

Age of Criminal Responsibility (Scotland) Bill

[AS INTRODUCED]

CONTENTS

Section

PART 1

AGE OF CRIMINAL RESPONSIBILITY

- 1 Raising the age of criminal responsibility
- 2 Raising the age of criminal responsibility: consequential repeal and saving
- 3 No referral of child under 12 to children's hearing on offence ground

PART 2

DISCLOSURE OF CONVICTIONS AND OTHER INFORMATION RELATING TO TIME WHEN PERSON UNDER 12

CHAPTER 1

DISCLOSURE OF CONVICTIONS

Disclosure under the Police Act 1997

- 4 Disclosure of convictions relating to time when person under 12

CHAPTER 2

DISCLOSURE OF OTHER INFORMATION: INDEPENDENT REVIEW

Independent review of other information

- 5 Disclosure of information relating to time when person under 12

Appointment of independent reviewer

- 6 Independent reviewer
- 7 Period and terms of appointment
- 8 Administrative support

Review of information prior to disclosure

- 9 Referral of information to independent reviewer
- 10 Notification of referral under section 9
- 11 Notification to applicant or scheme member
- 12 Provision of information to the independent reviewer
- 13 Review of information referred under section 9
- 14 Notification of determination
- 15 Appeal against determination under section 13

General functions of independent reviewer

- 16 Annual report and recommendations
- 17 Guidance
- 18 Regulation of procedure for review
- 19 Modifications of the functions of the independent reviewer

CHAPTER 3

GENERAL PROVISIONS

- 20 Amendments consequential on Chapter 2
- 21 Interpretation of Part 2

PART 3

VICTIM INFORMATION

- 22 Provision of information to persons affected by child's behaviour

PART 4

POLICE INVESTIGATORY AND OTHER POWERS

CHAPTER 1

EMERGENCY PLACE OF SAFETY

- 23 Power to take child under 12 to place of safety
- 24 Section 23: regulations

CHAPTER 2

SEARCH OF CHILDREN UNDER 12

Search without warrant

- 25 Search of child under 12 without warrant under existing enactment

Search under order

- 26 Application for order authorising search in relation to child under 12
- 27 Consideration of application for order under section 28
- 28 Order authorising search in relation to child under 12
- 29 Notification of order under section 28
- 30 Appeal against decision under section 28

CHAPTER 3

QUESTIONING OF CERTAIN CHILDREN

Limitation of police questioning

- 31 Limitation on police questioning of certain children

Child interview order

- 32 Application for child interview order
- 33 Consideration of application for child interview order
- 34 Child interview order
- 35 Notification of child interview order

- 36 Planning of investigative interview
- 37 Conduct of investigative interview
- 38 Right not to answer questions
- 39 Right to have supporter present
- 40 Right to have advocacy worker present
- 41 Child not to be questioned while unaccompanied
- 42 Information to be provided to child
- 43 Appeal against decision under section 34

Questioning in urgent cases

- 44 Questioning of child in urgent cases
- 45 Procedure following authorisation of questioning under section 44

Guidance

- 46 Guidance

CHAPTER 4

TAKING OF PRINTS AND SAMPLES FROM CERTAIN CHILDREN

Limitation on taking of prints and samples

- 47 Limitation on taking prints and samples from children under 12
- 48 Limitation on taking prints and samples from children aged 12 and over
- 49 Key definitions

Order authorising taking of prints and samples

- 50 Application for order authorising taking of prints and samples from child
- 51 Consideration by sheriff of application for order under section 52
- 52 Order authorising taking of prints and samples from child
- 53 Notification of order under section 52
- 54 Taking of intimate samples
- 55 Destruction of prints and samples taken under section 52
- 56 Appeal against decision under section 52

Taking of prints and samples in urgent cases

- 57 Taking of prints and samples in urgent cases
- 58 Procedure following taking of prints and samples under section 57

CHAPTER 5

GENERAL PROVISION

- 59 Wellbeing of child
- 60 Children's legal aid for proceedings under this Part
- 61 Additional powers and duties of constables
- 62 Offences
- 63 Interpretation of Part 4

PART 5

FINAL PROVISIONS

- 64 Interpretation
- 65 Civil jurisdiction of summary sheriffs

- 66 Regulation-making powers
- 67 Ancillary provision
- 68 Commencement
- 69 Short title

**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 29-EN), a Financial Memorandum (SP Bill 29-FM), a Policy
Memorandum (SP Bill 29-PM) and statements on legislative competence (SP Bill 29-LC).**

Age of Criminal Responsibility (Scotland) Bill

[AS INTRODUCED]

5 An Act of the Scottish Parliament to raise the age of criminal responsibility to 12 years and to make consequential changes to the law on the disclosure of criminal records and of other information relating to individuals working or seeking to work with children or certain adults; on the provision of information by the Principal Reporter to persons adversely affected by the behaviour of children; on the taking of certain children to a place of safety by the police; on the search of certain children by the police; on police interviews with certain children; and on the taking of forensic samples from certain children by the police; and for connected purposes.

PART 1

AGE OF CRIMINAL RESPONSIBILITY

10 **1 Raising the age of criminal responsibility**

For section 41 of the Criminal Procedure (Scotland) Act 1995 substitute—

“41 Age of criminal responsibility

A child under the age of 12 years cannot commit an offence.”.

15 **2 Raising the age of criminal responsibility: consequential repeal and saving**

- (1) Section 41A of the Criminal Procedure (Scotland) Act 1995 is repealed.
- (2) Despite that repeal, section 41A continues to have effect in relation to offences committed before the day on which this section comes into force.

20 **3 No referral of child under 12 to children’s hearing on offence ground**

For the purposes of section 66(2)(a) (investigation and determination by Principal Reporter) of the Children’s Hearings (Scotland) Act 2011 (the “2011 Act”), the Principal Reporter may not determine that the ground in section 67(2)(j) (the offence ground) applies where the child—

- (a) committed the offence before the day on which section 1 came into force, and
- (b) was under 12 years of age when the offence was committed.

