**Briefing Note for Practitioners**

**Age of Criminal Responsibility (Scotland) Act 2019**

**Raising the Age of Criminal Responsibility**

The [Age of Criminal Responsibility (Scotland) Act 2019](https://www.legislation.gov.uk/asp/2019/7/contents/enacted) raises the age of criminal responsibility to 12. The Act is formed of 7 parts and is supported by Statutory Guidance and Practice Guidance. Some parts of the Act have already been implemented, however some have still to be brought into force. Full commencement is scheduled for 17 December 2021.

Raising the age of criminal responsibility (ACR) means that a child under the age of 12 cannot be charged. The police will no longer have recourse to their criminal justice powers, particularly around arrest, detention, interview and reporting. In practice this will mean that a child under 12 will no longer be held criminally responsible for their actions. The police will still have a duty to record and investigate any allegations of crime.

Increasing the age of criminal responsibility from 8 to 12 aligns with the current minimum age of criminal prosecution in Scotland. This has the potential to support a positive cultural shift in how the harmful behaviour of children, and the issues that lead to it, is viewed and understood. Children under 12 will no longer be stigmatised by being criminalised at a young age due to being labelled as an ‘offender’, and they will not be disadvantaged by having convictions for the purposes of disclosure, which can adversely affect them later in life. The use of language will be important, any reference to a child must not be in the context of criminality. A [trauma informed approach](https://transformingpsychologicaltrauma.scot/) is crucial to supporting children. Trauma is described as a wide range of traumatic, abusive or neglectful events or series of events that are experienced as being emotionally or physically harmful or life threatening. Being able to recognise when a child may be affected by trauma and adapting the way we work to take this into account and in a way that supports recovery, does no harm and supports resilience is being trauma informed.

The aim is to protect children from the harmful effects of early criminalisation and ensure children and families receive the right support when they need it. Where there are concerns about a child’s behaviour, which cannot be met via voluntary supports and early intervention, a referral can be made to the Children’s Reporter on non-offence grounds.

**Disclosure Of Convictions & Other Information**

Any conduct by a child below the age of 12 that would previously have been recorded as a conviction will no longer be recorded as such. It will no longer be possible for a person to acquire a criminal conviction on the basis of behaviour that occurred when they were under 12. Non-conviction information relating to harmful behaviour that occurred when a child was under 12 will not automatically be disclosed. However, information about behaviour that took place when a child was under 12 can still be disclosed as ‘Other Relevant Information’ on an enhanced disclosure or via the Protecting Vulnerable Groups (PVG) scheme. Any information the Chief Constable believes should be disclosed will be reviewed by an Independent Reviewer. The independent reviewer was appointed in March 2020. For more information on this go to <https://www.mygov.scot/disclosure-behaviour-under-12>.

**Victims**

Victims will still be the victim of a crime and entitled to have the crime fully investigated and offered the support that is available to all victims of crime. Part 3 of the Act makes changes to the law that enables the Children’s Reporter to provide information to victims. Where someone is a victim of serious harmful behaviour, the Children’s Reporter will be able to give them information about the outcome of a referral relating to that matter.

**Search of Children**

Police officers have a range of statutory powers to stop and search children under 12 without a warrant. In certain cases, police officers may confiscate items they find. The Act preserves the existing powers of search for children under 12 to ensure that, when necessary and proportionate, these powers can still be used in relation to children under 12.

**Questioning of Children**

This new legislation does not prevent the police from carrying out their general duty to speak to anyone, including children, who they come across at the scene of an incident, to establish the basic facts. Police can speak to a child who has been identified as being responsible on an informal basis, with parental consent. Where parental consent is not available, police must rely on evidence gathered by other lawful means. Police will use professional judgement to establish whether using formal investigative ACR powers is necessary and proportionate.

