferred by section 28 as they consider appropriate, and
  - (b) may, from time to time, issue revised guidance.
- (2) Guidance under subsection (1) may in particular cover—
  - (a) what constitutes significant harm,
  - (b) the circumstances under which a constable may exercise the constable's power to take a child to a place of safety,
  - (c) co-operation between the persons mentioned in subsection (3) with a view to identifying (including in advance of any exercise of the power conferred by section 28) places within a particular area which are suitable for use as a place of safety for the purposes of section 28,
  - (d) processes to be put in place by those persons—
    - (i) to minimise the number of occasions on which it is not reasonably practicable to keep a child in a place of safety other than a police station,
    - (ii) to ensure that the need to safeguard and promote the wellbeing of the child being kept in a place of safety is treated as a primary consideration in accordance with section 72(2),
  - (e) the keeping of a child who is being kept in a place of safety that is a police station in a cell.
- (3) The persons are—
  - (a) the chief constable,
  - (b) local authorities.
- (4) A person mentioned in subsection (3) must have regard to guidance issued under subsection (1).
- (5) Before issuing guidance under subsection (1), the Scottish Ministers must consult—
  - (a) the chief constable,
  - (b) each local authority,
  - (c) such other persons as they consider appropriate.

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### **32 Reports on use of places of safety**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting period—
  - (a) prepare a report containing, in relation to that period, such information on the exercise of the power conferred by section 28 as the Scottish Ministers may by regulations specify,
  - (b) lay a copy of the report before the Scottish Parliament, and
  - (c) publish the report in such manner as they consider appropriate.
- (2) In this section, “reporting period” means—
  - (a) the year beginning with the day on which section 28 comes into force, and
  - (b) each successive period of one year.
- (3) The Scottish Ministers may by regulations substitute for the number of years for the time being specified in subsection (2)(b) another number of years.

## **CHAPTER 2**

### **SEARCH OF CHILDREN UNDER 12**

#### *Search without warrant*

### **33 Search of child under 12 without warrant under existing enactment**

- (1) This section applies to an enactment under or by virtue of which a constable may, on the ground (however expressed) that the constable reasonably suspects an offence has been, is being or is about to be committed, carry out a search without warrant.
- (2) The enactment applies to a child under 12 years of age as it applies to a person of 12 years or over who has committed, is committing or is about to commit an offence where the child's behaviour is such that, were the child 12 years or over, it would be an offence in relation to which the constable's power of search would be available.
- (3) But subsection (2) does not apply to the enactment to the extent that it provides (or would, by virtue of that subsection, provide) that—
  - (a) the constable may arrest the child,
  - (b) the constable may apply for a warrant,
  - (c) the child commits an offence if the child—
    - (i) obstructs the constable in the exercise of a power conferred under or by virtue of the enactment, or
    - (ii) fails to comply with any requirement made of the child by the constable.
- (4) The Scottish Ministers may by regulations—
  - (a) specify enactments to which this section is not to apply,
  - (b) modify subsection (3).

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VALID FROM 17/12/2021

*Search under order*

**34 Application for order authorising search in relation to child under 12**

- (1) A constable may apply to the sheriff for an order under section 36 authorising a search in relation to a child under 12 years of age.
- (2) An application for an order under section 36 must—
  - (a) identify the applicant,
  - (b) identify the child in respect of whom the order is sought,
  - (c) in so far as is practicable, identify a parent of the child,
  - (d) state the grounds on which the application is made,
  - (e) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.

**35 Consideration of application for order under section 36**

- (1) This section applies where a constable makes an application under section 34 in respect of a child.
- (2) The sheriff may determine the application in court or in chambers after such enquiry or hearing (if any) as the sheriff considers appropriate.
- (3) Before determining the application, the sheriff must consider whether any of the following persons should be given an opportunity to make representations—
  - (a) the applicant,
  - (b) the child in respect of whom the application is made,
  - (c) a parent of the child,
  - (d) any other person the sheriff considers to have an interest in the application.

**36 Order authorising search in relation to child under 12**

- (1) This section applies where a constable makes an application under section 34 in respect of a child.
- (2) The sheriff may make an order authorising any of the actions mentioned in subsection (4) if satisfied that there are reasonable grounds to suspect that—
  - (a) the child—
    - (i) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
    - (ii) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person, and
  - (b) evidence relevant to the investigation of that behaviour may be found on the child, on any premises or in any vehicle.
- (3) In considering the matters mentioned in subsection (2), the sheriff must have regard to—

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- (a) the nature and seriousness of the child's behaviour,
  - (b) whether making the order is appropriate given the child's circumstances (including the child's age and any matter related to the child's behaviour).
- (4) The actions referred to in subsection (2) are—
- (a) the search of the child,
  - (b) the entry to and search of any premises,
  - (c) the entry to and search of any vehicle,
  - (d) the seizure of anything the constable may find on the child or on premises or in the vehicle.
- (5) An order under this section authorises such of the actions mentioned in subsection (4) as are specified in the order for a period of 7 days beginning with the day on which the order is made.
- (6) A constable who enters any unoccupied premises by virtue of this section must leave the premises as effectively secured against unauthorised entry as the constable found them.
- (7) In this section—
- “premises” includes—
    - (a) land,
    - (b) buildings (including a building used as a dwelling),
    - (c) a caravan, houseboat or other moveable structure used as a dwelling,
  - “vehicle” includes a vessel.

### **37 Notification of order under section 36**

- (1) This section applies where an order is made under section 36 authorising the search of a child.
- (2) The constable must, as soon as reasonably practicable after the order is made, provide a copy of the order to—
  - (a) the child, and
  - (b) in so far as practicable, a parent of the child.
- (3) The constable must at the same time explain the order to the child in a way that is appropriate to the child's age and maturity.

### **38 Appeal against decision under section 36**

- (1) An appeal taken to the Sheriff Appeal Court under section 110 of the Courts Reform (Scotland) Act 2014 against a decision of the sheriff under section 36 may be taken only where the sheriff, on an application made by a constable or by or on behalf of the child to whom the decision relates, gives permission.
- (2) Permission to appeal against such a decision must be applied for—
  - (a) where an order is made under section 36, before the end of the period of 3 working days beginning with the day after the day on which the child is provided with a copy of the order under section 37,



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- (b) where the sheriff refuses to make such an order, before the end of the period of 3 working days beginning with the day after the day on which the decision is made.
- (3) An appeal against the decision of the sheriff under section 36 must be taken before the end of the period of 3 working days beginning with the day on which permission to appeal is given.
- (4) A decision of the Sheriff Appeal Court on an appeal against the sheriff's decision is final.
- (5) Subsection (6) applies where—
  - (a) the Sheriff Appeal Court upholds or varies the order appealed against, and
  - (b) the order as upheld or varied authorises an action mentioned in section 36(4) which, at the time the appeal is determined, has not been carried out.
- (6) The Sheriff Appeal Court may, in substitution for the period mentioned in section 36(5), specify a period for which any such action is authorised.
- (7) Any period specified by virtue of subsection (6) must not exceed 7 days beginning with the day on which the appeal is determined.

