

# Age of Criminal Responsibility (Scotland) Bill

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## 2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Places of safety: use of police stations and cells etc.**

122, 123, 60, 61, 62, 63

#### **Monitoring of use of emergency place of safety power**

100

#### **Questioning of children by police about pre-12 behaviour**

124, 125, 127, 128, 129

#### *Notes on amendments in this group*

Amendment 127 pre-empts amendments 35 and 34 in group “Further increase in the age of criminal responsibility (and of prosecution): age, and timescale for increase”

#### **Investigative interview by agreement**

126, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 143, 144, 145, 146, 148, 149, 150, 151, 152, 154, 155, 156, 157, 158, 159, 160, 164

#### **Children’s right to silence during investigative interview**

64

#### **Persons required to be present during investigative interview**

142, 147, 153

#### **Use and destruction of samples taken from certain children**

161, 162, 163

**Children’s hearings: consideration of diminished responsibility**

119

**Review of Scottish Children’s Reporter Administration**

120

**Power to make ancillary provision**

99

**Amendments already debated**

**Further increase in the age of criminal responsibility (and of prosecution): age, and timescale for increase**

With 2 – 25, 24, 27, 26, 29, 28, 31, 30, 33, 32, 35, 34, 37, 36, 39, 38, 41, 40, 43, 42, 45, 44, 47, 46, 49, 48, 51, 50, 53, 52, 55, 54, 57, 56, 74, 73, 121, 76, 75, 78, 77, 79, 81, 80, 59, 58

*Notes on amendments in this group*

Each of the following pairs of amendments are direct alternatives: 25 and 24; 27 and 26; 29 and 28; 31 and 30; 33 and 32; 35 and 34; 37 and 36; 39 and 38; 41 and 40; 43 and 42; 45 and 44; 47 and 46; 49 and 48; 51 and 50; 53 and 52; 55 and 54; 57 and 56; 59 and 58

Amendments 35 and 34 are pre-empted by amendment 127 in group “Question of children by police about pre-12 behaviour”

**Disclosure of information about pre-12 behaviour**

With 82 – 98

## THIS IS NOT THE MARSHALLED LIST

### Amendments in debating order

#### Places of safety: use of police stations and cells etc.

##### **Maree Todd**

**122** In section 23, page 12, line 21, at end insert—

<(5A) But a child must not be kept in a cell within a police station.

(5B) Subsection (5A) does not apply if (and only for as long as) it is not reasonably practicable for the child to be kept elsewhere within the police station.>

##### **Maree Todd**

**123** In section 23, page 12, line 22, after <station> insert <(whether in a cell or elsewhere)>

##### **Alex Cole-Hamilton**

**60** In section 23, page 12, line 25, at end insert—

<( ) For the avoidance of doubt, where a child is kept in a place of safety that is a police station, that child must not be kept in a legalised police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989.>

##### **Alex Cole-Hamilton**

**61** In section 23, page 12, line 25, at end insert—

<( ) Where a child under 14 years of age is kept in a place of safety that is a police station, that child must not be kept in a legalised police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989.>

##### **Alex Cole-Hamilton**

**62** In section 23, page 12, line 25, at end insert—

<( ) Where a child under 16 years of age is kept in a place of safety that is a police station, that child must not be kept in a legalised police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989.>

##### **Alex Cole-Hamilton**

**63** In section 23, page 12, line 28, leave out from <has> to <Act> and insert <, in relation to a child, means—

- (i) a residential or other establishment provided by a local authority,
- (ii) a community home within the meaning of section 53 of the Children Act 1989 (c.41),
- (iii) a hospital or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child,
- (iv) the dwelling-house of a suitable person who is so willing,
- (v) any other suitable place the occupier of which is so willing, or
- (vi) if no place of safety within the meaning of subparagraphs (i) to (v) is available, a police station.>

## THIS IS NOT THE MARSHALLED LIST

### **Monitoring of use of emergency place of safety power**

**Daniel Johnson**

**100** After section 24, insert—

#### **<Annual Report on the exercise of the power under section 23**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting year—
  - (a) prepare a report on the exercise of the power under section 23,
  - (b) lay a copy of that report before the Scottish Parliament.
- (2) The annual report must—
  - (a) specify the number of children under 12 taken to a place of safety in the reporting year,
  - (b) specify for each child taken to a place of safety in the reporting year—
    - (i) the reason why the child was taken to a place of safety,
    - (ii) the location or locations to which the child was taken,
    - (iii) the length of time the child spent at the location or locations,
    - (iv) where the location was a police station, the reasons why an alternative ‘place of safety’ could not be used,
  - (c) confirm that at no point a legalised police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989 was used as a place of safety.
- (3) In this section, “reporting year” is—
  - (a) the period beginning with the day on which this section comes into force and ending on 31 March, and
  - (b) each successive year ending on that date.>

