

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

EXPLANATORY NOTES

PART 4: POLICE INVESTIGATORY AND OTHER POWERS

Chapter 2: Search of children under 12

Changes made by the Act: what this Chapter of the Act does

Effect of provisions of general application on this Chapter

138. In addition to the particular provisions of Chapter 2 of Part 4 of the Act, sections 72 to 75 in Chapter 5 are also relevant to the search of a child or of premises, vehicles or vessels under Chapter 2.
139. [Section 72](#) means that a constable applying under section 34 for an order under section 36 for authority to search a child under must treat the need to safeguard and promote the child's wellbeing as a primary consideration. The same duty applies to the sheriff taking a decision on whether to make an order under section 36.
140. [Section 74](#) authorises a constable, searching a child under the authority of an order under section 36, to use reasonable force. But, in doing so, the constable must first seek the child's cooperation, may only use reasonable force as a last resort and must use as little force, and for as little time, as possible.¹ Those safeguards also apply where the constable is exercising an existing power of search by virtue of section 33 and the search power allows the use of reasonable force.
141. If someone intentionally obstructs a constable who is searching a child under a section 36 order, section 75 provides that the person has committed an offence and may, on conviction, be fined. A child aged under 12 (including the child being searched) cannot, of course, commit this offence.
142. But section 75 does not apply to a search under an existing statutory power carried out by virtue of section 33(2).²

¹ See section 74(3) to (6).

² As mentioned in paragraph 120, even where that statutory power provides for an offence, the child under 12 who is being searched cannot commit the offence. If the offence in question can be committed by other persons, other children aged under 12 could not, by virtue of new section 41 inserted into the 1995 Act by section 1, commit the offence, but a person aged 12 or over who obstructs the search of the child aged under 12 could.