



Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

PART 2 **S**

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

CHAPTER 1 **S**

DISCLOSURE OF CONVICTIONS ETC.

Pre-12 convictions etc. not be treated as convictions

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

- (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.
 - (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.”.

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- (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.”.

Commencement Information

II [S. 4](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

Disclosure of information about relevant behaviour

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

- (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,
 - (ii) the conduct constituting the offence,
 - (iii) any process or proceedings preliminary to the conviction,
 - (iv) any sentence imposed in respect of the conviction,

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- (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).

Commencement Information

I2 [S. 5](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

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

- (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—
 - (a) to determine any question affecting the rights, privileges, obligations or liabilities of any person, or

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- (b) to receive evidence affecting the determination of any such question.

Commencement Information

I3 [S. 6](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

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

- (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.

Commencement Information

I4 [S. 7](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

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

- (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

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- 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—
- (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.

Commencement Information

I5 [S. 8](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

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

- (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

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- 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))—
- (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.

Commencement Information

I6 S. 9 in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

CHAPTER 2 S

INDEPENDENT REVIEW OF DISCLOSURE OF INFORMATION

Limitation on disclosure of information

10 Disclosure of information relating to time when person under 12 S

- (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—

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- (a) the independent reviewer determines, on a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019, that the information ought to be included in the certificate and—
 - (i) no appeal under section 20 of that Act is taken, or
 - (ii) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a), or
 - (b) the sheriff, on an appeal under section 20, determines under section 20(3)(b) that the information ought to be included in the certificate.”,
 - (b) after subsection (7) insert—

“(7A) In this section, “independent reviewer” means the independent reviewer appointed under section 12 of the Age of Criminal Responsibility (Scotland) Act 2019.”.
- (2) In section 113B (enhanced criminal record certificates) of the 1997 Act, after subsection (4) insert—

“(4A) For the avoidance of doubt, information such as is mentioned in subsection (4) may include information with respect to relevant behaviour (within the meaning of section 5(1)(a) of the Age of Criminal Responsibility (Scotland) Act 2019).”.
- (3) In section 49 (vetting information) of the 2007 Act, after subsection (1) insert—

“(1A) For the avoidance of doubt, information such as is mentioned in subsection (1) (c) may include information with respect to relevant behaviour (within the meaning of section 5(1)(a) of the Age of Criminal Responsibility (Scotland) Act 2019).”.
- (4) In section 75 (sources of information) of the 2007 Act—
 - (a) after subsection (2) insert—

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

 - (a) the independent reviewer determines, on a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019, that the information ought to be included in the scheme member's scheme record and—
 - (i) no appeal under section 20 of that Act is taken, or
 - (ii) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a), or
 - (b) the sheriff, on an appeal under section 20, determines under section 20(3)(b) that the information ought to be included in the scheme member's scheme record.”,
 - (b) after subsection (5) insert—

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

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Commencement Information

I7 [S. 10](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

Appointment of independent reviewer

11 Independent reviewer **S**

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.

Commencement Information

I8 [S. 11](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

12 Period and terms of appointment **S**

- (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

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- (c) the Scottish Ministers consider that the person—
 - (i) is unable to exercise the reviewer's functions, or
 - (ii) is unsuitable to continue to hold that office.
- (8) For the purposes of subsection (7)(b), a person becomes insolvent if—
 - (a) the person's estate is sequestrated,
 - (b) the person grants a trust deed for creditors or makes a composition or arrangement with creditors,
 - (c) a voluntary arrangement proposed by the person is approved,
 - (d) the person's application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
 - (e) the person becomes subject to any other kind of order or arrangement analogous to those described in paragraphs (a) to (d) anywhere in the world.

Commencement Information

I9 [S. 12](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

13 Administrative support **S**

- (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.

Commencement Information

I10 [S. 13](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

Review of information prior to disclosure

14 Referral of information to independent reviewer **S**

- (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—

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- (a) in the case of information falling within subsection (1)(a), information about the purpose described in the statement under section 113B(2) of the 1997 Act in relation to which the enhanced criminal record certificate is required,
- (b) in the case of information falling within subsection (1)(b), information about the regulated work in relation to which the scheme member to whom the scheme record relates participates in the scheme,
- (c) an explanation of why the chief constable considers the information ought to be included in the enhanced criminal record certificate or, as the case may be, scheme record, and
- (d) any other information the chief constable considers relevant to the exercise of the independent reviewer's functions.

Commencement Information

I11 [S. 14](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

15 Notification of referral under section 14 **S**

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.

Commencement Information

I12 [S. 15](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

16 Notification to applicant or scheme member **S**

[^{F1}(A1) This section applies where information falling within subsection (A2) or (A3) is referred to the independent reviewer for review.

(A2) Information falls within this subsection if—

- (a) it has been referred to the independent reviewer following a request for information made by the Scottish Ministers under section 113B(4) of the 1997 Act,
- (b) it relates to a time when the applicant was under 12 years of age, and
- (c) it ought, in the opinion of the person who referred the information to the independent reviewer, to be included in an enhanced criminal record certificate issued under section 113B(1) of that Act.