### **Questioning of children by police about pre-12 behaviour**

**Gail Ross**

**124** In section 31, page 15, line 27, at end insert—

- <(A1) 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.>

## THIS IS NOT THE MARSHALLED LIST

### Gail Ross

- 125 In section 31, page 15, line 28, leave out from beginning to <where> in line 30 and insert <The child may not be questioned by a constable, or subjected to an investigative interview, in relation to the incident mentioned in subsection (A1) unless>

### Gail Ross

- 127 In section 31, page 15, line 33, leave out subsection (2)

### Maree Todd

- 128 In section 31, page 16, leave out line 16

### Maree Todd

- 129 In section 31, page 16, line 22, at end insert <,  
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).>

### Investigative interview by agreement

#### Maree Todd

- 126 In section 31, page 15, line 30, at end insert—  
<( ) by virtue of section (*Investigative interview by agreement*)(2),>

#### Maree Todd

- 130 After section 31, insert—  
*<Investigative interview by agreement*

#### **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.

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- (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,
  - (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 36.
- (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 32(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 32(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.>

## THIS IS NOT THE MARSHALLED LIST

### Maree Todd

131 After section 31, insert—

#### <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 (*Investigative interview by agreement*)(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 (*Investigative interview by agreement*)(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,
  - (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 (*Investigative interview by agreement*) (5)).
- (3) As soon as reasonably practicable after the identity of the person who will act as advocacy worker during the investigative interview is known, the constable must provide that person with a copy of the notice given under subsection (1)(a).>

### Maree Todd

132 In section 36, page 18, line 21, leave out <a child interview order is made in respect of a> and insert <an investigative interview of a child is authorised—

- (a) by virtue of section (*Investigative interview by agreement*)(2), or
- (b) by a child interview order made in respect of the>

### Maree Todd

133 In section 36, page 18, line 23, leave out <authorised by the order>

### Maree Todd

134 In section 36, page 18, line 25, at beginning insert <where the interview is authorised by a child interview order,>

## THIS IS NOT THE MARSHALLED LIST

### Maree Todd

- 135** In section 36, page 18, line 34, leave out from <where> to end of line 36 and insert <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 (*Investigative interview by agreement*)(2)).>

### Maree Todd

- 136** In section 36, page 19, line 1, leave out subsection (4) and insert—
- <(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 (*Investigative interview by agreement*), 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 advocacy worker during the interview.>

### Maree Todd

- 137** In section 37, page 19, line 11, leave out from beginning to second <a> and insert—
- <(A1) Subsection (A2) applies where an investigative interview of a child is authorised by virtue of section (*Investigative interview by agreement*)(2).
  - (A2) The interview—
    - (a) may not start prior to the child being given a copy of the plans for the interview drawn up under section 36,
    - (b) must be conducted in accordance with those plans.
  - (1) Subsections (2) to (4) apply where an investigative interview of a child is authorised by a child interview order made in respect of the>

### Maree Todd

- 138** In section 38, page 19, line 22, leave out <a child interview order is made in respect of a> and insert <an investigative interview of a child is authorised—
  - (a) by virtue of section (*Investigative interview by agreement*)(2), or
  - (b) by a child interview order made in respect of the>

**THIS IS NOT THE MARSHALLED LIST**

**Maree Todd**

- 139 In section 38, page 19, line 24, leave out <authorised by the order>

**Maree Todd**

- 140 In section 39, page 19, line 26, leave out <a child interview order is made in respect of a> and insert <an investigative interview of a child is authorised—
- (a) by virtue of section (*Investigative interview by agreement*)(2), or
  - (b) by a child interview order made in respect of the>

**Maree Todd**

- 141 In section 39, page 19, line 27, leave out <authorised by the order>

**Maree Todd**

- 143 In section 39, page 20, leave out line 8 and insert—
- <(7) Where the investigative interview is authorised—
- (a) by virtue of section (*Investigative interview by agreement*), 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)>

**Maree Todd**

- 144 In section 39, page 20, line 18, at end insert—
- <(11) Subsection (12) applies where—
- (a) the child's supporter is required by subsection (7)(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.
- (12) The agreement of the person required by subsection (7)(a) to be the child's supporter to the investigative interview being conducted is to be treated as withdrawn.>

