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## Age of Criminal Responsibility (Scotland) Act 2019 (ACRA)

### ACRA Operational Guidance for Social Work and Police

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## 1. PURPOSE

- 1.1. This Guidance contains information to support Police Scotland and Local Authorities in the application of their operational duties under the Age of Criminal Responsibility (Scotland) Act 2019 (the Act).<sup>1</sup> The Act was fully commenced on 17<sup>th</sup> December 2021.

## 2. INTRODUCTION

- 2.1 This Guidance should be read in conjunction with the following, published by Scottish Ministers.

- [Age of Criminal Responsibility \(Scotland\) Act 2019 – Statutory Guidance on Investigative Interviews](#)
- [Age of Criminal Responsibility Act \(Scotland\) Act 2019 – Statutory Guidance on the use of a Place of Safety](#)
- [Age of Criminal Responsibility \(Scotland\) 2019: list of places of safety - gov.scot \(www.gov.scot\)](#)
- [Age of Criminal Responsibility Act \(Scotland\) Act 2019 – Child Interview Rights Practitioner Code of Practice](#)

- 2.2 The Act raises the age of criminal responsibility to 12 years and provides specific powers for police investigating **serious cases** of harmful behaviour and includes duties for Local Authorities.

- 2.3 The Act is underpinned by the key principles that a child **cannot be held criminally responsible** for harmful behaviour that amounts to a crime or offence which **occurred** when the **child was aged under 12. The child cannot be arrested or charged** with offences.

- 2.4 The use of language is important. References must relate to the child's behaviour, wellbeing and welfare needs, and risks and not to criminality<sup>2</sup>.

- 2.5 Part 4 of the Act relates to police powers in relation to the use of a place of safety (PoS) and the investigation of serious physical harm or sexual harm by a child, which occurred whilst aged under 12. This Part also contains the duties for Local Authorities in these circumstances.

- 2.6 This guidance sets out how police and social work will collaborate to consider the use of investigatory powers under the Act as they relate to the child, whilst ensuring the child's wellbeing and welfare remain a primary consideration.

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<sup>1</sup> Link to the Age of Criminal Responsibility (Scotland) Act 2019: <https://www.legislation.gov.uk/asp/2019/7/contents/enacted> and [Explanatory Notes](#)

<sup>2</sup> [Youth justice: Raising the age of criminal responsibility - gov.scot \(www.gov.scot\)](#)

- 2.7 This guidance defines the operational roles, responsibilities and processes that allow professionals to respond to situations where a constable reasonably believes that a child, whilst under the age of 12 years, is responsible for causing or risking causing harm to another person.
- 2.8 Serious incidents must be met with a compassionate, sensitive, proportionate, and effective response, addressing the needs of children, families, victims, and the wider community.
- 2.9 At any point where concerns are identified about actual or future significant harm to **any** child, the National Guidance for Child Protection in Scotland (2021, updated 2023)<sup>3</sup> must be followed. If child protection (CP) concerns arise in relation to the child who is believed to have caused or risked causing serious harm to another person, the immediacy of risk of significant harm to the child involved will determine the prioritisation of next actions.
- 2.10 Any exercise of the functions authorised by the Act must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.

### 3. BACKGROUND

- 3.1 The intention of the Act is to protect children from the harmful effects of early criminalisation, while ensuring that children and their families receive the right support.
- 3.2 The rights of the child must be properly recognised, upheld and protected in line with the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC<sup>4</sup> states that children who come into conflict with the law have a right to be treated fairly, with appropriate safeguards and in a manner consistent with the child's sense of dignity and worth (Article 40). Children also have the right to participate effectively in proceedings, have their views listened to and taken into account (Article 12) and to have their privacy respected (Article 16). It is crucial that the approach taken by all professionals takes account of the evolving capacities of the child (Article 5). [All action must comply with the UNCRC \(Incorporation\) \(Scotland\) Act 2024.](#)<sup>5</sup>

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<sup>3</sup> [National Guidance for Child Protection in Scotland 2021 - updated 2023 - gov.scot](#)

<sup>4</sup> The UN Convention on the Rights of the Child provides further detail on upholding children's human rights in justice settings in [General Comment 24](#), including during police interviews. Additional guidance is provided in the [Council of Europe Guidelines on Child-Friendly Justice and Human rights: Children's rights - gov.scot \(www.gov.scot\)](#)

<sup>5</sup> The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 came into effect on 16<sup>th</sup> July 2024 <https://www.legislation.gov.uk/asp/2024/1/contents>

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- 3.3 Getting it Right for Every Child<sup>6</sup> (GIRFEC) emphasises the need to take a child centred approach, understanding the wellbeing of a child in their current situation, taking into consideration the wider influences on a child and their developmental needs. This Guidance is therefore relevant to all agencies and services that support children and families through effective and collaborative partnership working.
- 3.4 The intentions of the Act are compatible with Scotland's approach to welfare and the protection of children as represented within the ethos and principles of the Kilbrandon Report<sup>7</sup>, which informed the establishment of the Children's Hearing system in 1968. The Kilbrandon vision of a welfare approach for young people 'in trouble' or at risk, continues to ensure that the system considers and deals with the underlying issues in a child's life.
- 3.5 The aim of the Act also aligns with the intentions outlined in The Promise (Independent Care Review, 2020) which highlights the disproportionate criminalisation of care experienced children and young people.<sup>8</sup>
- 3.6 A child who has behaved in a manner that has caused or risked causing significant harm or serious physical harm or sexual harm to another person<sup>9</sup>, may themselves have experienced childhood adversity and difficulties such as significant loss, abuse, neglect, trauma, or 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 forms of harmful behaviours in childhood.<sup>10</sup>
- 3.7 All investigative and planning activity triggered by a child's believed significant or seriously 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.
- 3.8 Police and social work are required to use professional judgement to establish whether using the investigative powers under the Act is necessary and proportionate.
- 3.9 Police and statutory services will take action to protect the safety and meet the needs of those involved in the situation, including the victim(s) and the community. Responding proportionately and effectively to the needs of a child who has caused or risked causing harm does not diminish the rights of victims. They will still be the victim of a crime and entitled to have that crime fully investigated by the police and offered the support that is available to all victims of crime.

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<sup>6</sup> [Getting it right for every child \(GIRFEC\): GIRFEC principles and values - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>7</sup> [The KILBRANDON Report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>8</sup> [#KeepThePromise - The Promise](#)

<sup>9</sup> As defined in Part 4 of the Act

<sup>10</sup> [The Report of the Advisory Group on the Minimum Age of Criminal Responsibility \(consult.gov.scot\)](http://www.esytc.ed.ac.uk/) and the Edinburgh study on Youth Transitions and Crime <http://www.esytc.ed.ac.uk/>

- 3.10 Close collaborative working between police, social work and core services is essential at all stages. This means that effective communication will be required at key points where decisions and arrangements are required to be made in relation to ACRA IIs and associated processes. Children who are subject to the provisions of the Act may be known to social work, as well as health and education services, so a joint approach to planning is essential to ensure that the needs and wellbeing of the child are paramount considerations.
- 3.11 Discovering what happened in circumstances of serious harmful behaviour is dependent upon trauma-informed<sup>11</sup>, child centred, rights respecting processes and practice. This includes communication and co-ordination with those who care for and have responsibilities towards the child and any other children who have been affected.

#### 4. CRITERIA AND CIRCUMSTANCES FOR USING POLICE POWERS TO QUESTION A CHILD

- 4.1 The Act **limits the power** of the police to question or interview a child under 12 years of age to circumstances where a constable has reasonable grounds to suspect that the child<sup>12</sup>:
- by behaving in a violent or dangerous way, has caused or risked causing **serious physical harm** to another person, or
  - by behaving in a sexually violent or sexually coercive way, has caused or risked causing **harm** (whether physical or not) to another person.
- 4.2 Under these circumstances, the child may only be questioned by police<sup>13</sup> or participate in an ACRA II, in relation to the incident under investigation, if authorised by:
- agreement of the child and parent, or
  - a CIO granted by a sheriff on application by the police, or
  - in urgent cases where there is risk of loss of life
- 4.3 Investigative interviews under the Act are only for **serious incidents** involving concerns about the behaviour of a child (outlined in 4.1) whilst under the age of 12 and, only when it is considered **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). Where an investigative interview is required, the Act provides a distinct process for this to occur.

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<sup>11</sup> [The National Trauma Training Programme \(NTTP\) | NHS Education \(scot.nhs.uk\)](https://www.nhs.uk)

<sup>12</sup> Section 39(1)

<sup>13</sup> The Act allows for the constable to cause a child to be questioned by another person.

4.4 Police can continue to speak with child witnesses of such behaviour and with children suspected of less harmful behaviour, in an age-appropriate way, without applying provisions in the Act. Constables should use professional judgement to establish whether using formal investigative powers within this legislation may be necessary and proportionate.<sup>14</sup>

4.5 **ACRA s.39 – Limitations on Police Questioning of a Child**

4.5.1 Section 39 of the Act creates a prohibition on interviewing a child about seriously harmful behaviour (i.e. where it meets the criteria and is deemed to be an ACRA Incident by police) other than in accordance with the provisions within the Act, i.e.

- investigative interview by agreement, or
- investigative interview by means of a CIO.,

4.5.2 Also, in certain circumstances, police may use the power in section 54, which permits urgent questioning, but only where there is a risk of loss of life (authorised by a Superintendent or above) if the child is not questioned immediately.

4.5.3 The Act has specific legal protections built in to **protect the rights of the child** who is under the age of criminal responsibility.<sup>15</sup>

4.5.4 The investigation of harmful behaviour by children under the age of criminal responsibility must take into consideration the **child's right to legal protections as well as victims' rights** and expectations, and the duty of police to investigate all reported crime.

4.5.5 The section 39 prohibition specifically refers to questioning and investigative interviews. This also includes Joint Investigative Interviews (JII) undertaken by police and social work as part of a child protection (CP) investigation.<sup>16</sup>

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<sup>14</sup> the general ability of constables to engage with members of the public (including children aged under 12) will persist, subsection (2) of section 39 introduces a prohibition on police questioning of children aged under 12 except in specific circumstances.

<sup>15</sup> Crime recording standards have remained unchanged. All reported harmful behaviour (whether or not it meets the threshold for an ACRA Incident) by children under the age of criminal responsibility (bearing in mind that a suspect's full identity or age might not be known at the time of reporting) that would previously have been referred to as a crime or offence, must still be recorded according to the Scottish Crime Recording Standards.

<sup>16</sup> Failure to comply with the provisions within the legislation regarding the questioning of a child about harmful behaviour would be **unlawful**. It may render any evidence obtained inadmissible - whether for any criminal proceedings (where there is an adult or older child who is charged with an offence arising out of the same circumstances, which pre-ACRA would have been a co-accused), or for Children's Hearing related proceedings in respect of the child under the ACR. Additionally, the Chief Constable might be left open to legal action.

- 4.5.6 The Act creates a legislative framework which **must** be complied with when the child's harmful behaviour meets the threshold level. This means that the child cannot be questioned by the police, or in a JII, about their harmful behaviour (whether for CP or otherwise), other than by means of the provisions within ACRA. It is also prohibited for the police to cause the child to be questioned by another person (e.g. police cannot ask social work to question the child about the harm and to relay that information back to the police).
- 4.5.7 Whilst a CP concern may become apparent as part of the ACRA II, IRD decision makers and Senior Investigating Officers (SIOs) must be clear that during any subsequent JII, the harmful behaviour cannot be discussed. If the ACRA Incident does arise during the JII (at the behest of the child for example), it must be carefully managed. It should be acknowledged but **not** explored further, much in the same way that JII practice manages criminal admissions made by a child during a JII (refer to section 25).
- 4.5.8 A single agency investigation or interview led and conducted by social work, independent of the police, would **not** fall within the scope of section 39 and would allow social work to assess the child's wellbeing needs and undertake any risk assessment, and for the child to receive necessary interventions and support. It would be expected that the harmful behaviour might need to be explored during engagement with a child (such as therapeutic, support or risk management work) and **section 39 does not prevent this**.

#### 4.6 Child Aged under 12 – No Powers under the Act

- 4.6.1 It is likely most cases where a child, **whilst aged under 12**, is believed to be responsible for harmful behaviour, the behaviour will not meet the ACRA threshold for use of police powers under the Act, for example, behaviour involving **theft, vandalism, or minor assault**. In such circumstances, there are no formal police powers to interview the child about their behaviour or the circumstances surrounding the incident.
- 4.6.2 The ability of police to engage with members of the public, including children under 12, will continue. Children under 12<sup>17</sup> can be spoken to by police voluntarily, with agreement from their parent/carer, in relation to behaviour that does not meet the threshold for serious harm.
- 4.6.3 This will be of relevance to those children who exhibit a pattern of behaviour that does not meet the threshold for using the legislative provisions but that is nevertheless of significant concern and may require a multi-agency response to assess and manage risk and to ensure their needs are addressed and appropriate supports are identified.

#### 4.6.4 Definitions

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<sup>17</sup> In relation to questioning by police, the change in the age of criminal responsibility places children aged 8 to 11 in the same position as children aged under 8.

- 4.6.5 The Act provides different thresholds of harm, dependent upon the type of behaviour exhibited. For the police powers under the Act to apply, where the behaviour is **violent or dangerous**, this must result in **serious physical harm** being caused or risked, and where it is **sexually violent or sexually coercive**, then the harm can be **physical, sexual, or psychological in nature**.
- 4.6.6 Harmful behaviour causes **physical and/or psychological damage or injury** which results in **suffering, and/or impairment to health and development**. Harmful behaviour can be physical, psychological, or sexual in nature.
- 4.6.7 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**.
- 4.6.8 It is a matter of **professional judgement**, based on the gathered evidence and context, as to whether the degree of harm is serious.
- 4.6.9 A single traumatic event may cause **serious harm**. Serious harm can also result from an accumulation of events, both acute and long-standing.
- 4.6.10 Where there is a non-recent report of serious harmful behaviour by a child aged under 12 (at the time of the behaviour), and the child is now aged 12 – 15 or 16/17 (if subject to a Compulsory Supervision Order), then the police powers of investigation under the Act can apply, but only if the behaviour **occurred after the date of implementation of the Act** (i.e., 17<sup>th</sup> December 2021). Refer to Appendix 1 – Definitions of a Child Under the Act.

#### 4.7 Purpose of the ACRA II

The purpose of the interview is to seek information from a child in relation to an incident which is the subject of a police investigation. The interview must be necessary to properly investigate the child's behaviour and the circumstances surrounding it. The intention is to find out what has happened and who was responsible.