### CHAPTER 3

#### QUESTIONING OF CERTAIN CHILDREN

VALID FROM 17/12/2021

##### *Limitation on police questioning*

#### **39 Limitation on police questioning of certain children**

- (1) This section applies where a constable has reasonable grounds to suspect that a child, while under 12 years of age—
  - (a) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
  - (b) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person.
- (2) The child may not be questioned by a constable, or subjected to an investigative interview, in relation to the incident mentioned in subsection (1) unless the questioning or interview is authorised—
  - (a) by virtue of section 40(2),
  - (b) by an order under section 44 (a “child interview order”), or
  - (c) by virtue of section 54.
- (3) In this Chapter—
  - “child” means a person—
    - (a) who is under 16 years of age, or

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- (b) who is—
- (i) 16 or 17 years of age, and
  - (ii) subject to a compulsory supervision order, or an interim compulsory supervision order, made under the 2011 Act,
- “investigative interview” means a meeting, or series of meetings—
- (a) planned by a constable in collaboration with a local authority, and
  - (b) conducted—
    - (i) by a constable or an officer of a local authority, or
    - (ii) jointly by a constable and an officer of a local authority,
- for the purpose of seeking information from a child in relation to an incident which is the subject of a police investigation,
- references to a constable questioning a child include references to a constable causing a child to be questioned by another person (and cognate expressions are to be construed accordingly).

VALID FROM 17/12/2021

*Investigative interview by agreement*

**40 Investigative interview by agreement**

- (1) This section applies where—
- (a) a constable has reasonable grounds to suspect that a child, while under 12 years of age—
    - (i) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
    - (ii) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person,
  - (b) the constable considers that an investigative interview of the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence), and
  - (c) both—
    - (i) the child, and
    - (ii) a parent of the child,
 agree to an investigative interview of the child being conducted.
- (2) Where this section applies, an investigative interview of the child in relation to the behaviour mentioned in subsection (1)(b) is authorised for so long as the agreement mentioned in subsection (1)(c) is not withdrawn.
- (3) Agreement under subsection (1)(c) is withdrawn if—
- (a) the child or the parent who has given agreement withdraws that agreement,
  - (b) the child or that parent fails to comply in a material respect with the plans for the investigative interview authorised by subsection (2) drawn up under section 47.

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- (4) Refusal by the child to answer questions during the interview does not constitute withdrawal of agreement under subsection (3)(b).
- (5) Where agreement under—
  - (a) subsection (1)(c)(i) is withdrawn, a constable may, under section 42(1), apply to the sheriff for a child interview order,
  - (b) subsection (1)(c)(ii) is withdrawn, a constable may—
    - (i) seek agreement for the purposes of that subsection from another parent of the child, or
    - (ii) under section 42(1), apply to the sheriff for a child interview order.
- (6) Nothing in this section affects the power of a constable to apply for a child interview order in relation to the behaviour mentioned in subsection (1)(b) in circumstances other than those mentioned in subsection (5)(a) and (b)(ii).
- (7) For the purposes of this section, a “parent of the child” means a person who—
  - (a) is aged 18 or over,
  - (b) has parental responsibilities (within the meaning of the Children (Scotland) Act 1995) in relation to the child, and
  - (c) is related to the child or with whom the child lives.
- (8) In subsection (7)(c), the reference to a person who is related to the child includes reference to a person who—
  - (a) is married to or in a civil partnership with a person who is related to the child,
  - (b) is related to the child by the half blood.

#### **41 Information to be provided following agreement to investigative interview**

- (1) A constable must, as soon as reasonably practicable after agreement to an investigative interview being conducted is given under section 40(1)(c)—
  - (a) provide a notice in writing containing the information mentioned in subsection (2) to—
    - (i) the child, and
    - (ii) the parent of the child who has given agreement under that section, and
  - (b) in so far as practicable, explain the information contained in the notice to—
    - (i) the child (in a way that is appropriate to the child's age and maturity), and
    - (ii) the parent mentioned in paragraph (a)(ii).
- (2) The information is—
  - (a) that the investigative interview is authorised by virtue of agreement having been given under section 40(1)(c),
  - (b) that either the child or the parent who has given agreement under that section can withdraw agreement at any time (whether before or after the start of the investigative interview),
  - (c) information about the other circumstances in which agreement is withdrawn,
  - (d) that agreement being withdrawn will end the investigative interview, and

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- (e) information about what else may happen following withdrawal of agreement (for example, the actions mentioned in section 40(5)).
- (3) As soon as reasonably practicable after the identity of the person who will act as child interview rights practitioner during the investigative interview is known, the constable must provide that person with a copy of the notice given under subsection (1)(a).

VALID FROM 17/12/2021

### *Child interview order*

#### **42 Application for child interview order**

- (1) A constable may apply to the sheriff for a child interview order.
- (2) An application for a child interview order must—
  - (a) identify the applicant,
  - (b) identify the child in respect of whom the order is sought,
  - (c) in so far as practicable, identify a parent of the child,
  - (d) state the grounds on which the application is made,
  - (e) set out provisional plans for the investigative interview of the child, and
  - (f) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.
- (3) Before making an application for a child interview order, the constable must—
  - (a) determine which local authority is the relevant local authority in relation to the planning and conduct of the proposed investigative interview of the child, and
  - (b) consult that authority about the making of the application and the provisional plans mentioned in subsection (2)(e) (unless such consultation is not practicable).
- (4) In this Chapter, “relevant local authority” has the meaning given by section 201 of the 2011 Act.

#### **43 Consideration of application for child interview order**

- (1) This section applies where a constable makes an application for a child interview order.
- (2) The sheriff may determine the application in court or in chambers after such enquiry or hearing (if any) as the sheriff considers appropriate.
- (3) Before determining the application, the sheriff must consider whether any of the following persons should be given an opportunity to make representations—
  - (a) the applicant,
  - (b) the child in respect of whom the application is made,
  - (c) a parent of the child,
  - (d) any other person the sheriff considers to have an interest in the application.

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#### **44 Child interview order**

- (1) This section applies where a constable makes an application for a child interview order.
- (2) The sheriff may make the order if satisfied—
  - (a) that there are reasonable grounds to suspect that the child, while under 12 years of age—
    - (i) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
    - (ii) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person, and
  - (b) that an investigative interview of the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence).
- (3) In considering the matters mentioned in subsection (2), the sheriff must have regard to—
  - (a) the nature and seriousness of the child's behaviour, and
  - (b) whether an investigative interview of the child is appropriate given the child's circumstances (including the child's age and any matter related to the child's behaviour).
- (4) A child interview order authorises an investigative interview of the child in relation to the behaviour to which the application relates.
- (5) A child interview order may also—
  - (a) require any person in a position to do so to produce the child to a person specified in the order for the purpose of ensuring the child's attendance at the investigative interview,
  - (b) authorise the transporting of the child to and from the place where the interview is to take place (by the person specified in paragraph (a) or another person),
  - (c) authorise any other action (including action to safeguard and promote the wellbeing of the child) required in connection with the interview.
- (6) A child interview order may contain directions about—
  - (a) the conduct of the investigative interview authorised by the order,
  - (b) the carrying out of any other action required or authorised by the order.
- (7) A child interview order ceases to have effect at the end of the period of 7 days or such shorter period as is specified in the order (the period in each case beginning with the day after the day on which the order is made or such later day as is specified in the order).

