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# Age of Criminal Responsibility (Scotland) Act 2019 2019 asp 7

## PART 4

### POLICE INVESTIGATORY AND OTHER POWERS

#### CHAPTER 3

##### QUESTIONING OF CERTAIN CHILDREN

VALID FROM 17/12/2021

##### *Limitation on police questioning*

#### **39 Limitation on police questioning of certain children**

- (1) This section applies where a constable has reasonable grounds to suspect that a child, while under 12 years of age—
  - (a) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or
  - (b) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person.
- (2) The child may not be questioned by a constable, or subjected to an investigative interview, in relation to the incident mentioned in subsection (1) unless the questioning or interview is authorised—
  - (a) by virtue of section 40(2),
  - (b) by an order under section 44 (a “child interview order”), or
  - (c) by virtue of section 54.
- (3) In this Chapter—

“child” means a person—

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- (a) who is under 16 years of age, or
  - (b) who is—
    - (i) 16 or 17 years of age, and
    - (ii) subject to a compulsory supervision order, or an interim compulsory supervision order, made under the 2011 Act,
- “investigative interview” means a meeting, or series of meetings—
- (a) planned by a constable in collaboration with a local authority, and
  - (b) conducted—
    - (i) by a constable or an officer of a local authority, or
    - (ii) jointly by a constable and an officer of a local authority,

for the purpose of seeking information from a child in relation to an incident which is the subject of a police investigation,

references to a constable questioning a child include references to a constable causing a child to be questioned by another person (and cognate expressions are to be construed accordingly).

VALID FROM 17/12/2021

### *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.
- (3) Agreement under subsection (1)(c) is withdrawn if—
- (a) the child or the parent who has given agreement withdraws that agreement,

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- (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.

#### **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)—
  - (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,

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- (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).

VALID FROM 17/12/2021

### *Child interview order*

#### **42 Application for child interview order**

- (1) A constable may apply to the sheriff for a child interview order.
- (2) An application for a child interview order must—
  - (a) identify the applicant,
  - (b) identify the child in respect of whom the order is sought,
  - (c) in so far as practicable, identify a parent of the child,
  - (d) state the grounds on which the application is made,
  - (e) set out provisional plans for the investigative interview of the child, and
  - (f) be accompanied by supporting evidence, whether documentary or otherwise, sufficient to enable the sheriff to determine the application.
- (3) Before making an application for a child interview order, the constable must—
  - (a) determine which local authority is the relevant local authority in relation to the planning and conduct of the proposed investigative interview of the child, and
  - (b) consult that authority about the making of the application and the provisional plans mentioned in subsection (2)(e) (unless such consultation is not practicable).
- (4) In this Chapter, “relevant local authority” has the meaning given by section 201 of the 2011 Act.

#### **43 Consideration of application for child interview order**

- (1) This section applies where a constable makes an application for a child interview order.
- (2) The sheriff may determine the application in court or in chambers after such enquiry or hearing (if any) as the sheriff considers appropriate.
- (3) Before determining the application, the sheriff must consider whether any of the following persons should be given an opportunity to make representations—
  - (a) the applicant,
  - (b) the child in respect of whom the application is made,
  - (c) a parent of the child,

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- (d) any other person the sheriff considers to have an interest in the application.

#### **44 Child interview order**

- (1) This section applies where a constable makes an application for a child interview order.
- (2) The sheriff may make the order if satisfied—
  - (a) that there are reasonable grounds to suspect that the 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, and
  - (b) 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).
- (3) In considering the matters mentioned in subsection (2), the sheriff must have regard to—
  - (a) the nature and seriousness of the child's behaviour, and
  - (b) whether an investigative interview of the child is appropriate given the child's circumstances (including the child's age and any matter related to the child's behaviour).
- (4) A child interview order authorises an investigative interview of the child in relation to the behaviour to which the application relates.
- (5) A child interview order may also—
  - (a) require any person in a position to do so to produce the child to a person specified in the order for the purpose of ensuring the child's attendance at the investigative interview,
  - (b) authorise the transporting of the child to and from the place where the interview is to take place (by the person specified in paragraph (a) or another person),
  - (c) authorise any other action (including action to safeguard and promote the wellbeing of the child) required in connection with the interview.
- (6) A child interview order may contain directions about—
  - (a) the conduct of the investigative interview authorised by the order,
  - (b) the carrying out of any other action required or authorised by the order.
- (7) A child interview order ceases to have effect at the end of the period of 7 days or such shorter period as is specified in the order (the period in each case beginning with the day after the day on which the order is made or such later day as is specified in the order).

