

# **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***

#### ***Investigative interview by agreement***

151. Subsection (2) of section 40 authorises the conduct of an investigative interview (defined in section 39(3)) of a child (also defined in section 39(3)) if the tests described in subsection (1) of section 40 are met. The first test is that a constable has reasonable grounds to suspect that a child, while aged under 12, by behaving in a violent or dangerous way, caused or risked causing serious physical harm to another person or, by behaving in a sexually violent or sexually coercive way, caused or risked causing harm (whether physical or not – so including psychological harm) to another person.<sup>1</sup> The second test is that the constable considers that an investigative interview is necessary to fully investigate the incident which involved suspected harmful behaviour by the child.<sup>2</sup> The third test is that both the child and a parent of the child (defined in subsections (7) and (8) of section 40) agree to an investigative interview of the child being conducted (subsection (1)(c)).
152. **Section 40** only authorises an investigative interview of the child for as long as the agreement mentioned in subsection (1)(c) remains in place. Agreement can be withdrawn at any time by either the child or the parent (subsection (3)(a)). If the child withdraws agreement and police still wish to interview the child, then a constable must apply for a child interview order under section 42 (subsection (5)(a)). If a parent of the child withdraws agreement, then the agreement of another parent can be sought or a child interview order can be applied for (subsection (5)(b)).
153. The agreement of the child or, as the case may be, parent is treated as withdrawn if the child or parent fails to comply in a material respect with the interview plans drawn up under section 47 – see subsection (3)(b) of section 40. However, subsection (4) specifically provides that agreement is not to be treated as withdrawn by virtue of the child exercising their right under section 49 to not say anything during the interview.
154. **Section 50(11)** sets out a further circumstance where agreement is treated as withdrawn. Section 50(6)(a) requires that, in the case of an investigative interview by agreement, the child's supporter during the interview must be the parent who has given agreement under section 40. Section 50(7) requires that the child's supporter must be considered appropriate by the person conducting the interview. If the person conducting the

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<sup>1</sup> This test matches the circumstances described in section 39(1), which prohibits police questioning or an investigative interview of the child, except if authorised in certain ways – including by section 40. It also matches one of the matters as to which a sheriff has to be satisfied for a child interview order to be granted (section 44(2)(a)).

<sup>2</sup> This test matches the other matter as to which a sheriff has to be satisfied for a child interview order (section 44(2)(b)).

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

interview considers that the parent who has given agreement to the interview is not an appropriate person to act as supporter, that parent's agreement is treated as withdrawn. Again, either the agreement of another parent must be obtained under section 40 or a child interview order made in order for the interview to proceed.

155. A constable may apply for a child interview order to be made in respect of the child at any time, even if agreement is in place (see subsection (40(6))).
156. [Section 41](#) provides for the child and the parent who has given agreement under section 40 to be given written notification of the matters listed in subsection (2) of section 41, including their right to withdraw agreement at any time and the fact that this will bring the interview to an end (while not preventing, for example, an application for a child interview order being made). The information must also be explained to the child (in an age-appropriate way) and the parent. The child's interview rights practitioner, once identified, will also be given a copy of the notice (see subsection (3)). Section 53(4) also provides for the information mentioned in section 41(2) to be provided to the child and the parent again before the start of the interview.