#### **45 Notification of child interview order**

- (1) This section applies where a child interview order is made in respect of a child.
- (2) A constable must—
  - (a) as soon as reasonably practicable after the order is made—

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- (i) provide the child, and, in so far as practicable, a parent of the child, with a copy of the order, and
- (ii) explain the order to the child in a way that is appropriate to the child's age and maturity, and
- (b) as soon as reasonably practicable after the identities of the persons who will act as supporter and child interview rights practitioner during the investigative interview authorised by the order are known, provide each of those persons with a copy of the order.

#### **46 Appeal against decision under section 44**

- (1) An appeal taken to the Sheriff Appeal Court under section 110 of the Courts Reform (Scotland) Act 2014 against a decision of the sheriff under section 44 may be taken only where the sheriff, on an application made by a constable or by or on behalf of the child to whom the decision relates, gives permission.
- (2) Permission to appeal against such a decision must be applied for—
  - (a) where a child interview order is made, before the end of the period of 3 working days beginning with the day after the day on which the child is provided with a copy of the order under section 45,
  - (b) where the sheriff refuses to make such an order, before the end of the period of 3 working days beginning with the day after the day on which the decision is made.
- (3) An appeal against the decision of the sheriff under section 44 must be taken before the end of the period of 3 working days beginning with the day on which permission to appeal is given.
- (4) A decision of the Sheriff Appeal Court on an appeal against the sheriff's decision is final.
- (5) Subsection (6) applies where—
  - (a) the Sheriff Appeal Court upholds or varies the order appealed against, and
  - (b) the investigative interview authorised by the order has not been completed at the time the appeal is determined.
- (6) The Sheriff Appeal Court may, in substitution for the period mentioned in section 44(7) (or any period specified by virtue of that section), specify—
  - (a) a period (not exceeding 7 days) at the end of which the child interview order is to cease to have effect, and
  - (b) the day on which that period is to begin.

VALID FROM 17/12/2021

### *Planning and conduct of investigative interviews*

#### **47 Planning of investigative interview**

- (1) This section applies where an investigative interview of a child is authorised—
  - (a) by virtue of section 40(2), or

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- (b) by a child interview order made in respect of the child.
- (2) A constable must, in collaboration with the relevant local authority, draw up plans for the conduct of the investigative interview.
- (3) The plans drawn up under subsection (2) must—
  - (a) where the interview is authorised by a child interview order, accord with any directions contained in the order,
  - (b) specify—
    - (i) the period over which the interview will be conducted,
    - (ii) the number of meetings which will take place as part of the interview,
    - (iii) the date of each meeting,
    - (iv) how long each meeting will last,
    - (v) the location at which each meeting will take place,
    - (vi) the persons by whom the child may be questioned at each meeting,
    - (vii) the support and assistance required by the child during the interview, and
  - (c) include any other relevant information (for example, details of any arrangements for transport of the child to and from the interview where such transport is authorised by a child interview order or agreed in connection with an interview authorised by virtue of section 40(2)).
- (4) A constable must, as soon as reasonably practicable after plans are drawn up under subsection (2)—
  - (a) provide the child with a copy of the plans and, in so far as practicable, explain the information contained in the plans to the child (in a way that is appropriate to the child's age and maturity), and
  - (b) provide a copy of the plans—
    - (i) where the interview is authorised by virtue of section 40, to the parent who has given agreement under subsection (1)(c)(ii) of that section,
    - (ii) where the interview is authorised by a child interview order, in so far as is practicable to a parent of the child.
- (5) A constable must, as soon as reasonably practicable after the identities of the persons mentioned in subsection (6) are known, provide each of those persons with a copy of the plans.
- (6) Those persons are—
  - (a) where the interview is authorised by a child interview order, the person who will act as supporter during the interview,
  - (b) the person who will act as child interview rights practitioner during the interview.

#### **48 Conduct of investigative interview**

- (1) Subsection (2) applies where an investigative interview of a child is authorised by virtue of section 40(2).
- (2) The interview—

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- (a) may not start prior to the child being given a copy of the plans for the interview drawn up under section 47,
  - (b) must be conducted in accordance with those plans.
- (3) Subsections (4) to (6) apply where an investigative interview of a child is authorised by a child interview order made in respect of the child.
- (4) No action authorised or required by the order may take place prior to the child being given a copy of the plans for the investigative interview drawn up under section 47.
- (5) The interview must be conducted in accordance with—
- (a) any directions about the conduct of the interview contained in the order, and
  - (b) the plans drawn up under section 47.
- (6) Any other action required or authorised by a child interview order must be carried out in accordance with—
- (a) any directions about the carrying out of those actions contained in the order,
  - (b) the plans for the interview drawn up under section 47.

#### **49 Right not to answer questions**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) The child is under no obligation to say anything during the investigative interview.

#### **50 Right to have supporter present**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) The child has the right, during the investigative interview, to have another person (a “supporter”) present in the room in which the interview is being conducted.
- (3) The supporter must not be denied access to the child at any time during the interview.
- (4) Subsections (2) and (3) do not apply if (but only for as long as)—
- (a) a relevant constable, and
  - (b) an officer of the relevant local authority,
- agree that the supporter's absence from the room in which the interview is being conducted is necessary (including where it is necessary to safeguard or promote the child's wellbeing).
- (5) A “relevant constable” is a constable—
- (a) who is of the rank of sergeant or above, and
  - (b) who has not been involved in the investigation of the incident to which the interview relates (including in the planning and conduct of the interview).
- (6) Where the investigative interview is authorised—



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- (a) by virtue of section 40, the child's supporter must be the parent who has given agreement under subsection (1)(c)(ii) of that section to the interview being conducted,
  - (b) by a child interview order, the child's supporter—
    - (i) must be aged 18 or over,
    - (ii) may, but need not, be a parent of the child.
- (7) The child's supporter is to be a person considered appropriate by the person conducting the interview.
- (8) In considering for the purpose of subsection (7) whether a person is appropriate, the person conducting the interview is—
  - (a) so far as reasonably practicable, to ascertain the views of the child, and
  - (b) to have regard to any views ascertained.
- (9) In having regard to the views of the child under subsection (8), the person conducting the interview is to take account of the child's age and maturity.
- (10) Subsection (11) applies where—
  - (a) the child's supporter is required by subsection (6)(a) to be a particular person, and
  - (b) the person conducting the interview does not consider that person to be an appropriate person to be the child's supporter.
- (11) The agreement of the person required by subsection (6)(a) to be the child's supporter to the investigative interview being conducted is to be treated as withdrawn.

