



# Age of Criminal Responsibility (Scotland) Act 2019

2019 asp 7

## PART 4

### POLICE INVESTIGATORY AND OTHER POWERS

#### CHAPTER 3

##### QUESTIONING OF CERTAIN CHILDREN

###### *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,
  - (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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—
  - (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.

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- (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.