PART 2

DISCLOSURE OF CONVICTIONS AND OTHER INFORMATION RELATING TO TIME WHEN PERSON UNDER 12

CHAPTER 1

DISCLOSURE OF CONVICTIONS

Disclosure under the Police Act 1997

4 Disclosure of convictions relating to time when person under 12

- (1) The Police Act 1997 (the “1997 Act”) is amended as follows.
- (2) In section 112 (criminal conviction certificates), in the definition of “conviction” in subsection (3), for “, other than a spent conviction.” substitute “but not—
- (a) a conviction of an offence committed when the applicant was under 12 years of age, or
- (b) a spent conviction.”.
- (3) In section 113A (criminal record certificates), in the definition of “conviction” in subsection (6), after “spent conviction,” insert “but not a conviction of an offence committed when the applicant was under 12 years of age,”.

CHAPTER 2

DISCLOSURE OF OTHER INFORMATION: INDEPENDENT REVIEW

Independent review of other information

5 Disclosure of information relating to time when person under 12

- (1) In section 119 (sources of information) of the 1997 Act—
- (a) after subsection (2) insert—
- “(2A) But the chief constable of the Police Service of Scotland may provide information mentioned in section 113B(4) relating to a time when the applicant was under 12 years of age only where—
- (a) the independent reviewer determines, on a review under section 13 of the Age of Criminal Responsibility (Scotland) Act 2018, that the information ought to be included in the certificate and—
- (i) no appeal under section 15 of that Act is taken, or
- (ii) such an appeal having been taken, the sheriff confirms the determination under section 15(3)(a), or
- (b) the sheriff, on an appeal under section 15, determines under section 15(3)(b) that the information ought to be included in the certificate.”,
- (b) after subsection (7) insert—
- “(7A) In this section, “independent reviewer” means the independent reviewer appointed under section 7 of the Age of Criminal Responsibility (Scotland) Act 2018.”.

(2) The Protection of Vulnerable Groups (Scotland) Act 2007 (the “2007 Act”) is amended as follows.

(3) In section 75 (sources of information)—

(a) after subsection (2) insert—

5 “(2A) But the chief constable may provide information under subsection (2) relating to a time when the scheme member was under 12 years of age only where—

(a) the independent reviewer determines, on a review under section 13 of the Age of Criminal Responsibility (Scotland) Act 2018, that the information ought to be included in the scheme member’s scheme record and—

10 (i) no appeal under section 15 of that Act is taken, or

(ii) such an appeal having been taken, the sheriff confirms the determination under section 15(3)(a), or

(b) the sheriff, on an appeal under section 15, determines under section 15(3)(b) that the information ought to be included in the scheme member’s scheme record.”,

15 (b) after subsection (5) insert—

“(6) In this section, “independent reviewer” means the independent reviewer appointed under section 7 of the Age of Criminal Responsibility (Scotland) Act 2018.”.

20 *Appointment of independent reviewer*

6 Independent reviewer

There is to be an independent reviewer for the purposes of—

(a) reviewing information concerning behaviour of persons when under 12 years of age before the disclosure of such information—

25 (i) in an enhanced criminal record certificate under section 113B of the 1997 Act, or

(ii) in a scheme record under section 52 of the 2007 Act, and

(b) exercising other functions conferred on the reviewer by or under this Act or any other enactment.

30 **7 Period and terms of appointment**

(1) The Scottish Ministers are to appoint a person as the independent reviewer for such period, not exceeding 3 years, as Ministers determine.

(2) A person is to be appointed as independent reviewer on such terms as the Scottish Ministers determine.

35 (3) A person may be reappointed as independent reviewer for a further period or periods.

(4) The Scottish Ministers may pay such remuneration or allowances to the independent reviewer as they determine.

- (5) Where the office of independent reviewer is vacant or the reviewer is for any reason unable to exercise the reviewer's functions, the Scottish Ministers may designate a person to exercise those functions for such period as Ministers consider necessary.
- (6) The Scottish Ministers may terminate the appointment of the independent reviewer before the end of the period mentioned in subsection (1) by giving notice of the termination to the independent reviewer not less than 3 months before it is to take effect.

8 Administrative support

- (1) The Scottish Ministers must provide, or ensure the provision of, such staff and property as they consider the independent reviewer requires for the purpose of carrying out the reviewer's functions.
- (2) The Scottish Ministers must consult the independent reviewer as to the staff and property the reviewer requires for the purpose of carrying out the reviewer's functions.

Review of information prior to disclosure

9 Referral of information to independent reviewer

- (1) This section applies where—
- (a) the chief constable, having been requested to do so by the Scottish Ministers under section 113B(4) of the 1997 Act, has identified information which relates to a time when the applicant was under 12 years of age and which, in the chief constable's opinion, ought to be included in an enhanced criminal record certificate issued under section 113B(1) of that Act, or
 - (b) the chief constable, as a result of an enquiry or arrangements made under section 47 of the 2007 Act, has identified information which relates to a time when the scheme member was under 12 years of age and which, in the chief constable's opinion, ought to be included in a scheme record by virtue of section 49(1)(c) of that Act.
- (2) The chief constable must, before providing that information to the Scottish Ministers, refer that information to the independent reviewer together with the following—
- (a) in the case of information falling within subsection (1)(a), information about the purpose described in the statement under section 113B(2) of the 1997 Act in relation to which the enhanced criminal record certificate is required,
 - (b) in the case of information falling within subsection (1)(b), information about the regulated work in relation to which the scheme member to whom the scheme record relates participates in the scheme,
 - (c) an explanation of why the chief constable considers the information ought to be included in the enhanced criminal record certificate or, as the case may be, scheme record, and
 - (d) any other information the chief constable considers relevant to the exercise of the independent reviewer's functions.

10 Notification of referral under section 9

Where the chief constable refers information to the independent reviewer under section 9, the chief constable must, at the same time as doing so, notify the Scottish Ministers of that fact.

5 **11 Notification to applicant or scheme member**

(1) The independent reviewer must notify the applicant or, as the case may be, the scheme member to whom the information relates that information has been received for review.

(2) A notice under subsection (1) must include details of—

10 (a) the information relating to the applicant or scheme member which has been referred to the independent reviewer for review,

(b) how the applicant or scheme member can make representations to the independent reviewer about whether the information ought to be included in the enhanced criminal record certificate or, as the case may be, scheme record,

(c) the period within which any representations may be made.

15 (3) A notice under subsection (1) may include details of—

(a) any information the independent reviewer believes the applicant or scheme member holds and which the reviewer requests the applicant or scheme member to provide to the reviewer,

(b) the period within which the information may be provided.