## **51 Right to have child interview rights practitioner present**

- (1) This section applies where an investigative interview of a child is authorised—
  - (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) The child has the right, in connection with and during the investigative interview, to receive advice, support and assistance from a child interview rights practitioner.
- (3) The child has the right to a private consultation with the child interview rights practitioner before, or at any time during, the interview.
- (4) The child interview rights practitioner must not be denied access to the child at any time during the interview.
- (5) A child interview rights practitioner must—
  - (a) so far as reasonably practicable, ascertain the views of the child in relation to—
    - (i) the extent to which the child wishes to receive advice, support and assistance from the practitioner, and
    - (ii) the ways in which advice, support and assistance is to be provided, and
  - (b) have regard to any views ascertained.
- (6) In having regard to the views of the child under subsection (5), the child interview rights practitioner is to take account of the child's age and maturity.

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- (7) In subsection (2), “advice, support and assistance” includes the child interview rights practitioner—
- (a) helping the child to understand—
    - (i) the purpose of the interview,
    - (ii) the child's rights in relation to the interview (including the child's right to refuse to answer questions), and
    - (iii) what may happen as a result of the interview,
  - (b) making recommendations to the child about the exercise of the child's rights in relation to the interview,
  - (c) being present with the child in the room in which the interview is being conducted,
  - (d) communicating on the child's behalf with the person conducting the interview or otherwise supporting the child in communicating with that person,
  - (e) questioning whether the interview is being conducted—
    - (i) in accordance with any child interview order authorising the interview or otherwise fairly,
    - (ii) in a way that treats the need to safeguard and promote the wellbeing of the child as a primary consideration.
- (8) A child interview rights practitioner is a person who is authorised, by virtue of being included in the register established and maintained under section 56(1), to provide advice, support and assistance to children in relation to their involvement in investigative interviews authorised by virtue of section 40(2) or by a child interview order.

## **52 Child not to be questioned while unaccompanied**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) The investigative interview may be conducted only if (and only for as long as)—
- (a) both the child's supporter and the child interview rights practitioner are in attendance at the location where the interview is being conducted, and
  - (b) at least one of those persons is present in the room in which the interview is being conducted.

## **53 Information to be provided to child**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) Before the start of the investigative interview, the person conducting the interview must ensure that—
- (a) the child is provided with the information mentioned in subsection (3), and
  - (b) the information is explained to the child.
- (3) The information is information about—

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- (a) the behaviour to which the interview relates,
  - (b) the purpose of the interview,
  - (c) the child's rights in relation to the interview (including the child's right not to answer questions), and
  - (d) what may happen as a result of the interview.
- (4) Where the investigative interview is authorised by virtue of section 40(2), the person conducting the interview must also ensure that the information mentioned in section 41(2) is provided to—
- (a) the child, and
  - (b) the parent who has given agreement under section 40(1)(c)(ii).
- (5) Information provided under subsections (2)(a) and (4)(a) must be provided in a format appropriate to the child's age and maturity.

VALID FROM 17/12/2021

### *Questioning in urgent cases*

#### **54 Questioning of child in urgent cases**

- (1) This section applies where a constable has reasonable grounds to suspect that—
- (a) a child, while under 12 years of age, by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, and
  - (b) there is a risk of loss of life if the child is not questioned immediately.
- (2) The constable may, in so far as necessary to prevent loss of life, question the child about the child's behaviour and the circumstances surrounding it if authorised to do so by a relevant senior officer under subsection (3).
- (3) The relevant senior officer may authorise the constable to question the child as mentioned in subsection (2) only if that officer is satisfied that—
- (a) there are reasonable grounds to suspect that the child, while under 12 years of age, by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person,
  - (b) questioning of the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence), and
  - (c) it is not practicable to apply for a child interview order authorising an investigative interview of the child because there is a risk of loss of life if the child is not questioned immediately.
- (4) In considering the matters mentioned in subsection (3), the relevant senior officer must have regard to—
- (a) the nature and seriousness of the child's behaviour,
  - (b) whether the questioning of the child is appropriate given the child's circumstances (including the child's age and any matter related to the child's behaviour).

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- (5) A child in respect of whom authorisation under subsection (3) is granted is not required to answer questions during the questioning authorised by that subsection.
- (6) In this section, a “relevant senior officer” is an officer of the rank of superintendent or above.

#### **55 Procedure following authorisation of questioning under section 54**

- (1) This section applies where the questioning of a child is authorised by section 54.
- (2) The constable authorised under section 54 to question the child must inform the child—
  - (a) that the questioning of the child has been authorised under section 54, and
  - (b) that the child has the right not to answer questions.
- (3) A constable must, in so far as practicable, inform a parent of the child about the authorisation under section 54.
- (4) Subsection (3) need not be complied with if the constable reasonably suspects that informing a parent of the child would exacerbate the risk of loss of life.
- (5) A constable must inform a child interview rights practitioner about the authorisation under section 54.
- (6) A constable must, as soon as reasonably practicable after authorisation is granted under section 54, apply for a child interview order authorising an investigative interview of the child in relation to the behaviour mentioned in section 54(1).

#### *Register of child interview rights practitioners*

#### **56 Register of child interview rights practitioners**

- (1) The Scottish Ministers must establish and maintain a register of persons who are authorised to provide advice, support and assistance to children in relation to their involvement in investigative interviews.
- (2) A person may be included in the register only if the person is a solicitor who is entitled to provide children's legal assistance under section 28M of the Legal Aid (Scotland) Act 1986.
- (3) The Scottish Ministers may by regulations make further provision in connection with—
  - (a) the register (including the establishment and maintenance of the register),
  - (b) child interview rights practitioners (including provision for the payment of expenses, fees and allowances to such practitioners by the Scottish Ministers).
- (4) Regulations under subsection (3)(b) may in particular include provision—
  - (a) about how child interview rights practitioners are appointed to cases, and
  - (b) requiring, so far as reasonably practicable, the views of the child involved in the case as to the appointment of a particular child interview rights practitioner to be ascertained and, taking account of the child's age and maturity, had regard to.

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(5) In this section—

“investigative interview” means an investigative interview authorised by virtue of section 40(2) or by a child interview order,

“solicitor” means a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980.

### Guidance

## 57 Guidance

(1) The Scottish Ministers—

(a) must issue guidance about—

- (i) the obtaining and withdrawal of agreement for the purposes of section 40,
- (ii) applications for a child interview order,
- (iii) the planning and conduct of investigative interviews authorised by virtue of section 40(2) or by a child interview order,
- (iv) the questioning of children by virtue of section 54, and

(b) may, from time to time, issue revised guidance.