#### **45 Notification of child interview order**

- (1) This section applies where a child interview order is made in respect of a child.
- (2) A constable must—

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- (a) as soon as reasonably practicable after the order is made—
  - (i) provide the child, and, in so far as practicable, a parent of the child, with a copy of the order, and
  - (ii) explain the order to the child in a way that is appropriate to the child's age and maturity, and
- (b) as soon as reasonably practicable after the identities of the persons who will act as supporter and child interview rights practitioner during the investigative interview authorised by the order are known, provide each of those persons with a copy of the order.

#### **46 Appeal against decision under section 44**

- (1) An appeal taken to the Sheriff Appeal Court under section 110 of the Courts Reform (Scotland) Act 2014 against a decision of the sheriff under section 44 may be taken only where the sheriff, on an application made by a constable or by or on behalf of the child to whom the decision relates, gives permission.
- (2) Permission to appeal against such a decision must be applied for—
  - (a) where a child interview order is made, before the end of the period of 3 working days beginning with the day after the day on which the child is provided with a copy of the order under section 45,
  - (b) where the sheriff refuses to make such an order, before the end of the period of 3 working days beginning with the day after the day on which the decision is made.
- (3) An appeal against the decision of the sheriff under section 44 must be taken before the end of the period of 3 working days beginning with the day on which permission to appeal is given.
- (4) A decision of the Sheriff Appeal Court on an appeal against the sheriff's decision is final.
- (5) Subsection (6) applies where—
  - (a) the Sheriff Appeal Court upholds or varies the order appealed against, and
  - (b) the investigative interview authorised by the order has not been completed at the time the appeal is determined.
- (6) The Sheriff Appeal Court may, in substitution for the period mentioned in section 44(7) (or any period specified by virtue of that section), specify—
  - (a) a period (not exceeding 7 days) at the end of which the child interview order is to cease to have effect, and
  - (b) the day on which that period is to begin.

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#### *Planning and conduct of investigative interviews*

#### **47 Planning of investigative interview**

- (1) This section applies where an investigative interview of a child is authorised—

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- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) A constable must, in collaboration with the relevant local authority, draw up plans for the conduct of the investigative interview.
- (3) The plans drawn up under subsection (2) must—
- (a) where the interview is authorised by a child interview order, accord with any directions contained in the order,
  - (b) specify—
    - (i) the period over which the interview will be conducted,
    - (ii) the number of meetings which will take place as part of the interview,
    - (iii) the date of each meeting,
    - (iv) how long each meeting will last,
    - (v) the location at which each meeting will take place,
    - (vi) the persons by whom the child may be questioned at each meeting,
    - (vii) the support and assistance required by the child during the interview, and
  - (c) include any other relevant information (for example, details of any arrangements for transport of the child to and from the interview where such transport is authorised by a child interview order or agreed in connection with an interview authorised by virtue of section 40(2)).
- (4) A constable must, as soon as reasonably practicable after plans are drawn up under subsection (2)—
- (a) provide the child with a copy of the plans and, in so far as practicable, explain the information contained in the plans to the child (in a way that is appropriate to the child's age and maturity), and
  - (b) provide a copy of the plans—
    - (i) where the interview is authorised by virtue of section 40, to the parent who has given agreement under subsection (1)(c)(ii) of that section,
    - (ii) where the interview is authorised by a child interview order, in so far as is practicable to a parent of the child.
- (5) A constable must, as soon as reasonably practicable after the identities of the persons mentioned in subsection (6) are known, provide each of those persons with a copy of the plans.
- (6) Those persons are—
- (a) where the interview is authorised by a child interview order, the person who will act as supporter during the interview,
  - (b) the person who will act as child interview rights practitioner during the interview.

