

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT AGE OF CRIMINAL RESPONSIBILITY  
(SCOTLAND) ACT 2019 (CONSEQUENTIAL  
PROVISIONS AND MODIFICATIONS) ORDER 2021

*Wednesday 1 December 2021*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Sunday 5 December 2021**

© Parliamentary Copyright House of Commons 2021

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chair: MR VIRENDRA SHARMA*

- |  |  |
|--|--|
| † Baker, Mr Steve ( <i>Wycombe</i> ) (Con)                               | † McDonald, Stuart C. ( <i>Cumbernauld, Kilsyth and Kirkintilloch East</i> ) (SNP) |
| † Bonnar, Steven ( <i>Coatbridge, Chryston and Bellshill</i> ) (SNP)     | † Murray, Ian ( <i>Edinburgh South</i> ) (Lab)                                     |
| Burton, Richard ( <i>Leeds East</i> ) (Lab)                              | † Owen, Sarah ( <i>Luton North</i> ) (Lab)   |
| † Davies, Gareth ( <i>Grantham and Stamford</i> ) (Con)                  | Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)   |
| † Drax, Richard ( <i>South Dorset</i> ) (Con)                            | † Stewart, Iain ( <i>Parliamentary Under-Secretary of State for Scotland</i> )     |
| † Edwards, Ruth ( <i>Rushcliffe</i> ) (Con)                              | † Syms, Sir Robert ( <i>Poole</i> ) (Con)  |
| † Hammond, Stephen ( <i>Wimbledon</i> ) (Con)                            | Twigg, Derek ( <i>Halton</i> ) (Lab)   |
| † Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) | Peter Stam, <i>Committee Clerk</i>   |
| † Hart, Sally-Ann ( <i>Hastings and Rye</i> ) (Con)                      |  |
| † Hollinrake, Kevin ( <i>Thirsk and Malton</i> ) (Con)                   | † <b>attended the Committee</b>  |

## Seventh Delegated Legislation Committee

*Wednesday 1 December 2021*

[MR VIRENDRA SHARMA *in the Chair*]

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

2.30 pm

**The Parliamentary Under-Secretary of State for Scotland (Iain Stewart):** I beg to move,

That the Committee has considered the draft Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021.

It is always a pleasure to serve under your chairmanship, Mr Sharma. I am pleased to have the opportunity today to explain and debate these consequential amendments, which will support the Scottish Government's decision to raise the age of criminal responsibility in Scotland from eight to 12 years. The order will extend the powers of the independent reviewer appointed to make decisions on the disclosure of relevant information to the rest of the United Kingdom relating to when a person was under the age of 12.

When a chief constable outside Scotland receives a request from Scottish Ministers for the disclosure of information relating to a behaviour when a person was under 12, the information will first be reviewed by the independent reviewer, who will then decide whether the information should be disclosed. The legislation will also ensure that certain powers held by Police Scotland can be exercised by constables of non-territorial forces operating in Scotland, subject to the same guidance and regulations that apply to Scottish constables. It extends an obstruction offence to the rest of the UK and ensures the enforcement of related court orders throughout the United Kingdom.

If the order were not to be taken forward, legislative and operational loopholes would remain that would constrain the ability of Scotland to protect extremely vulnerable members of society. The order will ensure effective and proper cross-border co-operation, allowing police forces operating in Scotland to deal effectively with seriously harmful behaviour by children under the age of 12. It will allow for the proper management and disclosure of information relating to when a person was under the age of 12.

For the benefit of Members not familiar with the Scotland order process, I will explain that the Scotland Acts of 1998, 2012 and 2016 devolved significant powers to Scotland. This type of statutory instrument, known as a Scotland Act order, is a form of secondary legislation made under the Scotland Act 1998. It is used to update, implement or adjust Scotland's devolution settlement. The order before us today is a section 104 order—a type of order that allows for necessary or expedient legislative

provision in consequence of any provision made by or under any Act of the Scottish Parliament or secondary legislation made by Scottish Ministers.

In this instance, provision is required in consequence of the Age of Criminal Responsibility (Scotland) Act 2019. The 2019 Act raised the age of criminal responsibility in Scotland from eight to 12 and made other important legislative changes to support this. Of relevance to this debate was the establishment of the post of independent reviewer, who is tasked with deciding whether information relating to behaviour that took place when an individual was under the age of 12 should be disclosed. This order will extend the powers of this position to the rest of the UK and will ensure that, when a chief officer of a police force in other parts of the UK is responding to a request for information, they first provide material to the independent reviewer, who will decide whether it ought to be disclosed by Disclosure Scotland.

Section 75 of the 2019 Act made it an offence in Scotland to obstruct a police investigation into a child under the age of 12. Article 16 of the order will extend this offence to include obstructions that occur across the United Kingdom. This is deemed necessary so that police forces in Scotland can operate effectively across the UK when a child living in another part of the UK is involved in a serious incident while in Scotland. The cross-border enforcement of court orders made under the 2019 Act, which is also delivered through this order, will support these UK-wide operations.

In further support of police forces in Scotland, the order extends relevant provisions that apply to Police Scotland through the 2019 Act to constables of non-territorial forces operating in Scotland. This will apply to constables of the Ministry of Defence police, the British Transport police, and the Civil Nuclear Constabulary. It will ensure that all constables operating in Scotland are bound by the same regulations.

In summary, the instrument supports the work of our police forces in Scotland to deal with harmful behaviour of children under 12 by improving the powers of police constables operating in Scotland. By extending the powers of the independent reviewer across the UK, it provides equally strong safeguards. The instrument, in its legislative content and policy objectives, has the support of both Governments in Scotland, and I commend the order to the Committee.

