

Age of Criminal Responsibility (Scotland) Act 2019

Child Interview Rights Practitioners – Code Of Practice

June 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

Age of Criminal Responsibility (Scotland) Act 2019

Child Interview Rights Practitioners – Code Of Practice

Introduction

1. This Code of Practice sets out the national standards of practice that apply to all Child Interview Rights Practitioners (ChIRPs), as implemented by the Age of Criminal Responsibility (Scotland) Act 2019 (Register of Child Interview Rights Practitioners) Regulations 2021. The Code of Practice (and associated policy paper) will inform the exercise of functions by the Scottish Ministers in relation to the operation and management of the register, as well as setting out the relevant requirements on ChIRPs in relation to competencies and training.

Background

2. The policy intention of the Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”) is to protect children from the harmful effects of early criminalisation, while ensuring that incidents of harmful behaviour by children under 12 can continue to be effectively investigated and responded to appropriately.

3. Commencement of the Act is being phased. Since November 2019 (under section 3 of the Act, it has not been possible for children under 12 to be referred to a children’s hearing on offence grounds. Once fully implemented, it will not be possible for children under 12 to be charged or arrested with an offence, and police will not have recourse to their criminal justice powers.

4. The Act provides the police with specific powers to investigate incidents of serious harmful behaviour which took place when a child was under 12 in a manner which ensures that the child’s well-being is always treated as a primary consideration.

5. This means that at all stages of an investigation under the Act, social workers and police officers will be alert to the child’s individual needs and will take a trauma-informed approach in their interactions with the child. The ChIRP is also required to act in accordance with this approach, which is reflected in the competencies and standards of conduct required for registration.

6. The questioning of a child in relation to serious harmful behaviour which took place when a child was under 12, is by way of an investigative interview. Other than in urgent cases, an investigative interview must be jointly planned by social work and police. Planning will take place in an ACR Interagency Referral Discussion (IRD). Involvement of a prospective ChIRP at the stage of the development of the interview plan would be beneficial so they are aware of the child’s needs and preferences and any adaptations which are needed for the interview with the child. This is as further reflected in this Code and in the fee structure (at Annex A).

7. A child who is taking part in an investigative interview is not a suspect. The approach taken by professionals involved in the process must reflect the

non-criminal nature of the interview. The investigative interview is not an interrogation and will be carried out in an age-appropriate setting, with every effort being made by the professionals to ensure the child feels safe and comfortable to speak. The ChIRP will have a role to help the child communicate their own needs, wishes and concerns in relation to the conduct of the interview. The intention behind the interview is to understand what happened, and enable the right supports to be put in place for the child, so it will be important to hear the child's own perspectives about the incident of concern.

8. Research undertaken by the Scottish Children's Reporter Administration found that of those children aged 8-11 years referred to a children's hearing on offence grounds in 2013-14, the majority were also referred on care and protection grounds, or already had compulsory supervision measures in place. This evidence demonstrates the link between harmful behaviour and other disruption or trauma occurring in the life of a child responsible for that harm, which, in turn, informed the policy underpinning the Act.

9. Children being interviewed under the Act are likely to be distressed, anxious, display anger, disassociation and confusion and may be highly vulnerable. It is possible that social work and police may be aware of child protection issues prior to the interview, or such concerns may emerge during the course of the interview itself. This will require professionals (social work, police, and ChIRPs) to build a rapport with the child and be flexible and compassionate in their handling of the interview.

10. All professionals involved in the process will have a responsibility to try and secure the appropriate engagement of the child during the interview and to adapt the interview to the child's needs - and to their preferences, unless this is not possible. This will include ending the interview if that is considered to be in the best interests of that child.

11. The ChIRP will be given a copy of the child's interview plan. It would be preferable for the ChIRP to be identified during the planning phase and to offer views to the police and local authority. Their advice would be of a general nature given they may not have already spoken to the child. The ChIRP must meet with the child at least once before the interview. If possible, this should not happen immediately prior to the interview. The ChIRP would be expected to use this opportunity to build some rapport and trust with the child and to explain the role of the ChIRP in the interview, the purpose of the interview, and the potential consequences, rather than planned outcomes which could stem from it. The ChIRP should ascertain the views of the child so far as is reasonably practicable and in an age-appropriate manner. The child may have experienced a traumatic situation that they themselves find it difficult to make sense of, or to talk about. The ChIRP must engage sensitively with the child to help them understand the situation and provide them with advice in an age-appropriate manner.

