

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

EXPLANATORY NOTES

PART 4: POLICE INVESTIGATORY AND OTHER POWERS

Chapter 4: Taking of prints and samples from certain children

Pre-existing law

176. The law governing when the police can take fingerprints,¹ as well as various types of “forensic” samples,² from a person suspected of committing an offence is mainly to be found in Part 2 of the 1995 Act, in particular in sections 18 to 19C. Those provisions allow the taking of prints and samples from persons suspected of offences,³ as well as governing the taking of prints and samples from persons convicted of certain specified offences⁴ and in certain other circumstances. In addition, these provisions cover the use, retention and destruction of prints and samples taken before proceedings or after proceedings are concluded.
177. Generally, prints and samples can be used for the prevention or detection of crime and the investigation and prosecution of offences⁵ and must be destroyed if no criminal proceedings are brought against the person or, where proceedings are brought, when they are concluded other than with the person being convicted.⁶ There are exceptions, however, to the requirement to destroy prints and samples as soon as proceedings are concluded, mainly relating to circumstances where they were taken from persons suspected of and prosecuted for certain violent and sexual offences.⁷ In such cases, the prints and samples can be retained for a period after the conclusion of the criminal proceedings.⁸
178. Where prints and samples are taken from a person who is subsequently convicted of an offence, those prints and samples may be retained as part of the person’s criminal records and the provisions of sections 18A to 18F do not apply.
179. These sections apply to a child over the age of criminal responsibility who is suspected of having committed an offence as they apply to an adult.⁹ Although such children are unlikely to be prosecuted and convicted, prints and samples can nevertheless be taken under section 18(2) of the 1995 Act.

¹ As well as other prints, including palm prints and prints and impressions of other parts of the skin. These are defined in the 1995 Act as “relevant physical data” – see section 18(7A).

² Samples of hair, of DNA (from swabbing inside the mouth), blood, urine etc. – see section 18(6) and (6A) of the 1995 Act.

³ See section 18(2) of the 1995 Act.

⁴ Mainly “relevant violent offences” and “relevant sexual offences”, defined in section 19A(6) of the 1995 Act, as well as certain other sexual offences (see, e.g., section 19AA).

⁵ See section 19C(2)(a) of the 1995 Act. Other lawful uses are listed in section 19C(2)(b) to (d).

⁶ See section 18(3) of the 1995 Act.

⁷ “Relevant violent offences” and “relevant sexual offences” defined in section 19A(6) of the 1995 Act.

⁸ Varying between 2 and 3 years, depending on the circumstances, and subject to possible extension.

⁹ Children under 12 cannot be prosecuted, however (section 41A of the 1995 Act). And most children of 12 and over are referred to the children’s hearings system rather than prosecuted through the criminal courts.

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

180. Sections 18E and 18F of the 1995 Act make particular provision for the retention and destruction of prints and samples taken from children where, on referral to the children's hearing, the offence ground in section 67(2)(j) of the 2011 Act is either accepted or established and the offence involved is a "relevant violent offence" or a "relevant sexual offence"¹⁰ which has been prescribed by the Scottish Ministers in an order under section 18E(6).¹¹
181. Section 56 of the 2003 Act also makes provision about the retention and use of prints and samples provided voluntarily, in connection with the investigation of an offence. It does not apply to persons from whom prints and samples can be taken under the 1995 Act¹² or where the prints or samples are taken by virtue of any power of search, any power to take possession of evidence to avoid it being lost or destroyed or under a court warrant.
182. Where the person gives written consent,¹³ the prints and samples can be retained and used for the purposes of the prevention or detection of crime, the investigation of an offence and the conduct of a prosecution,¹⁴ as well as for a number of other purposes.¹⁵ The person can limit the purposes for which the prints and samples can be used.¹⁶ And consent can be withdrawn and, where it is, the prints, samples and any information derived from them must be destroyed.¹⁷
183. Prints and samples taken with the consent of a child aged under eight could (subject to issues about the meaning of consent when applied to a young child) be retained and used under this section given that the child cannot be arrested, held in custody or detained. Section 56 might be used, for instance, where such a child was the victim of an offence committed by someone else or, perhaps, was a witness. The same would apply to a child aged eight or over provided the child had not been arrested and held in custody or detained.

10 As defined in section 19C(6) of the 1995 Act.

11 See [The Retention of Samples etc. \(Children's Hearings\) \(Scotland\) Order 2011 \(SSI 2011/197\)](#) for which relevant violent offences and which relevant sexual offences are currently prescribed for the purposes of section 18E.

12 Persons suspect of having committed offences and to whom section 18(1) of the 1995 Act applies, i.e. who have been arrested and are in custody. The 2016 Act replaced the previous law on arrest and detention under section 14 of the 1995 Act and amended section 18(1) accordingly (see 2016 Act, schedule 2, paragraph 28(1): in force 28 January 2018).

13 Or such consent is given on behalf of the person.

14 Section 56(2)(a) of the 2003 Act.

15 Such as the identification of a deceased person, the interests of national security or an investigation into terrorism (section 56(2)(b) to (d) of the 2003 Act).

16 See section 56(3) of the 2003 Act.

17 See section 56(4) and (5) of the 2003 Act.