

The Age of Criminal Responsibility: What you need to know

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The [Age of Criminal Responsibility \(Scotland\) Act 2019 \(legislation.gov.uk\)](https://legislation.gov.uk) was passed in Parliament in May 7, 2019 and received Royal Assent on June 11, 2019. Whilst almost half of provisions in the Act have already been fully or partially commenced, a number are still to be brought into force. This information sheet is to advise of some of these changes.

Children's Hearing System

When section 1 of the Age of Criminal Responsibility (Scotland) Act (ACR Act) is implemented (date to be confirmed), no child under the age of 12 can commit an offence. The age of criminal responsibility is currently eight years and until section 1 is commenced, police may still charge children aged 8-11 years.

Whilst a child under age 12 can still be referred by police to SCRA for an offence, the reporter cannot make a decision to arrange a children's hearing on offence grounds. The reporter can consider using other grounds if the decision is made to call a Hearing. This change came into force with section 3 of the ACR Act in November 2019. For children aged 8-11 who were charged and made subject to Compulsory Supervision prior to November 2019, these grounds still stand. Where, after this date, the reporter makes the decision to call a hearing, they cannot refer on offence grounds if the offence took place prior to the child's 12th birthday (even where the child is aged 12 or over at the time the hearing is called).

Disclosure of Criminal Convictions

By raising the age of criminal responsibility, it is no longer possible for a child under 12 to acquire any criminal convictions. [Read our blog to find out more.](#) Previously acquired convictions still exist as does the police's power to retain information relating to a time when a child was under 12. Under Part 2 of the Act, which came into force on November 30, 2020, convictions for children under 12 will no longer be automatically disclosed on any disclosure certificate. However, information about behaviour that took place when a child was under 12 can be disclosed, if appropriate, as Other Relevant Information, on an enhanced disclosure or PVG scheme record. Any information the Chief Constable believes should be disclosed by 'Disclosure Scotland' regarding a child under 12, will be reviewed by an 'independent reviewer'.

The independent reviewer will notify the applicant (who may no longer be a child) of the information that has been referred to them (regarding behaviour when they were under age 12). The applicant has the opportunity to make representations before a decision is made to disclose or not. [Advocacy](#) may be available to support this process. This allows for a level of protection and it would only be in exceptional circumstances that information would be disclosed regarding behaviour of a child when they were under 12.

Victim Information

Under section 27 of the ACR Act, the principal reporter has the power to decide to share information regarding the behaviour of a child under age 12 if the child has harmed another person by acting or behaving in a physically violent or sexually harmful or dangerous, threatening or abusive way. The harm referred to can be physical or psychological.

This information would need to be requested and would include the decision made regarding the outcome of the referral. People who can request this information include:

- any person against whom an offence appears to have been committed (or where that person is a

- child, any relevant person in relation to the child)
- any person who appears to have been harmed by action or behaviour of a child aged under 12 which was physically violent, sexually violent or sexually coercive, or dangerous, threatening or abusive (or where the person harmed is a child, any relevant person in relation to the child), and other persons specified in regulations.

Place of Safety

Once Part 4 is fully commenced (date tbc), a police constable may take any child under age 12 to a place of safety in cases where the child is behaving (or is likely to behave) in a way that is causing or risks causing significant harm to another person and the child's removal is necessary to protect the other person from an immediate risk of significant harm or further such harm:

- A parent/carer of the child must be informed that the child has been taken to a place of safety
- The child may be searched prior to being placed into any police transporting vehicle
- The child can be kept in the place of safety for a maximum of 24 hours (for only so long as is necessary to put in place arrangements for their care or protection or where intimate samples are required, for a Forensic Sheriff's Order to be obtained).
- Places of safety include residential or other establishments provided by local authorities, hospitals or surgeries, the dwelling of any suitable person and police stations.

Arrest/Search/Interview

- Police continue to have a power to search a child below the age of 12 if there is a power of search contained in other legislation and the police have reasonable cause to believe the child may be in possession of an article in contravention of that statute, for example, an offensive weapon. However, a child below age 12 will not commit an offence if they are found to be in possession of a weapon; the power only extends to the search powers, not the statutory offence for possession. There are other pieces of legislation which provide a power of search, including the misuse of drugs and stolen property.
- Once the Act is fully commenced, police constables will no longer retain existing powers of arrest and interview, in relation to children under 12. They may however speak with them about the incident, where there is co-operation from the child and parent or carer.
- Investigative interviews of a child under 12 can be carried out if: a constable has reasonable grounds to suspect a child of behaving in a violent or dangerous way, caused or risked causing serious physical harm to another person or, by behaving in a sexually violent or sexually coercive way, caused or risked causing harm (whether physical or not - so including psychological harm) to another person; that an investigative interview is necessary to fully investigate the incident; and that both the child and a parent of the child agree to an investigative interview of the child being conducted. Investigative interviews will be planned for, in collaboration with the relevant local authority.
- An application can be made for a Forensic Sheriff's Order to take data and samples - these can include fingerprints, DNA, external face/hand swabs and/or intimate samples. An alternative is for emergency samples to be taken, when authorised by a Superintendent or above but these would not include intimate samples.

The age of criminal responsibility in Scotland is still under review. The European minimum is age 14. Scottish Ministers are required to review the operation of the Act generally, and with a view to considering the future age of criminal responsibility within three years of the Act coming into force. There are several working groups currently considering a number of factors in relation to a higher age of criminal responsibility.

If you would like to know more about this work, please contact fiona.dyer@strath.ac.uk.

The Scottish Government are currently working to a timetable of implementing the Act in full by autumn 2021.