#### **48 Conduct of investigative interview**

- (1) Subsection (2) applies where an investigative interview of a child is authorised by virtue of section 40(2).
- (2) The interview—

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- (a) may not start prior to the child being given a copy of the plans for the interview drawn up under section 47,
  - (b) must be conducted in accordance with those plans.
- (3) Subsections (4) to (6) apply where an investigative interview of a child is authorised by a child interview order made in respect of the child.
- (4) No action authorised or required by the order may take place prior to the child being given a copy of the plans for the investigative interview drawn up under section 47.
- (5) The interview must be conducted in accordance with—
- (a) any directions about the conduct of the interview contained in the order, and
  - (b) the plans drawn up under section 47.
- (6) Any other action required or authorised by a child interview order must be carried out in accordance with—
- (a) any directions about the carrying out of those actions contained in the order,
  - (b) the plans for the interview drawn up under section 47.

#### **49 Right not to answer questions**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) The child is under no obligation to say anything during the investigative interview.

#### **50 Right to have supporter present**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) The child has the right, during the investigative interview, to have another person (a “supporter”) present in the room in which the interview is being conducted.
- (3) The supporter must not be denied access to the child at any time during the interview.
- (4) Subsections (2) and (3) do not apply if (but only for as long as)—
- (a) a relevant constable, and
  - (b) an officer of the relevant local authority,
- agree that the supporter's absence from the room in which the interview is being conducted is necessary (including where it is necessary to safeguard or promote the child's wellbeing).
- (5) A “relevant constable” is a constable—
- (a) who is of the rank of sergeant or above, and
  - (b) who has not been involved in the investigation of the incident to which the interview relates (including in the planning and conduct of the interview).
- (6) Where the investigative interview is authorised—



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- (a) by virtue of section 40, the child's supporter must be the parent who has given agreement under subsection (1)(c)(ii) of that section to the interview being conducted,
  - (b) by a child interview order, the child's supporter—
    - (i) must be aged 18 or over,
    - (ii) may, but need not, be a parent of the child.
- (7) The child's supporter is to be a person considered appropriate by the person conducting the interview.
- (8) In considering for the purpose of subsection (7) whether a person is appropriate, the person conducting the interview is—
- (a) so far as reasonably practicable, to ascertain the views of the child, and
  - (b) to have regard to any views ascertained.
- (9) In having regard to the views of the child under subsection (8), the person conducting the interview is to take account of the child's age and maturity.
- (10) Subsection (11) applies where—
- (a) the child's supporter is required by subsection (6)(a) to be a particular person, and
  - (b) the person conducting the interview does not consider that person to be an appropriate person to be the child's supporter.
- (11) The agreement of the person required by subsection (6)(a) to be the child's supporter to the investigative interview being conducted is to be treated as withdrawn.

## **51 Right to have child interview rights practitioner present**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) The child has the right, in connection with and during the investigative interview, to receive advice, support and assistance from a child interview rights practitioner.
- (3) The child has the right to a private consultation with the child interview rights practitioner before, or at any time during, the interview.
- (4) The child interview rights practitioner must not be denied access to the child at any time during the interview.
- (5) A child interview rights practitioner must—
- (a) so far as reasonably practicable, ascertain the views of the child in relation to—
    - (i) the extent to which the child wishes to receive advice, support and assistance from the practitioner, and
    - (ii) the ways in which advice, support and assistance is to be provided, and
  - (b) have regard to any views ascertained.
- (6) In having regard to the views of the child under subsection (5), the child interview rights practitioner is to take account of the child's age and maturity.