12. The child has the right to have the ChIRP and/or their supporter¹ present in the room when the interview(s) is being conducted. The child may choose not to have the ChIRP in the room when any part of the interview is being conducted, but in

¹ "supporter" has the meaning given by section [50\(2\) of the Act](#)

this situation the ChIRP must remain on the premises where the interview is being held and the child must have access to their ChIRP at all times.

13. Any child involved in seriously harmful² behaviour whilst under the age of criminal responsibility will have their needs addressed without being treated as a criminal or a 'perpetrator', regardless of whether they are under the age of 12 or not at the time of the investigative interview. One of the consequences that may stem from an investigative interview could be referral to the Children's Reporter. The Reporter will make a decision about whether to arrange a children's hearing, making any investigations that are required in order to make this decision. The Reporter will not be able to refer a child on offence grounds where the offence took place when the child was under the age of criminal responsibility. The most likely alternative grounds under the Children's Hearings (Scotland) Act 2011 will be:

- Section 67(2)(m): that the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person; or
- Section 67(2)(n): that the child is beyond the control of a relevant person.

14. Other processes may be more appropriate. If a child is at risk of significant harm, child protection procedures apply. If it becomes apparent that the behaviour of concern is unlikely to have caused / to cause serious harm, Early and Effective Intervention (EEI)³ processes may be appropriate.

15. Chapter 2, of Part 2 of the Act provides that there shall be no automatic future release of information by Disclosure Scotland pertaining to the child's behaviour while under 12. Information about behaviour that occurred while a person was a child under 12 may still be retained by the police and other relevant bodies for their purposes. This information may be disclosed by the chief constable as "Other Relevant Information" (ORI). This will *only* happen if the chief constable considers that the ORI is relevant to the purpose of the disclosure and that it ought to be disclosed, and, following a review of the information, the Independent Reviewer agrees. Disclosure will only be possible on an enhanced disclosure or PVG scheme record. State disclosure by Disclosure Scotland will only occur in rare instances after very careful consideration by the Independent Reviewer of all information available at the time.

16. The ChIRP should be mindful that disclosure of this behaviour will only take place in exceptional occasions. The purpose of the interview is to find out what happened in order to ensure the right interventions are in place for the child and others. It is within this context that the ChIRP is expected to provide their advice.

² The extent to which harm might be considered serious has been defined as harmful behaviour of a violent or sexual nature which is life threatening and/or traumatic, and from which recovery, whether physical or psychological, may reasonably be expected to be difficult or impossible.

³ EEI provides an opportunity, where appropriate, to divert children from formal systems such as the Children's Hearing System. EEI allows for a proportionate and appropriate response to address any identified needs and concerns.

Conditions for Registration

17. A registered ChIRP must notify the Scottish Government in advance or, which failing, within no more than twenty working days (or longer if special reason for exceeding twenty days can be shown) of any changes to information or documentation relevant to that person's registration as a ChIRP.

18. A registered ChIRP shall at all times be in possession of a current valid practising certificate which does not have a restriction preventing the provision of children's legal assistance.

19. A person is included in the register of ChIRPs on the basis that they certify that (s)he complies with, and will continue to comply with, the terms of this Code of Practice.

20. In addition to the registration requirements under the child's legal assistance scheme, a person applying for registration on the ChIRPs register will be required to demonstrate the following additional key competencies:

- Competence 1 – A good understanding and detailed knowledge of the provisions of the Age of Criminal Responsibility (Scotland) Act 2019 and associated regulations.
- Competence 2 – A good understanding of Getting it Right for Every Child and child protection practice and the range of screening and preventative procedures.
- Competence 3 – A good practical understanding of child development and the principles of communicating with children, and a trauma-informed approach.⁴
- Competence 4 – A good understanding of the ethos behind the investigative interview and the potential additional consequences that could flow from it.
- Competence 5 – The appropriate skills and experience of working sensitively with children under 12, including experience of representing children and young people at children's hearings and related court proceedings.
- Competence 6 – An understanding of children's rights in line with the UNCRC, particularly the rights of children who may be in need of special protective measures, or who come into conflict with the law.

