



# Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th May 2019 and received Royal Assent on 11th June 2019**

An Act of the Scottish Parliament to raise the age of criminal responsibility to 12 years and to make consequential changes to the law on the disclosure of criminal records and of other information relating to individuals working or seeking to work with children or certain adults; on the provision of information by the Principal Reporter to persons adversely affected by the behaviour of children; on the taking of certain children to a place of safety by the police; on the search of certain children by the police; on police interviews with certain children; and on the taking of forensic samples from certain children by the police; and for connected purposes.

## PART 1

### AGE OF CRIMINAL RESPONSIBILITY

#### **1 Raising the age of criminal responsibility**

For section 41 of the Criminal Procedure (Scotland) Act 1995 substitute—

##### **“41 Age of criminal responsibility**

A child under the age of 12 years cannot commit an offence.”.

#### **Commencement Information**

**II** [S. 1](#) in force at 17.12.2021 by [S.S.I. 2021/449](#), [reg. 2](#)

#### **2 Raising the age of criminal responsibility: consequential repeal and saving**

(1) Section 41A of the Criminal Procedure (Scotland) Act 1995 is repealed.

*Changes to legislation: Age of Criminal Responsibility (Scotland) Act 2019 is up to date with all changes known to be in force on or before 10 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (2) Despite that repeal, section 41A continues to have effect in relation to offences committed before the day on which this section comes into force.

**Commencement Information**

**I2** S. 2 in force at 17.12.2021 by [S.S.I. 2021/449](#), [reg. 2](#)

**3 No referral of child under 12 to children's hearing on offence ground**

For the purposes of section 66(2)(a) (investigation and determination by Principal Reporter) of the Children's Hearings (Scotland) Act 2011 (the “2011 Act”), the Principal Reporter may not determine that the ground in section 67(2)(j) (the offence ground) applies where the child—

- (a) committed the offence before the day on which section 1 came into force, and
- (b) was under 12 years of age when the offence was committed.

**Commencement Information**

**I3** S. 3 in force at 29.11.2019 by [S.S.I. 2019/349](#), [reg. 2\(a\)](#) (with [reg. 3](#))

**PART 2**

**DISCLOSURE OF CONVICTIONS AND OTHER INFORMATION  
RELATING TO TIME WHEN PERSON UNDER 12**

**CHAPTER 1**

**DISCLOSURE OF CONVICTIONS ETC.**

*Pre-12 convictions etc. not be treated as convictions*

**4 Amendment of the Rehabilitation of Offenders Act 1974**

- (1) The Rehabilitation of Offenders Act 1974 (the “1974 Act”) is amended as follows.
- (2) In section 1 (rehabilitated persons and spent convictions)—
  - (a) in subsection (1C), for “, (5) and (6)” substitute “ and (5) to (8) ”,
  - (b) after subsection (6) insert—
    - “(7) This Act does not apply to any conviction of an offence committed when the individual was under 12 years of age.
    - (8) Accordingly, references in this Act to a conviction do not include references to any such conviction.”.
- (3) In section 3 (certain disposals of children's hearing treated as conviction), after subsection (2) insert—

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“(3) This section does not apply where the acts or omissions constituting the ground mentioned in subsection (1) occurred when the child was under 12 years of age.”.

(4) In section 8B (protection afforded to spent alternatives to prosecution: Scotland), after subsection (2) insert—

“(2A) This section does not apply where the acts or omissions constituting the offence mentioned in subsection (1) occurred when the person was under 12 years of age.”.

(5) In section 9B (unauthorised disclosure of spent alternatives to prosecution: Scotland), after subsection (9) insert—

“(10) This section does not apply where the acts or omissions constituting the offence mentioned in subsection (1)(b) occurred when the person was under 12 years of age.”.

#### Commencement Information

**I4** [S. 4](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

### *Disclosure of information about relevant behaviour*

## **5 Disclosure of information about convictions etc. relating to time when person under 12**

(1) Sections 6 to 8 apply to behaviour (“relevant behaviour”) of a person which occurred when the person was under 12 years of age and—

- (a) which resulted in the person being—
  - (i) convicted of an offence, or
  - (ii) given an alternative to prosecution (within the meaning of section 8B(1) of the 1974 Act), or
- (b) in relation to which—
  - (i) the person was taken to a place of safety by virtue of section 28,
  - (ii) an order under section 36 authorising a search in relation to the person was applied for,
  - (iii) the person was interviewed by virtue of section 40(2),
  - (iv) a child interview order was applied for in respect of the person,
  - (v) the person was questioned by virtue of section 54,
  - (vi) an order under section 63 authorising the taking of relevant physical data or a relevant sample from the person was applied for,
  - (vii) relevant physical data or a relevant sample was taken from the person by virtue of section 59(1)(b) or 69.

