



Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

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

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- (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.
- (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),

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- (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—
 - (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,

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- (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.

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.

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- (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).

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.

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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—
 - (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

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(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,

(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—

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- (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
 - (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

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- 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.
- (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

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- (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
 - (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).

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(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.

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),

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(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—
 - (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.

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- (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
 - (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.

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(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—

- (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.

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- (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—
 - (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.

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- (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.
- (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)—

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- (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—
 - (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—

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- (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).
- (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.

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- (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.
- (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,

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- (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.

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.

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- (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—
- (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,

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- (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,
 - (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.

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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—
 - (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

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- (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.

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

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- (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.
- (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

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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 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.

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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.
- (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,

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- (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,
 - (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.

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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.
- (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.

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- (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—

“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), ”.

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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
 - (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—

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- (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—

- “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.

Status:

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