

Age of Criminal Responsibility (Scotland) Act 2019

Part 4 – Police Investigatory and Other Powers

Statutory Guidance on the use of a Place of Safety

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Ministerial Foreword

The Age of Criminal Responsibility (Scotland) Act 2019 increases the age of criminal responsibility in Scotland to 12 years of age. This means that primary school-aged children will no longer be dealt with as criminal suspects.

We know that harmful behaviour is often a symptom of deeper welfare concerns and trauma in a child's life. Increasing the age of criminal responsibility seeks to bring about a positive cultural shift in how harmful behaviour by young children, and the issues that lead to it, is seen and understood in Scotland.

It is crucial for all of us to act in a way that protects children, cares for their needs and upholds the principles which underpin children's rights. Protecting children from the harmful effects of criminalisation, whilst ensuring that they and their family receive the right support, will improve their life chances and well-being.

The Act sets out a number of measures that enable action to be taken by the police and other statutory agencies when children under 12 are involved in serious incidents. These measures will ensure that the harmful behaviour of children under 12 can continue to be investigated, and that authorities respect and respond to the needs of victims.

This guidance sets out the responsibilities and procedures to be followed by police, in collaboration with local authorities in relation to the power to taking a child under the age of 12 to a place of safety in certain limited situations.

We would like to thank Police Scotland, Social Work Scotland and all partners who have been instrumental in developing this guidance.



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1. Introduction and Background

Introduction

1.1 This statutory guidance is published by the Scottish Ministers in accordance with section 31 of the Age of Criminal Responsibility (Scotland) Act 2019 (“the Act”). It contains information for the Police Service of Scotland and local authorities in relation to the use of the power conferred by section 28 of the Act, which provides a constable with the power to take a child under the age of 12 to a place of safety.

1.2 This power can be used if the constable has “reasonable grounds” to suspect that the child is behaving, or is likely to behave, in a way that is causing, or risks causing, significant harm to another person. The power can only be exercised if this is necessary to protect another person from an immediate risk of significant harm (or further significant harm, if they have already been harmed).

1.3 Where there is a need to safeguard and protect a child who may be at risk of harm, child protection procedures should be followed as set out in the [National Guidance for Child Protection in Scotland](#).

1.4 The need to safeguard and promote the wellbeing of the child as a primary consideration¹ applies to the powers set out in this guidance.

1.5 Section 31 of the Act sets out that the chief constable and each local authority must have regard to the guidance.

1.6 Link to the Age of Criminal Responsibility (Scotland) Act 2019:
<https://www.legislation.gov.uk/asp/2019/7/contents/enacted>

Policy Context

1.7 The policy intention of the Act is to protect children from the harmful effects of early criminalisation, whilst ensuring that the child and their family receive the right support. Where the behaviour of a child under the age of 12 has caused significant harm and requires investigation, their rights must be properly recognised, upheld and protected in line with UNCRC.

1.8 The Scottish Government’s vision of Scotland as the Best Place to Grow Up is one that extends to all children. A holistic approach to understanding and responding to the needs of children, including those involved in harmful behaviour, helps improve life chances, promotes more positive outcomes and makes Getting It Right For Every Child (GIRFEC) a reality.

1.9 A child under the age of 12 years cannot be treated as having committed an offence. To ensure a GIRFEC child-centred approach - whilst continuing to support the police service in their statutory obligation to investigate crime - the police and local authorities must work together to consider the wider influences on a child’s developmental needs when thinking about their wellbeing. This is particularly

¹ Section 72(2) of the Act.

pertinent during an emergency situation where consideration of a place of safety may be required.

1.10 The term “place of safety” is not unique to this legislation. Section 56 of 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.

1.11 The criteria for taking a child to a place of safety sets a high bar test for use of the powers (set out in Section 2 of this guidance). They do not diminish the wider duties of a constable to respond to an incident or the needs of a child involved. When a constable’s view is that a child should not be left unsupervised, it is essential that they leave the child in the care of a responsible adult. This is entirely consistent with UNCRC, the duties under sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012, and the wider legal context within which constables carry out their duties.

1.12 Where there is a concern that a child is at risk of significant harm or further such harm, child protection processes must be followed as set out in the [National Guidance for Child Protection in Scotland](#).

1.13 Section 28 of the Act addresses the need to ensure police officers can intervene effectively to protect individuals and communities. It provides constables with the ability to take a child to a place of safety to ensure the safety of others who may be at immediate risk of significant harm or further such harm from the child.

1.14 Regardless of the legislation used, and the harm caused, it is important to keep a keen focus on the immediate needs of the child.

