

Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

PART 4

POLICE INVESTIGATORY AND OTHER POWERS

CHAPTER 1

EMERGENCY PLACE OF SAFETY

PROSPECTIVE

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
 - (b) in either case, for no longer than 24 hours.

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: Age of Criminal Responsibility (Scotland) Act 2019, CHAPTER 1 is up to date with all changes known to be in force on or before 14 December 2020. 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

- (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),
 - (b) publish the list in such manner as they consider appropriate.

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Commencement Information

II S. 29 in force at 31.3.2020 by S.S.I. 2020/74, reg. 2, sch.

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.

Commencement Information

II S. 30 in force at 31.3.2020 by S.S.I. 2020/74, reg. 2, sch.

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,

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- (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,
 - (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.

Commencement Information

I3 S. 31 in force at 31.3.2020 by [S.S.I. 2020/74](#), reg. 2, [sch.](#)

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.

Commencement Information

I4 S. 32 in force at 31.3.2020 by [S.S.I. 2020/74](#), reg. 2, [sch.](#)

Status:

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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\(9\)](#)