



# Age of Criminal Responsibility (Scotland) Act 2019 2019 asp 7

## PART 4

### POLICE INVESTIGATORY AND OTHER POWERS

#### 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.
- (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—

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- (a) specify enactments to which this section is not to apply,
- (b) modify subsection (3).

#### Commencement Information

**II** S. 33(4) in force at 31.3.2020 by S.S.I. 2020/74, reg. 2, sch.

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.

#### **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

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- (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
  - (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

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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.

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