1.15 The removal of a child raises issues in relation to the child’s right to liberty (Article 37(b) UNCRC and Article 5 ECHR). Accordingly, removal to a place of safety must only be used as a measure of last resort, in relation to the protection of any other person from an immediate risk of significant harm (or further such harm). The child can only be kept in a place of safety for so long as is necessary to put in place arrangements for the care and protection of the child or for an order under section 63 of the Act, authorising the taking of intimate samples from the child, to be obtained. In either case, the child must not be kept in the place of safety for longer than 24 hours. If these safeguards are not adhered to, then the child’s right to liberty will be infringed.

1.16 Due to the unintended consequences and additional trauma removing a child to a place of safety can have on a child, constables should use their professional judgement to establish whether the use of section 28 powers is necessary and proportionate. The ability to invoke section 28 is to be balanced against the requirement, necessity and justification of doing so.

1.17 Remaining within the family home should always be the priority where appropriate. It is anticipated that in most situations a constable comes across and where the child consents, the constable will return a child to their home and a place of safety will not be required. Where there is doubt as to the suitability of the person to whom the child is being returned, then consultation with local authority should be carried out.

1.18 Where the child does not consent to being taken home, their normal place of residence can be used as a place of safety where the test for exercise of the section 28 power is met. There may be considerations around whether this is a suitable place, but it is for police to determine, in consultation with the local authority, whether this is suitable in the individual case.

1.19 Where another place of safety is required, in many situations it will be safe and in the child's best interests to be placed within the wider family. However, the optimal place of safety will depend on the needs of each child and contextual factors. Due consideration must be given to the capacity and commitments of potential carers and care settings; and to the needs of and risks relating to other children in a potential placement. This is why consultation with the local authority is key.

1.20 Police officers and social workers (and any other professionals involved) will be alert to the child's individual needs and should follow trauma-informed principles² in any interactions with the child.

1.21 Care experienced children may be particularly vulnerable due to traumatic experiences and the likelihood of their disproportionate contact with formal systems and the police. Part 9 of the Children and Young People (Scotland) Act 2014 requires Corporate Parents to be alert to matters which adversely impact on looked after children and to promote their interests.

2. Responsibilities and Procedures

Criteria for use of a place of safety

2.1 The criteria for taking a child under the age of 12 to a place of safety are set out in sections 28(1) and 28(2).

2.2 The power is designed as an emergency response to situations where a child under the age of 12 poses an immediate risk of significant harm or further such harm to another person.

2.3 Harmful behaviour can be physical, psychological or sexual in nature. Behaviour is harmful when it results in or is likely to result in unnecessary suffering and/or physical or psychological damage and/or impairment to health and development.

2.4 The extent to which harm is 'significant' relates to the severity or likely severity of suffering and/or physical or psychological damage and/or impairment to health and development.

2.5 It is a matter for professional judgement, based on the gathered evidence and context, as to whether the degree of harm to which the victim is believed to have been subjected, is suspected of having been subjected, or is likely to be subjected, is 'significant'.

²As set out in Pages 30-36 of the [nationaltraumatrainningframework.pdf \(transformingpsychologicaltrauma.scot\)](#)

2.6 It is essential that constables are able to articulate the impact that resulted in their use of powers and must cover the essential elements, namely:

- It is necessary to do so to **protect any other person**; and
- There is an **immediate risk of significant harm or further such harm**.

Identifying an appropriate place of safety

2.7 The need to safeguard and promote the wellbeing of the child being cared for in a place of safety is treated as a primary consideration in accordance with section 72(2) of the Act. At any time there may be a need to consider measures to protect the child, and child protection procedures must be followed.

2.8 Whilst the Act gives a constable the power to remove a child to a place of safety, local authorities are best placed to identify potential places that will best meet the needs of the child, taking into account the current circumstances. The police must notify the local authority of the need for a place of safety in circumstances where the child's home is not appropriate. Agreement should be sought as to the most suitable and available resource as quickly as possible.

2.9 Section 28 of the Act lists the categories of establishment which can be used as a place of safety. Provision within each local authority will vary but examples include:

Category	Example
<p>a residential or other establishment provided by a local authority</p> <p>a community home within the meaning of section 53 of the Children Act 1989 (c.41)</p>	<ul style="list-style-type: none"> • multi-agency child protection unit • children's house • care home • residential unit • school/community campus • nurseries • family support centres • library • sports centre/clubs • community centre • social work office • outreach/cluster flat • private let accommodation
<p>a hospital or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child</p>	<ul style="list-style-type: none"> • hospital • child health clinics • specialist health resources • CAMHS services • medical centres • therapeutic support services
<p>the dwelling-house of a suitable person who is so willing</p>	<ul style="list-style-type: none"> • child's home • person within the family network • family friend • foster carer • childminder

any other suitable place the occupier of which is so willing	<ul style="list-style-type: none"> • third sector support services • places of worship • church halls
a police station	

2.10 Annex A includes the core principles to meet the standards for a place of safety and lists the components required to help identify local premises.