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- (7) In subsection (2), “advice, support and assistance” includes the child interview rights practitioner—
- (a) helping the child to understand—
    - (i) the purpose of the interview,
    - (ii) the child's rights in relation to the interview (including the child's right to refuse to answer questions), and
    - (iii) what may happen as a result of the interview,
  - (b) making recommendations to the child about the exercise of the child's rights in relation to the interview,
  - (c) being present with the child in the room in which the interview is being conducted,
  - (d) communicating on the child's behalf with the person conducting the interview or otherwise supporting the child in communicating with that person,
  - (e) questioning whether the interview is being conducted—
    - (i) in accordance with any child interview order authorising the interview or otherwise fairly,
    - (ii) in a way that treats the need to safeguard and promote the wellbeing of the child as a primary consideration.
- (8) A child interview rights practitioner is a person who is authorised, by virtue of being included in the register established and maintained under section 56(1), to provide advice, support and assistance to children in relation to their involvement in investigative interviews authorised by virtue of section 40(2) or by a child interview order.

## **52 Child not to be questioned while unaccompanied**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) The investigative interview may be conducted only if (and only for as long as)—
- (a) both the child's supporter and the child interview rights practitioner are in attendance at the location where the interview is being conducted, and
  - (b) at least one of those persons is present in the room in which the interview is being conducted.

## **53 Information to be provided to child**

- (1) This section applies where an investigative interview of a child is authorised—
- (a) by virtue of section 40(2), or
  - (b) by a child interview order made in respect of the child.
- (2) Before the start of the investigative interview, the person conducting the interview must ensure that—
- (a) the child is provided with the information mentioned in subsection (3), and
  - (b) the information is explained to the child.
- (3) The information is information about—

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- (a) the behaviour to which the interview relates,
  - (b) the purpose of the interview,
  - (c) the child's rights in relation to the interview (including the child's right not to answer questions), and
  - (d) what may happen as a result of the interview.
- (4) Where the investigative interview is authorised by virtue of section 40(2), the person conducting the interview must also ensure that the information mentioned in section 41(2) is provided to—
- (a) the child, and
  - (b) the parent who has given agreement under section 40(1)(c)(ii).
- (5) Information provided under subsections (2)(a) and (4)(a) must be provided in a format appropriate to the child's age and maturity.

VALID FROM 17/12/2021

### *Questioning in urgent cases*

#### **54 Questioning of child in urgent cases**

- (1) This section applies where a constable has reasonable grounds to suspect that—
  - (a) a child, while under 12 years of age, by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, and
  - (b) there is a risk of loss of life if the child is not questioned immediately.
- (2) The constable may, in so far as necessary to prevent loss of life, question the child about the child's behaviour and the circumstances surrounding it if authorised to do so by a relevant senior officer under subsection (3).
- (3) The relevant senior officer may authorise the constable to question the child as mentioned in subsection (2) only if that officer is satisfied that—
  - (a) there are reasonable grounds to suspect that the child, while under 12 years of age, by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person,
  - (b) questioning 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) it is not practicable to apply for a child interview order authorising an investigative interview of the child because there is a risk of loss of life if the child is not questioned immediately.
- (4) In considering the matters mentioned in subsection (3), the relevant senior officer must have regard to—
  - (a) the nature and seriousness of the child's behaviour,
  - (b) whether the questioning of the child is appropriate given the child's circumstances (including the child's age and any matter related to the child's behaviour).

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- (5) A child in respect of whom authorisation under subsection (3) is granted is not required to answer questions during the questioning authorised by that subsection.
- (6) In this section, a “relevant senior officer” is an officer of the rank of superintendent or above.