Training requirements

21. The Scottish Government will organise pre-registration training for assessment of competences required for the role of ChIRP for solicitors expressing an interest in registering as a ChIRP. The ChIRP would be expected to demonstrate ongoing competence, with annual refresher training available and the opportunity to share good practice.

Standards of Professional Conduct

22. A ChIRP's conduct as a solicitor is regulated by the Law Society of Scotland, which sets out the standards of service and conduct and provides rules and guidance with which all solicitors must comply. Consequently, solicitors will at all times act independently, honestly and in accordance with the standards of ethics and conduct defined by the Society and, whilst carrying out the specific responsibilities of a ChIRP, will act in accordance with the standards reflected in this Part of the Code.

23. In providing advice to children who are taking part in investigative interviews, ChIRPs will be expected to act in accordance with the ethos behind the interview, appreciating the non-criminal nature of the interview. While discharging their professional duties to a child, a ChIRP must always treat the need to safeguard and promote the best interests of the child as a paramount consideration. This should be in a manner that safeguards and promotes the wellbeing of the child throughout their childhood as a primary consideration, and respects their rights.

24. In addition to providing advice, support, and assistance in an age appropriate way, the ChIRP will, so far as reasonably practicable, be required to draw out the views of the child and while not determinative, it will be important for the ChIRP to take the child's preferences into account. While the ChIRP cannot ensure another person's understanding, he or she should take all reasonable steps to try and assist the child's understanding or to enlist further specialist support if required. A ChIRP must consider and decide the most appropriate and effective way to communicate with the child, including whether an interpreter is required and if not already involved, ensure that one is available, with continuity for the child where possible.

25. The explanation of the role to a child should normally take place when the ChIRP meets with the child for the first time, and may require to be repeated at subsequent meetings. The ChIRP is there to ensure the child is aware of their rights and potential consequences stemming from an interview. The ChIRP must explain the following to the child:

- The child's right not to answer any questions during the interview.
- The right of the child to have the ChIRP and/or their Supporter present in the room when the interview is being conducted and to have access to their ChIRP at all times.
- The child's right to give their views on the extent and the ways in which they wish advice, support and assistance to be provided by the ChIRP, and for the ChIRP to have regard to these views.

26. The ChIRP must also ensure the following: that there is a legal basis for the interview, the interview is conducted in accordance with the interview plan, the child has been given a copy of the plan prior to the interview, and that the child has had the right to consult with the ChIRP prior to the interview.

27. The ChIRP is to support the child to be able to effectively participate in an interview to the extent that the child wishes. They are likely to discuss the details of why they are being interviewed, and what actions the child will wish to take in order

to prepare and participate in the interview. The ChIRP must also communicate to the child the potential consequences which could stem from the investigative interview.

28. After the interview the ChIRP will speak to police and social work and then with the child to explain any further steps that may be taken.

29. If the Scottish Government is not satisfied that a person is able to demonstrate the above competencies prior to inclusion in the register as a ChIRP then the person will be refused registration.

30. Registered ChIRPs will be expected to maintain the key competencies outlined in paragraph 20 of this Code of Practice and be able to demonstrate this when called upon to do so. Failure to be able to demonstrate these key competencies at any time after registration may result in de-registration.

31. If at any time a ChIRP is removed from the child legal assistance scheme, that person must also be removed from the register of ChIRPs. A ChIRP must, as soon as practicable, notify the Scottish Ministers in writing if they are no longer entitled to provide children's legal assistance under that scheme.

32. It is open to a person to re-apply for registration if they are able to demonstrate that they have subsequently obtained the required competencies.

33. As a pre-requisite to being in a position to meet the additional standards of this Code, regard will be had to the rules and guidance of the Law Society of Scotland in assessing whether a person's conduct meets the standard required.

34. In assessing whether the person's conduct meets the required standard, the views of the child in relation to whom the ChIRP was appointed, a relevant person in relation to that child, the other participants in the interview such as police and social work may be sought.

35. A ChIRP will be required to use a "case management", auditable approach, showing effective case management and closure processes, for monitoring and evaluation purposes.