2.11 Following the use of this power, an inter-agency referral discussion (IRD) may be necessary to ensure a co-ordinated approach to next steps in collaborative safeguarding and protection of the child’s wellbeing, depending on the situation. Inter-agency referral discussions (IRDs) are established mechanisms that allow a multi-agency approach for children and their needs.

2.12 At all stages, the parent³ or carer of the child must be involved and informed, unless doing so would place the child or someone else at immediate risk. This includes informing a parent or carer of the child that they have been taken to a place of safety and where that place is.

Use of a police station as a place of safety

2.13 Where there is an urgent need to remove a child under 12 and an appropriate place of safety cannot be identified immediately following consultation with social work, the Act permits a child to be taken to a police station.

2.14 Whilst a police station is included in the definition of a place of safety, it must only be used in exceptional circumstances. **All other options must first be considered.** The following conditions apply:

- A child may be kept in a place of safety that is a police station only if a constable of the rank of Inspector or above considers that it is not reasonably practicable to keep the child in a place of safety that is not a police station.
- A child must not be kept in a cell within a police station unless a constable of the rank of Inspector or above considers that it is not reasonably practicable for the child to be kept elsewhere within the police station. In making such decisions, the safety and wellbeing of the child remains a primary consideration alongside the safety of other persons.
- A child must not be in a cell for any longer than is considered necessary. If this is essential to prevent immediate harm, then alternatives must be sought and utilised as soon as possible. A child must never be left unsupervised in a cell.

Maximum period of use of a place of safety

2.15 The removal of a child to a place of safety raises issues in relation to the child’s right to liberty (Article 37(b) UNCRC and Article 5 ECHR) and this power must

³ parent” includes guardian and any person who has care of the relevant child, (except where provided otherwise: see section 40(7) <https://www.legislation.gov.uk/asp/2019/7/section/40/enacted>)

only be used as a measure of last resort, in relation to an immediate risk of significant harm.

2.16 The child may only be kept in a place of safety for so long as is necessary to put in place arrangements for the care and protection of the child or for an order for the taking of intimate samples under section 63 of the Act to be obtained. In either case, the child must not be kept in the place of safety for longer than 24 hours. There is no power to keep the child in a place of safety after that time.

2.17 Child protection processes including an assessment of the context of the harm may need to be considered in managing the risks posed to and from the child, as focus solely on the family rather than wider relationships may not suffice in managing presenting behaviours.

2.18 The child must be returned home within 24 hours or earlier if safe to do so for the child and any potential victim. The provisions will cease to have effect from the point at which the child is left in the care of their parent or carer.

2.19 If a return home would be inappropriate or unsafe, alternative arrangements must be made for the care or protection of the child in line with child protection procedures, and as soon as possible within the 24 hour period.

3. Monitoring, Evaluation and Reporting on the Use of Places of Safety

3.1 Section 32 of the Act requires the Scottish Ministers to present the Scottish Parliament with a report setting out information on the exercise of section 28 powers on an annual basis.

3.2 Monitoring and reporting on use of the power will ensure that provisions are being limited to those circumstances where “it is necessary to do so to protect any other person from an immediate risk of significant harm or further such harm to others”.

3.3 To support the development of the annual report on the exercise of section 28 powers, Police Scotland must ensure processes are in place to gather the following information:

- Reason for seeking place of safety – to include the following details:
 - nature and circumstances of the incident;
 - evidence of child’s behaviour causing risk of significant harm to others;
 - evidence that exercising the section 28 power was necessary to protect others from an immediate risk of significant harm;
- Type and location of place of safety;
- Length of time at place of safety;
- Whether the child was kept in police station and, if so, reasons why;
- Whether the child was kept in a cell within police station and, if so, why, for how long and who was with them.

Information Sharing Agreement

3.4 An information sharing agreement will be set up between Scottish Government officials and Police Scotland regarding the most appropriate mechanism to share and collect relevant data.

Preparing/Publishing Report

3.5 Scottish Ministers are required to prepare a report in relation to the information recorded by Police Scotland. The first report must be laid before the Scottish Parliament after the first year of section 28 being in force and then annually after that. The frequency of the reporting period may be amended by regulations (subject to affirmative procedure).

4. List of Places of Safety

4.1 Section 29 of the [Age of Criminal Responsibility \(Scotland\) Act 2019](#) requires the Scottish Ministers to compile, maintain and publish a list of places of safety across Scotland which may be used by a Police Constable where a child under the age of 12 meets the relevant criteria.

4.2 Links to the published list will be circulated separately.

4.3 Where a place of safety is required, Police Scotland should contact the local social work team who will determine availability at that point.

