

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

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

Effect of provisions of general application on this Chapter

174. Any person exercising functions under this Chapter (for example, a constable making an application for a child interview order, a local authority participating in the planning of an investigative interview authorised by agreement or by a child interview order, a constable or social worker conducting such an interview or a constable questioning a child in urgent circumstances under section 54, or a child interview rights practitioner) must treat the need to safeguard and promote the wellbeing of the child as a primary consideration (section 72). The sheriff, in deciding whether to grant an application for a child interview order, is subject to the same duty. Section 74 authorises a constable who is authorised by virtue of a child interview order to carry out an investigative interview, or to question a child under section 54, to use reasonable force (for example, to ensure that the child attends the interview), subject to the limitations set out in subsections (4) to (6) of that section. Force cannot be used if the interview is taking place by agreement. Any person who obstructs a constable acting under a child interview order (or section 54) or otherwise interferes with the investigation into the child's behaviour (for example, by intimidating the child into giving false answers) is guilty of an offence (section 75). Of course, no child aged under 12 (including the child being questioned) can commit this offence (by virtue of new section 41 of the 1995 Act as inserted by section 1 of the Act).