

# **AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019**

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## **EXPLANATORY NOTES**

### **PART 4: POLICE INVESTIGATORY AND OTHER POWERS**

#### ***Chapter 4: Taking of prints and samples from certain children***

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

#### ***Taking of prints and samples under court order***

197. [Sections 61](#) and [62](#) set out the process involved in applying for an order under section 63. The constable can apply to the sheriff for an order under section 63.<sup>1</sup> Section 61(2) sets out the requirements that the application must comply with, including that it must state the grounds on which the application is made.
198. These grounds will include<sup>2</sup> that the constable has reasonable suspicion that the child, by behaving in a violent or dangerous way, has caused or could have caused serious physical harm to another person or that the child caused or could have caused harm (physical or psychological) to another person by behaving in a sexually violent or sexually coercive way. They will also include information as to why the constable considers the taking of prints and samples from the child is needed in order to investigate that behaviour.
199. [Section 61\(2\)](#) also requires the constable to specify which prints and samples the constable seeks to take, and whether intimate samples are sought, and that the application includes supporting evidence that will enable the sheriff to come to a decision on the application.<sup>3</sup>
200. [Section 62](#) governs the procedure the sheriff must follow when considering an application under section 61. The sheriff has discretion as to whether to hold a hearing or to determine the application without hearing from the constable or anyone else. The sheriff also has discretion over whether to consider the application in open court or in the sheriff's chambers (which would provide a degree of privacy to the proceedings).
201. Subsection (3) requires the sheriff, before deciding the application, to consider whether the constable, the child, a parent of the child, or anyone else the sheriff thinks has an interest, should be given an opportunity to make representations to the sheriff on the application and whether an order should be made.
202. The matters as to which the sheriff must be satisfied before making an order, and what the order authorises, are set out in section 63. The sheriff must be satisfied that there are reasonable grounds to suspect that the child in relation to whom the application is made has, by behaving in a violent or dangerous way, caused or could have caused serious

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<sup>1</sup> By virtue of section 81 of the Act, summary sheriffs may also deal with such applications.

<sup>2</sup> By virtue of this being part of the test which the sheriff must apply under section 63(2).

<sup>3</sup> See section 61(2)(f).

physical harm to another person or, by behaving in a sexually violent or coercive way, caused or could have caused harm (physical or psychological) to another person.

203. The sheriff must also be satisfied that taking prints and samples – either those specified in the application by the constable under section 61(2)(e) or other prints and samples<sup>4</sup> – 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. Given the nature of an investigation of the sort that might be involved here, it may not be entirely clear who did what and it could eventually transpire that another person, over the age of criminal responsibility, has committed an offence. But it may be that the taking prints and samples from the child is what ascertains that it was the other person, and not the child, whose behaviour actually caused the harm. For the sheriff to make the order, however, there must be reasonable suspicion that the child has behaved in the way set out in section 63(2)(a).
204. When considering these matters, the sheriff must have regard to the nature and seriousness of the child’s behaviour and to whether taking prints and samples is appropriate in the circumstances, including, but not restricted to, the child’s age.
205. As well as authorising the taking of prints and samples, the order must also specify the prints and samples that may be taken from the child, and must also specify a time period within which the samples must be taken.<sup>5</sup> In addition, it authorises taking steps in relation to the prints and samples, which would include comparing fingerprints with a fingerprint database and analysing DNA samples. The order also authorises the removal of the child to and the keeping of the child in a place at which prints and samples are to be taken.
206. The order may also require a person, such as a parent, to produce the child to the constable so that prints and samples can be taken (see section 63(6)).
207. The order does not specify that it is the constable who is to take the prints and samples. Intimate samples, for instance, the taking of which may be authorised by an order under section 63, cannot be taken by a constable and can only be taken by medical professionals.
208. [Section 65](#) makes provision about this. Dental impressions may only be taken by a registered dentist, while other intimate samples may be taken either by a doctor, a nurse or a person who is a member of another health care profession<sup>6</sup> or a person of a type prescribed by the Scottish Ministers.<sup>7</sup>
209. Where the sheriff makes an order authorising the taking of prints and samples, the constable must give notice of it, and a copy of it, to the child and a parent of the child (if the constable is able to do). The child must also be provided with an explanation of the order in a way that the child will be able to understand.<sup>8</sup>

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<sup>4</sup> By virtue of section 63(4)(a) the sheriff must specify in the order the prints and samples that the order authorises the constable to take from the child but these need not be the same prints and samples sought in the application.

<sup>5</sup> The default position is for the period to be no more than 7 days but the sheriff may specify a longer period – see section 63(4)(b).

<sup>6</sup> Designated by regulations under section 65(3). Such regulations are subject to the negative procedure by virtue of section 82(2)(e).

<sup>7</sup> By regulations under section 65(2)(b)(iii) – subject to the negative procedure by virtue of section 82(2)(d).

<sup>8</sup> See section 64.