20 **12 Provision of information to the independent reviewer**

(1) The independent reviewer may by notice require any person mentioned in subsection (3) to provide the reviewer with information which the reviewer believes the person holds and which the reviewer considers is necessary to carry out the review.

25 (2) A notice under subsection (1) must specify the information sought and the period within which it must be provided.

(3) The persons referred to in subsection (1) are—

30 (a) the chief constable,

(b) the Principal Reporter,

(c) the Scottish Courts and Tribunals Service,

(d) a local authority,

(e) any other person the independent reviewer considers appropriate.

13 Review of information referred under section 9

(1) The independent reviewer, on receiving information mentioned in section 9(1)(a), must review—

35 (a) whether the information is relevant in relation to the purpose described in the statement under section 113B(2) of the 1997 Act in relation to which the enhanced criminal record certificate is required, and

(b) whether it ought to be included in that certificate.

- (2) The independent reviewer, on receiving information mentioned in section 9(1)(b), must review—
- (a) whether the information is relevant in relation to the type of regulated work in relation to which the scheme member to whom the scheme record relates participates in the scheme, and
- (b) whether it ought to be included in that record.
- (3) The independent reviewer, in carrying out a review under this section, must—
- (a) take account of—
- (i) information provided under section 9(2),
- (ii) any representations made by the applicant or, as the case may be, the scheme member, and
- (iii) any information provided under section 12,
- (b) have regard to any guidance issued by the Scottish Ministers under section 17.
- (4) Following the review, the independent reviewer must determine either—
- (a) that the information ought not to be included in the enhanced criminal record certificate or, as the case may be, scheme record, or
- (b) that the information ought to be so included.

14 Notification of determination

- (1) The independent reviewer must notify the persons mentioned in subsection (2) of the determination under section 13(4) and of the reviewer's reasons for it.
- (2) The persons are—
- (a) the chief constable,
- (b) the applicant or, as the case may be, the scheme member,
- (c) the Scottish Ministers.
- (3) Notice under subsection (1) must be given before the end of the period of 7 days beginning with the day after the day on which the independent reviewer makes the determination.

15 Appeal against determination under section 13

- (1) The following persons may appeal the independent reviewer's determination under section 13(4) to the sheriff on a point of law only—
- (a) the applicant or, as the case may be, the scheme member,
- (b) the chief constable.
- (2) An appeal under this section must be taken before the end of the period of 28 days beginning with the day on which the independent reviewer's determination was notified under section 14.
- (3) On an appeal under this section, the sheriff must—
- (a) confirm the determination of the independent reviewer, or

(b) quash that determination and substitute for it the sheriff’s own determination.

(4) The decision of the sheriff on an appeal under this section is final.

General functions of independent reviewer

16 Annual report and recommendations

- 5 (1) The independent reviewer must, as soon as reasonably practicable after the end of each reporting year—
- (a) prepare a report on the exercise of the reviewer’s functions during that year, and
- (b) send a copy of that report to the Scottish Ministers.
- 10 (2) The Scottish Ministers must lay a copy of each report received under subsection (1)(b) before the Scottish Parliament as soon as reasonably practicable after receiving it.
- (3) The independent reviewer may include in an annual report recommendations to the Scottish Ministers as to—
- (a) any guidance issued by Ministers under section 17 or which the reviewer considers it would be appropriate for Ministers to issue,
- 15 (b) any changes to any enactment which the reviewer considers appropriate, and
- (c) any other matters the reviewer considers appropriate.
- (4) In this section, “reporting year” is—
- (a) the period beginning with the day on which this section comes into force and ending on 31 March, and
- 20 (b) each successive year ending on that date.

17 Guidance

- (1) The Scottish Ministers—
- (a) must issue guidance to the independent reviewer about the exercise of the reviewer’s functions, and
- 25 (b) may, from time to time, issue revised guidance.
- (2) Before issuing guidance or revised guidance under this section, the Scottish Ministers must consult—
- (a) the independent reviewer,
- (b) such other persons Ministers consider appropriate.
- 30 (3) The independent reviewer, in exercising the reviewer’s functions, must have regard to any such guidance.

18 Regulation of procedure for review

- (1) The Scottish Ministers may by regulations make provision about the procedure for the review under this Part of the inclusion of information in enhanced criminal record certificates and scheme records.
- 35

- (2) Regulations under this section may in particular include provision about—
- (a) the time period within which the chief constable is to refer to the independent reviewer information that the chief constable has identified and considers ought to be included in an enhanced criminal record certificate or, as the case may be, a scheme record,
 - (b) the time period within which the independent reviewer is to notify the applicant or, as the case may be, the scheme member under section 11(1),
 - (c) the time period within which the applicant or, as the case may be, the scheme member may make representations under section 11(2) to the independent reviewer,
 - (d) the time period within which a person required under section 12(1) to provide information to the independent reviewer is to do so.

19 Modifications of the functions of the independent reviewer

- (1) The Scottish Ministers may by regulations modify the functions of the independent reviewer.
- (2) The Scottish Ministers must, before laying a draft of a Scottish statutory instrument containing regulations under this section before the Scottish Parliament, consult such persons as they consider appropriate.
- (3) Regulations under this section may—
 - (a) modify any enactment (including this Act),
 - (b) include transitional, transitory or saving provision.

CHAPTER 3

GENERAL PROVISIONS

20 Amendments consequential on Chapter 2

- (1) The 1997 Act is amended as follows.
- (2) In section 117 (disputes about accuracy of certificates)—
 - (a) in subsection (3), at the beginning insert “Subject to subsection (3A),”,
 - (b) after that subsection insert—
 - “(3A) But an application under this section may not request a review of information contained in a certificate by virtue of section 113B(4) which was or could have been the subject of an appeal under section 15 of the Age of Criminal Responsibility (Scotland) Act 2018.”,
 - (c) in subsection (4), for “such a request” substitute “a request mentioned in subsection (3)”.
- (3) The 2007 Act is amended as follows.
- (4) In section 51 (correction of inaccurate scheme record)—
 - (a) in subsection (4), at the beginning insert “Subject to subsection (4A),”,

(b) after that subsection insert—

“(4A) But a scheme member may not request a review of information included in a scheme record by virtue of section 49(1)(c) which was or could have been the subject of an appeal under section 15 of the Age of Criminal Responsibility (Scotland) Act 2018.”,

(c) in subsection (5), for “such a request” substitute “a request mentioned in subsection (4)”.