- 4.7.1 The Act defines an 'investigative interview' as **a meeting or a series of meetings** planned by police in collaboration with the relevant local authority<sup>18</sup> that is conducted:

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<sup>18</sup> "Relevant local authority in relation to a child" has the same meaning as in section 201, Children's Hearing Act 2011 (i.e. the local authority in whose area the child predominantly resides or, if there is no such authority, the local authority with whose area the child has the closest connection).

- a) by a constable or an officer of a local authority, or
- b) jointly by a constable and an officer of the local authority.<sup>19</sup>

4.7.2 As well as determining if the harmful behaviour is serious enough to meet the **criteria**, consideration must be given to:

- the **necessity** of an interview in relation to the police investigation;
- the **suitability** of conducting an interview with the child; and,
- if this would be in the **child's best interests**.

4.7.3 Through the investigative interview process, it is also intended that the wellbeing and welfare needs of the child will be identified and assessed and relevant supports and put in place. (Further assessment by a Lead Professional may be required following this process (see section 26).

4.7.4 In cases where there is a risk of loss of life and there is a need for *Urgent Questioning*, there will be limited or no opportunity for planning and the questioning will be undertaken solely by police. This will not take the form of an investigative interview<sup>20</sup> but will be immediate action taken by police to elicit information from a child that is essential to the securing the safety of another person(s).<sup>21</sup>

**See section 31 for additional resource – Flowchart - Initial Response and Investigative Process.**

## **5. CIRCUMSTANCES WHERE AN ACRA INTER-AGENCY REFERRAL DISCUSSION (IRD) SHOULD BE CONVENED<sup>22</sup>**

5.1 An ACRA IRD must be convened without undue delay where there are reasonable grounds to believe that a child (whilst aged under 12) has caused or risked causing serious physical harm or sexual harm to another person that meet the criteria of an ACRA Incident.

5.2 An ACRA IRD will coordinate decision-making and planning and will assess whether the provisions of the Act apply if this has not already been established.

5.3 In practice, there is alignment with multi-agency IRD principles, approach and processes as outlined in the National Guidance for Child Protection in Scotland (2021, updated 2023), however there are some specific considerations and additional requirements for ACRA IRDs.

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<sup>19</sup> s 39 (3)

<sup>20</sup> As defined in s 39(3)

<sup>21</sup> See section 7 below

<sup>22</sup> See section 31 additional resources

- 5.4 The ACRA IRD is likely to be instigated by police and will be facilitated by the local designated IRD Desk Officer and a social worker (usually a Senior Social Worker/ Team Manager) in line with local processes. The SIO in the case is likely to also participate and an Interview Advisor<sup>23</sup> (IA) may also attend due to their involvement in the planning of an ACRA II.
- 5.5 Police have a duty to conduct a thorough investigation of the incident and must liaise with social work to undertake an assessment of risk, needs and protective measures that may be required for any child. Police will share information relating to the incident under investigation, including evidence gathered thus far (**where appropriate and proportionate**) and the facts that have been established.
- 5.6 The ACRA IRD will take cognisance of the ongoing police investigation into the incident, including ongoing police enquiries and how new information may influence decision making.
- 5.7 **During** the ACRA IRD, all available evidence (both inculpatory and exculpatory<sup>24</sup>) should be shared (**where appropriate and proportionate**). Police will provide an assessment of whether the evidence is sufficient to establish the circumstances of the incident and who was responsible. Where these facts can be ascertained, then careful consideration must be given as to whether an interview is **necessary** for the investigation.
- 5.8 Due to the fluid nature of investigations, the initial ACRA IRD may not determine in the early stages that an ACRA II is necessary and may need to be reviewed as the police investigation progresses.
- 5.9 Except in time critical circumstances, the ACRA IRD should take place prior to any investigative procedures directly involving the child. This does not preclude the police from continuing with the investigation and securing evidence from other sources.
- 5.10 Exceptions to this include where police need to question a child urgently where there is **a risk of loss of life**.<sup>25</sup> Under these conditions, a CIO must be applied for as soon as reasonably practicable after the power has been exercised, and so an ACRA IRD should take place as soon as practicable thereafter. This could also apply where physical data and samples need to be taken urgently from the child under the authorisation of a Superintendent or above.<sup>26</sup>

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<sup>23</sup> Refer to the [Crime Investigation National Guidance \(hyperlink\)](#)

<sup>24</sup> Inculpatory means evidence that shows or tends to show a person's involvement in an act, or evidence that can establish who was responsible. Exculpatory means evidence that exonerates or tends to exonerate a person who is believed to have been involved in an act.

<sup>25</sup> Refer to section 7 'Urgent questioning' requires authorisation from an officer of the rank of Superintendent or above and police must inform the Child Rights Interview Practitioner (ChIRP) about this authorisation as soon as reasonably practicable. The parent of the child must also be advised unless there is reasonable cause to suspect that this could exacerbate the risk of loss of life.

<sup>26</sup> [Section 69 of the Act – Taking of Prints and Samples in urgent cases.](#)

- 5.11 At any stage during the ACRA IRD, where possible, the police should also relay any intentions to make an application for an order for Search or Physical Data and Samples and will provide the rationale for such an action. The legislation does not mandate for consultation with the local authority in respect of these orders and there may be occasions when it has been necessary to apply for such an order to secure evidence (physical or otherwise) in advance of any ACRA IRD. Transparency across all actions is good practice and may result in the sharing of additional information that could influence subsequent decision making.
- 5.12 However, where an Order for Physical Data and Samples is to be sought in respect of obtaining **intimate samples**, then an ACRA IRD **must** take place to facilitate the call-out of a Forensic Physician.
- 5.13 Police should always make every effort to seek the guidance of social work in relation to any actions taken directly involving the child and must always explain to the child, in a manner they understand, what they are doing and why.
- 5.14 A collaborative approach is always good practice when seeking the agreement of the child and parent to conduct an investigative interview. Police and social work must work together to plan for the investigative interview (interview by agreement/under a CIO).
- 5.15 The exception to this might be where the decision at the ACRA IRD is that the investigative interview will be police only. For example, where due to logistical/resourcing/inclement weather conditions (particularly in more rural areas), a joint ACRA II cannot be facilitated. Under these circumstances, joint planning should still take place.
- 5.16 The Act provides that **prior** to making an application for a CIO, police must consult with the local authority about the application and the provisional plan<sup>27</sup> and therefore an ACRA IRD **must** take place prior to making an application to a sheriff for a CIO, unless it is impracticable to do so.
- 5.17 It is important that the child and family receive the right support during this process, and the ongoing police investigation does not prevent social work from engaging with and supporting the family and undertaking any assessment as required. However, any social work interaction with the child and family should not involve direct discussion about the incident that is subject of the police investigation.
- 5.18 Social work or other services may know the child and family and have existing relationships. This can provide helpful support and assistance with planning and engagement with the child and parent / carer.

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<sup>27</sup> See section 31 – additional resources

## 6. ACRA IRD PRINCIPLES, APPROACH AND PROCESS

6.1 IRDs are established mechanisms that allow a multi-agency approach to all stages in planning and action, including consideration of the need for an interview; and consideration of any interim safety planning needed to protect the child and the victim and wider community from significant harm. Guidance on holding an ACRA IRD is aligned with the principles and approach for CP IRDs.

6.2 To determine whether an ACRA II with the child is necessary, the discussion should try to ascertain:

- the suitability of conducting an interview with the child
- if this would be in the child's best interests; and
- the necessity of an interview in relation to the police investigation.

### 6.3 Definition:

6.3.1 An ACRA IRD should be considered at the **earliest opportunity**; however, this does not diminish the need for police to seek early dialogue with social work.

6.3.2 An ACRA IRD may be a process rather than a single event.

6.3.3 This discussion may take place in person, or remotely, e.g. a virtual environment. Factors such as urgency, geography and local arrangements will determine how the ACRA IRD is facilitated.

### 6.4 Purpose:

6.4.1 An ACRA IRD is required to ensure a co-ordinated inter-agency response to serious harmful behaviour. The ACRA IRD will make decisions in relation to an ACRA II, the plan for an interview, if required, and whether agreement or CIO should be sought and consider relevant and necessary supports for the child and family, whilst ensuring the child's wellbeing and protection remain a primary consideration.

### 6.5 Instigation:

6.5.1 Police are likely to instigate an ACRA IRD, however other agencies can also make a request to convene an ACRA IRD where reports of serious harmful behaviour are made to other statutory agencies.

6.5.2 Where police initiate the ACRA IRD, they will present their assessment of whether the threshold of an ACRA Incident has been met and discuss any outstanding investigative actions required to facilitate a thorough investigation of the circumstances. If an ACRA II is necessary and is in the child's, best interest, the ACRA IRD will consider how this should be facilitated i.e. should agreement be sought from the child and parent, or an application submitted to a sheriff for a CIO.

**6.6 ACRA IRD Record:**

6.6.1 A record of the ACRA IRD (see section 31) must be maintained, including the time and reason for convening the ACRA IRD, the information shared, actions taken and proposed actions (single or joint agency), discussions held, reasoned decisions (including consideration of options), any lack of consensus or dissent, and the manner in which lack of consensus has been escalated and resolved, (see section below). This record should be accurately maintained throughout the duration of the ACRA IRD and investigation.

6.6.2 The minutes from the ACRA IRD should be recorded in accordance with local established processes for IRDs. This is a multi-agency document and version control (in the absence of an e-IRD system) is imperative.

6.6.3 At all stages, agencies must follow their own service Guidance for the Recording and Retention of Information. The ACRA IRD discussion is recorded jointly and must be retained in the relevant files of participating agencies.

**The needs and capacity of the child:**

As far as can be ascertained from earliest inquiries, consideration is given not only to the child's age but to the child's development, including:

- linguistic abilities
- memory retrieval capacities
- suggestibility
- effects of stress and trauma

In all decisions and plans, the additional support needs for each child must be considered, including:

- health concerns
- emotional distress and wellbeing

- speech and language<sup>28</sup>
- translation requirements
- risk of self-harm
- risk of harm to others
- additional supports relating to disabilities and all protected characteristics
- racial and cultural context

Where a language interpreter is required, they should be independent of the child's family and community. The interpreter should also understand the child's cultural context as well as being able to speak the relevant language.

**Core Professionals:**

Practitioners in police, social work and health must participate in the ACRA IRD; and participation of other professionals, particularly those from education (including local authority education services, independent schools or Grant Aided Special Schools (GASS) or Early Learning and Child Care (ELC), should be considered based on their involvement with the child. Information gathering can involve other services as needed, such as third sector, to support decision making.

ACRA IRD participants should be sufficiently senior to assess and discuss available information and make decisions on behalf of their agencies. They will have access to agency guidance, training and supervision in relation to this role.

Police have lead responsibility for the investigation into the behaviour that has caused or may have risked causing serious harm to another person and can exercise other powers in the Act such as taking a child to a place of safety, search or the taking of physical data and samples.

Social work has lead responsibility for enquiries relating to children who are experiencing or are likely to experience significant harm and the assessment of the wellbeing needs and protection and any risk assessment in relation to a child. Consideration is also required of the protection and wellbeing of any other child who has or may have been impacted by the circumstances being investigated.

A designated health professional can provide information that can inform the planning for the interview, planning and delivery of a forensic medical examination under an Order for Physical Data and Samples and any other health assessments and may follow up with any other relevant health needs.

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<sup>28</sup> Local Health Board and/ or Bairns' Hoose speech and language therapist services are available to provide guidance if required.

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Education is a critical source of contextual information about a child. They can provide relevant information about a child's needs and capacity. It is important to recognise existing relationships, for example, from school, as this can support the child and family as well as the investigation.

For the purposes of the ACRA IRD, relevant and proportionate information sharing between professionals relevant to the child is imperative. This includes the Named Person, Lead Professional or professionals in equivalent roles, and/or others who know the child well. This information will be useful for the planning of an interview.

Core agencies and relevant services consulted at the ACRA IRD stage will research the information systems available to them to share necessary, proportionate and relevant information for the purpose of effective decision-making, risk assessment and planning to support the child.

The Children's Reporter will not be involved in any ACRA IRD. However, the police may contact the Children's Reporter<sup>29</sup> to discuss the case at any point in the investigation. This discussion may assist the police in determining whether there is a requirement for an ACRA II or use of any of the other police powers under the Act. Unlike the Procurator Fiscal, the Children's Reporter cannot direct the police investigation in any way.

The ChIRP will not attend the ACRA IRD, however should, where deemed appropriate, attend relevant meetings and discussion in relation to the planning for an ACRA II and communication with the child and family/ carers (see ChIRP section below).

### Timing:

Where there is reasonable belief that a child has caused or has risked causing serious physical harm or sexual harm to another person, then an ACRA IRD must be convened without undue delay.

The ACRA IRD process may begin **out-with core hours** to consider **protective measures** or **interim safety planning** for a child and/or any other person, or where there is an **operational imperative** for police to progress the investigation. For example, this might be where the incident takes place over the weekend and there are:

- **public safety** considerations due to the **seriousness** of the behaviour, and
- it is considered to be in the **best interests** of the child to proceed.

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<sup>29</sup> Children's Reporter will only be available during normal office hours. The child can only be referred to a Children's Hearing on non-offence grounds, in relation to which the standard of proof is the balance of probabilities and the civil rules of evidence apply. The principal ones being that no corroboration is required and hearsay evidence is admissible.

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Whilst it might be **competent** to proceed in the **absence** of an ACRA IRD having taken place, this should be considered *exceptional* and good practice is always to seek to undertake an ACRA IRD prior to any investigative actions/use of police powers under the Act directly involving the child.

It is acknowledged that different IRD procedures exist across the country and whilst some areas may initiate an ACRA IRD out of hours, this might not be possible in others.

The expectation is, however, that where an ACRA IRD is deemed urgent and necessary, this will be facilitated wherever possible including out of hours and in exceptional circumstances.

At the commencement of the ACRA IRD, the police investigation is likely to be in the very early stages of evidence gathering and therefore it is possible that conclusive outcomes will not be reached at this stage. Information must be gathered and shared to support agreement about a co-ordinated response.

### **Specific circumstances:**

#### **Place of Safety**

An ACRA IRD is likely to be held after the ACRA place of safety (s.28) power has been used by police as an emergency response to a concern about a child's significant harmful behaviour. Refer to Section 26.

#### **Urgent power**

Where there has been urgent questioning of a child or the taking by police of physical data and samples from a child under emergency authorisation, a retrospective ACRA IRD will be required. This should take place as soon as possible following the procedure.

