

# **AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019**

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## **EXPLANATORY NOTES**

### **PART 4: POLICE INVESTIGATORY AND OTHER POWERS**

#### ***Chapter 3: Questioning of certain children***

#### ***Changes made by the Act: what this Chapter of the Act does***

#### ***Prohibition on questioning***

147. Although the general ability of constables to engage with members of the public (including children aged under 12) will persist, subsection (2) of section 39 introduces a prohibition on police questioning of children aged under 12<sup>1</sup> in the circumstances described in subsection (1), except where the questioning is authorised under one of paragraphs (a) to (c) of subsection (2). The circumstances set out in subsection (1) are that a constable reasonably suspects that the child (while aged under 12) has behaved, in a violent or dangerous way that caused (or risked causing) serious physical harm to another person or in a sexually violent or sexually coercive way that caused (or risked causing) harm (physical or otherwise (such as psychological harm)) to another person). The questioning prohibited by subsection (2) could include questioning at the scene of an incident or while the child is being transported somewhere, such as a police station or their home. But questioning is permitted (on a voluntary basis) until the constable forms a reasonable suspicion that the child has acted as mentioned in subsection (1).
148. Direct questioning by a police constable in any interview involving any degree of pre-planning, while subsection (1) applies, is also prohibited, and questioning by local authority officers (in practice, usually social workers) in a jointly planned interview is also prohibited (see the definition of “investigative interview” in subsection (3)). The powers of local authorities to plan and lead questioning of children in relation to this type of incident are otherwise not affected, although police questioning as part of such a local authority-led process is prohibited. The prohibition on police questioning includes a prohibition on any other person questioning the child on behalf of a police constable.
149. Police questioning is authorised in certain urgent situations (see section 39(2)(c) and sections 54 and 55). And investigative interviews of children are permitted if authorised by virtue of section 40(2) (that is, where the child and a parent of the child have agreed to the child being interviewed) or by a child interview order made under section 44. Sections 47 to 53 provide a number of safeguards in relation to the investigative interview of children (whether authorised by section 40 or by a child interview order).
150. Subsection (2) also means that if, while a child is initially being interviewed on a voluntary basis as either a victim or a witness in relation to an incident, a constable

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<sup>1</sup> Questioning of children aged 12 to 15 (and of children aged 16 or 17 who are subject to a compulsory supervision order or an interim compulsory supervision order) in relation to behaviour that took place when the child was aged under 12 is also prohibited (see the definition of “child” in section 39(3)).

*These notes relate to the Age of Criminal Responsibility (Scotland)  
Act 2019 (asp 7) which received Royal Assent on 11 June 2019*

forms the suspicion that the child has behaved as mentioned in subsection (1) in that (or a different) incident, the constable (and any local authority officer present, if it is a jointly planned interview) cannot ask any further questions in relation to that behaviour. If a constable wishes to question a child once reasonable suspicion that the child has behaved as mentioned in section 39(1) exists, then (unless the situation is an emergency to which section 54 applies) the constable must obtain the agreement of the child and a parent of the child (in order to proceed under section 40) or apply to the sheriff<sup>2</sup> for a child interview order.

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<sup>2</sup> By virtue of section 81 of the Act, summary sheriffs may also deal with applications for child interview orders.