21 Interpretation of Part 2

In this Part—

“1997 Act” means the Police Act 1997,

“2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007,

“applicant” means the person who applies under section 113B of the 1997 Act for an enhanced criminal record certificate,

“chief constable” means the chief constable of the Police Service of Scotland,

“enhanced criminal record certificate” has the meaning given by section 113B(3) of the 1997 Act,

“independent reviewer” means the independent reviewer appointed under section 7,

“regulated work” has the meaning given by section 91 of the 2007 Act,

“scheme member” has the meaning given by section 45(2) of the 2007 Act,

“scheme record” has the meaning given by section 48 of the 2007 Act,

“the scheme” has the meaning given by section 44 of the 2007 Act.

PART 3

VICTIM INFORMATION

22 Provision of information to persons affected by child’s behaviour

(1) After section 179 of the 2011 Act, insert—

“179A Request for information by person affected by child’s behaviour

(1) This section applies—

(a) where the Principal Reporter is required to make a determination in relation to a child under section 66(2) and has information which suggests that—

(i) the child has committed an offence, or

(ii) the child, while under 12 years of age, has behaved in a way that falls within subsection (2), or

(b) where, by virtue of section 71(3)(b) or 130, the Principal Reporter is required to arrange a children’s hearing in relation to a child who has pled guilty to, or been found guilty of, an offence.

- (2) Behaviour falls within this subsection if it—
- (a) is—
 - (i) physically violent,
 - (ii) sexually violent or sexually coercive, or
 - (iii) dangerous, threatening or abusive, and
 - (b) causes harm to another person.
- (3) A person mentioned in subsection (4) may request the Principal Reporter to provide the person with information about the action taken in relation to the offence or, as the case may be, the behaviour mentioned in subsection (1)(a)(ii).
- (4) The persons are—
- (a) any person against whom the offence mentioned in subsection (1)(a)(i) or (b) appears to have been committed,
 - (b) any person who appears to have been harmed by the behaviour mentioned in subsection (1)(a)(ii),
 - (c) where a person mentioned in paragraph (a) or (b) is a child, any relevant person in relation to that child,
 - (d) any other person or class of persons the Scottish Ministers may specify by regulations (subject to any conditions specified in the regulations).
- (5) The Principal Reporter may inform any person mentioned in subsection (4)(a), (b) or (c) of the person's right to request information under subsection (3).
- (6) Subsection (7) applies where—
- (a) the Principal Reporter is required under section 68(3)(a) to provide information to a person, and
 - (b) that person is entitled to request information under subsection (3).
- (7) A request made by the person for information under subsection (3) is to be treated as relating only to information which the Principal Reporter is not required to provide to the person under section 68(3)(a).

179B Information to which section 179A applies

- (1) The information about the action taken in relation to the offence or, as the case may be, the behaviour mentioned in subsection (1)(a)(ii) of section 179A which may be requested under subsection (3) of that section is—
- (a) in a case mentioned in section 179A(1)(a), information as to whether or not a children's hearing required to be arranged under section 69(2) for the purpose of deciding whether a compulsory supervision order should be made in respect of the child and—
 - (i) where such a hearing did not require to be arranged, the information mentioned in subsection (2)(a),
 - (ii) where such a hearing did require to be arranged, the information mentioned in subsection (2)(b),

(b) in a case mentioned in section 179A(1)(b), the information mentioned in subsection (2)(b).

(2) The information is—

(a) information as to—

(i) what determination the Principal Reporter made under section 66(2), and

(ii) any other action taken by the Principal Reporter (under section 68(5) or otherwise),

(b) information as to—

(i) whether a compulsory supervision order has been made in respect of the child or, as the case may be, whether a compulsory supervision order which is already in force in respect of the child has been terminated, varied or continued, or

(ii) how the referral to the children's hearing was otherwise discharged.

179C Decision by Principal Reporter following request under section 179A

(1) The Principal Reporter may comply with a request made under section 179A(3) only if satisfied—

(a) that the provision of the information would not be detrimental to the best interests of the child mentioned in section 179A(1) (or any other child), and

(b) having regard to the factors mentioned in subsection (2), that it is appropriate in the circumstances of the case to provide the information.

(2) The factors are—

(a) the age of the child mentioned in section 179A(1),

(b) the seriousness of the offence or, as the case may be, the behaviour mentioned in section 179A(1)(a)(ii),

(c) the circumstances in which the offence or behaviour took place,

(d) the effect that the offence or the behaviour has had on the person mentioned in section 179A(4)(a) or, as the case may be, section 179A(4)(b), and

(e) such other factors as the Principal Reporter considers appropriate.

(3) The Principal Reporter must not, in providing information under subsection (1), provide any more information than is necessary to inform the person who made the request of the action taken in relation to the offence or, as the case may be, the behaviour mentioned in section 179A(1)(a)(ii)."

(2) In section 68 (determination under section 66: no referral to a children's hearing) of the 2011 Act, after subsection (3) insert—

“(3A) The Principal Reporter may not, under subsection (3)(b), provide information to a person who is entitled to request that information under section 179A(3).”.

(3) Section 53 of the Criminal Justice (Scotland) Act 2003 is repealed.

PART 4

POLICE INVESTIGATORY AND OTHER POWERS

CHAPTER 1

EMERGENCY PLACE OF SAFETY

- 5 **23 Power to take child under 12 to place of safety**
- (1) This section applies where a constable finds in any place a child under 12 years of age who the constable has reasonable grounds to believe is behaving or is likely to behave in a way that is causing or risks causing significant harm to another person.
- 10 (2) The constable may take the child to a place of safety and keep the child there if the constable is satisfied that it is necessary to do so to protect any other person from an immediate risk of significant harm or further such harm.
- (3) As soon as practicable after a constable takes a child to a place of safety under this section, the constable must inform a parent of the child.
- (4) A child may be kept in a place of safety under this section—
- 15 (a) only for so long as is necessary—
- (i) to put in place arrangements for the care or protection of the child, or
- (ii) for an order under section 52 authorising the taking of intimate samples from the child to be obtained, and
- (b) in either case, for no longer than 24 hours.
- 20 (5) A child may be kept in a place of safety that is a police station only if it is not reasonably practicable to keep the child in a place of safety that is not a police station.
- (6) Where a child is kept in a police station, the constable must take steps to identify a place of safety that is not a police station and transfer the child to that place as soon as is reasonably practicable.
- 25 (7) Subsection (6) does not apply where subsection (4)(a)(ii) applies.
- (8) In this section—
- “intimate sample” has the meaning given by section 49(4),
- “place of safety” has the same meaning as in section 202(1) of the 2011 Act.
- 30 **24 Section 23: regulations**
- (1) The Scottish Ministers may by regulations make further provision about a child taken to and kept in a place of safety under section 23.
- (2) Regulations under subsection (1) may in particular include provision about—
- (a) the notice to be given when a child is taken to a place of safety, including—
- (i) the persons to whom notice is to be given,
- 35 (ii) the information persons given notice are to receive,
- (iii) when notice may be dispensed with,

- (b) the constable's duties to a child taken to and kept in the place of safety, including the information to be given to the child.

