



# 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—

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- (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.

## **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,

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- (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”.