(2) For the purposes of sections 6 to 8, circumstances ancillary to relevant behaviour includes—

- (a) where the behaviour resulted in the person being convicted of an offence, any circumstances of—
  - (i) the offence which was the subject of the conviction,

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- (ii) the conduct constituting the offence,
  - (iii) any process or proceedings preliminary to the conviction,
  - (iv) any sentence imposed in respect of the conviction,
  - (v) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or sentence,
  - (vi) anything done in pursuance of, or undergone in compliance with, any such sentence,
- (b) where the behaviour resulted in the person being given an alternative to prosecution, any circumstances of—
  - (i) the offence in respect of which the alternative to prosecution is given or the conduct constituting the offence,
  - (ii) any process preliminary to the alternative to prosecution being given (including consideration by any person of how to deal with the offence and the procedure for giving the alternative to prosecution),
  - (iii) any proceedings for the offence which took place before the alternative to prosecution was given (including anything that happened after that time for the purpose of bringing the proceedings to an end),
  - (iv) any judicial review proceedings relating to the alternative to prosecution,
  - (v) anything done or undergone in pursuance of the terms of the alternative to prosecution.
- (3) For the purposes of subsections (1)(a)(i) and (2)(a)—
  - (a) the acceptance or establishment (or deemed establishment), in relation to the person, of the ground of referral to the children's hearing referred to in section 3(1) of the 1974 Act is to be treated as a conviction, and
  - (b) any disposal of the case by the children's hearing is to be treated as a sentence.
- (4) The Scottish Ministers may, by regulations, modify the meanings in subsections (1) and (2) of relevant behaviour and circumstances ancillary to such behaviour.
- (5) Regulations under subsection (4) may modify any enactment (including this Act).

#### **Commencement Information**

**I5** [S. 5](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

## **6 Disclosure of information about relevant behaviour: judicial proceedings**

- (1) No evidence is admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland (“judicial proceedings”) to prove relevant behaviour of the person, or circumstances ancillary to such behaviour.
- (2) The person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to relevant behaviour of the person or circumstances ancillary to such behaviour.

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- (3) In this section and sections 7 and 9, “judicial proceedings” includes, in addition to any court proceedings, proceedings before any tribunal, body or person having power by virtue of any enactment, rule of law, arbitration agreement, rules, custom or practice—
- (a) to determine any question affecting the rights, privileges, obligations or liabilities of any person, or
  - (b) to receive evidence affecting the determination of any such question.

#### Commencement Information

**I6** [S. 6](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

### 7 Disclosure of information about relevant behaviour: non-judicial proceedings

- (1) Where a question is put to a person, other than in judicial proceedings, seeking information with respect to relevant behaviour of the person or of any other person—
- (a) the question is to be treated as not relating to that behaviour or to any circumstances ancillary to it (and the answer to the question may be framed accordingly), and
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that behaviour or, as the case may be, any circumstances ancillary to it in answering the question.
- (2) Any obligation imposed on any person by any enactment or rule of law, or by the provisions of any agreement or arrangement, to disclose any matters to any other person is not to extend to requiring the disclosure of relevant behaviour or any circumstances ancillary to it.
- (3) Relevant behaviour or any circumstances ancillary to it, or any failure to disclose relevant behaviour or any such circumstances, is not to be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.

#### Commencement Information

**I7** [S. 7](#) in force at 30.11.2020 by [S.S.I. 2020/369](#), reg. 2, [sch.](#)

### 8 Disapplication of sections 6 and 7

- (1) Subsection (2) applies where a referral is made to the independent reviewer for a determination under section 18 as to whether information with respect to relevant behaviour ought to be included in—
- (a) an enhanced criminal record certificate under section 113B of the Police Act 1997 (the “1997 Act”), or
  - (b) a scheme record under section 52 of the Protection of Vulnerable Groups (Scotland) Act 2007 (the “2007 Act”).
- (2) Sections 6 and 7(1) and (2) do not apply—
- (a) for the purpose of the referral (including any appeal under section 20), and