CHAPTER 2

SEARCH OF CHILDREN UNDER 12

5

Search without warrant

25 Search of child under 12 without warrant under existing enactment

- (1) This section applies to an enactment under or by virtue of which a constable may, on the ground (however expressed) that the constable reasonably suspects an offence has been, is being or is about to be committed, carry out a search without warrant.
- 10 (2) The enactment applies to a child under 12 years of age as it applies to a person of 12 years or over who has committed, is committing or is about to commit an offence where the child's behaviour is such that, were the child 12 years or over, it would be an offence in relation to which the constable's power of search would be available.
- (3) But subsection (2) does not apply to the enactment to the extent that it provides (or
15 would, by virtue of that subsection, provide) that—
 - (a) the constable may arrest the child,
 - (b) the constable may apply for a warrant,
 - (c) the child commits an offence if the child—
 - 20 (i) obstructs the constable in the exercise of a power conferred under or by virtue of the enactment, or
 - (ii) fails to comply with any requirement made of the child by the constable.
- (4) The Scottish Ministers may by regulations—
 - (a) specify enactments to which this section is not to apply,
 - (b) modify subsection (3).

25

Search under order

26 Application for order authorising search in relation to child under 12

- (1) A constable may apply to the sheriff for an order under section 28 authorising a search in relation to a child under 12 years of age.
- (2) An application for an order under section 28 must—
 - 30 (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,
 - 35 (e) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.

27 Consideration of application for order under section 28

- (1) This section applies where a constable makes an application under section 26 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.
- (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.

28 Order authorising search in relation to child under 12

- (1) This section applies where a constable makes an application under section 26 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.

29 Notification of order under section 28

(1) This section applies where an order is made under section 28 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.

30 Appeal against decision under section 28

(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 28 may be taken only where the sheriff gives permission.

(2) Such an appeal must be taken before the end of the period of 3 days beginning with the day after the day on which the decision appealed against is made.

(3) A decision of the Sheriff Appeal Court on an appeal against the sheriff’s decision is final.

CHAPTER 3

QUESTIONING OF CERTAIN CHILDREN

Limitation of police questioning

31 Limitation on police questioning of certain children

(1) It is unlawful for a constable to question a child, or for the child to be subject to an investigative interview, in relation to an incident of the type mentioned in subsection (2) except where the questioning or interview is authorised—

- (a) by an order under section 34 (a “child interview order”), or
- (b) by virtue of section 44.

(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.

(3) In this Chapter—

“child” means a person—

(a) who is under 16 years of age, or

(b) who is—

(i) 16 or 17 years of age, and

(ii) subject to a compulsory supervision order, or an interim compulsory supervision order, made under the 2011 Act,

“investigative interview” means a meeting, or series of meetings—

(a) planned—

(i) by a constable, or

(ii) by a constable in collaboration with a local authority, and

(b) conducted—

(i) by a constable or an officer of a local authority, or

(ii) jointly by a constable and an officer of a local authority,

for the purpose of seeking information from a child in relation to an incident which is the subject of a police investigation.

Child interview order

32 Application for child interview order

(1) A constable may apply to the sheriff for a child interview order.

(2) An application for a child interview order must—

(a) identify the applicant,

(b) identify the child in respect of whom the order is sought,

(c) in so far as practicable, identify a parent of the child,

(d) state the grounds on which the application is made,

(e) set out provisional plans for the investigative interview of the child, and

(f) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.

(3) Before making an application for a child interview order, the constable must—

(a) determine which local authority is the relevant local authority in relation to the planning and conduct of the proposed investigative interview of the child, and

- (b) consult that authority about the making of the application and the provisional plans mentioned in subsection (2)(e) (unless such consultation is not practicable).
- (4) In this Chapter, “relevant local authority” has the meaning given by section 201 of the 2011 Act.

5 **33 Consideration of application for child interview order**

- (1) This section applies where a constable makes an application for a child interview order.
- (2) The sheriff may determine the application in court or in chambers after such enquiry or hearing (if any) as the sheriff considers appropriate.
- 10 (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.

15 **34 Child interview order**

- (1) This section applies where a constable makes an application for a child interview order.
- (2) The sheriff may make the order if satisfied—
 - 20 (a) that there are reasonable grounds to suspect that the 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, and
 - 25 (b) that an investigative interview of 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—
 - 30 (a) the nature and seriousness of the child’s behaviour, and
 - (b) whether an investigative interview of the child is appropriate given the child’s circumstances (including the child’s age and any matter related to the child’s behaviour).
- (4) A child interview order authorises an investigative interview of the child in relation to the behaviour to which the application relates.
- (5) A child interview order may also—
 - 35 (a) require any person in a position to do so to produce the child to a person specified in the order for the purpose of ensuring the child’s attendance at the investigative interview,
 - (b) authorise the transporting of the child to and from the place where the interview is to take place (by the person specified in paragraph (a) or another person),

(c) authorise any other action (including action to safeguard and promote the wellbeing of the child) required in connection with the interview.

(6) A child interview order may contain directions about—

(a) the conduct of the investigative interview authorised by the order,

(b) the carrying out of any other action required or authorised by the order.

(7) A child interview order ceases to have effect at the end of the period of 7 days or such shorter period as is specified in the order (the period in each case beginning with the day after the day on which the order is made or such later day as is specified in the order).

35 Notification of child interview order

(1) This section applies where a child interview order is made in respect of a child.

