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DRAFT STATUTORY INSTRUMENTS

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**2021 No.**

**The Age of Criminal Responsibility (Scotland) Act 2019  
(Consequential Provisions and Modifications) Order 2021**

**PART 2**

Disclosure of convictions and other information relating to time when person under 12

**Interpretation of Part 2**

**3.** In this Part—

“the 1997 Act” means the Police Act 1997(1),

“the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007(2),

“applicant” means the person who applies under section 113B(3) of the 1997 Act for an enhanced criminal record certificate,

“chief officer” means—

(a) the chief constable of—

- (i) a police force in England and Wales,
- (ii) the Police Service of Northern Ireland,
- (iii) the Ministry of Defence Police,
- (iv) the British Transport Police,
- (v) the Civil Nuclear Constabulary,

(b) the Provost Marshal of—

- (i) the Royal Navy Police,
- (ii) the Royal Military Police,
- (iii) the Royal Air Force Police,

(c) the Director General of the National Crime Agency,

“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 12 of the 2019 Act,

“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.

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(1) 1997 c. 50.

(2) 2007 asp 14.

(3) Section 113B was added by the Serious Organised Crime and Police Act 2005 (c. 15), section 163(2).

### Limitation on disclosure of information relating to time when person under 12

4.—(1) In section 119 (sources of information) of the 1997 Act, after subsection (2A) insert—

“(2B) Subsection (2A) (as inserted by section 10(1) of the 2019 Act) applies in relation to the following persons as it applies in relation to the chief constable of the Police Service of Scotland—

- (a) the chief constable of—
  - (i) a police force in England and Wales;
  - (ii) the Police Service of Northern Ireland;
  - (iii) the Ministry of Defence Police;
  - (iv) the British Transport Police;
  - (v) the Civil Nuclear Constabulary;
- (b) the Provost Marshal of—
  - (i) the Royal Navy Police;
  - (ii) the Royal Military Police;
  - (iii) the Royal Air Force Police;
- (c) the Director General of the National Crime Agency.”.

(2) In article 3 (provision of police information to the Scottish Ministers) of the Protection of Vulnerable Groups (Scotland) Act 2007 (Consequential Provisions) Order 2010(4) —

(a) after paragraph (2) insert—

“(2A) But a chief officer mentioned in paragraph (2B) may, in response to a request for information of the type described in section 49(1)(c) of the 2007 Act, provide under paragraph (1) information 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 18 of the 2019 Act, that the information ought to be included in the scheme member’s scheme record and—
  - (i) no appeal under section 20 of the 2019 Act is taken, or
  - (ii) such an appeal having been taken, the sheriff confirms the determination under subsection (3)(a) of that section, or
- (b) the sheriff, on an appeal under section 20 of the 2019 Act, determines under subsection (3)(b) of that section that the information ought to be included in the scheme member’s scheme record.

(2B) The chief officers referred to in paragraph (2A) are the chief officers of the following police forces—

- (a) a police force in England and Wales,
- (b) the Police Service of Northern Ireland,
- (c) the Royal Navy Police,
- (d) the Royal Military Police,
- (e) the Royal Air Force Police,
- (f) the Ministry of Defence Police,
- (g) the British Transport Police,

- (h) the Civil Nuclear Constabulary,
- (i) the National Crime Agency.”,
- (b) after paragraph (4) insert—
  - “(4A) In paragraph (2A)—
  - “the 2019 Act” means the Age of Criminal Responsibility (Scotland) Act 2019,
  - “independent reviewer” means the independent reviewer appointed under section 12 of the Age of Criminal Responsibility (Scotland) Act 2019.”.

### **Referral of information to independent reviewer**

- 5.—(1) This article applies where—
- (a) a chief officer, having been requested to do so by the Scottish Ministers under section 113B(4) of the 1997 Act<sup>(5)</sup>, has identified information which relates to a time when the applicant was under 12 years of age and which, in the chief officer’s opinion, ought to be included in an enhanced criminal record certificate issue under section 113B(1) of that Act, or
  - (b) a chief officer, 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 officer’s opinion, ought to be included in a scheme record by virtue of section 49(1)(c) of that Act.
- (2) The chief officer 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 paragraph (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 paragraph (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 officer 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 officer considers relevant to the exercise of the independent reviewer’s functions.
- (3) If provision of the type mentioned in section 23(2)(a) of the 2019 Act is in force, the chief officer must refer the information that the chief officer has identified and considers ought to be included in an enhanced criminal record certificate or, as the case may be, a scheme record to the independent reviewer within the time period specified by virtue of that section.

### **Notification of referral**

6. Where a chief officer refers information to the independent reviewer under article 5, the chief officer must, at the same time as doing so, notify the Scottish Ministers of that fact.

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(5) The functions of the Secretary of State in section 113B(4), so far as exercisable within devolved competence, have been transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

### **Provision of information to the independent reviewer**

7.—(1) The independent reviewer may by notice require any person mentioned in paragraph (3) to provide the reviewer with information which the reviewer believes the person holds and which the reviewer considers is necessary to carry out a review under section 18 of the 2019 Act.

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

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

- (a) a chief officer,
- (b) a local authority,
- (c) Her Majesty’s Courts and Tribunals Service,
- (d) the Disclosure and Barring Service,
- (e) the Department of Justice in Northern Ireland,
- (f) any other person the independent reviewer considers appropriate.

(4) If provision of the type mentioned in section 23(2)(d) of the 2019 Act is in force, a person required under paragraph (1) to provide information to the independent reviewer must do so within the time period specified by virtue of that section.

(5) In paragraph (3), “local authority” means a local authority in England and Wales as defined (in relation to England and Wales) in section 1 of the Local Authorities (Goods and Services) Act 1970<sup>(6)</sup>.

### **Amendment of the Data Protection Act 2018**

8. In paragraph 4 of Schedule 18 to the Data Protection Act 2018<sup>(7)</sup> (relevant records relating to statutory functions)—

(a) after sub-paragraph (2)(e) insert—

“(f) the independent reviewer appointed under section 12 of the Age of Criminal Responsibility (Scotland) Act 2019.”,

(b) after sub-paragraph (7) insert—

“(8) In relation to the independent reviewer mentioned in sub-paragraph (2)(f), the “relevant functions” are the reviewer’s functions under Part 2 of the Age of Criminal Responsibility (Scotland) Act 2019.”.

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<sup>(6)</sup> 1970 c. 39.

<sup>(7)</sup> 2018 c. 12.