**Maree Todd**

- 145 In section 40, page 20, line 20, leave out <a child interview order is made in respect of a> and insert <an investigative interview of a child is authorised—
- (a) by virtue of section (*Investigative interview by agreement*)(2), or
  - (b) by a child interview order made in respect of the>

**Maree Todd**

- 146 In section 40, page 20, line 22, leave out <authorised by the order>

**Maree Todd**

- 148 In section 40, page 21, line 4, leave out first <the> and insert <any>

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**Maree Todd**

- 149 In section 40, page 21, line 20, leave out <a child interview order> and insert <section (*Investigative interview by agreement*)(2) of the Age of Criminal Responsibility (Scotland) Act 2019 or by a child interview order made under section 34 of that Act>

**Maree Todd**

- 150 In section 40, page 21, leave out lines 23 and 24

**Maree Todd**

- 151 In section 41, page 21, line 28, leave out <a child interview order is made in respect of a> and insert <an investigative interview of a child is authorised—
- (a) by virtue of section (*Investigative interview by agreement*)(2), or
  - (b) by a child interview order made in respect of the>

**Maree Todd**

- 152 In section 41, page 21, line 29, leave out <authorised by the order>

**Maree Todd**

- 154 In section 42, page 21, line 33, leave out <a child interview order is made in respect of a> and insert <an investigative interview of a child is authorised—
- (a) by virtue of section (*Investigative interview by agreement*)(2), or
  - (b) by a child interview order made in respect of the>

**Maree Todd**

- 155 In section 42, page 21, line 34, leave out <authorised by the order>

**Maree Todd**

- 156 In section 42, page 22, line 6, at end insert—
- <(3A) Where the investigative interview is authorised by virtue of section (*Investigative interview by agreement*)(2), the person conducting the interview must also ensure that the information mentioned in section (*Information to be provided following agreement to investigative interview*)(2) is provided to—
- (a) the child, and
  - (b) the parent who has given agreement under section (*Investigative interview by agreement*)(1)(c)(ii).>

**Maree Todd**

- 157 In section 42, page 22, line 7, leave out <subsection (2)(a)> and insert <subsections (2)(a) and (3A)(a)>

**Maree Todd**

- 158 Move section 43 to after section 35

**Maree Todd**

- 159 In section 46, page 23, line 23, at end insert—

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<( ) the obtaining and withdrawal of agreement for the purposes of section  
(*Investigative interview by agreement*),>

**Maree Todd**

- 160 In section 46, page 23, line 25, after <authorised> insert <by virtue of section (*Investigative interview by agreement*)(2) or>

**Maree Todd**

- 164 In section 63, page 34, line 2, at end insert <(except where provided otherwise: see section (*Investigative interview by agreement*)(7)),>

### **Children's right to silence during investigative interview**

**Alex Cole-Hamilton**

- 64 In section 38, page 19, line 23, leave out <not required to answer questions> and insert <under no obligation to say anything (other than to give the information specified in section 34(4) of the Criminal Justice (Scotland) Act 2016)>

### **Persons required to be present during investigative interview**

**Maree Todd**

- 142 In section 39, page 19, line 30, leave out subsection (3)

**Maree Todd**

- 147 In section 40, page 20, line 23, leave out subsection (3)

**Maree Todd**

- 153 In section 41, page 21, line 29, leave out from <not> to end of line 31 and insert <be conducted only if (and only for as long as)—
- (a) both the child's supporter and the advocacy worker 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.>

### **Use and destruction of samples taken from certain children**

**Maree Todd**

- 161 In section 47, page 24, line 27, at end insert—

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- <(2A) Relevant physical data or a relevant sample taken from a child in the circumstances and for the purpose mentioned in subsection (2), and any information derived from such a sample, may not be used for the purpose of investigating an incident of a type mentioned in subsection (2B).
- (2B) The incident is one—
- (a) which occurred when the child was under 12 years of age, and
  - (b) in relation to which the constable has reasonable grounds to suspect that the child—
    - (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.
- (2C) But subsection (2A) does not—
- (a) prohibit the use of the data, sample or information for the purpose of investigating the incident where the child is now 12 years of age or over and consents, or
  - (b) affect the ability of a constable—
    - (i) to apply for an order under section 52 authorising the taking of relevant physical data or a relevant sample from the child for the purpose of investigating the incident, or
    - (ii) to take such data or such a sample for that purpose by virtue of section 57.>

