

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

EXPLANATORY NOTES

PART 4: POLICE INVESTIGATORY AND OTHER POWERS

Chapter 3: Questioning of certain children

Pre-existing law

143. The statutory powers of police constables to detain and question criminal suspects are set out in Part 1 of the 2016 Act. Chapter 1 of that Act gives constables power to arrest a person without warrant where the constable has reasonable grounds for suspecting that the person has committed or is committing an offence. This power (and other powers in relation to arrested persons) extend (prior to implementation of this Act) to children aged eight to 11 (as such children can, until section 1 comes into force, commit an offence) but not to children aged under eight (who already cannot commit an offence).
144. **Section 34** of that Act empowers constables to question an arrested person in relation to the offence while in police custody¹ and also provides that the person is under no obligation to answer questions.² Arrested persons in police custody also have other rights under that Act, including the right to have intimation sent to another person (sections 38 and 39), a right to be given certain information (section 31) and a right to have a solicitor present (section 32). The last two of these rights also apply where a person is suspected of committing an offence but is attending for questioning (at a police station or other place) on a voluntary basis.
145. Police constables have a general ability to engage with members of the public on the basis of consent. As noted above, even where a person is suspected of committing an offence, the person may attend for interview voluntarily rather than being arrested. Where a child aged eight to 11 is suspected of committing an offence and is interviewed voluntarily, the rights conferred by sections 31 and 32 of the 2016 Act apply. By virtue of section 33 of the 2016 Act, such a child cannot consent to be interviewed (even voluntarily) without a solicitor being present. Children aged under eight cannot be suspected of committing an offence and so the powers in the 2016 Act do not apply, although such children can still be interviewed voluntarily³. The rights conferred by sections 31 and 32 of the 2016 Act do not apply in such cases.

¹ "Police custody" is defined in section 64 of the 2016 Act.

² Apart from providing their name, address, date of birth, place of birth and nationality.

³ It is of course inherent in an interview taking place voluntarily that consent to the interview can be withdrawn at any time and that the child can refuse to answer questions.