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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 3**

Police powers etc.

*Cross-border enforcement by constables of territorial police forces*

**Interpretation of Part 3**

**9.—(1)** In this Part—

“constable” means a constable of—

- (a) the Police Service of Scotland,
- (b) a police force in England or Wales,
- (c) the Police Service of Northern Ireland,

“Scottish constable” means a constable of the Police Service of Scotland.

**(2)** In this Part—

- (a) the following terms have the meanings given by section 76 of the 2019 Act—

“child”,

“child interview order”,

“intimate sample”,

“investigative interview”,

“relevant physical data”,

“relevant sample”,

- (b) “parent” has the meaning given, for the purposes of Part 4 of the 2019 Act (other than section 40(7) of that Act), by section 76 of that Act,

- (c) the following terms have the meanings given by section 36 of the 2019 Act—

“premises”,

“vehicle”,

- (d) “registered dentist” has the meaning given by section 53(1) of the Dentists Act 1984<sup>(1)</sup>,

- (e) “registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983<sup>(2)</sup> who holds a licence to practice under that Act,
- (f) “registered nurse” means a person registered in the register maintained under article 5 of the Nursing and Midwifery Order 2001<sup>(3)</sup> by virtue of qualifications in nursing.

## Search

**10.**—(1) Paragraph (2) applies where an order is made under section 36 of the 2019 Act in respect of a child and—

- (a) the child is in England, Wales or Northern Ireland, or
- (b) the order authorises the search of—
  - (i) premises in England, Wales or Northern Ireland, or
  - (ii) a vehicle which is for the time being in England, Wales or Northern Ireland.

(2) A constable may, for the purposes of the order, take any action which a Scottish constable would be entitled to take for those purposes if the child was in Scotland, the premises were in Scotland or, as the case may be, the vehicle was in Scotland.

(3) Except where section 37 of the 2019 Act has already been complied with, a constable who intends to act under paragraph (2) must, before doing so—

- (a) provide a copy of the order to—
  - (i) the child, and
  - (ii) in so far as practicable, a parent of the child, and
- (b) at the same time, explain the order to the child in a way that is appropriate to the child’s age and maturity.

(4) A constable who enters any unoccupied premises by virtue of paragraph (2) must leave the premises as effectively secured against unauthorised entry as the constable found them.

## Interviews

**11.**—(1) Paragraph (2) applies where a child in respect of whom an application for a child interview order is being made is in England, Wales or Northern Ireland.

(2) Any child interview order made as a result of that application may, in addition to doing anything permitted to be done in the order by virtue of section 44 of the 2019 Act—

- (a) require any person in England, Wales or Northern Ireland 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 authorised by the order,
- (b) authorise—
  - (i) the transporting of the child to and from the place where the interview is to take place (by the person specified in the order or another person),
  - (ii) any other action (including action to safeguard and promote the wellbeing of the child) required in connection with such transportation.

(3) Paragraph (4) applies where—

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(2) 1983 c. 54.

(3) S.I. 2002/253; article 5 was amended by S.I. 2009/1182, Schedule 4, paragraph 38(a) and S.I. 2018/838, Schedule 1, paragraph 4.

- (a) a child interview order has been made in respect of a child, and
- (b) the child is in England, Wales or Northern Ireland.

(4) A constable may, for the purposes of ensuring the child's attendance at an investigative interview authorised by the order and planned by virtue of section 47 of the 2019 Act, take any action which a Scottish constable would be entitled to take for that purpose if the child was in Scotland.

### **Taking of prints and samples from child**

**12.**—(1) Paragraph (2) applies where a child in respect of whom an application for an order under section 63 of the 2019 Act is being made is in England, Wales or Northern Ireland.

(2) Any order under that section made as a result of that application may, in addition to doing anything permitted to be done in the order by virtue of that section, require any person in England, Wales or Northern Ireland in a position to do so to produce the child to a constable.

(3) Paragraphs (4) and (5) apply where—

- (a) an order under section 63 of the 2019 Act has been made in respect of a child, and
- (b) the child is in England, Wales or Northern Ireland.

(4) A constable may, for the purposes of the order and subject to paragraph (7), take any action which a Scottish constable would be entitled to take for those purposes if the child was in Scotland.

(5) Where the order authorises the taking of an intimate sample from the child, the sample may be taken from the child—

- (a) where the sample is a dental impression, only by a registered dentist,
- (b) in any other case, only by—
  - (i) a registered medical practitioner, or
  - (ii) a registered nurse.