**Police Investigatory & Other Powers**

ACR Place of Safety

Part 4 of the Act creates a package of powers designed to ensure that serious behaviour by any child under the age of 12 can be investigated, and for this to be carried out in a child centred way that is in keeping with the ethos of removing children from criminal justice processes. The emergency ‘place of safety’ is one of these powers. This sets out that Police may take a child under 12 to a place of safety in the most serious of cases when they believe that it is necessary to manage an immediate risk of significant harm or further such harm by the child to another person. The child must be kept in the place of safety for as short a time as possible, up to a maximum of 24 hours. This will only be used in exceptional circumstances. It is the local authority’s responsibility to identify an appropriate place of safety. The use of a police station as a place of safety must be a last resort. The [Place of Safety](https://www.gov.scot/publications/age-criminal-responsibility-scotland-act-2019-part-4-police-investigatory-powers-statutory-guidance-use-place-safety/) statutory guidance sets out the responsibilities and procedures to be followed. The term “place of safety” is not unique to this legislation, the Children’s Hearings (Scotland) Act 2011 makes provision for a constable to remove a child to a place of safety when there is a risk of significant harm to a child. The term place of safety is also used in the Criminal Justice (Scotland) Act 2016 and is different to the ACR place of safety.

Investigative Interviews

The Investigative interview is another power created by the Act. Interviews can take place via agreement or via a Child Interview Order. For this to happen, the behaviour of a child must meet a threshold:

1. by behaving in a violent or dangerous way, has caused or risked causing *serious physical* *harm* to another person, or
2. by behaving in a sexually violent or sexually coercive way, has caused or risked causing *harm* (*whether physical or not*) to another person.

In order for the police powers to apply, where the behaviour is violent or dangerous, this must result in serious physical harm and where it is sexually violent or sexually coercive, then the harm can be physical or psychological in nature.

The child and a ‘parent of the child’ can consent to an interview by agreement. The Act defines a parent as someone over the age of 18 with parental responsibilities for the child and is related to or lives with the child.

The investigative interview must be necessary in order to properly investigate the child’s behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence). The primary focus of the investigative interview is to seek an explanation from the child as to what has happened, to understand their role, if any, in the incident and to identify any other people who were involved or who may be at risk of harm. The wellbeing and safety of the child is the primary focus. In urgent cases, where there is a risk of loss of life the police can interview a child on an emergency basis. Under these circumstances a retrospective inter-agency referral discussion (IRD) will take place on the next working day.

An investigative interview is a meeting, or a series of meetings, planned by police in collaboration with social work. The interview is conducted by police or social work or jointly by police and social work, for the purpose of seeking information from a child in relation to an incident which is the subject of a police investigation. Due to the high threshold which needs to be met for interviews, in the majority of cases these will be planned via Child Protection inter-agency referral discussions (IRD) (City of Edinburgh Council Social Work, Police Scotland and NHS Lothian) and interviews will be conducted by practitioners trained in joint investigative interviews. The [Investigative Interviews](https://www.gov.scot/publications/age-criminal-responsibility-scotland-act-2019-part-4-police-investigatory-powers-statutory-guidance-investigative-interviews/) statutory guidance outlines the roles and responsibilities for planning and conducting interviews, ensuring a child centred approach.

Decisions on a Child Interview Order can be appealed by a constable, the child or someone on their behalf. Permission to appeal must be made within 3 working days of the child receiving a copy of the order.

**Child Interview Rights Practitioner (ChIRP)**

The Child Interview Rights Practitioner (ChIRP) is a new role and is central to the investigative interview process. They must be a solicitor registered with the Children’s Legal Assistance Scheme. Every child who is involved in an investigative interview will have a ChIRP appointed to them. Their role will be to provide the child with advice, support and assistance in connection with and during the investigative interview. The ChIRP will take a trauma-informed approach in their interactions with the child and will be required to act in accordance with a [code of practice](https://www.gov.scot/publications/age-criminal-responsibility-scotland-act-2019-child-interview-rights-practitioners-code-practice/). IRD participants will liaise with the ChIRP about the interview plan.

**Supporter**

During the investigative interview the child has a right to have another person present in the room in which the interview is being conducted, known as a “supporter”. The supporter must not be denied access to the child, unless it is necessary to safeguard or promote the child’s wellbeing. If the interview is by agreement, the parent who gave agreement must be the supporter. If the interview is by an order the supporter must be over 18 and may be parent of the child but does not need to be. The ChIRP and Supporter must both be present in the building where the child is being interviewed but only one need to be in the room when the interview is taking place.