(2) A constable must—

(a) as soon as reasonably practicable after the order is made—

(i) provide the child, and, in so far as practicable, a parent of the child, with a copy of the order, and

(ii) in so far as practicable, explain the information contained in the order to the child in a way that is appropriate to the child's age and maturity, and

(b) as soon as reasonably practicable after the identities of the persons who will act as supporter and advocacy worker during the investigative interview authorised by the order are known, provide each of those persons with a copy of the order.

36 Planning of investigative interview

(1) This section applies where a child interview order is made in respect of a child.

(2) A constable must, in collaboration with the relevant local authority, draw up plans for the conduct of the investigative interview authorised by the order.

(3) The plans drawn up under subsection (2) must—

(a) accord with any directions contained in the order,

(b) specify—

(i) the period over which the interview will be conducted,

(ii) the number of meetings which will take place as part of the interview,

(iii) the date of each meeting,

(iv) how long each meeting will last,

(v) the location at which each meeting will take place,

(vi) the persons by whom the child may be questioned at each meeting,

(vii) the support and assistance required by the child during the interview, and

(c) include any other relevant information (for example, where the order authorises the transport of the child to and from the interview, details of the arrangements for that transport).

(4) A constable must—

(a) as soon as reasonably practicable after plans are drawn up under subsection (2)—

(i) provide the child, and, in so far as practicable, a parent of the child, with a copy of the plans, and

(ii) in so far as practicable, explain the information contained in the plans to the child in a way that is appropriate to the child's age and maturity, and

(b) as soon as reasonably practicable after the identities of the persons who will act as supporter and advocacy worker during the interview are known, provide each of those persons with a copy of the plans.

37 Conduct of investigative interview

(1) This section applies where a child interview order is made in respect of a child.

(2) No action authorised or required by the order may take place prior to the child being given a copy of the plans for the investigative interview drawn up under section 36.

(3) The interview must be conducted in accordance with—

(a) any directions about the conduct of the interview contained in the order, and

(b) the plans drawn up under section 36.

(4) Any other action required or authorised by a child interview order must be carried out in accordance with—

(a) any directions about the carrying out of those actions contained in the order,

(b) the plans for the interview drawn up under section 36.

38 Right not to answer questions

(1) This section applies where a child interview order is made in respect of a child.

(2) The child is not required to answer questions during the investigative interview authorised by the order.

39 Right to have supporter present

(1) This section applies where a child interview order is made in respect of a child.

(2) The child has the right, during the investigative interview authorised by the order, to have another person (a “supporter”) present in the room in which the interview is being conducted.

(3) The interview may be conducted only if (and for as long as) a supporter—

(a) is present in the room in which the interview is being conducted, or

(b) is otherwise in attendance at the place where the interview is being conducted.

(4) The supporter must not be denied access to the child at any time during the interview.

(5) Subsections (2) and (4) do not apply if (but only for as long as)—

(a) a relevant constable, and

(b) an officer of the relevant local authority,

agree that the supporter's absence from the room in which the interview is being conducted is necessary (including where it is necessary to safeguard or promote the child's wellbeing).

- (6) A "relevant constable" is a constable—
- 5 (a) who is of the rank of sergeant or above, and
- (b) who has not been involved in the investigation of the incident to which the interview relates (including in the planning and conduct of the interview).
- (7) A supporter—
- (a) must be aged 18 or over,
- 10 (b) may, but need not, be a parent of the child.
- (8) The child's supporter is to be a person considered appropriate by the person conducting the interview.
- (9) In considering for the purpose of subsection (8) whether a person is appropriate, the person conducting the interview is—
- 15 (a) so far as reasonably practicable, to ascertain the views of the child, and
- (b) to have regard to any views ascertained.
- (10) In having regard to the views of the child under subsection (9), the person conducting the interview is to take account of the child's age and maturity.

40 Right to have advocacy worker present

- 20 (1) This section applies where a child interview order is made in respect of a child.
- (2) The child has the right, in connection with and during the investigative interview authorised by the order, to receive support and assistance from an advocacy worker.
- (3) The interview may be conducted only if (and for as long as) an advocacy worker—
- 25 (a) is present in the room in which the interview is being conducted, or
- (b) is otherwise in attendance at the place where the interview is being conducted.
- (4) The child has the right to a private consultation with the advocacy worker before, or at any time during, the interview.
- (5) The advocacy worker must not be denied access to the child at any time during the interview.
- 30 (6) In subsection (2), "support and assistance" includes the advocacy worker—
- (a) helping the child to understand—
- (i) the purpose of the interview,
- (ii) the child's rights in relation to the interview (including the child's right to refuse to answer questions), and
- 35 (iii) what may happen as a result of the interview,
- (b) being present with the child in the room in which the interview is being conducted,

(c) communicating on the child’s behalf with the person conducting the interview or otherwise supporting the child in communicating with that person,

(d) questioning whether the interview is being conducted—

(i) in accordance with the child interview order authorising the interview or otherwise fairly,

(ii) in a way that treats the need to safeguard and promote the wellbeing of the child as a primary consideration.

(7) An advocacy worker is a person who provides children’s advocacy services (within the meaning of section 122 of the 2011 Act).

(8) Section 122 of the 2011 Act is amended as follows.

(9) In subsection (1), for “This section” substitute “Subsection (2)”.

(10) In subsection (4), in paragraph (b), for “qualifications to be held” substitute “qualifications and experience required”.

(11) In subsection (7)—

(a) in the definition of “children’s advocacy services”—

(i) the words from “services” to the end become paragraph (a) of the definition,

(ii) after that paragraph insert “,

(b) services of support and assistance provided to a child in connection with or during their participation in an investigative interview authorised by a child interview order,”,

(b) after that definition insert—

““child interview order” has the meaning given by section 63 of the Age of Criminal Responsibility (Scotland) Act 2018,

“investigative interview” has the meaning given by section 31(3) of the that Act.”.

41 Child not to be questioned while unaccompanied

(1) This section applies where a child interview order is made in respect of a child.

(2) The investigative interview authorised by the order may not continue during any period when both the child’s supporter and the advocacy worker are absent from the room in which the interview is being conducted.

42 Information to be provided to child

(1) This section applies where a child interview order is made in respect of a child.

(2) Before the start of the investigative interview authorised by the order, the person conducting the interview must ensure that—

(a) the child is provided with the information mentioned in subsection (3), and

(b) the information is explained to the child.

