



# 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

###### *Order authorising taking of prints and samples*

#### **61 Application for order authorising taking of prints and samples from child**

- (1) A constable may apply to the sheriff for an order under section 63 authorising the taking of relevant physical data or relevant samples from a child.
- (2) An application for an order under section 63 must—
  - (a) identify the applicant,
  - (b) in so far as is practicable, 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) specify the relevant physical data and relevant samples in relation to which authority to take is sought (including whether authority is sought to take an intimate sample),
  - (f) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.

#### **62 Consideration by sheriff of application for order under section 63**

- (1) This section applies where a constable makes an application under section 61 in respect of a child.

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- (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.

### **63 Order authorising taking of prints and samples from child**

- (1) This section applies where a constable makes an application under section 61 in respect of a child.
- (2) The sheriff may make an order authorising the taking of relevant physical data and relevant samples from the child only if satisfied that—
  - (a) there are 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, and
  - (b) the taking of relevant physical data or a relevant sample from the child is necessary to properly investigate the child’s behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence).
- (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 the taking of relevant physical data or relevant samples is appropriate given the child’s circumstances (including the child’s age and any matter related to the child’s behaviour).
- (4) An order under this section authorises—
  - (a) the taking of the relevant physical data or relevant samples specified,
  - (b) the period, beginning with day on which the order is made, within which that data and those samples may be taken, being—
    - (i) no more than 7 days, or
    - (ii) such longer period as may be specified on cause shown,
  - (c) the taking of steps in relation to that data and those samples,
  - (d) the removal of the child to the place at which the data and samples are to be taken and the keeping of the child in that place for the purposes of the taking of that data and those samples.
- (5) Subsection (4)(b) does not apply where the application for the order relates to relevant physical data or a relevant sample taken by virtue of section 69.
- (6) An order under this section may also require any person in a position to do so to produce the child to a constable.

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(7) In this section, “specified” means specified in the order.

#### **64 Notification of order under section 63**

- (1) This section applies where an order is made under section 63 authorising the taking of relevant physical data or a relevant sample from a child.
- (2) The constable must, as soon as reasonably practicable after the order is made, provide—
  - (a) the child, and
  - (b) in so far as practicable, a parent of the child,with a copy of the order.
- (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.

#### **65 Taking of intimate samples**

- (1) This section applies where an order under section 63 authorises the taking of intimate samples from a child.
- (2) An intimate sample may be taken from the child—
  - (a) where the sample is a dental impression, only by a registered dentist,
  - (b) in any other case, only by a—
    - (i) registered medical practitioner,
    - (ii) registered health care professional, or
    - (iii) another type of individual of a type prescribed (by reference to skills, qualifications, experience or otherwise) by the Scottish Ministers by regulations.
- (3) In this section—

“registered dentist” has the meaning given by section 53(1) of the Dentists Act 1984,

“registered health care professional” means—

  - (a) a registered nurse, or
  - (b) a registered member of a health care profession designated for the purposes of this section by the Scottish Ministers by regulations.

#### **66 Destruction of prints and samples taken under section 63**

- (1) This section applies where an order under section 63 authorises the taking of any relevant physical data or relevant sample from a child.
- (2) The constable who applied for the order must ensure that all record of any data taken, all samples taken, and all information derived from any samples are destroyed as soon as possible following—
  - (a) a decision not to pass information about the child to the Principal Reporter under section 61 of the 2011 Act, or
  - (b) where information is so passed, the conclusion of proceedings in relation to the child under that Act in so far as arising from that information.

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- (3) For the purposes of subsection (2)(b), such proceedings are concluded when an event mentioned in subsection (4) or (6) occurs.
- (4) The event referred to in subsection (3) is the determination by the Principal Reporter under section 66(2) of the 2011 Act—
  - (a) that the behaviour of the child, to which the information mentioned in subsection (2)(b) relates, does not give rise to a ground in section 67 of that Act applying in relation to the child (whether or not such a ground applies for any other reason), or
  - (b) that, as a result of that behaviour, such a ground does apply but it is not necessary for a compulsory supervision order to be made in respect of the child.
- (5) Subsection (6) applies where the Principal Reporter determines under section 69(1) of that Act that—
  - (a) as a result of the behaviour of the child referred to in subsection (4)(a), a ground in section 67 of that Act does apply, and
  - (b) it is necessary for a compulsory supervision order to be made in respect of the child.
- (6) The event referred to in subsection (3) is whichever of the following occurs first—
  - (a) the discharge of the referral to the children’s hearing,
  - (b) the withdrawal under section 107(2) of the 2011 Act of an application to the sheriff,
  - (c) the making of a compulsory supervision order in respect of the child, or
  - (d) where a compulsory supervision order is already in force in respect of the child, the termination, variation or continuation of the order.
- (7) An event mentioned in subsection (6) is not treated as having occurred for the purposes of subsection (3) until—
  - (a) the end of the period for any appeal under the 2011 Act with no appeal or further appeal, as the case may be, having been taken, or
  - (b) if an appeal or a further appeal, as the case may be, is taken, the conclusion of that appeal or further appeal.
- (8) Subsection (2) does not apply where the destruction of a sample, or the information derived from it, could have the effect of destroying any sample, or any information derived from it, lawfully held in relation to a person other than the child from whom the sample was taken.
- (9) The Scottish Ministers may by regulations modify subsection (6) so as to add to, vary, or remove an event for the time being mentioned in that subsection.
- (10) In this section, “children’s hearing” and “compulsory supervision order” have the same meanings as in the 2011 Act.

## **67 Appeal against decision under section 63**

- (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 63 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.

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- (2) Permission to appeal against such a decision must be applied for—
  - (a) where an order under section 63 is made, 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 64,
  - (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 63 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,
  - (b) the order as upheld or varied authorises the taking of relevant physical data or relevant samples which, at the time the appeal is determined, have not been taken.
- (6) The Sheriff Appeal Court may, in substitution for the period mentioned in subsection (4)(b)(i) of section 63 (or any period specified by virtue of subsection (4)(b)(ii) of that section), specify the period within which that data or those samples may be taken.
- (7) Any period specified by virtue of subsection (6) must not, except on cause shown, exceed 7 days beginning with the day on which the appeal is determined.

**68 Treatment of prints and samples where appeal taken against making of order under section 63**

- (1) This section applies where—
  - (a) an appeal is taken against a decision of the sheriff to make an order under section 63,
  - (b) before the constable who applied for the order was notified of the appeal, relevant physical data or a relevant sample was taken from the child by virtue of the order.
- (2) No steps or, as the case may be, no further steps may be taken in relation to the relevant physical data or relevant sample (other than holding or preserving the data or sample) before the conclusion of the appeal.
- (3) Where the decision of the sheriff is recalled and the order quashed, the constable who applied for the order must ensure that all record of any data taken, all samples taken, and all information derived from any samples taken are destroyed as soon as possible.
- (4) Where—
  - (a) the decision of the sheriff is varied so that the order authorises the taking of different relevant physical data or relevant samples to those originally specified in the order by virtue of section 63(4)(a), and
  - (b) as a result the taking of some or all of the data or samples mentioned in subsection (1)(b) would no longer be authorised by the order,

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the constable who applied for the order must ensure that all record of any such data taken, all such samples taken, and all information derived from any such samples taken are destroyed as soon as possible.