

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

EXPLANATORY NOTES

PART 4: POLICE INVESTIGATORY AND OTHER POWERS

Chapter 2: Search of children under 12

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

Search under court order

123. Sections 34 and 35 set out the process involved in applying for an order under section 36. The constable can apply to the sheriff for an order under section 36.¹ Section 34(2) sets out the requirements that the application must comply with, including that it must state the grounds on which the application is made.
124. These grounds will include² that the constable has reasonable suspicion that the child, by behaving in a violent or dangerous way, has caused or could have caused serious physical harm to another person or that the child caused or could have caused harm (physical or psychological) to another person by behaving in a sexually violent or sexually coercive way. They will also include information as to why the constable reasonably suspects that evidence relevant to the investigation of the child's behaviour may be found on the child, in premises or in a vehicle.
125. Section 34(2) also requires that the application includes supporting evidence that will enable the sheriff to come to a decision on the application.³
126. Section 35 governs the procedure the sheriff must follow when considering an application under section 34. The sheriff has discretion as to whether to hold a hearing or to determine the application without hearing from the constable or anyone else. The sheriff also has discretion over whether to consider the application in open court or in the sheriff's chambers (which would provide a degree of privacy to the proceedings).
127. Subsection (3) requires the sheriff, before deciding the application, to consider whether the constable, the child, a parent of the child, or anyone else the sheriff thinks has an interest, should be given an opportunity to make representations to the sheriff on the application and whether an order should be made.
128. The matters as to which the sheriff must be satisfied before making an order, and what the order authorises, are set out in section 36. The sheriff must be satisfied that there are reasonable grounds to suspect that the child in relation to whom the application is made has, by behaving in a violent or dangerous way, caused or could have caused serious physical harm to another person or, by behaving in a sexually violent or coercive way, caused or could have caused harm (physical or psychological) to another person.

¹ By virtue of section 81 of the Act, summary sheriffs may also deal with such applications.

² By virtue of this being part of the test which the sheriff must apply under section 36(2).

³ See section 34(2)(e).

*These notes relate to the Age of Criminal Responsibility (Scotland)
Act 2019 (asp 7) which received Royal Assent on 11 June 2019*

129. The sheriff must also be satisfied that evidence relevant to the investigation of the child's behaviour may be found on the child, in premises or in a vehicle.
130. When considering these matters, the sheriff must have regard to the nature and seriousness of the child's behaviour and to whether making the order (and, therefore, authorising the search) is appropriate in the circumstances, including, but not restricted to, the child's age.
131. The order may authorise any or all of the matters listed in section 36(4). As well as authorising the search of the child, the order may also authorise the search of premises (as defined in subsection (7)), the search of a vehicle (also defined in that subsection and including vessels), and the seizure of anything found during the search.
132. [Section 74](#) of the Act has the effect that a constable carrying out a search under the authority of an order under section 36 may use reasonable force in doing so. Use of reasonable force, in relation to premises, includes the power to overcome locks and other things that might hinder the constable in gaining entry.⁴
133. Where the constable opens and searches unoccupied premises, section 36(6) requires the constable to secure the premises on completing the search.
134. Where the sheriff makes an order authorising the search of a child under 12, the constable must give notice of it, and a copy of it, to the child and a parent of the child (if the constable is able to do so). The child must also be given an explanation of the order in a way that the child will be able to understand.⁵

⁴ Traditionally referred to as a power to "open shut and lockfast places".

⁵ See section 37(3).