- (3) The information is information about—
- (a) the behaviour to which the interview relates,
 - (b) the purpose of the interview,
 - (c) the child’s rights in relation to the interview (including the child’s right not to answer questions), and
 - (d) what may happen as a result of the interview.
- (4) Information provided under subsection (2)(a) must be provided in a format appropriate to the child’s age and maturity.

43 Appeal against decision under section 34

- (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 34 may be taken only where the sheriff gives permission.
- (2) Such an appeal must be taken before the end of the period of 3 days beginning with the day after the day on which the decision appealed against is made.
- (3) A decision of the Sheriff Appeal Court on an appeal against the sheriff’s decision is final.

Questioning in urgent cases

44 Questioning of child in urgent cases

- (1) This section applies where a constable has reasonable grounds to suspect that—
- (a) a child, while under 12 years of age, by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, and
 - (b) there is a risk of loss of life if the child is not questioned immediately.
- (2) The constable may, in so far as necessary to prevent loss of life, question the child about the child’s behaviour and the circumstances surrounding it if authorised to do so by a relevant senior officer under subsection (3).
- (3) The relevant senior officer may authorise the constable to question the child as mentioned in subsection (2) only if that officer is satisfied that—
- (a) there are reasonable grounds to suspect that the child, while under 12 years of age, by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person,
 - (b) questioning of 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), and
 - (c) it is not practicable to apply for a child interview order authorising an investigative interview of the child because there is a risk of loss of life if the child is not questioned immediately.
- (4) In considering the matters mentioned in subsection (3), the relevant senior officer must have regard to—
- (a) the nature and seriousness of the child’s behaviour,

(b) whether the questioning of the child is appropriate given the child's circumstances (including the child's age and any matter related to the child's behaviour).

(5) A child in respect of whom authorisation under subsection (3) is granted is not required to answer questions during the questioning authorised by that subsection.

5 (6) In this section, a "relevant senior officer" is an officer of the rank of superintendent or above.

45 Procedure following authorisation of questioning under section 44

(1) This section applies where the questioning of a child is authorised by section 44.

(2) The constable authorised under section 44 to question the child must inform the child—

10 (a) that the questioning of the child has been authorised under section 44, and

(b) that the child has the right not to answer questions.

(3) A constable must, in so far as practicable, inform a parent of the child about the authorisation under section 44.

15 (4) Subsection (3) need not be complied with if the constable reasonably suspects that informing a parent of the child would exacerbate the risk of loss of life.

(5) A constable must inform an advocacy worker about the authorisation under section 44.

(6) A constable must, as soon as reasonably practicable after authorisation is granted under section 44, apply for a child interview order authorising an investigative interview of the child in relation to the behaviour mentioned in section 44(1).

20 *Guidance*

46 Guidance

(1) The Scottish Ministers—

(a) must issue guidance about—

(i) applications for a child interview order,

25 (ii) the planning and conduct of investigative interviews authorised by a child interview order,

(iii) the questioning of children by virtue of section 44, and

(b) may, from time to time, issue revised guidance.

(2) Guidance under subsection (1) may in particular cover—

30 (a) the role of constables and local authorities in the planning and conduct of investigative interviews,

(b) principles according to which investigative interviews are to be conducted,

(c) the creation of an environment in which the child's wellbeing is safeguarded and promoted,

35 (d) approaches to questioning in investigative interviews,

(e) the recording of investigative interviews,

- (f) the determination of whether a person is an appropriate person to act as a supporter,
- (g) the role of supporters and advocacy workers in investigative interviews,
- (h) other forms of support and assistance that may be required by the child in connection with an investigative interview.

(3) A person exercising functions to which guidance under subsection (1) relates must, in doing so, have regard to that guidance.

(4) Before issuing guidance or revised guidance under this section, the Scottish Ministers must consult—

- (a) the chief constable,
- (b) each local authority,
- (c) such other persons as they consider appropriate.

CHAPTER 4

TAKING OF PRINTS AND SAMPLES FROM CERTAIN CHILDREN

Limitation on taking of prints and samples

47 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 52,
- (b) by virtue of section 57, 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 52(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) 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.

48 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 52, or
 - (ii) by virtue of section 57, or
- (b) where the child consents.

- 5 (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—
 - 10 (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.

49 Key definitions

- (1) In this Chapter, the following expressions have the meanings given in this section.
- 15 (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,
 - 20 (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—
- 25 (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,
- 30 (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—
- 35 (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”.

Order authorising taking of prints and samples

50 Application for order authorising taking of prints and samples from child

- (1) A constable may apply to the sheriff for an order under section 52 authorising the taking of relevant physical data or relevant samples from a child.
- (2) An application for an order under section 52 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.

51 Consideration by sheriff of application for order under section 52

- (1) This section applies where a constable makes an application under section 50 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.
- (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.

52 Order authorising taking of prints and samples from child

- (1) This section applies where a constable makes an application under section 50 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 57.
- (6) An order under this section may also require any person in a position to do so to produce the child to a constable.
- (7) In this section, “specified” means specified in the order.

53 Notification of order under section 52

- (1) This section applies where an order is made under section 52 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.

54 Taking of intimate samples

- (1) This section applies where an order under section 52 authorises the taking of intimate samples from a child.
- (2) An intimate sample may be taken from the child—
- 5 (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,
 10 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,
 15 “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.

55 Destruction of prints and samples taken under section 52

- 20 (1) This section applies where an order under section 52 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—
- 25 (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.
- (3) For the purposes of subsection (2)(b), such proceedings are concluded when an event
 30 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—
- 35 (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
 - 5 (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,
 - 10 (b) the withdrawal under section 107(2) of the 2011 Act of an application to the sheriff, or
 - (c) the making of a compulsory supervision order in respect of the child,
 - (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—
- 15 (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.
- 25 (10) In this section, “children’s hearing” and “compulsory supervision order” have the same meanings as in the 2011 Act.

56 Appeal against decision under section 52

- (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 52 may be taken only where the sheriff gives permission.
- (2) Such an appeal must be taken—
- (a) before the end of the period of 3 days beginning with the day after the day on which the decision appealed against is made, or
 - 35 (b) where an order is made under section 52 and a period longer than 7 days is specified in the order under section 52(4)(b)(ii), before the end of that period.
- (3) A decision of the Sheriff Appeal Court on an appeal against the sheriff’s decision is final.