(A3) Information falls within this subsection if—

- (a) it has been referred to the independent reviewer as a result of an enquiry or arrangements made under section 47 of the 2007 Act,
- (b) it relates to a time when the scheme member was under 12 years of age, and
- (c) it ought, in the opinion of the person who referred the information to the independent reviewer, to be included in a scheme record by virtue of section 49(1)(c) of that Act.]

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- (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.

Textual Amendments

F1 S. 16(A1)-(A3) inserted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(2)**

Commencement Information

I13 S. 16 in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

17 Provision of information to the independent reviewer **S**

- (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.

Commencement Information

I14 S. 17 in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

18 ^[F2]Review of referred information **S**

- (1) The independent reviewer, on receiving information ^[F3]falling within section 16(A2)], 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 [^{F4}falling within section 16(A3)], 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 [^{F5}in compliance with any requirement as to information to be provided to the independent reviewer together with the information falling within section 16(A2) or, as the case may be, (A3)],
 - (ii) any representations made by the applicant or, as the case may be, the scheme member, and
 - (iii) any information provided [^{F6}in response to a notice given by the independent reviewer requiring information in connection with the review],
 - (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.

Textual Amendments

- F2** S. 18 heading substituted (17.12.2021) by virtue of [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(4)**
- F3** Words in s. 18(1) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(3)(a)**
- F4** Words in s. 18(2) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(3)(b)**
- F5** Words in s. 18(3)(a)(i) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(3)(c)(i)**
- F6** Words in s. 18(3)(a)(iii) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(3)(c)(ii)**

Commencement Information

- I15** [S. 18](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, **sch.**

19 Notification of determination **S**

- (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.

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- (2) The persons are—
- [^{F7}(a) the person who referred the information falling within section 16(A2) or, as the case may be, (A3) to the independent reviewer,]
 - (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.

Textual Amendments

F7 S. 19(2)(a) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(5)**

Commencement Information

I16 S. 19 in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

20 Appeal against determination under section 18 **S**

- (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,
 - [^{F8}(b) the person who referred the information falling within section 16(A2) or, as the case may be, (A3) to the independent reviewer.]
- (2) An appeal under this section must be taken before the end of the period of 28 days beginning with the day on which the independent reviewer's determination was notified under section 19.
- (3) On an appeal under this section, the sheriff must—
- (a) confirm the determination of the independent reviewer, or
 - (b) quash that determination and substitute for it the sheriff's own determination.
- (4) The decision of the sheriff on an appeal under this section is final.
- (5) For the avoidance of doubt, a decision of the sheriff under subsection (4) does not preclude the persons mentioned in subsection (1) from appealing a subsequent determination of the independent reviewer under section 18(4) where it concerns the information in the original appeal.

Textual Amendments

F8 S. 20(1)(b) substituted (17.12.2021) by [The Independent Reviewer \(Modification of Functions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/476\)](#), regs. 1, **2(6)**

Commencement Information

I17 S. 20 in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

Changes to legislation: Age of Criminal Responsibility (Scotland) Act 2019, PART 2 is up to date with all changes known to be in force on or before 18 April 2024. 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) View outstanding changes

General functions of independent reviewer

21 Annual report and recommendations S

- (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.

Commencement Information

I18 [S. 21](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

22 Guidance S

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

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Commencement Information

I19 [S. 22](#) in force at 31.3.2020 by [S.S.I. 2020/74](#), reg. 2, [sch.](#)

23 Regulation of procedure for review **S**

- (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.

Commencement Information

I20 [S. 23](#) in force at 31.3.2020 by [S.S.I. 2020/74](#), reg. 2, [sch.](#)

24 Modifications of the functions of the independent reviewer **S**

- (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.

Commencement Information

I21 [S. 24](#) in force at 31.3.2020 by [S.S.I. 2020/74](#), reg. 2, [sch.](#)

Changes to legislation: Age of Criminal Responsibility (Scotland) Act 2019, PART 2 is up to date with all changes known to be in force on or before 18 April 2024. 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) View outstanding changes

CHAPTER 3 S

GENERAL PROVISIONS

25 Amendments consequential on Chapter 2 S

- (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) ”.

Commencement Information

I22 [S. 25](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), [reg. 2](#), [sch.](#)

26 Interpretation of Part 2 S

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,
- “regulated work” has the meaning given by section 91 of the 2007 Act,

Changes to legislation: Age of Criminal Responsibility (Scotland) Act 2019, PART 2 is up to date with all changes known to be in force on or before 18 April 2024. 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) [View outstanding changes](#)

“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.

Commencement Information

I23 [S. 26](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

Changes to legislation:

Age of Criminal Responsibility (Scotland) Act 2019, PART 2 is up to date with all changes known to be in force on or before 18 April 2024. 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.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(1A) inserted by [2020 asp 13 sch. 5 para. 7\(8\)\(b\)](#)
- s. 20A inserted by [2020 asp 13 sch. 5 para. 7\(9\)](#)