#### **55 Procedure following authorisation of questioning under section 54**

- (1) This section applies where the questioning of a child is authorised by section 54.
- (2) The constable authorised under section 54 to question the child must inform the child—
  - (a) that the questioning of the child has been authorised under section 54, and
  - (b) that the child has the right not to answer questions.
- (3) A constable must, in so far as practicable, inform a parent of the child about the authorisation under section 54.
- (4) Subsection (3) need not be complied with if the constable reasonably suspects that informing a parent of the child would exacerbate the risk of loss of life.
- (5) A constable must inform a child interview rights practitioner about the authorisation under section 54.
- (6) A constable must, as soon as reasonably practicable after authorisation is granted under section 54, apply for a child interview order authorising an investigative interview of the child in relation to the behaviour mentioned in section 54(1).

#### *Register of child interview rights practitioners*

#### **56 Register of child interview rights practitioners**

- (1) The Scottish Ministers must establish and maintain a register of persons who are authorised to provide advice, support and assistance to children in relation to their involvement in investigative interviews.
- (2) A person may be included in the register only if the person is a solicitor who is entitled to provide children's legal assistance under section 28M of the Legal Aid (Scotland) Act 1986.
- (3) The Scottish Ministers may by regulations make further provision in connection with—
  - (a) the register (including the establishment and maintenance of the register),
  - (b) child interview rights practitioners (including provision for the payment of expenses, fees and allowances to such practitioners by the Scottish Ministers).
- (4) Regulations under subsection (3)(b) may in particular include provision—
  - (a) about how child interview rights practitioners are appointed to cases, and
  - (b) requiring, so far as reasonably practicable, the views of the child involved in the case as to the appointment of a particular child interview rights practitioner to be ascertained and, taking account of the child's age and maturity, had regard to.

*Status: Point in time view as at 31/03/2020. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Age of Criminal Responsibility (Scotland) Act 2019, CHAPTER 3 is up to date with all changes known to be in force on or before 21 November 2023. 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)*

(5) In this section—

“investigative interview” means an investigative interview authorised by virtue of section 40(2) or by a child interview order,

“solicitor” means a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980.

#### Commencement Information

II S. 56(3)(4) in force at 31.3.2020 by S.S.I. 2020/74, reg. 2, sch.

### Guidance

## 57 Guidance

(1) The Scottish Ministers—

(a) must issue guidance about—

(i) the obtaining and withdrawal of agreement for the purposes of section 40,

(ii) applications for a child interview order,

(iii) the planning and conduct of investigative interviews authorised by virtue of section 40(2) or by a child interview order,

(iv) the questioning of children by virtue of section 54, and

(b) may, from time to time, issue revised guidance.

(2) Guidance under subsection (1) may in particular cover—

(a) the role of constables and local authorities in the planning and conduct of investigative interviews,

(b) principles according to which investigative interviews are to be conducted,

(c) the creation of an environment in which the child's wellbeing is safeguarded and promoted,

(d) approaches to questioning in investigative interviews,

(e) the recording of investigative interviews,

(f) the determination of whether a person is an appropriate person to act as a supporter,

(g) the role of supporters and child interview rights practitioners in investigative interviews,

(h) other forms of support and assistance that may be required by the child in connection with an investigative interview.

(3) A person exercising functions to which guidance under subsection (1) relates must, in doing so, have regard to that guidance.

(4) Before issuing guidance or revised guidance under this section, the Scottish Ministers must consult—

(a) the chief constable,

(b) each local authority,

(c) such other persons as they consider appropriate.

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**Status:** *Point in time view as at 31/03/2020. This version of this chapter contains provisions that are not valid for this point in time.*

**Changes to legislation:** *Age of Criminal Responsibility (Scotland) Act 2019, CHAPTER 3 is up to date with all changes known to be in force on or before 21 November 2023. 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)*

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**Commencement Information**

**I2** [S. 57](#) in force at 31.3.2020 by [S.S.I. 2020/74](#), [reg. 2](#), [sch.](#)

**Status:**

Point in time view as at 31/03/2020. This version of this chapter contains provisions that are not valid for this point in time.

**Changes to legislation:**

Age of Criminal Responsibility (Scotland) Act 2019, CHAPTER 3 is up to date with all changes known to be in force on or before 21 November 2023. 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.