Taking of prints and samples in urgent cases

57 Taking of prints and samples in urgent cases

- 5 (1) A constable may, subject to subsection (4), take relevant physical data or a relevant sample from a child if authorised to do so by a relevant senior officer under subsection (2).
- 10 (2) The relevant senior officer may authorise the constable to take relevant physical data or a relevant sample from the child only if that officer is satisfied that—
- (a) there are reasonable grounds to suspect that the child—
- 15 (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,
- (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), and
- 20 (c) that it is not practicable to apply for an order under section 52 authorising the taking of that data or sample because of the risk that, if the data or sample is not taken immediately, evidence derived from the data or sample, or the sample, would be lost or destroyed.
- (3) In considering the matters mentioned in subsection (2), the relevant senior officer must have regard to—
- (a) the nature and seriousness of the child’s behaviour,
- 25 (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) Intimate samples may not be taken from a child under this section.
- (5) In this section, a “relevant senior officer” is an officer—
- 30 (a) of the rank of superintendent or above,
- (b) who has not been involved in the investigation in connection with which the taking of the relevant physical data or relevant sample is sought.

58 Procedure following taking of prints and samples under section 57

- 35 (1) This section applies where any relevant physical data or relevant sample has been taken from a child by virtue of section 57.
- (2) No steps may be taken in relation to the relevant physical data or relevant sample (other than holding and preserving the data or sample) unless and until an order under section 52 authorising the taking of the data or sample is obtained.
- 40 (3) An application for an order under section 52 authorising the taking of the relevant physical data or relevant sample must be made before the end of the period of 7 days beginning with the day on which the data or sample was taken.

- (4) Such an application must, in addition to the matters mentioned in section 50(2), specify the data or sample taken by virtue of section 57.
- (5) The relevant senior officer who authorised the taking of the relevant physical data or relevant samples under section 57(2) must ensure that all record of any data taken and all samples taken are destroyed as soon as reasonably practicable after the earliest of the following events—
- (a) a decision by the constable who took the data or sample not to apply for an order under section 52,
 - (b) the end of the period mentioned in subsection (3), no application having been made,
 - (c) where such an application is made but the sheriff refuses the application—
 - (i) the end of the period for an appeal against the sheriff’s decision, no appeal having been taken, or
 - (ii) if an appeal is taken and the sheriff’s decision is upheld, the conclusion of the appeal.

CHAPTER 5

GENERAL PROVISION

59 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.

60 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—

“(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 2018.”.

(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 2018

- 5 (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 2018, and
- 10 (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,
- 15 (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,
- 20 (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),”.

61 Additional powers and duties of constables

- 25 (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 23,
- (b) is authorised to carry out a search by an order under section 28,
- 30 (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 44,
- (e) is authorised to take relevant physical data or relevant samples from a child—
- (i) by an order under section 52, or
- (ii) by virtue of section 57.
- 35 (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

(b) to carry out a search by virtue of section 25 and the enactment under which the search may be carried out authorises the constable to use reasonable force (however expressed).

5 (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—

10 (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.

62 Offences

(1) A person commits an offence if the person, without reasonable excuse, intentionally—

15 (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—

20 (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 23(2),

25 (b) an order under section 28,

(c) a child interview order,

(d) authorisation under section 44(2),

(e) an order under section 52,

(f) authorisation under section 57(1).

30 (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.

63 Interpretation of Part 4

In this Part—

“advocacy worker” has the meaning given by section 40(6),

35 “child” has the meaning given by section 31(3),

“child interview order” means an order under section 34(2),

“intimate sample” has the meaning given by section 49(4),

“investigative interview” has the meaning given by section 31(3),
 “parent” includes guardian and any person who has care of the relevant child,
 “relevant physical data” has the meaning given by section 49(2),
 “relevant sample” has the meaning given by section 49(3),
 “relevant senior officer” has the meaning given by section 57(5),
 “supporter” has the meaning given by section 39(2).

PART 5

FINAL PROVISIONS

64 Interpretation

In this Act—

“2011 Act” means the Children’s Hearings (Scotland) Act 2011,
 “child” means a person who is under 16 years of age (except where provided
 otherwise): see section 31(3),
 “constable” has the same meaning as in section 99(1) of the Police and Fire
 Reform (Scotland) Act 2012.

65 Civil jurisdiction of summary sheriffs

- (1) The Courts Reform (Scotland) Act 2014 is amended as follows.
- (2) In schedule 1 (civil jurisdiction of summary sheriff), after paragraph 4 insert—

“Proceedings relating to children under the age of criminal responsibility

4A Proceedings under the Age of Criminal Responsibility (Scotland) Act 2018.”.

66 Regulation-making powers

- (1) Each power of the Scottish Ministers to make regulations under this Act includes power—
 - (a) to make different provision for different purposes,
 - (b) to make any incidental, supplementary, consequential, transitional, transitory or saving provision which they consider appropriate.
- (2) Regulations under the following provisions are subject to the negative procedure—
 - (a) section 18(1),
 - (b) section 24(1),
 - (c) section 54(2)(b)(iii),
 - (d) section 54(3),
 - (e) subject to subsection (3)(e), section 67.
- (3) Regulations under the following provisions are subject to the affirmative procedure—
 - (a) section 19(1),

- (b) section 25(4),
- (c) section 49(6),
- (d) section 55(9),
- (e) section 67 which add to, replace or omit the text of an Act.

5 (4) This section does not apply to regulations under section 68(2).

67 Ancillary provision

(1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of or in connection with this Act or any provision made under it.

10 (2) Regulations under subsection (1) may modify any enactment (including this Act).

68 Commencement

(1) This section and section 69 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may appoint by regulations.

15 (3) Regulations under subsection (2) may—

- (a) include transitional, transitory or saving provision,
- (b) make different provision for different purposes.

69 Short title

The short title of this Act is the Age of Criminal Responsibility (Scotland) Act 2018.

Age of Criminal Responsibility (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to raise the age of criminal responsibility to 12 years and to make consequential changes to the law on the disclosure of criminal records and of other information relating to individuals working or seeking to work with children or certain adults; on the provision of information by the Principal Reporter to persons adversely affected by the behaviour of children; on the taking of certain children to a place of safety by the police; on the search of certain children by the police; on police interviews with certain children; and on the taking of forensic samples from certain children by the police; and for connected purposes.

Introduced by: John Swinney
Supported by: Maree Todd
On: 13 March 2018
Bill type: Government Bill

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
www.parliament.scot/documents