



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 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.

Status: This is the original version (as it was originally enacted).

- (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
 - (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 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.