(2) Guidance under subsection (1) may in particular cover—

- (a) the role of constables and local authorities in the planning and conduct of investigative interviews,
- (b) principles according to which investigative interviews are to be conducted,
- (c) the creation of an environment in which the child's wellbeing is safeguarded and promoted,
- (d) approaches to questioning in investigative interviews,
- (e) the recording of investigative interviews,
- (f) the determination of whether a person is an appropriate person to act as a supporter,
- (g) the role of supporters and child interview rights practitioners in investigative interviews,
- (h) other forms of support and assistance that may be required by the child in connection with an investigative interview.

(3) A person exercising functions to which guidance under subsection (1) relates must, in doing so, have regard to that guidance.

(4) Before issuing guidance or revised guidance under this section, the Scottish Ministers must consult—

- (a) the chief constable,
- (b) each local authority,
- (c) such other persons as they consider appropriate.

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## CHAPTER 4

### TAKING OF PRINTS AND SAMPLES FROM CERTAIN CHILDREN

#### *Limitation on taking of prints and samples*

VALID FROM 17/12/2021

#### **58      Limitation on taking prints and samples from children under 12**

- (1) It is unlawful for a constable to take any relevant physical data or relevant sample from a child under 12 years of age except where authorised to do so—
  - (a) by an order under section 63,
  - (b) by virtue of section 69, or
  - (c) by or under any other enactment.
- (2) Subsection (1) does not apply where—
  - (a) an offence appears to have been committed against the child, or
  - (b) the child appears to have been harmed as a result of another child behaving, when under 12 years of age, in a way mentioned in section 63(2)(a),
 and the taking of relevant physical data or a relevant sample from the child is necessary to properly investigate that offence or, as the case may be, behaviour.
- (3) Relevant physical data or a relevant sample taken from a child in the circumstances and for the purpose mentioned in subsection (2), and any information derived from such a sample, may not be used for the purpose of investigating an incident of a type mentioned in subsection (4).
- (4) The incident is one—
  - (a) which occurred when the child was under 12 years of age, and
  - (b) in relation to which the constable has reasonable grounds to suspect that the child—
    - (i) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
    - (ii) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person.
- (5) But subsection (3) does not—
  - (a) prohibit the use of the data, sample or information for the purpose of investigating the incident where the child is now 12 years of age or over and consents, or
  - (b) affect the ability of a constable—
    - (i) to apply for an order under section 63 authorising the taking of relevant physical data or a relevant sample from the child for the purpose of investigating the incident, or
    - (ii) to take such data or such a sample for that purpose by virtue of section 69.
- (6) In this Chapter—

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- (a) references to taking relevant physical data and relevant samples from a child include references to requiring the child to provide relevant physical data and relevant samples,
- (b) “child” has the same meaning as in Chapter 3.

VALID FROM 17/12/2021

## 59 Limitation on taking prints and samples from children aged 12 and over

- (1) It is unlawful for a constable to take any relevant physical data or relevant sample from a child of 12 years of age or over for the purposes of investigating an incident of a type mentioned in subsection (2) except—
  - (a) where authorised to do so—
    - (i) by an order under section 63, or
    - (ii) by virtue of section 69, or
  - (b) where the child consents.
- (2) The incident is one—
  - (a) which occurred when the child was under 12 years of age, and
  - (b) in relation to which the constable has reasonable grounds to suspect that the child—
    - (i) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
    - (ii) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person.

## 60 Key definitions

- (1) In this Chapter, the following expressions have the meanings given in this section.
- (2) “Relevant physical data” means any—
  - (a) fingerprint,
  - (b) palm print,
  - (c) print or impression, other than those mentioned in paragraph (a) and (b), of an external part of the body,
  - (d) record of a person's skin on an external part of the body created by an approved device,
  - (e) dental impression,
  - (f) photograph of a person.
- (3) “Relevant sample” means—
  - (a) a sample of hair, including pubic hair, or other material from an external part of the body taken by means of cutting, combing or plucking,
  - (b) a sample of nail or other material from a fingernail or toenail or from under any such nail,
  - (c) a sample of saliva or other material taken by means of swabbing the inside of the mouth,

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- (d) a sample, other than those mentioned in paragraph (c), of blood or other body fluid, of urine, of body tissue or of other material taken by any means (including by swabbing a bodily orifice other than the mouth).
- (4) “Intimate sample” means—
- (a) a sample of blood, semen, or any other tissue fluid, urine or pubic hair,
  - (b) a dental impression,
  - (c) a sample of any material taken by means of swabbing any part of a person's genitals (including pubic hair) or from a bodily orifice other than the mouth.
- (5) In subsection (2)(d), an “approved device” is a device approved by the Scottish Ministers by order under section 18(7B) of the Criminal Procedure (Scotland) Act 1995 for the purposes of section 18(7A)(d) of that Act.
- (6) The Scottish Ministers may by regulations modify the definitions of “relevant physical data”, “relevant sample” and “intimate sample”.

*Order authorising taking of prints and samples*

VALID FROM 17/12/2021

**61 Application for order authorising taking of prints and samples from child**

- (1) A constable may apply to the sheriff for an order under section 63 authorising the taking of relevant physical data or relevant samples from a child.
- (2) An application for an order under section 63 must—
- (a) identify the applicant,
  - (b) in so far as is practicable, identify the child in respect of whom the order is sought,
  - (c) in so far as is practicable, identify a parent of the child,
  - (d) state the grounds on which the application is made,
  - (e) specify the relevant physical data and relevant samples in relation to which authority to take is sought (including whether authority is sought to take an intimate sample),
  - (f) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.

VALID FROM 17/12/2021

**62 Consideration by sheriff of application for order under section 63**

- (1) This section applies where a constable makes an application under section 61 in respect of a child.
- (2) The sheriff may determine the application in court or in chambers after such enquiry or hearing (if any) as the sheriff considers appropriate.
- (3) Before determining the application, the sheriff must consider whether any of the following persons should be given an opportunity to make representations—



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- (a) the applicant,
- (b) the child in respect of whom the application is made,
- (c) a parent of the child,
- (d) any other person the sheriff considers to have an interest in the application.

VALID FROM 17/12/2021

### **63 Order authorising taking of prints and samples from child**

- (1) This section applies where a constable makes an application under section 61 in respect of a child.
- (2) The sheriff may make an order authorising the taking of relevant physical data and relevant samples from the child only if satisfied that—
  - (a) there are reasonable grounds to suspect that the child—
    - (i) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
    - (ii) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person, and
  - (b) the taking of relevant physical data or a relevant sample from the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence).
- (3) In considering the matters mentioned in subsection (2), the sheriff must have regard to—
  - (a) the nature and seriousness of the child's behaviour,
  - (b) whether the taking of relevant physical data or relevant samples is appropriate given the child's circumstances (including the child's age and any matter related to the child's behaviour).
- (4) An order under this section authorises—
  - (a) the taking of the relevant physical data or relevant samples specified,
  - (b) the period, beginning with day on which the order is made, within which that data and those samples may be taken, being—
    - (i) no more than 7 days, or
    - (ii) such longer period as may be specified on cause shown,
  - (c) the taking of steps in relation to that data and those samples,
  - (d) the removal of the child to the place at which the data and samples are to be taken and the keeping of the child in that place for the purposes of the taking of that data and those samples.
- (5) Subsection (4)(b) does not apply where the application for the order relates to relevant physical data or a relevant sample taken by virtue of section 69.
- (6) An order under this section may also require any person in a position to do so to produce the child to a constable.
- (7) In this section, “specified” means specified in the order.