36. Registration as a ChIRP would initially be for a period of 3 years, with the possibility of registration for a subsequent period of between 1 and 3 years, as determined by the Scottish Government.

Place of Consultation

37. A ChIRP should make arrangements to speak with the child in person prior to the interview, taking the child's views on location into account as far as possible. This should take place ideally at a date and time not immediately prior to the time of commencement of the interview. This may be at the same location designated for the investigative interview. A ChIRP may also consult with a child at a suitable place, such as where the child resides (e.g. their home, at a foster carer's home), at school or within a young person's centre, where it can be demonstrated that the child's best interests would be better served in doing so.

Child Interview Rights Practitioners – Fee Structure

Fixed appointment fee (£400)

1. This is a flat fee in respect of an appointment as a ChIRP and covers:
 - Reviewing available information (including the child's interview plan).
 - Communications with police officers and social workers and other relevant parties such as the child's supporter prior to, and following, the investigative interview.
 - Consultation with the child prior to, and following, the interview.
 - Preparing for the investigative interview.

Consider Interview Plan and liaise with police/social work - £110 fixed fee

2. If, upon receipt of the child's interview plan, a ChIRP realises there is a conflict of interest and needs to withdraw, it is not appropriate to claim a fixed appointment fee. If a ChIRP subsequently becomes aware of a reason why they cannot continue they will be able to claim for the work carried out.

Attendance at the investigative interview (or court as necessary): £110.00-£220.00⁵ (per daily attendance)

3. As the ChIRP must remain on-site and at any time may be requested by the child, this will be paid regardless of whether the ChIRP is with the child in the interview room or whether they are elsewhere in the building. If the ChIRP attends the interview but the child is not able to attend, the fee of £110.00 would be paid to the ChIRP for making themselves available to attend.

Travel Time

4. Travel time is in line with the rates payable under the children's hearings' safeguarder scheme.
 - Anything under 4 hours – Fixed fee of £30
 - Anything between 4 – 6 hours (round trip) – Fixed fee of £65
 - Anything between 6 – 8 hours (round trip) – Fixed fee of £130
 - Over 8 hours (round trip) – Fixed fee of £150 per each day of travel

5. Travel should be calculated between the ChIRPs base/residence and the place visited. The shortest practicable route should be taken and the most effective form of transport must be considered.

Reimbursement of expenses and allowances

6. The general principle governing the claiming of expenses and allowances is that reimbursement is not appropriate unless additional expense is actually incurred

⁵ A daily fee of £110 can be claimed for attendance of less than 2 hours with a maximum amount of £220 for attendance that is over 2 hours.

in carrying out the role of a ChIRP and attending the investigative interview. When this occurs, all expenses and allowances including actual receipted costs and flat rate mileage payments are payable to ChIRPs. The rate reimbursed for expenses and allowances is as set out below.

7. Where there are items of expenses where it is not possible to obtain receipts (such as paying for parking by phone) then this should be claimed for with an explanation of why the receipt isn't available. A cap of £10 is set on unavailable receipts.

Expense or Allowance Type	Rate
Bed and Breakfast	Up to £75.00. Receipt required
Car Hire	Receipt required
Car Parking	Receipt required
Staying with Friend	£25.00 per 24 hours
Meals Allowance	Maximum £23.50 per 24 hours and receipted
Motor Mileage Rate	£0.45 per mile
Motor Cycle Allowance	£0.24 per mile
Pedal Cycle Allowance	£0.20 per mile
Passenger Supplement	£0.05 per mile per passenger
Overnight by Train or Boat	£24.10 per 24 hours
Public Transport Air	Receipt/ticket required
Public Transport Bus	Receipt/ticket required
Public Transport Rail	Receipt/ticket required Standard class should be used
Public Transport Ferry	Receipt/ticket required
Public Transport Taxi	Receipt/ticket required
Public Transport Tube	Receipt/ticket required
Toll Charges	Receipt/ticket required
Personal incidental Expenses Allowance	Up to £5.00 per day. Receipt required
Necessary and ancillary administrative expenses	Receipt required
Miscellaneous	Receipt required

Interpretation Fees

8. Should the services of an interpreter be required, this will be sourced and authorised by the Scottish Government.



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-014-5 (web only)

Published by The Scottish Government, June 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS878986 (06/21)

W W W . g o v . s c o t