(6) Paragraph (7) applies where—

- (a) relevant physical data or a relevant sample is taken from a child under paragraph (4) by a constable other than a Scottish constable,
- (b) an intimate sample is taken from a child under paragraph (5).

(7) The data or, as the case may be, sample must be transferred, as soon as possible after the data or sample is taken, to—

- (a) a Scottish constable, or
- (b) a person specified by a Scottish constable.

(8) Except where section 64 of the 2019 Act has already been complied with, a constable who intends to carry out an action of the type mentioned in paragraph (4) in England, Wales or Northern Ireland must, before doing so—

- (a) provide a copy of the order to—
  - (i) the child, and
  - (ii) in so far as practicable, a parent of the child, and
- (b) at the same time, explain the order to the child in a way that is appropriate to the child's age and maturity.

### **Taking of prints and samples from child: urgent cases**

13.—(1) A constable may, subject to paragraph (2), take relevant physical data or a relevant sample from a child who is in England, Wales or Northern Ireland if authorised to do so by a relevant senior officer under section 69(2) of the 2019 Act.

(2) Intimate samples may not be taken from a child under paragraph (1).

(3) A constable may, for the purpose of taking relevant physical data or a relevant sample from a child under paragraph (1), take any action which a Scottish constable would be entitled to take for the purpose of taking, under section 69 of the 2019 Act, relevant data or a relevant sample from a child who is in Scotland.

(4) Where relevant physical data or a relevant sample is taken from a child under paragraph (1) by a constable other than a Scottish constable, the data or sample must be transferred, as soon as possible after the data or sample is taken, to—

- (a) a Scottish constable, or
- (b) a person specified by a Scottish constable.

(5) No other 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 63 of the 2019 Act authorising the taking of the data or sample is obtained.

(6) An application for an order under section 63 of the 2019 Act 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.

(7) Such an application must, in addition to the matters mentioned in section 61(2) of the 2019 Act, specify the data or sample taken under this article.

(8) The relevant senior officer who authorised the taking of the relevant physical data or relevant samples under section 69(2) of the 2019 Act must ensure that all record of any data taken and all samples taken are destroyed as soon as possible after the earliest of the following events—

- (a) a decision by the responsible Scottish constable not to apply for an order under section 63,
- (b) the end of the period mentioned in paragraph (6), 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.

(9) In this article—

a “relevant senior officer” is (regardless of which of the police forces mentioned in article 9(1) the constable acting under paragraph (1) is a constable of) a Scottish constable—

- (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,

“the responsible Scottish constable” is the Scottish constable—

- (a) who took the relevant physical data or relevant sample under paragraph (1),
- (b) to whom the data or sample was transferred under paragraph (4)(a), or, as the case may be,
- (c) who specified the person to whom the data or sample was transferred under paragraph (4) (b).

## **Destruction of prints and samples**

**14.**—(1) This article applies where an order made under section 63 of the 2019 Act authorises the taking of any relevant physical data or a relevant sample from a child, including where—

- (a) the data or sample is then taken by virtue of article 12(4), or
- (b) the order is made following the making of an application in accordance with section 70(3) of the 2019 Act or article 13(6) (the data or sample having been taken by virtue of section 69 of that Act or, as the case may be, article 13(1)).

(2) Paragraph (3) applies where—

- (a) the child is not resident in Scotland, and
- (b) a Scottish constable concludes, before the expiry of the maximum retention period, that, if the child was resident in Scotland, a decision would be made not to pass information about the child to the Principal Reporter under section 61 of the Children’s Hearings (Scotland) Act 2011(4).

(3) The constable who applied for the order under section 63 of the 2019 Act authorising the taking of the relevant physical data or relevant sample 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 after that conclusion is reached.

(4) Paragraph (5) applies where, on the day on which the maximum retention period expires, the child is not resident in Scotland.

(5) The constable who applied for the order under section 63 of the 2019 Act authorising the taking of the relevant physical data or relevant sample 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 after the expiry of the maximum retention period.

(6) Paragraphs (3) and (5) do 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.

(7) In this article, “maximum retention period” means the period of 6 months beginning with the day on which the data or sample was taken.

## **Wellbeing of child**

**15.** A person acting under this Part must, in doing so, treat the need to safeguard and promote the wellbeing of the child as a primary consideration.

## **Offences**

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

- (a) obstructs a person mentioned in paragraph (2), or
- (b) otherwise interferes with a police investigation into an incident in Scotland in relation to which a Scottish constable has grounds to suspect that a 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.

(2) The person is a constable or other person acting—

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(4) 2011 asp 1; section 61 was amended by the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 7, paragraph 44.