#### **Child Protection**

A primary consideration of the ACRA IRD will always be the protection and wellbeing of the child, notwithstanding the need to identify how best to support the police investigation. **Where immediate CP considerations are identified, intervention must not be delayed.**

Where any child may have been abused or neglected and/or is suffering or is likely to suffer significant harm, a CP IRD must be convened as soon as reasonably practicable and CP procedures followed. Co-ordinated information sharing and decision-making processes are critical to ensure investigative procedures safeguard and protect the child's wellbeing as a primary consideration.

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In some circumstances an ACRA and CP IRD can be held as one meeting where the relevant participants can attend. The **IRD may need to consider ACRA and CP issues considering requirements for both processes**, however ACRA and CP records must be maintained separately in line with local processes.

It is important to note that, where a decision is made to have a JII in relation to CP concerns about the child, **this interview cannot focus or ask any questions about the behaviour that is being investigated under the Act**. Any questions in relation to the behaviour must take place within the context and safeguards of an ACRA II. See section 4: section 39 – Limitations on Police Questioning of a Child.

Where there is any information that suggests a risk of significant harm, the child's safety and wellbeing will be the immediate and primary consideration. This includes consideration of the need for an interim safety plan.

Professionals need to address identified CP concerns and balance the need to investigate the behaviour under the Act.

If it is assessed that, for example, a CP investigation would not be prejudiced and that it was in the child's best interests to continue with the ACRA II, which can be safely concluded, then the interview might continue to its natural conclusion. However, if there is any doubt, the CP investigation will take precedence.

Each set of circumstances will need to be assessed on a case-by-case basis and will be subject to several variables.<sup>30</sup>

Concerns in relation to other children may initiate CP procedures, including a CP IRD to ensure consideration of all children impacted by any serious harmful behaviour.

### **Child witness**

There may be situations where a child, initially believed to have been responsible for an ACRA Incident, is subsequently established to be a **witness**. It would be appropriate to instigate CP procedures (if deemed necessary) and convene a CP IRD to discuss the best way to capture the child's testimony that could then be used as Evidence in Chief in any criminal proceedings.<sup>31</sup>

### **Decisions and planning:**

The ACRA IRD provides the foundations for the development of a strategic plan that will direct the next stage in joint or single agency decision making and planning.

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<sup>30</sup> Refer to Child Protection Concerns – during an ACRA II - section 25

<sup>31</sup> In line with the provisions under the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019

Priority consideration will be given to (but is not limited to):

- the well-being needs and protection of the child – is there any concern about the immediate safety and wellbeing of the child (or any other child) and any action required?<sup>32</sup>;
- background and information known about the child;
- any further information that might be required to inform decision making and who will be responsible for gathering this;
- whether the **criteria** for use of ACRA powers have been met (police have primary responsibility for this initial assessment);
- the **necessity** of an interview in relation to the police investigation;
- the **suitability** of conducting an interview with the child;
- if this would be in the **child's best interests**
- whether an investigative interview by agreement or by CIO will be sought;
- identifying a parent who can provide agreement<sup>33</sup>;
- identifying suitably trained interviewers from both agencies;
- planning for response and action should the child make a disclosure or there is a concern of a CP nature during the interview;
- the safety and needs of the child/children involved – is a CP IRD required for any child?
- involvement of the ChIRP<sup>34</sup>;
- the role of a supporter (where there is agreement to an investigative interview, the supporter must be the parent who gave agreement). The identified interviewers must consider the 'appropriateness' of this parent and make any contingency plans as necessary<sup>35</sup>;
- any other processes that other agencies might need to know about, in addition to joint evidence, for example, the requirement for physical data and samples (intimate/non-intimate)<sup>36</sup>;
- whether a single agency investigation and follow-up is preferred and if so, why (police have a duty to fully investigate reported crimes)?
- if no further investigation is required, what are the reasons for this?
- whether early referral to the Children's Reporter is required and who will make this referral?
- contingency plans where there is an appeal against a CIO or agreement is withdrawn.

The final decision as to whether an ACRA II with the child or the use of any ACRA police powers will be sought will remain with police, however decisions must be justifiable, necessary, proportionate and in the child's best interest. Such a decision should be recorded within the IRD Record.

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<sup>32</sup> Refer to National Guidance for Child Protection in Scotland 2023 for IRD considerations if there is a child protection concern

<sup>33</sup> Based on the criteria set out in section 8 below

<sup>34</sup> Refer to section 15

<sup>35</sup> Refer to section 14

<sup>36</sup> s58 – Taking of Prints and Samples from certain children and s60 – Key Definitions. Intimate samples may only be taken upon the granting of an Order for Physical Data and Samples. In an emergency, non-intimate samples may be taken from the child, however, a retrospective application for an Order for Physical Data and Samples must be submitted as soon as reasonably practicable.

The IRD records should reflect the agreement, or otherwise, of this decision by police and senior social work managers informed as needed (see lack of consensus below).

Where it is decided that an ACRA II of the child will be sought, the following are essential considerations:

**Essential considerations:**

- immediate support needed for the child or family;
- how the rights of the child will be upheld at all stages in the process;
- if any action is necessary to mitigate any potential impact on the child in terms of membership of any protected groups, for example, nationality, ethnicity, communication needs, including identifying the child's first language, translation needs, disability, etc;
- what information will and will not be shared with the child and family, with the understanding that information is not to be shared, if that could jeopardise a police investigation or place any child or other person at risk of harm;
- how and by whom information about the investigation can best be shared with the child, taking into account their capacity, maturity and communication needs;
- how and by whom information can best be shared with parent/carer
- how and by whom will written information be provided to the child and parent / carer;
- how and by whom relevant information will be shared with the ChIRP;
- feelings and views of the child about the investigation as it directly relates to the child;
- appropriate liaison with the ChIRP to plan the interview and uphold the child's rights;
- appropriate liaison with any lead professional and named person (or professional in equivalent role);
- how the ACRA IRD decisions will be reviewed if significant new information arises;
- whether the case involves a report to Crown Office in respect of a person above the age of criminal responsibility to ensure any matters that may be sub-judice are not impinged;
- practical arrangements for the interview such as transport, location etc and how this information will be shared with the ChIRP, child, family, supporter etc.

**Refer to Appendix 4 – Summary of decision making in relation to children under 12**

**Closure:**

An ACRA IRD is closed when a reasoned and evidenced inter-agency decision has been made and recorded. The decisions can include one or more of the following:

- Joint police and social work ACRA II;
- Single agency police ACRA II;
- A decision on whether an Order for Search or Physical Data and Samples should be made/is required retrospectively;
- Instigation of CP procedures and processes;
- Social work or other service (e.g., universal services, third sector) intervention and support, in line with local GIRFEC processes;
- Reasoned decision to take no further immediate action (however police may share information in line with the National Risk and Concern Hub processes).
- Referral to the Children's Reporter

The decision to close the ACRA IRD could happen at any time due to further information becoming available during the investigation.

The ACRA IRD record will be subject to updates as actions are progressed, or new information becomes available. All relevant partners should review the ACRA IRD at regular intervals of not more than 7 days (although the frequency is likely to be set according to local agreement), until closure is agreed.

An ACRA IRD can be reconvened if new information arises which could lead to a reconsideration of the required inter-agency response.

**Lead Professional:**

A lead professional, who will be from social work, is required to ensure co-ordination of assessment and next steps within a developing but coherent single child's plan<sup>37</sup> to address the needs of the child. They will provide a point of contact for parent / carers and professionals who may need support and / or to be sufficiently informed and understand the process. They may also signpost to additional advice and support. The ACRA IRD record should identify this person before closure. The point of contact should be communicated to the ChIRP.

**Lack of Consensus:**

If any agency involved in the ACRA IRD disagrees with the decision of another agency and where a compromise cannot be reached, consultation with senior managers from core agencies should take place to reach a decision. The points of disagreement and resolution must be recorded on the ACRA IRD record. There should be no delays in protective measures being instigated because of the disagreement. In such cases, the matter should be escalated as a matter of urgency.

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<sup>37</sup> [Getting it right for every child \(GIRFEC\): Child's plan - gov.scot \(www.gov.scot\)](http://www.gov.scot)

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In cases of lack of consensus, the local designated IRD Desk Officer will escalate the matter to the Divisional PPU Detective Inspector or Detective Chief Inspector or, if out of hours, the on-call Detective Inspector, for further discussion and decision. For social work, concerns must be escalated to a senior manager (following local processes) as soon as possible to avoid any delay in decision making and planning.

Police may decide to seek to undertake a single agency ACRA II as part of the police investigation and any such course of action must be well documented and justified.

### **Quality assurance and review of IRDs:**

Local areas should ensure that quality assurance systems are in place to support consistent standards; recognition of patterns in practice or context of concerns; and to support improvement and organisational learning across all agencies. Quality assurance would usually be achieved through regular reviews of IRDs by senior representatives of core agencies.

A local process for secure electronic sharing of the ACRA IRD record between core agencies promotes effective and consistent practice; and makes review, quality assurance and analysis of trends feasible. Local areas will have processes in place to undertake quality assurance and review of practice.

Reports to relevant local strategic partnerships (for example local Child Protection Committees - CPC) should consider integration of reporting on ACRA decision making and practice, to inform improvement through training, management and strategic improvements to systems and practice.

Local data on ACRA processes should be gathered including the number of ACRA IRDs and number of ACRA IIs. This will be reported to Local CPCs as part of the Minimum Dataset for Child Protection Committees.<sup>38</sup>

### **Debrief:**

Consideration should also be given to holding a debrief session with all practitioners, at the conclusion of the ACRA II, to ascertain any learning from the process that can inform future training and improvements. The debrief will involve police, and social work and, where appropriate, the ChIRP.

### **Outcome:**

The child and parent / carer must be informed as soon as possible about any further action that may be taken after the investigative interview, including any referral to the Children's Reporter. The ChIRP should also receive relevant information at this time to ensure that the child's rights are always upheld. The child and parent/carers should be given appropriate contact information for police and/or social work so they can ask questions or raise issues after the completion of the interview.

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<sup>38</sup> [Minimum Dataset for Child Protection Committees \(celcis.org\)](http://celcis.org)

**Sharing Information with Child and Parent:**

Where it is safe to do so, relevant information relating to the ACRA IRD should be shared with the child and parent /carer, dependant on parental responsibility. This will include ensuring the child and family are made aware that an IRD is taking place and an explanation for the reason for this where it is practically possible, this should take place prior to the IRD taking place. The timing of the IRD should not be unduly delayed by this process.

Following the ACRA IRD, where it is safe to do so, feedback should be provided to the child and parent / carer, dependant on parental responsibility. This should include an overview of the information that was shared and agreed plan and actions. **Prior to doing so, it is essential to consider whether sharing the information may jeopardise a police investigation or place the child, or any other child, at additional risk of harm.** All decisions should be recorded on the IRD recording template.

**7. POLICE QUESTIONING OF A CHILD IN URGENT CASES**

7.1 Where a constable has reasonable grounds to believe that a child under 12 years of age, by behaving in a violent or dangerous way, has caused or risked causing serious **physical** harm to another person **and** there is a risk of loss of life if the child is not questioned immediately, the child can be questioned about their behaviour and the circumstances surrounding it. Sexual, emotional and psychological harm are **not** included for the purposes of this section.

7.2 This questioning must be authorised by the relevant senior officer (Superintendent<sup>39</sup> or above) who must be satisfied that:

- there are reasonable grounds to suspect that the child, while under 12 years of age, by behaving in a violent or dangerous way, has caused or risked causing physical harm to another person;
- questioning 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**
- it is not practicable to apply for a CIO authorising an investigative interview of the child because there is a risk of loss of life if the child is not questioned immediately.

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<sup>39</sup> Unlike the authorisation needed to obtain physical data and samples urgently from the child, it is **not** a requirement under this section that the relevant senior officer granting authorisation has had no previous involvement in the case.

- 7.3 The relevant senior officer must consider the **nature and seriousness** of the child's behaviour and if questioning of the child is appropriate given the child's circumstances (including age and matters relating to the behaviour).
- 7.4 Police must explain to the child that they are to be questioned in these circumstances and that they have the right not to answer questions.
- 7.5 Where practicable, police must inform the child's parent that the child will be questioned in these urgent circumstances, except where it is reasonably believed that informing a parent would exacerbate the risk of loss of life.
- 7.6 Police are also responsible for contacting a ChIRP who will be advised of this authorisation.
- 7.7 An application for a CIO must be made as soon as practicable after the authorisation for urgent questioning is granted.
- 7.8 An ACRA IRD should take place as soon as possible thereafter.
- 7.9 Urgent questioning is not an ACRA II. Officers conducting urgent questioning may not be trained in investigative interviews and a social worker is unlikely to be present. It will generally be carried out by police officers upon their attendance at the scene of an incident where there is perceived to be a risk of loss of life if the child is not questioned immediately.

## 8. ACRA II BY AGREEMENT<sup>40</sup>

- 8.1 Consideration at IRD should be given as to whether it is preferable to hold an ACRA II by agreement (where possible). This is likely to reduce the time-lag between the incident taking place and the child being afforded the opportunity to speak about the circumstances surrounding it.
- 8.2 The **child and a parent** of the child must provide agreement to the investigative interview about the **behaviour to which the investigation relates**. It is the responsibility of police to seek agreement and provide the relevant written information to the child and parent. In practice this is likely to be supported by social work. Discussion should also take place with the ChIRP to coordinate communication and engagement with the child.

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<sup>40</sup> s 40

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For the purposes of this section<sup>41</sup> a ‘parent’ of the child means a person who

- is aged **18 or over**,
- has **parental responsibilities** (within the meaning of the Children (Scotland) Act 1995) in relation to the child, **and**
- is **related** to the child or with whom the **child lives**.

A person who is ‘related’ to the child includes reference to a person who:

- is married to or in a civil partnership with a person who is related to the child, e.g., stepparent / partner of parent
- is a blood relative of the child, e.g. grandparents, aunts, uncle, siblings, cousins, etc. This does not include stepsiblings unless related by blood to the child.

### **Only a person who meets these criteria can agree to an ACRA II**

It is essential that the police and social work fully understand who can give agreement. Should a CIO be necessary, this information is likely to be relevant to the application.