### Maree Todd

162 After section 56, insert—

#### <Treatment of prints and samples where appeal taken against making of order under section 52

- (1) This section applies where—
  - (a) an appeal is taken against a decision of the sheriff to make an order under section 52,
  - (b) before the constable who applied for the order was notified of the appeal, relevant physical data or a relevant sample was taken from the child by virtue of the order.
- (2) No steps or, as the case may be, no further steps may be taken in relation to the relevant physical data or relevant sample (other than holding or preserving the data or sample) before the conclusion of the appeal.
- (3) Where the decision of the sheriff is recalled and the order quashed, the constable who applied for the order must ensure that all record of any data taken, all samples taken, and all information derived from any samples taken are destroyed as soon as possible.
- (4) Where—
  - (a) the decision of the sheriff is varied so that the order authorises the taking of different relevant physical data or relevant samples to those originally specified in the order by virtue of section 52(4)(a), and
  - (b) as a result the taking of some or all of the data or samples mentioned in subsection (1)(b) would no longer be authorised by the order,

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the constable who applied for the order must ensure that all record of any such data taken, all such samples taken, and all information derived from any such samples taken are destroyed as soon as possible.>

**Maree Todd**

**163** After section 58, insert—

*<Destruction of prints and samples taken with consent*

### **Destruction of prints and samples taken from child aged 12 and over with consent**

- (1) This section applies where relevant physical data or a relevant sample has been taken from a child with consent by virtue of section 48(1)(b).
- (2) The relevant constable must ensure that all record of any data taken, all samples taken, and all information derived from any samples are destroyed as soon as possible following—
  - (a) a decision not to pass information about the child to the Principal Reporter under section 61 of the 2011 Act, or
  - (b) where information is so passed, the conclusion of proceedings in relation to the child under that Act in so far as arising from that information.
- (3) For the purposes of subsection (2)(b), such proceedings are concluded when an event mentioned in section 55(4) or (6) occurs.
- (4) Subsection (2) does not apply where the destruction of a sample, or the information derived from it, could have the effect of destroying a sample, or any information derived from it, lawfully held in relation to a person other than the child from whom the sample was taken.
- (5) In subsection (2), the “relevant constable” is the constable investigating the child’s behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence).>

## **Children’s hearings: consideration of diminished responsibility**

**Mary Fee**

**119** After section 63, insert—

**<PART**

CHILDREN’S HEARINGS: CONSIDERATION OF DIMINISHED RESPONSIBILITY

### **Children’s hearings: consideration of diminished responsibility**

After section 25 of the 2011 Act, insert—

#### **“25A Diminished responsibility**

- (1) This section applies where a children’s hearing or pre-hearing panel is coming to a decision about a matter relating to a child.
- (2) The children’s hearing or pre-hearing panel must consider if the child’s ability to determine or control the conduct to which the hearing relates was at the time of the conduct substantially impaired by reason of—
  - (a) abnormality of mind,

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- (b) developmental immaturity.
- (3) For the avoidance of doubt, the reference in subsection (2) to abnormality of mind includes mental disorder.
- (4) The fact that a child was under the influence of alcohol, drugs or any other substance at the time of the conduct in question does not of itself—
  - (a) constitute abnormality of mind for the purposes of subsection (2), or
  - (b) prevent such abnormality from being established for those purposes.
- (5) For the purposes of assessing developmental immaturity, a report must be obtained from an approved medical practitioner within the meaning of section 22 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (6) In this section, “conduct” includes acts and omissions.>

### **Review of Scottish Children’s Reporter Administration**

**Daniel Johnson**

**120** After section 63, insert—

#### **<PART**

#### **REVIEW OF THE SCOTTISH CHILDREN’S REPORTER ADMINISTRATION**

##### **Review of the Scottish Children’s Reporter Administration**

- (1) The Scottish Ministers must no later than 5 years after the Bill for this Act receives Royal Assent confer on such person as they determine appropriate responsibility to consider the matter referred to in subsection (2).
- (2) The matter is whether the Scottish Children’s Reporter Administration continues to perform its role to a satisfactory standard in consequence of the additional responsibilities conferred upon it by this Act.
- (3) The person on whom this responsibility is conferred must make a report to the Scottish Ministers.
- (4) The Scottish Ministers must—
  - (a) lay the report before the Scottish Parliament as soon as practicable after they have received it,
  - (b) publish the report in such manner as they consider appropriate.>

### **Power to make ancillary provision**

**Maree Todd**

**99** In section 67, page 35, line 9, leave out <or in connection with> and insert <, in connection with or for giving full effect to>

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