2.35 pm

**Ian Murray** (Edinburgh South) (Lab): It is a pleasure to see you in the Chair, Mr Sharma. I thank the Minister for presenting the statutory instrument. It is not a controversial SI for us at all, but I have a couple of questions for him.

When this measure was going through the Scottish Parliament, it was very consensual; many Opposition amendments were carried by Parliament. We tried to balance the rights of someone who would under this SI be underage, but would still be part of the criminal justice system as a result of serious offences that could be harmful to our communities.

However, it has taken so long for the instrument to come here—long enough for two independence referendum Bills to go through the Scottish Parliament—that meanwhile the UN convention on the rights of the child has recommended that the age of criminal

responsibility be increased from 12 to 14. I believe the Scottish Government have indicated that they wish to increase the age from 12 to 14 as well. Have there been any discussions about that, so that this time the rules do not change again before the consequential amendments are made in this place?

Also, has there been any indication about the working between the Scottish Government, the UK Government, the Police Federation and the police authorities? There has been some consternation, particularly with regard to the Scottish Police Federation, about the operation of the order and ensuring the protection of not only children but our communities when criminal justice matters are brought before them.

As I said, we will not oppose the order and we very much welcome it. We wish it had happened significantly quicker: many people who would have been caught by it are now too old to be covered—unless the age is increased to 14, as is the Scottish Government’s wish.

2.37 pm

**Stuart C. McDonald** (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Mr Sharma. I am grateful to the Minister for setting out the background to the order and explaining a little about the background of the Age of Criminal Responsibility (Scotland) Act 2019 and the changes it will implement. Quite a lot of the Act is now in force; because of it, children under 12 can no longer be stigmatised by being criminalised at a young age.

Yes, everyone would have liked things to have moved a little quicker but we can understand why they did not, circumstances being as they are. Other than that, I thank the Minister and his officials for their work in bringing about the order and ensuring that we take a step towards a more sensible age of criminal responsibility in Scotland.

2.38 pm

**Mr Steve Baker** (Wycombe) (Con): I am sorry to detain the Committee, but, unfortunately for the Committee, when I launched the Hansard Society’s review of delegated legislation, I insisted that Members of Parliament should always scrutinise what was put before them. Therefore I need to raise two points with my hon. Friend the Minister.

First, article 5(2)(c) talks about “an explanation of why the chief officer considers the information ought to be included in the enhanced criminal record certificate”. That put me in mind of a constituency case in which a young man who had done something wrong in his youth found that he was constrained in what he could do despite having very much moved on from his past misdemeanours. Has the Minister considered the extent to which people will perhaps unjustly be disadvantaged throughout their whole lives if minor information is included in these certificates? That might be a matter for him or possibly the Scottish Government. I heard his helpful explanation at the beginning of his remarks.

The other point I want to raise is about article 14, on the destruction of prints and samples. It says that “samples are to be destroyed as soon as possible” after either a conclusion has been reached or “the expiry of the maximum retention period”.

Could the Minister reassure me that the Government are considering continuing to review retention periods across the full range where Government take samples?

I particularly have in mind DNA retention, thinking back to the Protection of Freedoms Bill, on which I served in Committee many years ago. With that, Mr Sharma, I am very grateful for this opportunity to fulfil my pledge to the Hansard Society that I would always read the regulations.

**The Chair:** That was a wonderful contribution and I am sure the Minister has taken it positively.

2.40 pm

**Iain Stewart:** I thank the colleagues who have spoken; let me pick up on the questions that have been raised. First, on the time that this has taken and any further potential moves: the 2019 Act contains a three-year review period from the date it took effect. That review period will cover many of the points made by the hon. Member for Edinburgh South. A part of the UN Charter Bill was deemed by the Supreme Court to be outwith the competence of the Scottish Parliament; discussions are still happening as to how the measure, as amended, can be taken forward.

Of course we have discussed with both Governments, and with Police Scotland, the potential impact of the order, but we are talking about a very small number of cases each year that do not impose a huge additional workload on anyone. Obviously, if that were to change we would look at the measures. However, the purpose is to avoid loopholes and potential unintended consequences, and to make the operation smoother.

The three-year review period also covers the points made by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East, who probably has the prize for the most difficult constituency name—although the hon. Member for Coatbridge, Chryston and Bellshill comes in a close second. This has been a product of close co-operation between the two Governments.

The first point that my hon. Friend the Member for Wycombe raised about the general impact on the future prospects of a young person is a matter for the Scottish Government. The purpose of having the independent reviewer is to look at each case on its own merits and make an appropriate judgment as to what the future disclosures should be.

My hon. Friend’s second point, on the destruction of prints and samples, is something we have constantly under review. I point my hon. Friend to paragraph 14(7), which defines a maximum retention period of six months from the day on which the data sample was taken. I hope that provides him with some reassurance; he can get his gold star from the Hansard Society for asking a good question.

In conclusion, this measure commands cross-party support and I am grateful to colleagues for their contributions and questions today. I commend the draft order to the House.

**Sally-Ann Hart** (Hastings and Rye) (Con) *rose*—

**The Chair:** I apologise to the hon. Lady. She did not indicate that she wanted to speak before I had asked the Minister to wind up, as is normal practice.

**Sally-Ann Hart:** I just wanted to clarify something. I know the age of criminal responsibility in England and Wales is 10, so I was a bit confused about lifting it up to 12. It is something we can discuss afterwards.

**Iain Stewart:** There always has been a difference; it used to be eight in Scotland and 10 in England—now it has swapped around. We have never had that consistency.

*Question put and agreed to.*  
2.44 pm  
*Committee rose.*