Prior to seeking agreement to conduct an interview, an ACRA IRD should have taken place where the following should be discussed and recorded;

- who is responsible for seeking agreement;
- who needs to agree;
- who can agree (both in terms of fitting the criteria of parent and ensuring capacity to agree);
- any concerns about the suitability of the parent to provide agreement. If so, this would mean a CIO needs to be considered;
- what information<sup>42</sup> needs to be provided to the child and parent to inform their decision to agree and in what format the information needs to be presented;
- if there is any other information, in addition to that included on the *Child Information Leaflet – Investigative Interview by Agreement*<sup>43</sup> that is available and should be provided to inform the child and parent’s decision, and how will that be communicated;
- the parent and child’s understanding of the information contained in the leaflet;
- what additional support may be required to assist with their engagement and understanding;

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<sup>41</sup> Section 40 (7) and section 40 (8)

<sup>42</sup> Section 41 of the Act covers what is required to be notified.

<sup>43</sup> See leaflet – appendix 2 Section 41 places the duty on a constable to provide a notice in writing explaining the information. Another professional communicating information to the child would be following authorisation of a constable.

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- what the *potential* outcomes from the interview are, for example, no further action required, referral to partner agencies or Children's Reporter, other supports/interventions;
- who and how the agreement will be sought (most likely in person or by telephone);
- how understanding will be verified;
- how any potential scenarios will be responded to (for example, requests to consult someone, time to consider etc.);
- contingency planning, should the child or parent withdraw their agreement.

- 8.3 When considering whether it is appropriate to seek parental agreement to an interview, police and social work should review all available information, including that held by themselves and other agencies.
- 8.4 In some cases, there can be complex family situations and dynamics that will require careful consideration. This may be particularly important when a parent has retained parental rights and responsibilities, but the child resides out-with their care and/ or where they have no active relationship or contact with the child. These issues should be discussed during the ACRA IRD process.<sup>44</sup>
- 8.5 The parent who has given agreement must act as the supporter<sup>45</sup> for the child during an ACRA Interview by Agreement.
- 8.6 Where there is no person meeting the definition of a 'parent' available to give agreement and/or act as the supporter (e.g. Looked After children where the Local Authority has parental responsibilities), an ACRA II may only take place via a CIO.
- 8.7 Where the child has been questioned under urgent circumstances<sup>46</sup>, then an application for a CIO must be made as soon as reasonably practicable, regardless of whether the child still requires to be interviewed. If the child does need to be interviewed, it is not permissible to conduct an investigative interview by agreement under these circumstances.

## 9. WITHDRAWAL OF AGREEMENT

- 9.1 An ACRA II authorised by agreement is no longer authorised if a child or parent withdraws their agreement. Both the child and parent must agree to the interview.

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<sup>44</sup> Consideration must be given to circumstances where those with parental rights may have different views on the agreement and the impact on the child of complex family relationships and dynamics.

<sup>45</sup> Section 50(6)(a) – the child's supporter must be the parent who has given agreement under section 40 1(c)(ii), to the interview being conducted. See supporter section 14 below.

<sup>46</sup> Section 54 of the Act 2019 – Questioning of Child in Urgent circumstances – risk of loss of life

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- The child and parent can choose to withdraw agreement at any time.
- If the child and/or parent withdraws agreement and police still wish to interview the child, then they must apply for a CIO.
- The agreement of the child or parent is treated as withdrawn if the child or parent fails to comply in a material respect with the Plan for ACRA II.
- Agreement is not to be treated as withdrawn if the child exercises their right to not say anything during the interview or refuses to answer any question(s). Section 50(11) sets out a further circumstance where agreement is to be treated as withdrawn. Where the interviewer considers the parent who has given agreement to the interview not appropriate to act as the child's supporter, that parent's agreement is to be treated as withdrawn<sup>47</sup>. Although it would be permissible under the Act to seek the agreement of another parent, an application for a CIO should instead be made, so that the interview may proceed later.

- 9.2 In agreeing to the interview, the child and parent must be clear that they have the right to withdraw their agreement at any time and how they can exercise this right by providing informed consent. They should also be provided with an explanation of options that may be considered should agreement be withdrawn; this may include applying for a CIO.
- 9.3 A child can exercise their right to not answer questions (some or all) in the interview. This will not be taken as them withdrawing their agreement to the interview.
- 9.4 Where an interview is continued over multiple meetings, the child and parent should be reminded at each meeting, of their right to withdraw agreement, should they wish to do so. Those conducting the interview should be satisfied during the interview that the child and parent remain agreeable to the interview continuing.
- 9.5 Where agreement to the interview is withdrawn by either the child or parent, the interview must stop. The interviewers must explain this to the child and parent and inform them that further considerations will be made as to the need for the interview to continue at a later date, and if so, how this will be facilitated. A child or parent who withdraws their agreement to an interview can subsequently agree to an interview continuing. This agreement must be freely made.
- 9.6 Where agreement is withdrawn, this should be fed back to the ACRA IRD and thereafter the ACRA IRD process should consider:
- the need to safeguard and promote the child's wellbeing;
  - the need to interview the child further (based on the criteria and justification for the need to interview the child at all and their best interests);
  - whether the person withdrawing agreement is likely to change their mind;

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<sup>47</sup> Under these circumstances, where both interviewers determine that the supporter should be removed from the room, a 'relevant constable', meaning an officer of Sergeant or above, who has not had any involvement in the investigation or the planning and conduct of the interview, should be consulted, along with an officer of the relevant local authority (no restrictions as to who this can be), to make that decision

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- whether an application for a CIO is necessary and justified.

- 9.7 The ACRA IRD should consider contingency plans for these circumstances, considering the potential impact on the child and the parent / carer and family.
- 9.8 Police have the power to apply for a CIO at any time during the investigation. This power is not solely dependent upon withdrawal of agreement.

**10. INFORMATION TO BE PROVIDED - INVESTIGATIVE INTERVIEW BY AGREEMENT <sup>48</sup>**

- 10.1 Following agreement to an ACRA II, police<sup>49</sup> must provide written information to the child and parent (who has given agreement) and ChIRP. This will be in the form of a standard *Child Information Leaflet – Interview by Agreement* (see Appendix 2 – *Child Information Leaflets*).
- 10.2 This leaflet should be explained to the child in clear and simple terms, in a manner which is age appropriate and takes account of the child's level of understanding and communication needs. This will advise them of their rights and what will happen next including the right to change their mind and withdraw agreement. The police have a responsibility to ensure this information is given to and explained to the child, however in practice, social work may be best placed to support this conversation. This will be considered at the ACRA IRD on a **case-by-case** basis.
- 10.3 Where there is any doubt as to understanding of that agreement, further consideration should be given to providing additional information and assistance, or whether authorisation needs to be sought by way of a CIO.
- 10.4 This information should be given to the child as soon as possible, prior to the start of the interview by relevant police and social worker. Any delays experienced in delivering this notice should be fully documented within the associated police investigations Policy Log and ACRA IRD record.
- 10.5 Where it is an interview by agreement, then the parent who has given agreement must also be provided with a copy of this additional information.

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<sup>48</sup> Section 41

<sup>49</sup> Section 41(1)

11. INVESTIGATIVE INTERVIEW BY CIO<sup>50</sup>

**A CIO authorises an investigative interview of the child to whose behaviour the application relates.**

- 11.1 In any consideration of the need for a CIO and in making the application, there are specific responsibilities on the police to apply for an order and to consult with social work, so that a multi-agency approach is taken. There may be circumstances that consultation with social work is not feasible, however wherever possible, an ACRA IRD must take place in advance.
- 11.2 A CIO may be applied for where a decision has been made that an interview is required and the circumstances meet the criteria for harmful behaviour, and
- agreement is not provided (due to actively not agreeing or being unable to agree through a lack of capacity or understanding); **or**
  - agreement provided is subsequently withdrawn; **or**
  - where a child has been questioned under urgent circumstances and an order is required; **or**
  - where, in the particular circumstances, the police believe it is justifiable to apply for an order without first seeking agreement, e.g. where there is no 'parent' and therefore no possibility of seeking agreement or where the local authority has parental responsibilities.
- 11.3 The police have the power to apply for a CIO at any time during the investigation. This power is not dependent on withdrawal of an agreement.
- 11.4 Police, in consultation with social work, can identify if there is a need to ask for directions to be included in the order and specify this in their application. In their considerations they should have regard to the need to safeguard and promote the child's wellbeing in any directions requested.
- 11.5 Where it is not reasonably practical for police to consult with social work prior to applying for a CIO, this should be discussed at a retrospective ACRA IRD and the reasons recorded in the ACRA IRD record.
- 11.6 The Provisional Plan (see section 31) for the interview, that must accompany the application for the CIO, should, as far as possible, be completed by the specified police and social work interviewers (identified during the ACRA IRD). This will inform the **Plan for the ACRA Investigative Interview** (that will be drafted at a later stage if the CIO is authorised – refer to section 31). The Provisional Plan may include the following details:
- Date, venue, interviewers, any other persons who will be present (where known).

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<sup>50</sup> Section 42

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- Contingency plans (where known).
  - How the welfare and wellbeing needs of the child will be met during the interview (taking into account age, maturity, additional support needs and vulnerabilities).
- 11.7 A CIO specifies the period of time within which the interview can be conducted, up to a maximum of 7 days. The time for any period given begins on the day after the order is made, or a later date if specified in the order, albeit the order will be live immediately. Provisional planning should reflect this restrictive framework.
- 11.8 It is the responsibility of the police to notify social work, as soon as reasonably practicable, upon receipt of notification that an order has been granted or of an intention to appeal against any decision on an order. The police and local authority have a duty to comply with any directions in the order.
- 11.9 Once an order has been granted, the child and parent must be provided with a copy of the order as soon as reasonably practicable and have the order explained to them, ensuring that the child's explanation is appropriate to their age and maturity<sup>51</sup> (see Appendix 3 – Who must receive a copy of the CIO?). The order will be accompanied by a *Child Information Leaflet – Child Interview Order* and any Court produced document that explains the terms of the CIO and information on the right of appeal.
- 11.10 The Act states a constable **must**, as soon as **reasonably practicable** after the order is made, **provide a copy** of the order to the relevant people i.e. the child, parent (wherever practicable), supporter (if not the parent) and the ChIRP). In most cases this should be done in collaboration with social work.
- 11.11 This information should be given to the child as soon as possible, prior to the start of the interview by relevant police and social worker. Both will also be able to support the child's understanding of the information provided, which must be explained to the **child** in a manner that is **appropriate** to their **age** and **maturity**.

## 12. APPLICATION FOR A CIO <sup>52</sup> - CONSIDERATIONS

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<sup>51</sup> This is to ensure understanding of the information and their rights in relation to the order, in particular their right to seek the court's permission to appeal.

<sup>52</sup> Section 43 - CIO application process by police

12.1 The sheriff may grant a CIO if satisfied that the criteria have been met<sup>53</sup> and, in making this decision will also consider:

- the **nature and seriousness** of the child's behaviour, **and**
- whether an investigative interview of the child **is appropriate** given the child's circumstances – this includes the child's age and any matter related to the child's behaviour.

12.2 Before making a decision, the sheriff will consider whether representation should be heard from:

- the applicant,
- the child in respect of whom the application is made,
- a parent of the child,
- any other person the sheriff considers to have an interest in the application.

12.3 An order can:

- require a person, in a position to do so, to produce the child to a specified person, to ensure the child's attendance at the interview;
- authorise the person above or another person to transport the child to and from the interview;
- authorise any other action required in connection with the interview (including to safeguard and promote the child's wellbeing).
- and other directions about how the investigative interview should be conducted and specify other actions authorised by the order.

12.4 The sheriff will make a decision on the application for a CIO and provide intimation to police.

12.5 The CIO ceases to be valid after 7 days or such shorter period as specified in the order (beginning the day after the order is granted) or on a later date specified in the Order.

### 13. APPEAL AGAINST DECISION OF SHERIFF ON CIO

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<sup>53</sup> There are reasonable grounds to believe that the child, while under 12 years of age by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether serious physical or otherwise) to another person and that an investigative interview of the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it, including whether another person has committed an offence.

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- 13.1 Permission to appeal must be made to the sheriff who granted or refused the CIO. This application must be lodged by a constable or by or on behalf of the child to whom the decision relates. Lodging of the application seeking permission to appeal must be applied for;
- by the child or their representative, within **3 working days**, commencing on the **day after the child** is provided with a copy of the order; **or**
  - by the Police, within **3 working days**, commencing on the **day after the day** that the decision to refuse the order is made; **and**
  - where, upon receipt of an application, **permission** to appeal is granted, the appeal **must** be lodged with the Sheriff Appeal Court **before the end of 3 working days** beginning on **the day** permission is given.<sup>54</sup>
- 13.2 Where an application for a CIO is refused, wherever possible, police and social work will discuss any intention to, or requirement for, an appeal.
- 13.3 The **lodging** of an appeal at court **suspends** the effect of any CIO originally made by the sheriff.
- 13.4 A child who wishes to appeal an order is entitled to legal representation and children's Legal Aid to help them to do this. This will be dependent on their capacity to instruct a solicitor and their wish to do so. Where the child has a ChIRP, this person **may** be able to advise and represent the child as a solicitor in relation to an appeal or this may be another solicitor.
- 13.5 Where a CIO is granted, planning and arrangements for the investigative interview can be progressed. The ACRA IRD should consider the possibility of an appeal and take this into consideration when planning the interview and ensure this is part of the contingency plans.
- 13.6 Careful consideration will need to be given to any intention to undertake an ACRA II during the period in which a child could lodge an appeal. This should be considered in line with any specific direction in the CIO that must be complied with, for example, the date and time for the investigative interview to take place.
- 13.7 If the order is upheld or varied following the appeal, a new period within which the order has effect may be specified by the Sheriff Appeal Court.<sup>55</sup>
- 13.8 Where an appeal is not lodged at the court by the child or their representative prior to the interview taking place, it remains competent to act in accordance with any instructions on the CIO.

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<sup>54</sup> s110 of the Courts Reform (Scotland) Act 2014

<sup>55</sup> s46 allows the Sheriff Appeal Court, in a case where the interview authorised by the original CIO has not been completed at the time where that order is upheld or varied, to specify a new period within which the CIO is to have effect.

- 13.9 It is important that where the child / family intimate an intention to lodge an appeal, that this is discussed as part of the planning process and the ChIRP is kept fully informed.
- 13.10 If the child or someone acting on their behalf seeks permission from the sheriff to make an appeal against the granting of a CIO and the sheriff grants permission to appeal, then the appeal may be lodged at the Sheriff Appeal Court. **Once lodged, no questioning of the child can take place in relation to the incident, however interview planning may continue.**
- 13.11 Where an appeal is successful and an ACRA II has taken place, all recorded information may need to be destroyed in line with agency guidance. The sheriff might provide direction in this regard. There might be other legitimate reasons for retaining material, (for example, if a formal complaint is made against police or social work or CP concerns have been identified that will require further agency action).