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VALID FROM 17/12/2021

#### **64 Notification of order under section 63**

- (1) This section applies where an order is made under section 63 authorising the taking of relevant physical data or a relevant sample from a child.
- (2) The constable must, as soon as reasonably practicable after the order is made, provide—
  - (a) the child, and
  - (b) in so far as practicable, a parent of the child,
 with a copy of the order.
- (3) The constable must at the same time explain the order to the child in a way that is appropriate to the child's age and maturity.

#### **65 Taking of intimate samples**

- (1) This section applies where an order under section 63 authorises the taking of intimate samples from a child.
- (2) An intimate sample may be taken from the child—
  - (a) where the sample is a dental impression, only by a registered dentist,
  - (b) in any other case, only by a—
    - (i) registered medical practitioner,
    - (ii) registered health care professional, or
    - (iii) another type of individual of a type prescribed (by reference to skills, qualifications, experience or otherwise) by the Scottish Ministers by regulations.
- (3) In this section—
 

“registered dentist” has the meaning given by section 53(1) of the Dentists Act 1984,

“registered health care professional” means—

  - (a) a registered nurse, or
  - (b) a registered member of a health care profession designated for the purposes of this section by the Scottish Ministers by regulations.

#### **66 Destruction of prints and samples taken under section 63**

- (1) This section applies where an order under section 63 authorises the taking of any relevant physical data or relevant sample from a child.
- (2) The constable who applied for the order must ensure that all record of any data taken, all samples taken, and all information derived from any samples are destroyed as soon as possible following—
  - (a) a decision not to pass information about the child to the Principal Reporter under section 61 of the 2011 Act, or
  - (b) where information is so passed, the conclusion of proceedings in relation to the child under that Act in so far as arising from that information.

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- (3) For the purposes of subsection (2)(b), such proceedings are concluded when an event mentioned in subsection (4) or (6) occurs.
- (4) The event referred to in subsection (3) is the determination by the Principal Reporter under section 66(2) of the 2011 Act—
  - (a) that the behaviour of the child, to which the information mentioned in subsection (2)(b) relates, does not give rise to a ground in section 67 of that Act applying in relation to the child (whether or not such a ground applies for any other reason), or
  - (b) that, as a result of that behaviour, such a ground does apply but it is not necessary for a compulsory supervision order to be made in respect of the child.
- (5) Subsection (6) applies where the Principal Reporter determines under section 69(1) of that Act that—
  - (a) as a result of the behaviour of the child referred to in subsection (4)(a), a ground in section 67 of that Act does apply, and
  - (b) it is necessary for a compulsory supervision order to be made in respect of the child.
- (6) The event referred to in subsection (3) is whichever of the following occurs first—
  - (a) the discharge of the referral to the children's hearing,
  - (b) the withdrawal under section 107(2) of the 2011 Act of an application to the sheriff,
  - (c) the making of a compulsory supervision order in respect of the child, or
  - (d) where a compulsory supervision order is already in force in respect of the child, the termination, variation or continuation of the order.
- (7) An event mentioned in subsection (6) is not treated as having occurred for the purposes of subsection (3) until—
  - (a) the end of the period for any appeal under the 2011 Act with no appeal or further appeal, as the case may be, having been taken, or
  - (b) if an appeal or a further appeal, as the case may be, is taken, the conclusion of that appeal or further appeal.
- (8) Subsection (2) does not apply where the destruction of a sample, or the information derived from it, could have the effect of destroying any sample, or any information derived from it, lawfully held in relation to a person other than the child from whom the sample was taken.
- (9) The Scottish Ministers may by regulations modify subsection (6) so as to add to, vary, or remove an event for the time being mentioned in that subsection.
- (10) In this section, “children's hearing” and “compulsory supervision order” have the same meanings as in the 2011 Act.

VALID FROM 17/12/2021

## **67 Appeal against decision under section 63**

- (1) An appeal taken to the Sheriff Appeal Court under section 110 of the Courts Reform (Scotland) Act 2014 against a decision of the sheriff under section 63 may be taken

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only where the sheriff, on an application made by a constable or by or on behalf of the child to whom the decision relates, gives permission.

- (2) Permission to appeal against such a decision must be applied for—
  - (a) where an order under section 63 is made, before the end of the period of 3 working days beginning with the day after the day on which the child is provided with a copy of the order under section 64,
  - (b) where the sheriff refuses to make such an order, before the end of the period of 3 working days beginning with the day after the day on which the decision is made.
- (3) An appeal against the decision of the sheriff under section 63 must be taken before the end of the period of 3 working days beginning with the day on which permission to appeal is given.
- (4) A decision of the Sheriff Appeal Court on an appeal against the sheriff's decision is final.
- (5) Subsection (6) applies where—
  - (a) the Sheriff Appeal Court upholds or varies the order appealed against,
  - (b) the order as upheld or varied authorises the taking of relevant physical data or relevant samples which, at the time the appeal is determined, have not been taken.
- (6) The Sheriff Appeal Court may, in substitution for the period mentioned in subsection (4)(b)(i) of section 63 (or any period specified by virtue of subsection (4)(b)(ii) of that section), specify the period within which that data or those samples may be taken.
- (7) Any period specified by virtue of subsection (6) must not, except on cause shown, exceed 7 days beginning with the day on which the appeal is determined.

VALID FROM 17/12/2021

**68 Treatment of prints and samples where appeal taken against making of order under section 63**

- (1) This section applies where—
  - (a) an appeal is taken against a decision of the sheriff to make an order under section 63,
  - (b) before the constable who applied for the order was notified of the appeal, relevant physical data or a relevant sample was taken from the child by virtue of the order.
- (2) No steps or, as the case may be, no further steps may be taken in relation to the relevant physical data or relevant sample (other than holding or preserving the data or sample) before the conclusion of the appeal.
- (3) Where the decision of the sheriff is recalled and the order quashed, the constable who applied for the order must ensure that all record of any data taken, all samples taken, and all information derived from any samples taken are destroyed as soon as possible.

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(4) Where—

- (a) the decision of the sheriff is varied so that the order authorises the taking of different relevant physical data or relevant samples to those originally specified in the order by virtue of section 63(4)(a), and
- (b) as a result the taking of some or all of the data or samples mentioned in subsection (1)(b) would no longer be authorised by the order,

the constable who applied for the order must ensure that all record of any such data taken, all such samples taken, and all information derived from any such samples taken are destroyed as soon as possible.

