

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

EXPLANATORY NOTES

PART 3: VICTIM INFORMATION

Changes made by the Act

Impact on pre-existing law of change in age of criminal responsibility

73. **Part 1** of the Act would, if section 53 of the 2003 Act remained in place, have meant that information about action taken in response to the behaviour of eight to 11 year olds would not be available to persons affected by such behaviour (as the availability of information under that section depended on an offence having been committed, and eight to 11 year olds will not be able to commit an offence once Part 1 of this Act is in force).
74. **Part 1** of the Act does not affect the provision of information under section 68(3) of the 2011 Act, as this provision applies whichever section 67 ground was being considered in relation to the child.

What this Part of the Act does

75. **Section 27** of the Act repeals section 53 of the 2003 Act, preventing the effect mentioned in paragraph 73 above from arising (subsection (3)). New sections 179A, 179B and 179C are inserted into the 2011 Act in replacement (subsection (1)).
76. New section 179A(3) gives certain people a right, in certain circumstances, to request certain information about how a child¹ has been dealt with by the children's hearing system.
77. The right to make a request arises where the Principal Reporter is required to make a determination in respect of a child under section 66(2) of the 2011 Act² and the Principal Reporter has information suggesting:
- that a child has committed an offence (as a result of section 1 of the Act, this only applies in relation to children aged 12 or over), or
 - that a child aged under 12 (including a child aged under eight) has acted or behaved in a way mentioned in subsection (2) of section 179A (that is, that the child has harmed another person by acting or behaving in a physically violent, sexually violent or sexually coercive, or dangerous, threatening or abusive way). The harm referred to can be physical or psychological.

¹ "Child" is defined for the purposes of the 2011 Act, including new section 179A, 179B and 179C, in section 199 of that Act.

² Section 66(1) of the 2011 Act sets out when the requirement to make such a determination arises. This includes where the Principal Reporter receives information about a child from the police under section 61 of the 2011 Act. Determinations under section 66(2) fall to be made in relation to new circumstances involving children who are already subject to a compulsory supervision order, as well as in cases where the child is not subject to such an order.

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Act 2019 (asp 7) which received Royal Assent on 11 June 2019*

78. In addition, the right to request information arises where the case of a child aged 16 or 17 who has plead guilty to, or been found guilty of, an offence in court proceedings has been referred for disposal by the children's hearings system.³
79. The people who can make a request are:
- any person against whom an offence appears to have been committed (or where that person is a child, any relevant person in relation to the child),
 - any person who appears to have been harmed by action or behaviour of a child aged under 12 which was physically violent, sexually violent or sexually coercive, or dangerous, threatening or abusive (or where the person harmed is a child, any relevant person in relation to the child), and
- other persons specified in regulations (subject to any conditions specified in the regulations).⁴
80. The Principal Reporter may know, from information held in relation to a case, that a particular person would be entitled to request information under subsection (3) of section 179A. Subsection (5) of that section permits the Principal Reporter to contact such persons to advise them of their right to request information.
81. New section 179B describes the information that may be provided in response to a request under section 179A. The information varies according to how the case was dealt with.
82. In cases referred by a court for disposal by a children's hearing, the holding of a children's hearing is automatic, so there is no need to provide information as to whether a children's hearing required to be arranged. The information to be provided in such cases is the information mentioned in subsection (2)(b) of section 179B.
83. In all other cases covered by section 179A, the holding of a children's hearing is not automatic but turns on the Principal Reporter's determination under section 66(2). Under section 179B(1)(a), the information to be provided in such cases includes information as to whether or not a children's hearing is to be arranged. If a hearing is not to be held (because the Principal Reporter considers that no section 67 ground applies or that such a ground does apply but it is not necessary for a compulsory supervision order to be made in respect of the child), the additional information to be provided is that set out in section 179B(2)(a).⁵
84. If a hearing is to be held (because the Principal Reporter considers that a section 67 ground applies and also that it is necessary for a compulsory supervision order to be made in respect of the child), the additional information to be provided is that set out in section 179B(2)(b).
85. The information provided in response to a request under section 179A does not include information about the reasons for the decisions made by the Principal Reporter and children's hearings or details of the particular measures authorised by any compulsory supervision order to which the child is subject.

