



Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

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—
 - “(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.”.

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,
 - (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).

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.
- (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.

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.

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
 - (b) in relation to the relevant behaviour which is the subject of the referral.
- (3) Subsection (4) applies where—
 - (a) the independent reviewer has determined, on a review under section 18, that information with respect to relevant behaviour ought to be included in an enhanced criminal record certificate or, as the case may be, a scheme record, and
 - (b) such information is so included.
- (4) Sections 6 and 7 do not apply—
 - (a) in relation to the purpose for which the certificate or, as the case may be, scheme record is provided, and
 - (b) in relation to the relevant behaviour with respect to which information is included in the certificate or record.
- (5) In subsection (4)(a)—
 - (a) the purpose for which an enhanced criminal record certificate is provided means the prescribed purpose mentioned in section 113B(2) of the 1997 Act, and
 - (b) the purpose for which a scheme record is provided means the purpose mentioned in disclosure condition C in section 55 of the 2007 Act.
- (6) Subsection (7) applies where information with respect to relevant behaviour is included in a certificate or, as the case may be, scheme record as mentioned in subsection (3)(b).

- (7) Subject to subsections (1) and (2), the application of sections 6 and 7 is not excluded in relation to that relevant behaviour, or any circumstances ancillary to it, during the period before the certificate or record was provided.

9 Further limitations on sections 6 and 7

- (1) Section 6 does not apply to the determination of any issue, or to the admission or requirement of any evidence, relating to relevant behaviour of a person, or to circumstances ancillary to such behaviour, in any proceedings for the time being mentioned in subsection (2).
- (2) Those proceedings are—
- (a) any criminal proceedings (including any appeal or reference in a criminal matter),
 - (b) any proceedings under Part 2 of the Sexual Offences Act 2003, or on appeal from any such proceedings,
 - (c) any proceedings on an application under section 2, 4 or 5 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 or in any appeal under section 6 of that Act,
 - (d) any proceedings relating to parental responsibilities or parental rights (within the meaning of section 1(3) and section 2(4) respectively of the Children (Scotland) Act 1995), guardianship, adoption or the provision by any person of accommodation, care or schooling for children under the age of 18 years,
 - (e) any proceedings under Part II of the Children (Scotland) Act 1995 or under the Children’s Hearings (Scotland) Act 2011,
 - (f) any proceedings in which the person is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, the person consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence despite the provisions of section 6,
 - (g) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc.).
- (3) Despite the provisions of section 6, a judicial authority in judicial proceedings (not being proceedings mentioned in subsection (2))—
- (a) may admit or, as the case may be, require evidence relating to relevant behaviour of a person or to circumstances ancillary to such behaviour, and
 - (b) may determine any issue to which that evidence relates,
- if the judicial authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may subsequently be put before it), that justice cannot be done in the case except by admitting or requiring that evidence.
- (4) The Scottish Ministers may by regulations—
- (a) modify subsection (2) to—
 - (i) add proceedings to those mentioned in that subsection,
 - (ii) vary a description of such proceedings,
 - (iii) remove proceedings from that subsection,

- (b) make provision excluding the application of section 6 in relation to such other proceedings as may be specified in the regulations to such extent and for such purposes as may be so specified,
- (c) make provision excluding or modifying the application of section 7(1) in relation to questions put in such circumstances as may be specified in the regulations,
- (d) provide for such exceptions from the provisions of section 7(2) and (3) as seem to them appropriate, in such cases or classes of case, and in relation to relevant behaviour of such a description, as may be specified in the regulations.