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List of Places of Safety

Key messages

A child who has behaved in a manner that has potentially caused serious harm to another person is likely to have experienced childhood adversity and difficulties such as significant loss, abuse, neglect, trauma and a disrupted home and school life. Negative early life experiences can leave some children extremely vulnerable to environmental pressures and this can, in turn, contribute to the emergence of violence and/or other forms of harmful behaviours in childhood.

Police and statutory services will take action to protect the safety of those involved in the situation and attend to the needs of all including victims. All investigative and planning activity triggered by a child's harmful behaviour must have regard for the child's wellbeing as a primary consideration. Interventions must aim to protect children, reduce stigma and ensure better future life chances.

The GIRFEC principles and approach must be followed, ensuring that the child is treated with respect and dignity and that their rights are upheld in line with UNCRC. Children have a right to be cared for valued, be heard, be safe and be respected as well as receiving the right help and support for the wellbeing and development.

At any stage where there are concerns identified for the safety and wellbeing of a child, child protection processes must be followed. The National Guidance for Child Protection and local child protection procedures must be followed in this situation.

Where a Place of Safety is required under Age of Criminal Responsibility (Scotland) Act 2019, arrangements should be put in place that ensures the child's best interests remain at the forefront throughout and prevent traumatising of the child, while police undertake their duties.

General principles

- The rights of the child must be properly respected, recognised and upheld in line with UNCRC at all times.
- Trauma informed practice and principles must be adhered to no matter the circumstances or behaviour.
- There must be a child-centred, welfare focussed approach towards a child's harmful behaviour.
- Intervention must be informed by an understanding of child development, including issues relating to an awareness of the chronological and developmental age of a child, communication issues, disability and vulnerability.
- The child's needs and best interests must be at the centre of both decision making processes and any interventions.
- Ensure clear communication and co-ordination with those who care for and have responsibilities towards the child and other children closely affected.

- Children most at risk of being involved in harmful behaviour may also be at risk, or have experienced harm themselves.
- The child must be supported to enhance their ability to fully participate in processes in an informed way.
- Care experienced children may be particularly vulnerable to further trauma and all agencies must be mindful of their corporate parenting duties to looked after children.
- Early adverse contact with agencies is in itself a factor likely to heighten the risk of further offending behaviour involving children and young people.
- A child's must not be considered as an "offender" or "criminal".
- Serious incidents must be met with a compassionate, sensitive, proportionate and effective response, addressing the needs of children, families, victims and the wider community.
- Children must be listened to and meaningfully and appropriately involved in decision-making about their care, with all those involved properly listening and responding to what they want and need.
- There must be compassionate and caring decision-making.
- Active listening and engagement is fundamental to making the right decisions and provides support for children and families.

These principles will support the future quality of any information gathered about an incident as well as supporting recovery and longer term health and wellbeing for the child and reduce the possibility of future harmful behaviour.

If it appears that behaviours observed or reported fall short of risking or causing 'serious harm', the local processes for proportionate, co-ordinated 'Early and Effective Intervention' will apply within the Whole System Approach adopted in most areas. GIRFEC and Early and Effective Intervention aim to prevent children entering into formal systems if compulsory measures are not needed.

Identifying local places of safety

Local areas can identify local premises that can be used as a Place of Safety. Most will be places where a child can be accommodated such as foster carers and in some cases residential care. Social work will undertake an assessment of suitability and local availability of resource at the time it is required.

However if a child requires time out and support for a short period, an alternative local resource could be used, if it meets the required criteria/ standards.

The aim is to support the wellbeing of the child at a time of crisis therefore this must be child friendly and supportive environment that does not traumatise a child.

In circumstances where a child will need to be taken to a Place of Safety, the following key components will assist in identifying suitable locations:

- High quality child friendly environment where a child feels safe and secure, reduces distress and provides comfort and nurture.
- Local – reduce the need to travel and remain in a familiar community.

- Available at suitable time in an emergency - access may be required any time of the day or night including weekends therefore clear out of office arrangements are needed.
- Some premises may only be available at particular times and consideration must be given to current use and compatibility with place of safety requirements in an emergency situation.
- Swift local agreement in real time are required to ensure timely response and planning - practical processes need to be in place locally to gain access at the time required.
- Good coordination and cooperation required at local level so police can easily identify space at the time needed – for example single point of contact to access premises / identified local contacts.
- Swift decision making and supportive responses to ensure wellbeing of the child is central.
- The premises must be a child friendly environment suitable for children under 12 years old, this will reduce anxiety and prevent traumatisation.
- The premises must support feelings of safety, security and wellbeing (for example with the availability of soft furnishings/toys etc).
- The premises must provide a private, confidential space to minimise stigma
- Internal and external look and feel of the premises should minimise children's anxiety and put them at ease.
- Guidance on taking forensic samples from children is being developed by the Police Care Network.
- Premises should have minimal noise, interruptions and distractions.
- Access to refreshments/ toilets etc.



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