



# Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

## PART 4

### POLICE INVESTIGATORY AND OTHER POWERS

#### CHAPTER 3

##### QUESTIONING OF CERTAIN CHILDREN

###### *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mentioned in subsection (1)(b) is authorised for so long as the agreement mentioned in subsection (1)(c) is not withdrawn.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Agreement under subsection (1)(c) is withdrawn if—
- (a) the child or the parent who has given agreement withdraws that agreement,
  - (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- (a) subsection (1)(c)(i) is withdrawn, a constable may, under section 42(1), apply to the sheriff for a child interview order,
  - (b) subsection (1)(c)(ii) is withdrawn, a constable may—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.