#### 14. ROLE OF THE CHILD SUPPORTER<sup>56</sup>

- 14.1 During an investigative interview the child has the right to have a supporter present in the room in which the interview is being conducted<sup>57</sup>.
- 14.2 The child has the right to have their supporter and/or the ChIRP present in the room while the interview is being conducted. The ACRA II may only proceed if both are within the building where the interview is taking place and at least one of those persons is in the interview room with the child.
- 14.3 The supporter should not be denied access to the child during the interview unless the interviewers<sup>58</sup> agree that the supporter's absence from the room in which the interview is being conducted is necessary, for example, to safeguard or promote the child's wellbeing. See section 9 – Withdrawal of Agreement.
- 14.4 The child's supporter during an interview by agreement must be the parent who gave agreement (section 50(6)). Where agreement is withdrawn, either by the child or parent, or where the interviewers deem the parent to be unsuitable (as above), then a CIO should be applied for, to interview the child.

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<sup>56</sup> s50

<sup>57</sup> "Supporter" has the meaning given by section 50(2) of the Act

14.5 The child's supporter during an interview by agreement or under a CIO must either be in the interview room or within the building in which the interview is taking place. Where the child chooses a person other than the identified supporter to be present within the interview room, the supporter must similarly remain within the building. The child's views, so far as is possible (taking into account their age and maturity) should be considered.

14.6 However, if the child chooses not to have a supporter (parent or any other person present during an interview by agreement under a CIO) in the interview room, then it would be competent for only the ChIRP to be present. The supporter, however, must remain in the building.

#### 14.7 **Who can be a Supporter?**

##### 14.7.1 **Interview by Agreement**

- The Act states that where the ACRA II is by agreement, the child's supporter must be the parent who gave the agreement.
- If the interviewers do not consider the child's supporter (i.e. the parent) to be appropriate, then any agreement to an investigative interview that was given by this parent is considered withdrawn. See section 9 – Withdrawal of Agreement.

##### 14.7.2 **Interview by CIO**

- Where the ACRA II is authorised by a CIO, the supporter must be aged over 18 and could be the child's parent but need not be.
- This means that any person can be considered by the child to be a supporter, for example, another relative, a family friend, or a support worker. It is important to consider the involvement of someone who may have an existing, trusting relationship with the child.
- The child's supporter must be considered **appropriate** and, in making this decision, the views of the child, so far as is possible, should be considered, taking account of the child's age and maturity and having regard to these views. This decision will be made during the ACRA IRD.

14.8 The Act does not define 'appropriateness' however the following factors should be considered during the ACRA IRD, when determining who should act as the child's supporter:

- the suitability of the parent(s) must be considered in the early stages of discussions;
- the relationship between the child and the supporter as far as can be ascertained, does the parent have a good relationship with the child?
- the views of the child;

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- is the identified supporter involved or suspected to be involved in the incident under investigation?
- does the supporter have any clear prejudices towards the child or case outcome, e.g. is a sibling / other relative or friend involved?
- does the supporter have any vulnerabilities that may diminish their ability to act in this capacity?
- are social work or other agencies aware of any factors that might impinge on their ability to perform this role?

**15. ROLE OF THE CHILD INTERVIEW RIGHTS PRACTITIONER (ChIRP)<sup>59</sup>**

- 15.1 The child has the right to receive advice, support and assistance from a ChIRP in connection with and during the ACRA II.
- 15.2 The role of the ChIRP is outlined in the Scottish Government ChIRP Policy Paper and Code of Practice.<sup>60</sup> The ChIRP will be a legally qualified professional who is registered to undertake the role.
- 15.3 Police will contact Scottish Government (as outlined in ChIRP process) of the possible need to arrange a ChIRP as soon as practicable, when the ACRA IRD has decided that an ACRA II is necessary (by agreement or CIO).
- 15.4 There may be occasions when the ChIRP needs to be contacted before an ACRA IRD has taken place so plans can progress timeously, if required.
- 15.5 Police and social work will arrange to consult with the ChIRP in relation to the planning for the interview. A summary of the discussion must be recorded on the ACRA IRD record and the Plan for the ACRA II.
- 15.6 Although police retain responsibility for seeking agreement or applying for a CIO, it is best practice, as part of the planning for the interview, to consider who would be best placed to communicate with the child and parent / carer (police, social work or in some circumstances, the ChIRP).
- 15.7 The child has the right to a private consultation with the ChIRP before, or at any time during, the interview and the ChIRP must not be denied access to the child at any time during the interview.

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<sup>59</sup> s 51

<sup>60</sup> [Age of Criminal Responsibility \(Scotland\) Act 2019: child interview rights practitioners – code of practice - gov.scot \(www.gov.scot\)](http://www.gov.scot)

- 15.8 As part of the planning and preparation of the ACRA Plan for the ACRA II, the interviewers will explain any potential contingencies and deviation from the plan (for example, where a child makes a disclosure and CP becomes the immediate priority<sup>61</sup>). The ChIRP (and the supporter) must be aware of any changes to the process that may be required in these circumstances. These contingencies will be discussed at the ACRA IRD.
- 15.9 The child has the right to have the ChIRP and / or their supporter present in the room when the interview(s) is being conducted. The ACRA II may only proceed if both are at the location of the interview where the interview is taking place and at least one of those persons is in the interview room with the child.
- 15.10 The ChIRP can advise the child of their right of complaint to either police or social work should they be unsatisfied with the conduct of an interview.

In summary, the ChIRP's role is to provide support, advice and guidance by helping the child to understand the purpose of the interview:

- helping the child to understand and make recommendations to the child about their rights in relation to the interview;
- ensure the child is aware of the right to refuse to answer questions;
- be present in the room where the interview is being conducted;
- communicate on the child's behalf with those conducting the interview;
- support the child in communicating with the person conducting the interview;
- support the child to understand what may happen as a result of the interview;
- question whether the interview is being conducted in accordance with the terms of any CIO;
- ensure the interview is being conducted fairly and in a way that treats the need to safeguard and promote the wellbeing of the child as a primary consideration.

## **16. THE RIGHTS OF THE CHILD**

### **16.1 The Child's Rights**

Whether an ACRA II is by Agreement or CIO, the child has the right:

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<sup>61</sup> In some circumstances this will involve an interviewer or ChIRP asking for a pause or break during the ACRA II and a decision can be made on next steps, while ensuring the ChIRP and supporter are aware of and understand these changes in order to fully support the child.

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- to receive relevant information which must be age appropriate and accessible and takes account of any developmental factors and communication needs;
- to have the ChIRP and/ or supporter present in the room when the interview is being conducted;
- to have their views considered when identifying a supporter where there is a CIO;
- to receive advice, support and assistance from a ChIRP before and during the interview;
- to a private consultation with the ChIRP before, or at any time during, the interview. The ChIRP must not be denied access to the child at any time during the interview; and
- not to make any comment or answer any questions during the interview.

Prior to the start of an ACRA II, the interviewers must ensure that the child is provided with information that contains details of:

- the behaviour to which the interview relates;
- the purpose of the interview;
- their rights in relation to the interview - including their right not to answer questions, and
- what *may* happen as a result of the interview.<sup>62</sup>

Where the child and parent agree to the ACRA II, they must be provided with a notice in writing (Child Information Leaflet – *Interview by Agreement*) that explains what their agreement means and how to withdraw their agreement at any stage.

The child must also be advised of their right to appeal a decision by the sheriff to grant a CIO. This information will be provided along with the copy of the CIO and the relevant Child Information Leaflet.

Social work and police will work together to ensure that the child and parent/ carers are informed and supported.

## 17. APPROACH AND PRINCIPLES OF THE ACRA II

17.1 Taking a child-centred approach to planning and conducting interviews is vital in securing best information and providing the necessary support for the child before, during and after the interview.

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<sup>62</sup> This may be general information such as the need to ensure that decisions are made with regard to their wellbeing and welfare as a primary consideration and to whom information may be shared. Specific outcomes may not be known at this stage, so it is important to offer support and reassurance, as far as possible, to the child.

- 17.2 Police and social work will collaborate in the planning of the interview taking into account information from other services gathered at the ACRA IRD.
- 17.3 An initial briefing involving the police officer and social worker undertaking the interview, and a planning discussion (to include the ChIRP) must be held prior to any ACRA II taking place. This should ideally be conducted by one of those who attended the ACRA IRD. A police SIO and IA might also be present. This will be recorded on the ACRA Investigative Interview VRI (Visually Recorded Interview) Briefing, Debriefing and Process Record (see section 31).
- 17.4 The approach to investigative interviewing of children under this Act will be trauma-informed and achieve the intended outcomes through robust planning and interview techniques. The approach being adopted for ACRA IIs is based upon recognised training for JII and comprises component parts: strategy, planning, actions and outcomes.

#### 17.5 **General Principles for the ACRA II**

17.5.1 General principles that underpin the conduct of investigative activities are summarised below:

- **Rights:** The child's feelings and views are sought, and their rights are respected and protected at every stage.
- **Safety:** The investigations process is carefully considered and sufficiently robust to establish the circumstances of serious harmful behaviour, whilst ensuring the safety of all those involved.
- **Wellbeing:** The wellbeing of the child is the lens through which all decisions and actions in respect of that child, are taken.
- **Preparation:** Processes include early discussion between the lead agencies and co-ordination and partnership with those responsible for the child's care.
- **Understanding:** Each stage and any change or decision is explained in a way that makes sense to each child and those responsible for their safe care, taking into account culture, capacity, age and stage.
- **Support:** Support will be provided for children and families involved in these processes.
- **Skill:** Professionals involved have received the required training and are supervised accordingly, to ensure a co-ordinated and child-centred process.
- **Pace:** The pace of exploration should be set by the child, and the interviewer will remain attuned to the impact of trauma upon the needs and feelings of each child.
- **Place:** Investigative processes are conducted in an environment which is child-friendly and accessible to all those attending
- **Improvement:** Processes will be evaluated and improved to ensure adherence to standards

17.6 An ACRA II differs from a JII in their purpose and in the considerations required by the Act.

**Strategy**

17.7 The planning of the ACRA II includes a strategy to identify the aims and objectives of the interview and coordinate all stages of the process. The strategy developed during the ACRA IRD informs planning for the ACRA II. Interviewers will be alert to the child's needs and will indicate if the planning needs to be adapted, in light of any new information.

17.8 The strategy must also consider the role of the ChIRP and the supporter and the specific duties under the Act (for example if an interview is being conducted under an agreement or if a CIO will be sought).

**Planning**

17.9 The assigned police and social work interviewers will draft a Plan for the ACRA II and a separate Plan for the Child's Needs that will include details about the child's:

- strengths and resources;
- any complex needs;
- cognitive factors;
- experiences of trauma and adversity;
- speech and language or communication needs;
- context and motivation;
- relationships.

17.10 To address this complexity, effective interview planning is essential, and will consider practicalities such as location, transport, timing, breaks and communication between interviewers during the ACRA II. The Plan for the ACRA II should be dynamic so interviewers can respond to any answers given by the child as well as to the needs of the child as they become apparent during the interview.

17.11 The interviewers should involve the ChIRP in this planning stage and should consider the communication required with the child's supporter, to ensure that the interview is well coordinated, and roles and responsibilities are clear. Any contingencies should be discussed, such as where CP concerns might arise.

**Action**

17.12 The ACRA II will be undertaken using an agreed approach between police and social work, based on robust planning.

17.13 It is important that all decisions are informed by the need to reduce anxiety to the child and minimise any risk of traumatisation.

**Purpose**

17.14 The aim of the interview is to seek information from the child in relation to an incident which is the subject of a police investigation, while ensuring a trauma informed approach and focus on the wellbeing of the child.

17.15 The interview may also identify any wellbeing or welfare concerns in relation to the child. This will inform next steps in planning to support the child and family, including risk management and appropriate and proportionate interventions where needed.<sup>63</sup>

**Support and Evaluation**

17.16 Interviewers require support to effectively undertake their role. This can be achieved by ensuring that there is quality assurance and practice evaluation carried out to assess competency.

17.17 This can involve a debriefing of all professionals (including the ChIRP) to provide support and contribute to identifying learning and development.

**18. TRAINING**

18.1 Investigative Interviewers (police and social workers) will be trained to develop the specific understanding, knowledge and specialised skills required for the effective interviewing of children under the Act. Interviewers are likely to have attended the National Joint Investigative Interview (JII) Training Programme which underpins the Scottish Child interview model (SCIM) for JII of children<sup>64</sup> and will receive additional

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<sup>63</sup> See Support and Intervention section 27.10

<sup>64</sup> <https://www.cosla.gov.uk/about-cosla/our-teams/children-and-young-people/joint-investigative-interviews-of-child-victims-and-witnesses>

investigative interview training on the duties, roles and responsibilities under the Act and relevant trauma informed principles and approaches to interviews in such situations.

- 18.2 Interviews are likely to be recorded by means of a Visually Recorded Interview (VRI)<sup>65</sup>. All trained officers and social workers will be trained and competent in the use of this equipment.

## **19. ROLE OF THE INTERVIEWERS**

- 19.1 An ACRA II is planned for and undertaken by two interviewers, one police officer and one social worker, identified during the ACRA IRD.
- 19.2 The lead interviewer may be from either police or social work and roles will be agreed at the planning stage after consideration of all relevant factors. Whilst an ACRA II is part of a police investigation, they can be led by either agency, however interviewers will be adaptable and flexible during the interview and hence the skillset of each profession will be recognised, when assigning roles.
- 19.3 The lead interviewer has primary responsibility for asking questions and information gathering. The second will take written notes of the salient points to ensure that all relevant matters are addressed and assist in identifying and reviewing pertinent information about anything the child may disclose. This will inform the decision-making that influences the developing joint strategy and future support for the child.
- 19.4 Where both interviewers are in the room with the child, it may become apparent that the child displays a preference towards the second interviewer. In such cases, the second interviewer should lead the interview.
- 19.5 During any scheduled breaks, the second interviewer should share their observations about the conduct of the interview and inform subsequent questioning. This provides an opportunity for both interviewers to review and reflect on their notes and lines of enquiry.
- 19.6 It is recognised that there are challenges with practical arrangements for these interviews as there will potentially be four adults in the interview room, along with the child. The planning and consultation with the ChIRP and any subsequent discussions with the supporter will inform a cohesive approach that should be adopted by all involved to ensure that the process remains child focused and respectful of the child's rights.
- 19.7 It is essential that the child is assisted to understand the roles and responsibilities of those involved.

