



Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

PART 4

POLICE INVESTIGATORY AND OTHER POWERS

CHAPTER 3

QUESTIONING OF CERTAIN CHILDREN

Investigative interview by agreement

40 Investigative interview by agreement

- (1) This section applies where—
- (a) a constable has reasonable 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,
 - (b) the constable considers that an investigative interview of the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence), and
 - (c) both—
 - (i) the child, and
 - (ii) a parent of the child,agree to an investigative interview of the child being conducted.
- (2) Where this section applies, an investigative interview of the child in relation to the behaviour mentioned in subsection (1)(b) is authorised for so long as the agreement mentioned in subsection (1)(c) is not withdrawn.

Changes to legislation: Age of Criminal Responsibility (Scotland) Act 2019, Cross Heading: Investigative interview by agreement is up to date with all changes known to be in force on or before 24 June 2024. 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

- (3) Agreement under subsection (1)(c) is withdrawn if—
- (a) the child or the parent who has given agreement withdraws that agreement,
 - (b) the child or that parent fails to comply in a material respect with the plans for the investigative interview authorised by subsection (2) drawn up under section 47.
- (4) Refusal by the child to answer questions during the interview does not constitute withdrawal of agreement under subsection (3)(b).
- (5) Where agreement under—
- (a) subsection (1)(c)(i) is withdrawn, a constable may, under section 42(1), apply to the sheriff for a child interview order,
 - (b) subsection (1)(c)(ii) is withdrawn, a constable may—
 - (i) seek agreement for the purposes of that subsection from another parent of the child, or
 - (ii) under section 42(1), apply to the sheriff for a child interview order.
- (6) Nothing in this section affects the power of a constable to apply for a child interview order in relation to the behaviour mentioned in subsection (1)(b) in circumstances other than those mentioned in subsection (5)(a) and (b)(ii).
- (7) For the purposes of this section, a “parent of the child” means a person who—
- (a) is aged 18 or over,
 - (b) has parental responsibilities (within the meaning of the Children (Scotland) Act 1995) in relation to the child, and
 - (c) is related to the child or with whom the child lives.
- (8) In subsection (7)(c), the reference to a person who is related to the child includes reference to a person who—
- (a) is married to or in a civil partnership with a person who is related to the child,
 - (b) is related to the child by the half blood.

Modifications etc. (not altering text)

- C1** Pt. 4 applied (with modifications) (17.12.2021) by 2004 c. 20, s. 56B (as inserted by [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Consequential Provisions and Modifications\) Order 2021 \(S.I. 2021/1458\)](#), arts. 1(1), **19**)
- C2** Pt. 4 applied (with modifications) (17.12.2021) by 1987 c. 4, s. 2E (as inserted by [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Consequential Provisions and Modifications\) Order 2021 \(S.I. 2021/1458\)](#), arts. 1(1), **17**)
- C3** Pt. 4 applied (with modifications) (17.12.2021) by 2003 c. 20, s. 31B (as inserted by [The Age of Criminal Responsibility \(Scotland\) Act 2019 \(Consequential Provisions and Modifications\) Order 2021 \(S.I. 2021/1458\)](#), arts. 1(1), **18**)

Commencement Information

- I1** S. 40 in force at 17.12.2021 by [S.S.I. 2021/449](#), reg. 2

41 Information to be provided following agreement to investigative interview

- (1) A constable must, as soon as reasonably practicable after agreement to an investigative interview being conducted is given under section 40(1)(c)—

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- (a) provide a notice in writing containing the information mentioned in subsection (2) to—
 - (i) the child, and
 - (ii) the parent of the child who has given agreement under that section, and
 - (b) in so far as practicable, explain the information contained in the notice to—
 - (i) the child (in a way that is appropriate to the child's age and maturity), and
 - (ii) the parent mentioned in paragraph (a)(ii).
- (2) The information is—
- (a) that the investigative interview is authorised by virtue of agreement having been given under section 40(1)(c),
 - (b) that either the child or the parent who has given agreement under that section can withdraw agreement at any time (whether before or after the start of the investigative interview),
 - (c) information about the other circumstances in which agreement is withdrawn,
 - (d) that agreement being withdrawn will end the investigative interview, and
 - (e) information about what else may happen following withdrawal of agreement (for example, the actions mentioned in section 40(5)).
- (3) As soon as reasonably practicable after the identity of the person who will act as child interview rights practitioner during the investigative interview is known, the constable must provide that person with a copy of the notice given under subsection (1)(a).

Commencement Information

I2 S. 41 in force at 17.12.2021 by S.S.I. 2021/449, reg. 2

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(1A) inserted by [2020 asp 13 sch. 5 para. 7\(8\)\(b\)](#)
- s. 20A inserted by [2020 asp 13 sch. 5 para. 7\(9\)](#)