VALID FROM 17/12/2021

*Taking of prints and samples in urgent cases*

**69 Taking of prints and samples in urgent cases**

- (1) A constable may, subject to subsection (4), take relevant physical data or a relevant sample from a child if authorised to do so by a relevant senior officer under subsection (2).
- (2) The relevant senior officer may authorise the constable to take relevant physical data or a relevant sample from the child only if that officer is satisfied that—
  - (a) there are reasonable grounds to suspect that the child—
    - (i) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
    - (ii) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person,
  - (b) the taking of relevant physical data or a relevant sample from the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence), and
  - (c) that it is not practicable to apply for an order under section 63 authorising the taking of that data or sample because of the risk that, if the data or sample is not taken immediately, evidence derived from the data or sample, or the sample, would be lost or destroyed.
- (3) In considering the matters mentioned in subsection (2), the relevant senior officer must have regard to—
  - (a) the nature and seriousness of the child's behaviour,
  - (b) whether the taking of relevant physical data or relevant samples is appropriate given the child's circumstances (including the child's age and any matter related to the child's behaviour).
- (4) Intimate samples may not be taken from a child under this section.
- (5) In this section, a “relevant senior officer” is an officer—
  - (a) of the rank of superintendent or above,

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- (b) who has not been involved in the investigation in connection with which the taking of the relevant physical data or relevant sample is sought.

#### **70 Procedure following taking of prints and samples under section 69**

- (1) This section applies where any relevant physical data or relevant sample has been taken from a child by virtue of section 69.
- (2) No steps may be taken in relation to the relevant physical data or relevant sample (other than holding and preserving the data or sample) unless and until an order under section 63 authorising the taking of the data or sample is obtained.
- (3) An application for an order under section 63 authorising the taking of the relevant physical data or relevant sample must be made before the end of the period of 7 days beginning with the day on which the data or sample was taken.
- (4) Such an application must, in addition to the matters mentioned in section 61(2), specify the data or sample taken by virtue of section 69.
- (5) The relevant senior officer who authorised the taking of the relevant physical data or relevant samples under section 69(2) must ensure that all record of any data taken and all samples taken are destroyed as soon as reasonably practicable after the earliest of the following events—
  - (a) a decision by the constable who took the data or sample not to apply for an order under section 63,
  - (b) the end of the period mentioned in subsection (3), no application having been made,
  - (c) where such an application is made but the sheriff refuses the application—
    - (i) the end of the period for an appeal against the sheriff's decision, no appeal having been taken, or
    - (ii) if an appeal is taken and the sheriff's decision is upheld, the conclusion of the appeal.

VALID FROM 17/12/2021

#### *Destruction of prints and samples taken with consent*

#### **71 Destruction of prints and samples taken from children aged 12 and over with consent**

- (1) This section applies where relevant physical data or a relevant sample has been taken from a child with consent by virtue of section 59(1)(b).
- (2) The relevant constable must ensure that all record of any data taken, all samples taken, and all information derived from any samples are destroyed as soon as possible following—
  - (a) a decision not to pass information about the child to the Principal Reporter under section 61 of the 2011 Act, or
  - (b) where information is so passed, the conclusion of proceedings in relation to the child under that Act in so far as arising from that information.

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- (3) For the purposes of subsection (2)(b), such proceedings are concluded when an event mentioned in section 66(4) or (6) occurs.
- (4) Subsection (2) does not apply where the destruction of a sample, or the information derived from it, could have the effect of destroying a sample, or any information derived from it, lawfully held in relation to a person other than the child from whom the sample was taken.
- (5) In subsection (2), the “relevant constable” is the constable investigating the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence).

## CHAPTER 5

### GENERAL PROVISIONS

VALID FROM 17/12/2021

#### 72 Wellbeing of child

- (1) This section applies where—
  - (a) a person is—
    - (i) exercising any function conferred by this Part, or
    - (ii) acting in pursuance of an order made or authorisation granted under this Part,
  - (b) under or by virtue of this Part, a court is making a decision about a matter to do with a child.
- (2) In exercising the function, acting in pursuance of the order or authorisation or, as the case may be, making the decision, the person or court must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.

#### 73 Children's legal aid for proceedings under this Part

- (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 28B (children's legal aid)—
  - (a) in subsection (2), for “subsection (3)” substitute “subsections (3) and (3A)”,
  - (b) after subsection (3) insert—

“(3A) The proceedings are, where regulations under section 28LB are made, proceedings before the sheriff and appeals from the sheriff under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019.”.
- (3) After section 28LA insert—

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**“28LB Power of Scottish Ministers to provide for children's legal aid to be available in relation to proceedings under the Age of Criminal Responsibility (Scotland) Act 2019**

- (1) The Scottish Ministers may by regulations modify this Part so as to—
  - (a) provide for children's legal aid to be available to a child in connection with proceedings before the sheriff and appeals from the sheriff under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, and
  - (b) specify the other persons (if any) to whom children's legal aid is to be available in connection with such proceedings and appeals.
- (2) Regulations under subsection (1) may in particular made provision about—
  - (a) the proceedings in relation to which and the circumstances in which children's legal aid is to be available automatically,
  - (b) the proceedings in relation to which and the circumstances in which children's legal aid is to be available on application to the Board.
- (3) Where regulations under subsection (1) include provision as is mentioned in subsection (2)(b), the regulations—
  - (a) must make provision for the conditions as to which the Board is to be satisfied before children's legal aid is to be made available,
  - (b) may make provision for different conditions to be satisfied in relation to different persons.”.
- (4) In section 37 (parliamentary procedure for regulations), in subsection (2), after “28LA(1),” insert “ 28LB(1), ”.

VALID FROM 17/12/2021

**74 Additional powers and duties of constables**

- (1) This section applies where a constable—
  - (a) is authorised to take a child to a place of safety and to keep the child there by virtue of section 28,
  - (b) is authorised to carry out a search by an order under section 36,
  - (c) is authorised to carry out an investigative interview of a child by a child interview order,
  - (d) is authorised to question a child by virtue of section 54,
  - (e) is authorised to take relevant physical data or relevant samples from a child—
    - (i) by an order under section 63, or
    - (ii) by virtue of section 69.
- (2) The authorisation mentioned in subsection (1) includes authorisation to use reasonable force.
- (3) Subsections (4) to (6) apply where a constable is authorised—
  - (a) to use reasonable force under subsection (2), or



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- (b) to carry out a search by virtue of section 33 and the enactment under which the search may be carried out authorises the constable to use reasonable force (however expressed).
- (4) A constable, before deciding to use reasonable force in relation to a child under 12 years of age, must take all reasonable steps to seek and obtain the cooperation of the child.
- (5) A constable may use reasonable force in relation to a child under 12 years of age only as a last resort.
- (6) Where a constable resorts to the use of reasonable force in relation to a child under 12 years of age, the constable must—
  - (a) use no more force than is absolutely necessary, and
  - (b) in so far as is reasonably practicable, explain to the child why the constable considers force must be used.