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<sup>65</sup> See section 24

## 20. ACRA PLAN FOR THE CHILD'S NEEDS

- 20.1 An *ACRA Plan for the Child's Needs* should be produced for all children who are subject to an ACRA II. This document (see section 31) should be developed by the interviewers based on information obtained from the ACRA IRD and other information gathered about the child from those who know them well. This ensures that the needs of the child are fully considered. Planning for the child's needs is *not a statutory* requirement but is the best practice approach for interviews based on learning from the SCIM.
- 20.2 The *ACRA Plan for the Child's Needs* should not be shared with the child or the child's parent / supporter due to the sensitivity of the information likely to be contained within it when complete. However, the document should be shared and discussed with the ChIRP (unless determined otherwise at the ACRA IRD) as the content will help inform the ChIRP as to how the child can best be supported by them in the interview.
- 20.3 The *ACRA Plan for the Child's Needs* supports interviewers to identify the specific needs of the child and consider how the child's welfare can be supported in the investigative interview.
- 20.4 This Plan focuses on:
- Strengths and Resources
  - Disabilities
  - Cognitive Factors
  - Speech, Language and Communication Needs
  - Trauma and Adversity
  - Context and Motivation
  - Relationships
  - Working in Partnership
  - Child Protection Concerns
  - ChIRP's Comments

## 21. PLAN FOR THE ACRA II

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- 21.1 There is a statutory requirement for police and the local authority to collaborate when planning the conduct of the ACRA II.<sup>66</sup> The *Plan for the ACRA Investigative Interview* (see section 31) will be developed by the identified interviewers and informed by the information obtained at the ACRA IRD and gathered in the completion of the ACRA Plan for the Child's Needs. The Plan for the ACRA II must be completed as fully as possible with all sections given full consideration (where any sections are not relevant/ appropriate, this must be clearly stated). Where a SIO or IA has been appointed to the investigation, they are also likely to be involved in the planning for the interview.
- 21.2 This document lists details of the child and other relevant participants followed by the purpose and logistics of the interview. The child, parent and ChIRP must be given a copy of the full document. The interview cannot proceed until they receive this.
- 21.3 The police and social work interviewers will be fully briefed by the relevant Detective Sergeant, Social Work Manager and SIO (if appointed) prior to drafting the Plan for the ACRA II. Consideration should also be given to support from an IA<sup>67</sup> (as deemed necessary).
- 21.4 The ChIRP assigned to provide advice, support and assistance to the child during the interview should be invited to contribute to the Plan for the ACRA II and be provided with a copy unless there are specific reasons to the contrary.
- 21.5 Police are the statutory authority for investigations and therefore have overall responsibility for the content of the Plan for the ACRA II.
- 21.6 The following details will be recorded on the Plan for the ACRA II and explained to the child and the parent who has given Agreement:
- The behaviour to which the interview relates and is being investigated by police i.e. the purpose of the interview.
  - What will be done to support the child's wellbeing at the interview.
  - The child's rights in relation to the interview.
  - The period over which the interview will be conducted\*.
  - The number of meetings which will take place as part of the interview
  - The date and time of each meeting\*.
  - How long each meeting will last\*.
  - The location at which each meeting will take place.
  - The roles of each person present.
  - The persons by whom the child may be questioned at each meeting.
  - Support and assistance required by the child during the interview (including any additional support needs and vulnerabilities).

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<sup>66</sup> S47 of the Act

<sup>67</sup> Refer to the [Crime Investigation National Guidance \(hyperlink\)](#)

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- What may happen as a result of the interview (including referral to the Children’s Reporter if relevant)
- Ensuring this is consistent with the information provided by the ChIRP to the child and parent.
- Any other relevant information (e.g. arrangements for the transport of the child to and from the interview, contingency plans).

\*Not all information will be available at the time of drafting this plan and estimates should be provided where possible.

21.7 Where the interview is to be conducted under a CIO, the Plan for the ACRA II must include and comply with any directions authorised by a sheriff in the order.

21.8 Information in relation to the plans must be accurately recorded and must be held in an auditable format.<sup>68</sup>

21.9 The Plan for the ACRA II will be a standard electronic template<sup>69</sup> and will be shared with core agencies, either electronic (in accordance with Data Protection) or by hard copy to be retained in their records.

21.10 The interview planning will include agreement on the best approach to sharing the Plan for the ACRA II and who should be involved, and this **must** involve an explanation to the child in a manner and approach that they understand and takes account of their age, stage of development and communication needs. The Plan for the ACRA II must also be shared with the parent who gave agreement and in the case of a CIO, to a parent of the child if practicable. In all circumstances, the supporter must be given a copy of the Plan for the ACRA II.

21.11 The Plan for the ACRA II should be shared with the ChIRP in reasonable timescales to allow the ChIRP to properly discuss this with the child in advance of the interview. Except where unavoidable, the Plan should not be shared on the same day as the interview.

21.12 Any delays to this process or decision not to share, must be fully recorded and explained in the ACRA IRD record and on the Police Policy Log.

21.13 The ACRA II may not take place without the child being given a copy of the Plan for the ACRA II in advance, and the interview should proceed in accordance with the Plan for the ACRA II. Interviewers should ensure that the child and parent / carer / supporter are fully aware of the ensuing process and that there is a shared understanding of the roles of all present.

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<sup>68</sup> Any notes associated with discussions around formulation of the plan(s) should be filed and retained according to agencies’ policies and in compliance with the Data Protection Act 2018.

<sup>69</sup> see section 31 – additional resources

21.14 Where there is any deviation from the initial Plan for the ACRA II, then this should be recorded by the identified lead agency on the Plan for the ACRA II and shared with the child, parent who has given agreement/the supporter (if different) and the ChIRP, as soon as reasonably practicable, prior to the commencement of the interview.

## **22. PROTOCOL FOR ACRA II**

22.1 A Protocol for ACRA II must be completed by the interviewers. This should be reviewed together with the supporting Pre-Interview Checks and Guidance (see section 31).

22.2 The Protocol is closely aligned to the NICHD (National Institute of Child Health and Human Development) protocol<sup>70</sup> The revised ACRA protocol includes the specific information to be given to the child to ensure their legal rights are upheld in relation to the ACRA II.

## **23. LOCATION AND TIME OF THE INTERVIEW**

23.1 An ACRA II will be visually recorded<sup>71</sup> unless there are specific reasons why this may be inappropriate for the individual child, or this is not possible for practical reasons. The logistics of the interview and requirement for equipment will be discussed (in so far as possible) at the ACRA IRD.

23.2 Where the child, for whatever reason, does not wish to be captured under VRI conditions, the SIO must be made aware and the decision on how to proceed must be documented (for example, audio only or if the Questions and Answers are to be handwritten) on the Policy Log.

23.3 The use of VRI equipment and the identification of a suitable interviewing facility; will be dependent upon local arrangements. This will be discussed and planned at the ACRA IRD.

23.4 Careful consideration will be given to when an interview would suit the child and family. Arrangements will be agreed on a case-by-case basis, based on the child's needs.

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<sup>70</sup> The NICHD Protocol is an evidence - based interview protocol for use in forensic interviewing <https://www.cosla.gov.uk/about-cosla/our-teams/children-and-young-people/joint-investigative-interviews-of-child-victims-and-witnesses>

<sup>71</sup> This could be fixed or mobile visual recording equipment.

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- 23.5 Decisions should consider any geographic challenges in relation to the practicalities of transporting the child and/or others, to a predetermined location. This is especially important when considering children who reside in rural areas, particularly remote and island locations where there may be limited options.
- 23.6 In all circumstances, the needs of the child must be a primary consideration. This will include the age and developmental stage of the child, accessibility issues for those in attendance, concerns about the location within a community, and any specific considerations, such as disabilities (for example hearing impairment, mobility or other physical constraints etc.)
- 23.7 Arrangements for suitable premises and practical arrangements will take cognisance of the safety, wellbeing and concerns of the victim, including careful consideration of where and when any child victim will be interviewed and /or attends for support.
- 23.8 Planning must always consider privacy and confidentiality and the number of children that can be safely and appropriately dealt with at any given facility at any one time. There is a particular risk of children involved in the same incident meeting one another. This must be carefully considered and managed.
- 23.9 When identifying suitable premises, the following must be taken into consideration to ensure a safe and supportive environment for an investigative interview:
- high quality child friendly environment where the child feels safe and secure, reducing distress;
  - supports feelings of safety, security and wellbeing – e.g. child friendly décor, toys and soft furnishings;
  - equipment required - camera/microphone positioning (non-intrusive);
  - local – reducing the need to travel and remain in a familiar community;
  - situated in a quiet location (soundproofing preferable);
  - option for a second dedicated interview monitoring room;
  - available at suitable times when required;
  - local coordination and cooperation required for access;
  - provides a private, confidential space to minimise stigma;
  - internal and external look and feel of the premises minimises child's anxiety and put them at ease;
  - minimal noise, interruptions and distractions;
  - disability access and accommodation of equipment (e.g., wheelchair access);
  - accommodates the number of people required to be in the room;
  - amenities – kitchen or availability of refreshments, toilet facilities;

- possibility for child to visit or see photos beforehand to reduce anxiety.

### 23.10 **Bairns' Hoose**

23.10.1 The Scottish Government Vision of a Bairns' Hoose (Barnahus) in Scotland is that:

“All children in Scotland who have been victims or witnesses to abuse or violence, as well as children under the age of criminal responsibility whose behaviour has caused significant harm, or abuse will have access to trauma-informed recovery, support and justice.”<sup>72</sup>

23.10.2 The scope of this includes the use of a Bairns' Hoose for the ACRA II and, as appropriate, other services of the Bairns' Hoose for children involved in ACRA processes.

23.10.3 Planning and arrangements must be discussed and agreed at the ACRA IRD in line with Bairns' Hoose Standards<sup>73</sup>.

## 24. **RECORDING**

24.1 The use of a VRI has been identified as good practice and this method of capturing information, is consistent with that which is applied to the capture of evidence from children under current CP JII guidance and practice. It is child-focused and supports more seamless interaction between the interviewer(s) and the child. A VRI improves the quality (recording and content) of the investigative interview and will minimise the number of meetings that take place, which is in the child's best interests.

24.2 At all stages, agencies must follow their own service Guidance for the Recording and Retention of information.

## 25. **CHILD PROTECTION CONCERNS – DURING AN ACRA II**

25.1 If a child's presentation or account gives interviewers reason to believe that the child may have experienced or may be at risk of significant harm, the interviewers have the discretion to make a dynamic judgement as to whether the ACRA II should be paused or terminated.

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<sup>72</sup> [Bairns' Hoose - Scottish Barnahus: vision, values and approach - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>73</sup> [https://www.healthcareimprovementscotland.org/our\\_work/standards\\_and\\_guidelines/stnds/bairns\\_hoose\\_standards.aspx](https://www.healthcareimprovementscotland.org/our_work/standards_and_guidelines/stnds/bairns_hoose_standards.aspx)

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Therefore, the preparation for an ACRA II must involve contingency planning for any emerging CP concerns (where applicable, this must take the form of a new JII). This should include planning and preparation with the ChIRP.

- 25.2 Managing this situation at the time is complex and will require a dynamic assessment, taking account of CP and ACRA considerations on a case-by-case basis, always ensuring the child's wellbeing remains a primary consideration.
- 25.3 The incident under police investigation will need consideration given its serious nature, including any potential risks to others.
- 25.4 In any situation the response must be trauma informed and child centred. It is important that the concern expressed by the child is listened to, acknowledged and taken seriously by the interviewers. Consideration must be given to the child's rights in this context and their decision to share sensitive, personal and possibly traumatic information at this time, perhaps for the first time.
- 25.5 On occasions where the ACRA II is paused due to a CP concern arising, the interviewers must seek advice from their relevant managers on how to proceed. Police and social work managers should make this decision jointly, considering what would be in the best interest of the child at that time. The SIO must also be consulted prior to any decisions being made. Where there is disagreement the IRD must be informed and advise on a progression plan. It is likely a CP IRD will take place in these circumstances.
- 25.6 The supporter may be the child's parent and therefore supporting their understanding of the situation is critical.
- 25.7 Police may continue with enquiries (out-with the interview setting) to gather evidence about the incident under investigation and police and social work should liaise to share updates on the progress of the investigation and any new information. This helps to ensure the best outcomes for the child can be determined, including whether safety measures are required, or additional support is needed.
- 25.8 A joint CP / ACRA IRD should be convened as soon as possible to discuss the CP issues, agree any further action required and discuss any outstanding action required in relation to the ACRA investigation.
- 25.9 Decisions will be updated on the ACRA IRD record by the lead agency and changes should be agreed to by all participants.
- 25.10 CP procedures provide a structured framework to consider care, protection and risk management, including the possible need for an urgent response, both in relation to the protection of the child and others.

25.11 Depending on the specific circumstances, relevant and proportionate legal measures can be considered (details of this are outlined in the National Guidance for Child Protection, 2021 updated 2023).

25.12 In making any determination about how to proceed, the following should be considered, however professional judgement will be required.

25.13 **Child protection considerations:**

- Is there concern about the immediate safety of the child?
- What is in the best interests of the child at that time?
- What is the nature, seriousness and immediacy of the harm disclosed?
- How is the child presenting at that time?
- Has the child disclosed any injury or discomfort?
- When did the incident take place?

25.14 **Proceeding to JII:**

It is important to note that, where a decision is made to proceed with a JII in relation to CP concerns about the child, **this interview cannot focus on or ask any questions about the harmful behaviour that is the subject of the ACRA investigation.** This can only be carried out using the provisions of the Act, which suitably safeguard the child's rights. See Section 4: s.39 – Limitations on Police Questioning of a Child.

25.15 **In addition to the above, it is important to consider the requisite planning requirements for a JII (with relevance to the planning for an interview under the SCIM). Consideration should be given to:**

- Whether a JII can take place immediately and with efficacy.
- Is a Topic Identification Plan/Interview Plan (specific to the JII/SCIM interview) drafted?
- The impact moving from an ACRA II to a JII / SCIM interview may have on the child, bearing in mind that the ChIRP will need to be removed from the room and likely so will the supporter/parent. Would this cause the child anxiety or confusion?
- How will this be structured?
- Will some of the process (ground rules, rapport building etc.) need to be repeated for the JII?
- Can the child protection concern be acknowledged at this time and returned to at a future JII? It is important to ensure that the child, supporter and ChIRP are clear about the processes being undertaken and why.