- (a) under article 10,
- (b) in pursuance of a child interview order or under article 11,
- (c) under article 12,
- (d) under article 13.

(3) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Exercise of functions by constables and members of non-territorial police organisations*

**Application of 2019 Act to non-territorial forces**

17. After section 2D of the Ministry of Defence Police Act 1987<sup>(5)</sup> insert—

**“2E. Exercise of functions in relation to children under the Scottish age of criminal responsibility**

(1) The following apply, in Scotland, in relation to a member of the Ministry of Defence Police as they apply in relation to a constable of the Police Service of Scotland—

- (a) Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019 (in this section, “the 2019 Act”),
- (b) any regulations made or guidance issued under that Part.

(2) Subsections (3) to (6) make further provision in relation to the application of Part 4 of the 2019 Act to members of the Ministry of Defence Police.

(3) References in Part 4 of the 2019 Act (however expressed) to constables of a particular rank are to be read, in relation to action taken or proposed to be taken by a member of the Ministry of Defence Police, as references to a member of the Ministry of Defence Police of the rank referred to.

(4) References in the following sections of the 2019 Act to the chief constable are to be read as including reference to the chief constable of the Ministry of Defence Police—

- (a) section 29(2)(a),
- (b) section 31(3)(a) and (5)(a),
- (c) section 57(4)(a).

(5) The reference in section 33(1) of the 2019 Act to an enactment includes reference to an enactment which confers a power of the type described in that section on members of the Ministry of Defence Police (whether or not the enactment also confers that power on constables of the Police Service of Scotland).

(6) The reference in section 75(2) of the 2019 Act to a constable is to be read as including reference to a member of the Ministry of Defence Police.”.

18. After section 31A of the Railways and Transport Safety Act 2003<sup>(6)</sup> insert—

**“31B. Exercise of functions in relation to children under the Scottish age of criminal responsibility**

(1) The following apply, in Scotland, in relation to a constable of the Police Force as they apply in relation to a constable of the Police Service of Scotland—

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(5) 1987 c. 4; section 2D was added S.I. 2018/46, Schedule 2, paragraph 1.

(6) 2003 c. 20; section 31A was added by S.I. 2018/46, Schedule 2, paragraph 2.

(a) Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019 (in this section, “the 2019 Act”),

(b) any regulations made or guidance issued under that Part.

(2) Subsections (3) to (6) make further provision in relation to the application of Part 4 of the 2019 Act to constables of the Police Force.

(3) References in Part 4 of the 2019 Act (however expressed) to constables of a particular rank are to be read, in relation to action taken or proposed to be taken by constable of the Police Force, as references to a constable of the Police Force of the rank referred to.

(4) References in the following sections of the 2019 Act to the chief constable are to be read as including reference to the chief constable of the Police Force—

(a) section 29(2)(a),

(b) section 31(3)(a) and (5)(a),

(c) section 57(4)(a).

(5) The reference in section 33(1) of the 2019 Act to an enactment includes reference to an enactment which confers a power of the type described in that section on constables of the Police Force (whether or not the enactment also confers that power on constables of the Police Service of Scotland).

(6) The reference in section 75(2) of the 2019 Act to a constable is to be read as including reference to a constable of the Police Force.”

**19.** After section 56A of the Energy Act 2004(7) insert—

**“56B. Exercise of functions in relation to children under the Scottish age of criminal responsibility**

(1) The following apply, in Scotland, in relation to a member of the Constabulary as they apply in relation to a constable of the Police Service of Scotland—

(a) Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019 (in this section, “the 2019 Act”),

(b) any regulations made or guidance issued under that Part.

(2) Subsections (3) to (6) make further provision in relation to the application of Part 4 of the 2019 Act to members of the Constabulary.

(3) References in Part 4 of the 2019 Act (however expressed) to constables of a particular rank are to be read, in relation to action taken or proposed to be taken by a member of the Constabulary, as references to a member of the Constabulary of the rank referred to.

(4) References in the following sections of the 2019 Act to the chief constable are to be read as including reference to the chief constable of the Constabulary—

(a) section 29(2)(a),

(b) section 31(3)(a) and (5)(a),

(c) section 57(4)(a).

(5) The reference in section 33(1) of the 2019 Act to an enactment includes reference to an enactment which confers a power of the type described in that section on members of the Constabulary (whether or not the enactment also confers that power on constables of the Police Service of Scotland).

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(7) 2004 c. 20; section 56A was added by S.I. 2018/46, Schedule 2, paragraph 3.

(6) The reference in section 75(2) of the 2019 Act to a constable is to be read as including reference to a member of the Constabulary.”.