



# Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

## PART 4

### POLICE INVESTIGATORY AND OTHER POWERS

#### CHAPTER 3

##### QUESTIONING OF CERTAIN CHILDREN

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

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

- (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) 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

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- (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—
  - (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—
  - (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

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- (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.
- (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—
- (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.