25.16 It is likely that moving from an ACRA II to a JII will only be used in exceptional circumstances, due to necessary planning and essential co-ordination and to limit the impact on the child.

25.17 Where a JII commences, a new recording will need to be started.

25.18 **ACRA considerations:**

- Can the ACRA II be safely concluded?
- What impact is pausing the ACRA II likely to have on the child?
- Are there concerns about the safety of others?
- How will the decision impact on the ACRA investigation?

**At any stage, urgent action may be required to protect a child or another person from actual or likely significant harm. This may include an interim safety plan.**

**26. PLACE OF SAFETY**

26.1 The power under section 28 of the Act can be used if police have reasonable grounds to believe 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 such harm if they have already been harmed).

26.2 This emergency power allows police to take the child to a place of safety and to keep the child there. The use of the power must be necessary and proportionate.

26.3 As soon as practicable after police take a child to a place of safety, they must inform a parent of the child.

A child may be kept in a place of safety under this section

(a) only for **so long as is necessary** -

(i) to put in place arrangements for the **care or protection** of the child, or

(ii) for an order (under section 63) authorising the taking of **intimate samples** from the child to be obtained, and

(b) in either case, for **no longer than 24 hours**.

- 26.4 At any stage, where there is a need to safeguard and protect a child who may be at risk of harm, CP procedures should be followed as set out in the National Guidance for Child Protection in Scotland 2021 updated 2023. The extent to which harm is 'significant' relates to the severity or likely severity of suffering and significant interruption, change or damage to physical, emotional, intellectual or behavioural health and development, resulting in trauma and suffering.
- 26.5 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'.
- 26.6 There are different criteria for the use of the Place of Safety power. The behaviour does not need to meet the threshold of 'serious harm' that defines an 'ACRA Incident' (see paragraph 26.1).
- 26.7 Where there is no risk of immediate, significant harm or further such harm, police will act in line with their duties<sup>74</sup> to ensure the safety of the child believed to have caused or risked causing harm.
- 26.8 Where police use the section 28 power, they will contact social work<sup>75</sup>, advise they have used this power and provide a synopsis of the incident.
- 26.9 In all cases, police and social work will undertake checks to assess the suitability of any arrangements. Social work will undertake relevant checks based on the information provided and will share relevant and proportionate information to inform decision making. This will include (where relevant and if known):
- child protection register check
  - concerns or alerts noted
  - legal status of the child
  - child's place of residence
- 26.10 It is anticipated that in most situations, police will return the child to their home where the child is willing to accompany them, or in accordance with their powers under the Police and Fire Reform (Scotland) Act 2012, and use of ACRA powers will not be required.

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<sup>74</sup> Under the Police and Fire Reform (Scotland) Act 2012

<sup>75</sup> Contact details for social work both during and out with office hours are provided in the published list however local areas should share specific details and may develop local protocols to support this.

- 26.11 A child's home or place of residence can be a place of safety and police can take a child there under the section 28 power.
- 26.12 Where a child cannot be returned to the care of the parent or carer, social work will identify the most appropriate place of safety for the child, in a timeous manner. Consideration should be given to the suitability of extended family, friends, and other relevant adults as appropriate to ensure the care and protection of the child.
- 26.13 The section 28 power will **cease to have effect** where police consider that the child's immediate care and protection is adequately met by leaving them in a place where a suitable person(s) can attend to the child's needs.
- 26.14 Early liaison with social work is essential to ensure that the child's needs at that time can be met. Social work can make other provision for the child such as a foster care, residential care or other suitable premises. This will be considered on a case-by-case basis.
- 26.15 Where social work is unable to provide a place immediately, the child should be taken to the nearest police station that has an identified place of safety room, at which time the attending officer will continue to liaise with social work to ascertain a more suitable location to take the child to.
- 26.16 **Only police** can exercise the section 28 power. Police can take a child to a place of safety. 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. Whilst a police station is defined as a place of safety, it must only be used in exceptional circumstances. All other options must be first considered. Social work will assess the needs and risks on a case-by-case basis.
- 26.17 It is essential that officers discuss with social work colleagues any concerns they may have about the child's behaviour. If it is safe to do so, then officers may leave the child at the place of safety. If the circumstances change, the local authority staff may ask for officers to return. This will be individually assessed.
- 26.18 Police will also inform social work of any known health (such as allergies) or wellbeing concerns that they have identified from discussion with the parent/carer.
- 26.19 Where there is any identified risk that the child may attempt to harm anyone whilst in the care of the local authority, or attempt to abscond, it is incumbent on police to remain with the child. Local authority staff will have no power under section 28 to intervene in such instances.

26.20 Police are empowered to use reasonable force in the exercise of this power.

26.21 There are also additional considerations where intimate samples (which may only be taken under the authority of an Order for Physical Data and Samples) need to be obtained from the child (so that evidence is not lost or destroyed), to properly investigate the incident. In most cases, the requirement for intimate samples is likely to be time sensitive and so the preference is that, if there are powers to take the child to a place of safety, then it should be a suitable space to facilitate a forensic medical examination of the child (e.g. an NHS facility). Discussion will need to take place with the local hospital to seek agreement to taking the child there and keeping them there under section 28 for the purposes of conducting a Forensic Medical Examination. This will be on a case-by-case basis.

26.22 In specific circumstances, police may decide to remain with the child in a place of safety, for example where physical samples are required. These arrangements will not be suitable for some social work offices and other places of safety, and therefore a police station may be the only suitable venue.

26.23 Following the use of this power, an ACRA IRD should take place in most cases.<sup>76</sup>

26.24 Supporting the child in these circumstances is important and a trauma informed approach should be used. Police and social work will collaborate to ensure the wellbeing of the child is considered and their rights respected.<sup>77</sup>

26.25 Information on the use of section 28 place of safety powers must be gathered to inform police reports to Scottish Ministers<sup>78</sup>.

26.26 Where the child is left in the care of the local authority, police will advise social work of the time the section 28 power has come into effect. Social work will record details and times of any subsequent movement of the child and the point where the power ends. This information will be noted in the ACRA IRD Record.

26.27 The following details must be recorded and reported to Scottish Government by Police:

- nature and circumstances of the incident;
- evidence of risk to others;
- rationale for not returning the child home (where applicable);

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<sup>76</sup> See section 6

<sup>77</sup> Key principles for places of safety are outlined in the Ministerial Guidance (Annex A)

<sup>78</sup> Details are outlined in Ministerial Guidance

- date, time and location use of the power started and ended;
- details of officer(s) exercising the power;
- type and location of the place of safety;
- length of time at the place of safety;
- any further movement of the child, with associated times/lengths of stay;
- whether the child was kept in a police station, and, if so, the authorising officer and reasons why;
- whether the child was kept in a police cell, and, if so, the authorising officer, reasons why and who supervised the child while in the cell<sup>79</sup>;  
and
- date, time and details of the parent notified (or the reason if not informed)

## **27. PLANNING AND SUPPORT FOR THE CHILD AND FAMILY**

- 27.1 This section focuses on what happens after ACRA powers have been used. It outlines key pathways, services and approaches to provide support for children and families.
- 27.2 This section applies equally to children whose behaviour does not meet the threshold and criteria for an ACRA Incident and to children whose behaviour does meet the criteria, and when there is a decision not to hold an ACRA II and / or to use any of the other available police investigatory powers under the Act.
- 27.3 At this stage social work are likely to be the lead agency and undertake the Lead Professional role.
- 27.4 Where there is consideration of the use of ACRA powers, the child and their family may already be involved with social work and / or third sector services. Most children will be in contact with the universal services of health and education.
- 27.5 A child under 12, whose behaviour has caused concern, may have experienced trauma, adversity, loss, instability, abuse and / or neglect. Children who are involved in harmful behaviour may have been harmed themselves. The impact of an incident, or series of incidents, in early childhood on a child's life chances can be long lasting, therefore any intervention will be carefully assessed and considered.

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<sup>79</sup> Refer to S28(6) and (7)

- 27.6 It is important that the needs of the child are viewed holistically, within the context of their own environment and family.<sup>80</sup> Identifying supports early can help to minimise or prevent the risk of future harmful behaviour.
- 27.7 A child's cognitive ability develops over time, and a child may not understand the full impact of their actions on others, or indeed on themselves. Some children will also have additional needs such as speech and language or learning supports, and careful attention must be made to any specialist needs required for the child.
- 27.8 All interventions and supports will be trauma informed and recognise the importance of relationships, trust, engagement and connections with the child and their family to ensure that any intervention is effective and supportive. Supports must take a rights-based approach for all children at every stage.
- 27.9 A GIRFEC approach for children is firmly grounded in securing both their best interests and wellbeing<sup>81</sup> and supporting families by ensuring children receive the right help, at the right time. This approach ensures that the child's health, education and wellbeing needs are at the fore and that early intervention, support and diversion is recognised. Any intervention will be proportionate and not unnecessarily bring a child into a 'system' where this is not required.
- 27.10 An identified Lead Professional or Named Person, or person in an equivalent role, will coordinate support and intervention for the child and family. A multi-agency assessment following the national practice model can be undertaken following local GIRFEC and staged intervention processes. This can include a multi-agency Team around the Child<sup>82</sup> meeting and the development of a single Child's Plan<sup>83</sup> which will include any necessary action required to address the child's needs.
- 27.11 Relevant information must be shared with the Team Around the Child to ensure appropriate support is put in place for the child and family, to consider the child's wellbeing needs and any change needed to the Child's Plan.
- 27.12 Where a child has displayed harmful behaviour, the Child's Plan should be holistic and tailored to need and context, including risk assessment and management measures and interventions. Where there is concern regarding sexually harmful behaviours, reference should be made to National Child Protection Guidance (2021, updated 2023).<sup>84</sup>

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<sup>80</sup> GIRFEC National Practice Model - gov.scot ([www.gov.scot](http://www.gov.scot))

<sup>81</sup> Getting it right for every child (GIRFEC): Wellbeing (SHANARRI) - gov.scot ([www.gov.scot](http://www.gov.scot))

<sup>82</sup> These meetings can vary in terminology across the country e.g. Child's Plan meeting/ GIRFEC meeting etc

<sup>83</sup> Getting it right for every child (GIRFEC): Child's plan - gov.scot ([www.gov.scot](http://www.gov.scot))

<sup>84</sup> Refer to National Child Protection Guidance 2021 (p169): Children and young people who have displayed harmful sexual behaviour

- 27.13 Where the child requires recovery or therapeutic support and intervention, this should be considered and the relevant services put in place including consideration of Bairns' Hoose. This support could be from health, social work or third sector, or other local services that would meet the child's assessed need.
- 27.14 Any questions, **as part of a police investigation**, in relation to the child's harmful behaviour (about an ACRA Incident) must take place within the context and safeguards of an ACRA II.
- 27.15 The Promise<sup>85</sup> emphasises that families must be given support to overcome the difficulties they may encounter. Meaningful engagement with families must ensure their voices are heard and they are involved in decisions that affect them.
- 27.16 For children who have been involved in an ACRA investigation process, consideration of relevant family support is important. The Promise highlights 10 principles of family support which should be embedded into practice.
- Holistic and relational
  - Therapeutic
  - Non stigmatising
  - Patient and persistent
  - Underpinned by children's rights
  - Community based
  - Responsive and timely
  - Working with family assets
  - Empowerment and agency
  - Flexible
- 27.17 Effective engagement to meet a child's needs and therefore reduce future risk is more likely within approaches which emphasise respectful and rights-based communication with children and families, build upon strengths that have been evidenced, address need and risk, and work with the interaction of relationships and factors in the child's world. This could include approaches such as Signs of Safety (SoS)<sup>86</sup> and Family Group Decision Making / Family Group Conferencing (FGDM).<sup>87</sup>

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<sup>85</sup> [Home - The Promise](#)

<sup>86</sup> SoS is a model of child protection and family support which is based on structured development of partnership between professionals and family members, and between professionals themselves. The model works by encouraging shared understanding and ideas about what needs to change, and by defining shared responsibilities in steps towards achieving these changes.

<sup>87</sup> FGDM is an independently co-ordinated process which empowers family members to shape plans for children. The process is applicable in a wide range of urgent circumstances when partnership with families is essential – for example, to develop participation in an agreed safety plan for a child at risk of significant harm.



27.21.1 A small number of children may require specialist support for their mental wellbeing and health and to deal with the presenting behaviours and /or prevent harmful behaviour escalating in future. There are a range of services that may be available locally including specialist support such as the Child and Adolescent Mental Health Service (CAMHS), counselling services in schools, and community wellbeing service support for children, young people and their families including services available from third sector organisations.

27.21.2 Consideration must also be given to possible risks regarding self-harm and suicide. Workers in police, social work, health, education, and the third sector need to be alert to circumstances where the child may be at heightened risk and should maintain awareness of what to do to support children. A trauma-informed initial response can often significantly reduce risk and feelings of pain, isolation and despair.

## 27.22 REFERRAL TO THE CHILDREN'S REPORTER

27.22.1 A key principle of the Children's Hearing system is the welfare-based approach towards children, at risk or in need, which looks at a child's actions in the context of their support needs and an understanding of why that behaviour may have occurred.<sup>93</sup>

27.22.2 As a result of the Act, a child under the age of 12 years can no longer commit an offence in Scotland and the Children's Reporter cannot refer a child to a children's hearing on offence grounds where the incident took place when the child was under the age of 12. The Children's Reporter can refer a child to a Children's Hearing on non-offence grounds that may include reference to any serious harmful behaviour by the child.<sup>94</sup>

27.22.3 The Children's Reporter will consider the child 's development, parenting and family and environmental factors alongside the history of co-operation with any previous intervention; the impact of any previous intervention; the current motivation to change; and the willingness to co-operate with any intervention.

27.22.4 Where the Reporter decides not to proceed to a Hearing following the receipt of a referral, they may refer the child to the local authority for support on a voluntary basis, or they may decide to take no further action. A fundamental principle of the children's hearings system is that the hearing will consider the individual circumstances of each child and should not make orders in respect of the child, such as compulsory supervision orders, unless to do so is better for the child.

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<sup>93</sup> [Welcome to SCRA | Scottish Children's Reporter Administration](#)

<sup>94</sup> If the reporter decides to arrange a children's hearing where the child was under 12 when the offence was committed, the reporter must not select the offence ground. The most likely alternative grounds 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.

