



# Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

## PART 4

### POLICE INVESTIGATORY AND OTHER POWERS

## CHAPTER 5

### GENERAL PROVISIONS

#### **72 Wellbeing of child**

- (1) This section applies where—
  - (a) a person is—
    - (i) exercising any function conferred by this Part, or
    - (ii) acting in pursuance of an order made or authorisation granted under this Part,
  - (b) under or by virtue of this Part, a court is making a decision about a matter to do with a child.
- (2) In exercising the function, acting in pursuance of the order or authorisation or, as the case may be, making the decision, the person or court must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.

#### **73 Children's legal aid for proceedings under this Part**

- (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 28B (children's legal aid)—
  - (a) in subsection (2), for "subsection (3)" substitute "subsections (3) and (3A)",
  - (b) after subsection (3) insert—

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“(3A) The proceedings are, where regulations under section 28LB are made, proceedings before the sheriff and appeals from the sheriff under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019.”.

(3) After section 28LA insert—

**“28LB Power of Scottish Ministers to provide for children’s legal aid to be available in relation to proceedings under the Age of Criminal Responsibility (Scotland) Act 2019**

- (1) The Scottish Ministers may by regulations modify this Part so as to—
  - (a) provide for children’s legal aid to be available to a child in connection with proceedings before the sheriff and appeals from the sheriff under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, and
  - (b) specify the other persons (if any) to whom children’s legal aid is to be available in connection with such proceedings and appeals.
- (2) Regulations under subsection (1) may in particular made provision about—
  - (a) the proceedings in relation to which and the circumstances in which children’s legal aid is to be available automatically,
  - (b) the proceedings in relation to which and the circumstances in which children’s legal aid is to be available on application to the Board.
- (3) Where regulations under subsection (1) include provision as is mentioned in subsection (2)(b), the regulations—
  - (a) must make provision for the conditions as to which the Board is to be satisfied before children’s legal aid is to be made available,
  - (b) may make provision for different conditions to be satisfied in relation to different persons.”.
- (4) In section 37 (parliamentary procedure for regulations), in subsection (2), after “28LA(1),” insert “28LB(1),”.

**74 Additional powers and duties of constables**

- (1) This section applies where a constable—
  - (a) is authorised to take a child to a place of safety and to keep the child there by virtue of section 28,
  - (b) is authorised to carry out a search by an order under section 36,
  - (c) is authorised to carry out an investigative interview of a child by a child interview order,
  - (d) is authorised to question a child by virtue of section 54,
  - (e) is authorised to take relevant physical data or relevant samples from a child—
    - (i) by an order under section 63, or
    - (ii) by virtue of section 69.
- (2) The authorisation mentioned in subsection (1) includes authorisation to use reasonable force.
- (3) Subsections (4) to (6) apply where a constable is authorised—
  - (a) to use reasonable force under subsection (2), or

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- (b) to carry out a search by virtue of section 33 and the enactment under which the search may be carried out authorises the constable to use reasonable force (however expressed).
- (4) A constable, before deciding to use reasonable force in relation to a child under 12 years of age, must take all reasonable steps to seek and obtain the cooperation of the child.
- (5) A constable may use reasonable force in relation to a child under 12 years of age only as a last resort.
- (6) Where a constable resorts to the use of reasonable force in relation to a child under 12 years of age, the constable must—
  - (a) use no more force than is absolutely necessary, and
  - (b) in so far as is reasonably practicable, explain to the child why the constable considers force must be used.

## **75 Offences**

- (1) A person commits an offence if the person, without reasonable excuse, intentionally—
  - (a) obstructs a person mentioned in subsection (2), or
  - (b) otherwise interferes with a police investigation into an incident in relation to which a constable has reasonable grounds to suspect that a child, while under 12 years of age—
    - (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.
- (2) The person is a constable or other person acting in pursuance of—
  - (a) section 28(2),
  - (b) an order under section 36,
  - (c) a child interview order,
  - (d) authorisation under section 54(2),
  - (e) an order under section 63,
  - (f) authorisation under section 69(1).
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **76 Interpretation of Part 4**

In this Part—

- “advice, support and assistance” has the meaning given by section 51(7),
- “chief constable” means the chief constable of the Police Service of Scotland,
- “child” has the meaning given by section 39(3),
- “child interview order” means an order under section 44(2),
- “child interview rights practitioner” has the meaning given by section 51(8),
- “intimate sample” has the meaning given by section 60(4),
- “investigative interview” has the meaning given by section 39(3),

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“parent” includes guardian and any person who has care of the relevant child, (except where provided otherwise: see section 40(7)),

“place of safety” has the meaning given by section 28(11),

“relevant physical data” has the meaning given by section 60(2),

“relevant sample” has the meaning given by section 60(3),

“relevant senior officer” has the meaning given by section 69(5),

“supporter” has the meaning given by section 50(2),

“working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.