

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

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

Taking prints and samples in urgent cases

214. The Act recognises that there may be situations in which there is not time to seek and obtain an order from the sheriff under section 63. Section 69 therefore provides a way for a constable to take prints and samples without an order where a senior police officer¹ who has not been involved in the investigation into the child's behaviour gives the constable authority to do so.
215. Intimate samples may not, however, be taken under the authority provided by this section.²
216. The test the senior officer applies is essentially the same as the test the sheriff would apply under section 63 but with the addition of a further matter. This is that it is not practicable for the constable to apply for an order because of the risk that, if the prints and samples are not taken immediately, evidence would be lost or destroyed. That evidence might be the sample itself or it might be evidence derived from a sample.³
217. Like the sheriff when deciding an application under section 63, in considering whether to authorise the taking of prints and samples, the senior officer must have regard to the nature and seriousness of the child's behaviour and to whether taking prints and samples is appropriate in the circumstances, including, but not restricted to, the child's age.
218. Because the taking of prints and samples under this section has not been authorised by the sheriff, if the constable wants to take any steps with them (other than simply storing and preserving them), the constable must apply for an order under section 63. Section 70 provides that, if an order is not applied for and, indeed, made, the prints and samples taken under section 69 must be destroyed.⁴
219. The constable has 7 days to apply for the order and section 62 applies to an application following the taking of prints and samples under section 69 as it applies to an application where that hasn't occurred, but with the modification that the application must specify the prints and samples already taken rather than those which the constable seeks to take.⁵

¹ A superintendent or an officer of a higher rank.

² See section 69(4).

³ For example, material under a child's fingernails.

⁴ See section 70(5). The duty to ensure the prints and samples are destroyed falls on the senior officer who authorised the constable to take them. Section 66 governs when prints and samples must be destroyed where an order under section 63 has been made, including where the order follows the taking of prints and samples under section 69.

⁵ See section 70(4).

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

220. Where the sheriff makes an order in such a case, the order does not specify the period within which the prints and samples can be taken, since they have already been taken.⁶

⁶ See section 63(5).