27.22.5 Any agency can refer a child to the Children's Reporter at any stage. Where the statutory criteria are met<sup>95</sup> police and the local authority must refer a child.<sup>96</sup> In a case involving harmful behaviour that meets the threshold for an ACRA Incident, any decision by the police Concern Hub not to refer the case to the Children's Reporter must only be taken after full consultation with the SIO.

27.22.6 Where an ACRA investigation is being considered a decision can be taken at ACRA IRD, as to whether there is a requirement, or not, for a referral at that time. This will depend upon the information gathered in relation to the incident and the welfare and wellbeing of the child, what is known about the child and their background and what can be established in the early stages of the investigation as well as known family circumstances. However, it may be that a decision is taken at the end of the investigative process once further information has been gathered and assessed. The child has the right to know the possible outcomes following an ACRA investigation and it is important that any decisions are clearly communicated to the child and family, including the decision to refer to the Children's Reporter. In the case of ACRA IIs, the ChIRP can also offer advice and guidance and should be informed of any decisions made at this time. The plan from the IRD should include who will communicate the requirement for a referral or otherwise to the child and their family.

## 27.23 SECURE CARE

27.23.1 It is very rare for a child under the age of 12 to be placed in secure care in Scotland and is only relevant for a very small number of children who may be a significant risk to themselves, or others in the community, whose needs and risks can only be managed in this setting.<sup>97</sup>

27.23.2 Robust regulations and requirements are in place, ensuring that any child should only be placed in secure accommodation for as long as necessary.<sup>98</sup> Decision making for secure care is necessarily robust and any decision taken to deprive a child of their liberty must meet very strict criteria.

27.23.3 A decision for secure care is made by the local authority Chief Social Work Officer and the Manager of the secure care accommodation. The Act does not change the criteria or decision-making process.

## 28. DUTY TO INFORM VICTIM<sup>99</sup>

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<sup>95</sup> The statutory criteria for referral to the Reporter are: (a) the child is in need of protection, guidance, treatment or control; and (b) it might be necessary for a Compulsory Supervision Order to be made in relation to the child. The local authority and the police must refer a child when the criteria apply. Any other person may do so.

<sup>96</sup> <http://www.scra.gov.uk/wp-content/uploads/2016/03/Guidance-on-Referral-to-Reporter.pdf>

<sup>97</sup> The Children's Hearings (Scotland) Act 2011 provides the legal framework, including specific conditions and the 'secure care criteria' that must be satisfied ; [Secure care: pathway and standards - gov.scot \(www.gov.scot\)](http://www.gov.scot/Secure-care-pathway-and-standards)

<sup>98</sup> The Children's Hearings (Scotland) Act 2011 provides the legal framework, including specific conditions and the 'secure care criteria' that must be satisfied.

<sup>99</sup> s27

28.1 Under the Act, Police Scotland have a duty to provide the Children's Reporter with details of the victim of harmful behaviour, where this behaviour is:

- physically violent;
- sexually violent or sexually coercive; **or**
- dangerous, threatening or abusive; **and**
- causes **harm to another person**.

28.2 This is shared on the basis of a Legal Requirement under Article 6 of UK GDPR.

28.3 Through the Victim Information Team, SCRA can provide victims of seriously harmful behaviour with information on the disposal of the case, whether it is a decision of the Children's Reporter or children's hearing. The Victim Information Team will provide the information to victims of such behaviour where the victim has opted to receive it, subject to some exceptions in particular situations. Where the victim is a child, this information will be provided to the parent or other person responsible for the care of the child.

## 29. SHARING OF INFORMATION BY POLICE WITH PARTNERS AND THIRD SECTOR AGENCIES

29.1 Police Risk and Concern Hubs determine the need to share information through a holistic assessment of information held by Police Scotland, which can maximise early intervention. Child Concern wellbeing information (National interim Vulnerable Persons Database - iVPD) is shared with statutory agencies under [Article 6 of the UK General Data Protection Regulation \(GDPR\)](#). The same assessment will be applied to the ACRA Child Concern forms raised for children who, whilst aged under 12, are believed to have caused or risked causing harm to others, where there are concerns for their wellbeing due to the nature of the behaviour(s) and / or there is a requirement to refer the child to the Children's Reporter.

## 30. CROSS BORDER POWERS

30.1 There may be occasions where a child under 12 years of age, who is not resident in Scotland, causes harm whilst visiting Scotland.

- 30.2 By virtue of a UK Parliamentary Order under Section 104 of the Scotland Act 1998, it will be competent for a child residing in a different part of the UK to be subject of an investigation of their harmful behaviour, where this behaviour takes place in Scotland. This includes use of the powers under ACRA, such as the ability to apply to a sheriff for Orders for search, interview or physical data and samples, where the harmful behaviour meets the threshold of seriousness. In these circumstances, the application for an order will be submitted in the Sheriffdom where the child's harmful behaviour took place. An order granted in these circumstances may be carried out in any part of the UK.
- 30.3 The matter will be the subject of an ACRA Child Concern Report on iVPD. The Concern Hub will assess the report and, if sufficient information is gathered regarding the child's harmful behaviour, and it is appropriate to do so, will share it with the Police Force and/or local authority for the area in which the behaviour took place and where the child usually resides.
- 30.4 It will be a matter for the relevant local authority to liaise with their colleagues in the jurisdiction in which the child normally lives, to ensure the nature of the harm they may have caused is known to that Authority. This may well be discussed in advance at any related ACRA IRD.
- 30.5 The Children's Reporter only has jurisdiction for children who normally reside in Scotland; hence it is not appropriate to refer a matter to the Children's Reporter if the child is not resident in Scotland.
- 30.6 Where a child below the age of criminal responsibility, who is normally resident in Scotland, causes harm whilst out-with Scotland, such matters can be referred to the Children's Reporter. However, the investigation of such matters will continue to be a matter for the authorities in the area where the behaviour occurred, in line with their rules of law, including their age of criminal responsibility. The Children's Reporter can consider behaviour which happened anywhere, including internationally, for a child who is normally resident in Scotland.

## **31. APPENDICES AND ADDITIONAL RESOURCES**

### **Appendix:**

1. Definitions of a child under the Act
2. Child Information Leaflets
3. Who must receive a copy of the CIO?
4. Summary of decision making in relation to children under 12
5. Glossary

**OFFICIAL**

**Additional Resources:** The following list of Police Scotland force forms and flowcharts referred to throughout this document can be accessed via Police Scotland intranet and copies can be found within the JII SharePoint which is accessible to relevant social work staff and managers.

1. ACRA Investigative Interview – Provisional Plan – Force Form 048-024
2. Plan for the ACRA Investigative Interview – Force Form 048-025
3. ACRA Plan for the Child’s Needs – Force Form 048-025(A)
4. Record of ACRA Inter-Agency Referral Discussion – Force Form 048-026
5. ACRA Investigative Interview – VRI Briefing, De-Briefing and Process Record – Force Form 048-028
6. ACRA investigative Interview – VRI Recording of Salient Points – Continuation Pages - Force Form – 048-028A
7. ACRA Investigative Interview – VRI Briefing, De-Briefing and Process Guidance – Force Form 048-028B
8. Pre-ACRA Interview (II) Checks
9. ACRA Investigative Interview Protocol
10. Flowchart 1 – ACRA Initial Response and Investigative Process
11. Flowchart 2 – ACRA IRD and Investigative Interview Process

**Appendix 1 - Definitions of a Child Under the Act**

**Order / Power:**

- Search Order
- Place of Safety

Child must be aged <12

**Order / Power**

- Child Interview Order
- Physical Data and Samples Order
- Investigative Interview by Agreement
- Questioning in urgent cases
- Taking of physical data and samples in urgent cases

Child must be aged < 16 or 16/17 (if subject to a Compulsory Supervision Order or interim Compulsory Supervision Order – CSO)

## **Appendix 2 - Child Information Leaflets**

In the execution of any order, the use of police powers to obtain physical data or samples or the use of a place of safety, the relevant Child Information Leaflet must be given to certain individuals.

The content of the leaflet must be explained to the child in a manner appropriate to the child's age and maturity.

The leaflets must be shared in hard copy with the child, parent and/or supporter but can be shared electronically with the ChIRP, where facilities permit and as directed by the ACRA IRD.

### **Who receives copies of the ACRA Child Information Leaflets?**

#### **Child**

- Order for Search
- Taking Data and Samples in Urgent Cases
- Order for Data and Samples
- Investigative Interview by Agreement
- The Investigative Interview
- Child Interview Order
- A Place of Safety

#### **Parent**

- Investigative Interview by Agreement
- A Place of Safety

#### **ChIRP**

- Investigative Interview by Agreement

**\* Leaflets are held by police**

**Appendix 3 – Who Must Receive a Copy of the CIO?**

The following should receive a copy of the CIO:

- Child
- Parent (wherever practicable)
- Supporter (if not the parent); and
- ChIRP

Appendix 4 - Summary of decision making in relation to children under 12

Decision	Section	Test	Comments
<b>Immediate protection decisions</b>			
Should the police take a child to a place of safety to protect others?	Section 28	Only if constable: 1. has reasonable grounds to believe the <i>child is behaving or is likely to behave in a way that is causing or risks causing significant harm to another person</i> 2. is satisfied that <i>it is necessary to take child to a place of safety to protect any other person from an immediate risk of significant harm or further such harm</i>	Power under ACR (2019) Act
Should the police take a child to a place of safety for the child's own protection?	Section 56 of the 2011 Act	Only if constable is satisfied: 1. that there are reasonable grounds to believe that <i>the child has been or is being treated/neglected that the child is suffering or is likely to suffer significant harm</i> [i.e., the criteria for a sheriff granting a CPO] 2. that the removal of the child is <i>necessary to protect the child from the harm</i> 3. it is not practicable to apply for a CPO	The long-standing power of the police to remove a child to a place of safety for their own protection
<b>Investigation decisions</b>			
Should police <b>question</b> a child about their behaviour?		The police can question a child believed to be responsible for committing harmful behaviour that does not meet the threshold for an investigative interview (and witnesses of such behaviour), in an age-appropriate way, without applying the provisions in the 2019 Act.	The police can question a child only if the constable is satisfied that the behaviour <i>does not</i> meet the threshold in section 39.

<p>Should the police <b>interview</b> a child about their behaviour?</p>	<p>Section 39  Section 54 Section 40  Section 44</p>	<p>1. The police can interview a child if a constable has reasonable grounds to believe that a child, while under 12 years of age—  <i>(a) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or</i>  <i>(b) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person</i></p> <p>2. If the behaviour is above this threshold, the police can only interview if:</p> <ol style="list-style-type: none"> <li>1. <i>Necessary to prevent loss of life and there is a risk of loss of life if the child is not questioned immediately</i></li> <li>2. <i>By Agreement if it is necessary to properly investigate the child's behaviour and the circumstances surrounding it</i></li> <li>3. <i>by obtaining a child interview order – sheriff needs to be satisfied:</i> <ol style="list-style-type: none"> <li>1. <i>the child's behaviour meets the threshold test</i></li> <li>2. <i>the interview is necessary to properly investigate the child's behaviour and the circumstances surrounding it</i></li> </ol> </li> </ol>	
<p>Should the police take prints or samples from a child?</p>	<p>Section 58  Section 63</p>	<p>1. The police are prohibited from taking prints or samples from a child under 12 unless authorised by court order or in an urgent case</p> <p>2. A sheriff can authorise the taking of prints or samples if satisfied that:</p> <ol style="list-style-type: none"> <li>1. <i>there are reasonable grounds to suspect that the child:</i>  <i>(a) by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or</i>  <i>(b) by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person</i></li> <li>2. <i>the taking of the prints or samples is necessary to properly investigate the child's behaviour and the circumstances surrounding it</i></li> </ol>	<p>This is the same threshold test of behaviour as for investigative interviews</p>

	Section 69	<p>3. a senior officer (superintendent or above) can authorise the taking of prints or samples if satisfied that:</p> <ol style="list-style-type: none"> <li>1. there are reasonable grounds to believe that the child: <ol style="list-style-type: none"> <li>(a) <i>by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person, or</i></li> <li>(b) <i>by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person</i></li> </ol> </li> <li>2. the taking of the prints or samples <i>is necessary to properly investigate the child's behaviour and the circumstances surrounding it AND</i></li> <li>3. it is not <i>practicable to apply for an order from a sheriff because of the risk that, if the print or sample is not taken immediately, evidence from it would be lost or destroyed</i></li> </ol>	This is the same threshold test of behaviour as for investigative interviews
<b>Decisions about sharing information</b>			
Should the police tell SW, education or another agency about the child?			No different to their decision about any other child
Should the police refer the child to the Reporter?	Section 61 of the 2011 Act	<p>The police have a duty to refer a child to the reporter if they consider:</p> <ol style="list-style-type: none"> <li>1. <i>that the child is in need of protection, guidance, treatment or control,</i></li> <li><i>and</i></li> <li>2. <i>that it might be necessary for a CSO to be made</i></li> </ol>	No different to their decision about any other child

## Appendix 5 – Glossary

Term	Definition
ACR	Age of Criminal Responsibility
ACRA	Age of Criminal Responsibility (Scotland) Act 2019 (referred to in the documentation as The Act)
ACRA IRD	Age of Criminal Responsibility (Scotland) Act 2019 Interagency Referral Discussion
CAMHS	Child and Adolescent Mental Health Services
ChIRP	Child Interview Rights Practitioners
CIO	Child Interview Order
CP	Child Protection
CPC	Child Protection Committees
CPR	Child Protection Register
CSO	Compulsory Supervision Order under Children's Hearings (Scotland) Act 2011
E EI	Early and Effective Intervention
ELC	Early Learning and Child Care
FGDM	Family Group Decision Making/Family Group Conferencing
IA	Interview Advisor
II	Investigative Interview
iVPD	interim Vulnerable Persons Database
IRD	Interagency Referral Discussion. Within this guidance an IRD is referred to as a CP IRD to distinguish it from an ACRA IRD.
GASS	Grant Aided Special Schools
GDPR	General Data Protection Regulation
GIRFEC	Getting it Right for Every Child. Scotland's approach to promoting, supporting and safeguarding the wellbeing of all children and young people.

<b>JII</b>	Joint Investigative Interview(s)
<b>NICHD</b>	National Institute of Child Health and Human Development
<b>PPU</b>	Public Protection Unit
<b>SCIM</b>	Scottish Child Interview Model
<b>SIO</b>	Senior Investigating Officer(s)
<b>SoS</b>	Signs of Safety
<b>TATC</b>	Team Around the Child
<b>The Promise</b>	The Promise refers to the Scottish Government Independent Care Review, 2020
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>VRI</b>	Visually Recorded Interview