³ See section 49 of the 1995 Act. Section 71 of the 2011 Act requires the Principal Reporter to arrange a children's hearing for the purpose of disposing of the case where the child is not already subject to a compulsory supervision order. Section 130 of the 2011 Act has the same effect in relation to cases where the child is already subject to a compulsory supervision order.

⁴ The regulations are subject to negative procedure (by virtue of existing section 195(3) of the 2011 Act). Section 53 of the 2003 Act included a similar power to that conferred by new section 179A(4)(d) of the 2011 Act. That previous power was used to make [The Children's Hearings \(Provision of Information by Principal Reporter\) \(Prescribed Persons\) \(Scotland\) Order 2003 \(SSI 2003/424\)](#). The persons prescribed were Victim Support Scotland, the Criminal Injuries Compensation Authority, the Criminal Injuries Compensation Appeals Panel and insurers.

⁵ This includes information as to any action taken by the Principal Reporter under section 68(5) of the 2011 Act or otherwise. Section 68(5) of the 2011 Act specifically empowers the Principal Reporter, where the case is not proceeding to a children's hearing, to refer the child to a local authority for the provision of advice, guidance and assistance under Chapter 1 of Part 2 of the Children (Scotland) Act 1995 or to certain other specified bodies for the provision of advice, guidance and assistance. In addition, the Principal Reporter has a general power under paragraph 9 of schedule 3 of the 2011 Act to do anything which the Principal Reporter considers appropriate for the purposes of or in connection with the Principal Reporter's statutory functions.

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86. Provision of the information described in section 179B is not automatic. New section 179C(1) permits the Principal Reporter to comply with a request for information under section 179A only if satisfied that the provision of the information would not be detrimental to the best interests of the child to whom the information relates (or any other child). In addition, the Principal Reporter must be satisfied that providing the information is appropriate in all the circumstances of the case.⁶ In deciding this, the Principal Reporter must take into account the factors set out in section 179C(2).
87. [Section 179C\(3\)](#) also prohibits the Principal Reporter from providing information in response to a request under section 179A which is not directly related to the action or behaviour which caused harm or which constituted an offence.⁷
88. Subsections (6) and (7) of section 179A set out what is to happen when a person is entitled to request information under that section (for example, by virtue of having been harmed by a child's behaviour or being a person against whom an offence has been committed) and also entitled to receive information under section 68(3)(a) of the 2011 Act (for example, by virtue of being the person who reported the behaviour or the offence to the Principal Reporter). The more limited information required to be provided under section 68(3)(a) is provided under that section (so without the Principal Reporter having to be satisfied as mentioned in section 179C(1)) and additional information requested under section 179A is provided under section 179C (subject to the conditions in that section being satisfied).
89. Subsection (2) of section 27 of the Act also inserts a new subsection (3A) into section 68 of the 2011 Act, which eliminates any uncertainty about what information may be provided under 68(3)(b)⁸ to a person who is also entitled to request information under section 179A (by providing that information which can be requested under section 179A cannot be provided under section 68(3)(b) to such a person).

⁶ The Principal Reporter must also comply with data protection law in providing information under section 179C.

⁷ If, for example, in a case involving a child aged under 12, the facts relating to the behaviour which harmed the person making the request for information are not accepted, the children's hearing may proceed on the basis of other facts which are accepted. If a compulsory supervision order is then made in respect of the child, this information cannot be provided in response to the request under section 179A, as the order made does not relate to the harmful behaviour to which the request relates.

⁸ The information available under section 68(3)(b) of the 2011 Act is more limited than that which can be requested under section 179A, but fewer conditions have to be satisfied than if information is provided in response to a request under section 179A. Section 68(3)(a) and (b), of course, apply only where the Principal Reporter determines that the case should not be referred on to a children's hearing.