



Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

PART 4

POLICE INVESTIGATORY AND OTHER POWERS

CHAPTER 4

TAKING OF PRINTS AND SAMPLES FROM CERTAIN CHILDREN

Limitation on taking of prints and samples

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—

Changes to legislation: *Age of Criminal Responsibility (Scotland) Act 2019, Cross Heading: Limitation on taking of prints and samples is up to date with all changes known to be in force on or before 25 July 2023. 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*

- (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.
- (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.

Modifications etc. (not altering text)

- C1** Pt. 4 applied (with modifications) (17.12.2021) by 2004 c. 20, s. 56B (as inserted by [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Consequential Provisions and Modifications\) Order 2021 \(S.I. 2021/1458\)](#), arts. 1(1), **19**)
- C2** Pt. 4 applied (with modifications) (17.12.2021) by 1987 c. 4, s. 2E (as inserted by [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Consequential Provisions and Modifications\) Order 2021 \(S.I. 2021/1458\)](#), arts. 1(1), **17**)
- C3** Pt. 4 applied (with modifications) (17.12.2021) by 2003 c. 20, s. 31B (as inserted by [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Consequential Provisions and Modifications\) Order 2021 \(S.I. 2021/1458\)](#), arts. 1(1), **18**)

Commencement Information

- I1** [S. 58](#) in force at 17.12.2021 by [S.S.I. 2021/449](#), [reg. 2](#)
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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.

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(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.

Commencement Information

I2 [S. 59](#) in force at 17.12.2021 by [S.S.I. 2021/449](#), [reg. 2](#)

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,
- (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”.

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Commencement Information

- I3** [S. 60\(1\)-\(5\)](#) in force at 17.12.2021 by [S.S.I. 2021/449](#), **reg. 2**
I4 [S. 60\(6\)](#) in force at 31.3.2020 by [S.S.I. 2020/74](#), **reg. 2**, **sch.**

Changes to legislation:

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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\(9\)](#)