VALID FROM 17/12/2021

## 75 Offences

- (1) A person commits an offence if the person, without reasonable excuse, intentionally—
  - (a) obstructs a person mentioned in subsection (2), or
  - (b) otherwise interferes with a police investigation into an incident in relation to which a constable has reasonable grounds to suspect that a child, while under 12 years of age—
    - (i) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
    - (ii) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person.
- (2) The person is a constable or other person acting in pursuance of—
  - (a) section 28(2),
  - (b) an order under section 36,
  - (c) a child interview order,
  - (d) authorisation under section 54(2),
  - (e) an order under section 63,
  - (f) authorisation under section 69(1).
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 17/12/2021

## 76 Interpretation of Part 4

In this Part—

**Status:** Point in time view as at 12/06/2019. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** *Age of Criminal Responsibility (Scotland) Act 2019 is up to date with all changes known to be in force on or before 25 April 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“advice, support and assistance” has the meaning given by section 51(7),  
 “chief constable” means the chief constable of the Police Service of Scotland,  
 “child” has the meaning given by section 39(3),  
 “child interview order” means an order under section 44(2),  
 “child interview rights practitioner” has the meaning given by section 51(8),  
 “intimate sample” has the meaning given by section 60(4),  
 “investigative interview” has the meaning given by section 39(3),  
 “parent” includes guardian and any person who has care of the relevant child, (except where provided otherwise: see section 40(7)),  
 “place of safety” has the meaning given by section 28(11),  
 “relevant physical data” has the meaning given by section 60(2),  
 “relevant sample” has the meaning given by section 60(3),  
 “relevant senior officer” has the meaning given by section 69(5),  
 “supporter” has the meaning given by section 50(2),  
 “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

VALID FROM 17/12/2021

## PART 5

### CHILDREN'S HEARINGS: DUTY TO CONSIDER NEED FOR FURTHER REPORTS

#### **77 Children's hearings: duty to consider need for further reports**

- (1) The 2011 Act is amended as follows.
- (2) In section 91 (grounds accepted: powers of grounds hearing), after subsection (3) insert—
  - “(3A) In deciding whether to exercise the power conferred by subsection (2), the grounds hearing must consider whether to require the Principal Reporter to obtain any report, from any person, which the grounds hearing considers relevant to any matter to be determined by the subsequent children's hearing.”.
- (3) In section 119 (children's hearing following deferral or proceedings under Part 10), after subsection (3) insert—
  - “(3A) In deciding whether to exercise the power conferred by subsection (2), the children's hearing must consider whether to require the Principal Reporter to obtain any report, from any person, which the children's hearing considers relevant to any matter to be determined by the subsequent children's hearing.”.
- (4) In section 138 (powers of children's hearing on review), after subsection (3) insert—

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“(3A) In deciding whether to exercise the power conferred by subsection (2), the children's hearing must consider whether to require the Principal Reporter to obtain any report, from any person, which the children's hearing considers relevant to any matter to be determined by the subsequent children's hearing.”.

VALID FROM 17/12/2021

## PART 6

### REVIEW OF AGE OF CRIMINAL RESPONSIBILITY

#### 78 Review of age of criminal responsibility

- (1) The Scottish Ministers must—
  - (a) during the review period, review the operation of this Act—
    - (i) generally, and
    - (ii) with a view to considering the future age of criminal responsibility, and
  - (b) prepare and publish a report on that review.
- (2) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (3) In carrying out the review, the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The report on the review must be prepared, published and laid before the Scottish Parliament no later than 12 months after the end of the review period.
- (5) The “review period” is the period of 3 years beginning with the day on which section 1 comes into force.

#### 79 Provision of information

- (1) The Scottish Ministers may, for a purpose mentioned in subsection (2), require a person mentioned in subsection (3) to provide them with such information as the person holds in relation to the exercise of functions under Part 4 of this Act as they consider appropriate.
- (2) The purposes are—
  - (a) the carrying out of the review mentioned in section 78,
  - (b) the monitoring of the exercise of functions under Part 4 following the end of the review period mentioned in that section.
- (3) The persons are—
  - (a) the chief constable of the Police Service of Scotland,
  - (b) the Scottish Courts and Tribunals Service,
  - (c) a local authority,
  - (d) Children's Hearings Scotland,

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- (e) the Scottish Children's Reporter Administration,
- (f) the Scottish Legal Aid Board,
- (g) the Crown Office and Procurator Fiscal Service.

## PART 7

### FINAL PROVISIONS

VALID FROM 31/03/2020

#### 80 Interpretation

In this Act—

“2011 Act” means the Children's Hearings (Scotland) Act 2011,

“child” means a person who is under 16 years of age (except where provided otherwise: see section 39(3)),

“constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012.

VALID FROM 31/03/2020

#### 81 Civil jurisdiction of summary sheriffs

(1) The Courts Reform (Scotland) Act 2014 is amended as follows.

(2) In schedule 1 (civil jurisdiction of summary sheriff), after paragraph 4 insert—

**“Proceedings relating to children under the age of criminal responsibility**

4A Proceedings under the Age of Criminal Responsibility (Scotland) Act 2019.”.

VALID FROM 31/03/2020

#### 82 Regulation-making powers

(1) Each power of the Scottish Ministers to make regulations under this Act includes power—

(a) to make different provision for different purposes,

(b) to make any incidental, supplementary, consequential, transitional, transitory or saving provision which they consider appropriate.

(2) Regulations under the following provisions are subject to the negative procedure—

(a) section 23(1),

(b) section 30(1),

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- (c) section 56(3),
- (d) section 65(2)(b)(iii),
- (e) section 65(3),
- (f) subject to subsection (3)(h), section 83.

(3) Regulations under the following provisions are subject to the affirmative procedure—

- (a) section 5(4),
- (b) section 9(4),
- (c) section 24(1),
- (d) section 32(1)(a) and (3),
- (e) section 33(4),
- (f) section 60(6),
- (g) section 66(9),
- (h) section 83 which add to, replace or omit the text of an Act.

(4) This section does not apply to regulations under section 84(2).

VALID FROM 31/03/2020

### **83 Ancillary provision**

(1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.

(2) Regulations under subsection (1) may modify any enactment (including this Act).

### **84 Commencement**

(1) This section and section 85 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may appoint by regulations.

(3) Regulations under subsection (2) may—

- (a) include transitional, transitory or saving provision,
- (b) make different provision for different purposes.

### **85 Short title**

The short title of this Act is the Age of Criminal Responsibility (Scotland) Act 2019.

**Status:**

Point in time view as at 12/06/2019. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Age of Criminal Responsibility (Scotland) Act 2019 is up to date with all changes known to be in force on or before 25 April 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.