

Children (Care and Justice) (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Children (Care and Justice) (Scotland) Bill

[AS AMENDED AT STAGE 2]

5 An Act of the Scottish Parliament to make provision to bring all under 18s within the scope of the children’s hearings system and about the measures that may be included in compulsory supervision orders, the provision of information to certain persons as to disposals made by the hearings system, and about supervision and guidance for children after age 18; to make provision
10 treating under 18s as children for the purposes of the criminal justice system and about how children are treated in that system, including providing for the extension of restrictions on reporting proceedings involving children to the investigation and pre-trial phase, new safeguards for children in court, the circumstances in which courts must seek advice from a children’s hearing or remit the case to a hearing for disposal, the court’s power to impose driving disqualifications and penalty points despite so remitting, the operation of sexual offences notification requirements on such remittal, and the use of secure accommodation, and removing the option of young offenders institutions and remand centres, when detaining children; to make changes to provision on secure accommodation and the regulation of secure accommodation services, including those services which take children from other parts of the United Kingdom; to change the age at which a person
15 is a child for the purposes of antisocial behaviour orders; to repeal provisions on the named person service and on child’s plans; and for connected purposes.

PART 1

CHILDREN’S HEARINGS SYSTEM

1 Age of referral to children’s hearing

- 20 (1) The Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”) is amended as follows.
- (2) In section 199 (meaning of “child”)—
- (a) in subsection (1)—
- (i) for “16” substitute “18”,
- (ii) for “subsections (2) to (9)” substitute “subsection (2)”,
- 25 (b) subsections (3) to (9) are repealed.

1A Child assessment and child protection measures: secure accommodation

- (1) The 2011 Act is amended as follows.
- (2) In section 35 (child assessment orders), in subsection (3), at the end of paragraph (b) insert “(but see section 57A(2)),”.

- (3) In section 37 (child protection orders), in subsection (2), at the end of paragraph (b) insert “(but see section 57A(2)),”.
- (4) In section 55 (application to justice of the peace), in subsection (1), at the end of paragraph (b) insert “(but see section 57A(2)),”.
- 5 (5) In section 56 (constable’s power to remove child to place of safety), in subsection (1), after “may” insert “, subject to section 57A(3),”.
- (6) In section 57 (sections 55 and 56: regulations), in subsection (1), after “safety” insert “(other than secure accommodation)”.
- (7) After section 57 insert—

“Emergency placement of child in secure accommodation

57A Emergency placement of child in secure accommodation: pre-conditions

- (1) Subsection (2) applies to—
- (a) a child assessment order,
- (b) a child protection order,
- 15 (c) an order made by a justice of the peace under section 55.
- (2) The order may not include an authorisation that enables the child to be taken or removed to, and kept in, a place or, as the case may be, a place of safety that is secure accommodation unless—
- (a) one or more of the conditions mentioned in subsection (4) applies, and
- 20 (b) having considered the other options available, the sheriff or, as the case may be, the justice of the peace is satisfied that it is necessary to include such an authorisation in the order.
- (3) A constable may not, under section 56(1), remove a child to a place of safety that is secure accommodation and keep the child there unless—
- (a) one or more of the conditions mentioned in subsection (4) applies, and
- (b) having considered the other options available, the constable is satisfied that it is necessary to do so.
- (4) The conditions are—
- (a) that—
- 30 (i) the child has previously absconded and is likely to abscond again unless the child is kept in secure accommodation, and
- (ii) if the child were to abscond, it is likely the child’s health, safety or development would be at risk,
- (b) that the child is likely to engage in self-harming conduct unless the child is kept in secure accommodation,
- 35 (c) that the child is likely to cause physical or psychological harm to another person unless the child is kept in secure accommodation.
- (5) In subsection (4)(c), “psychological harm” includes fear, alarm and distress.

57B Emergency placement of child in secure accommodation: regulations

(1) The Scottish Ministers may by regulations make further provision about the placing and keeping of a child in secure accommodation—

(a) by virtue of—

(i) a child assessment order,

(ii) a child protection order,

(iii) an order made by a justice of the peace under section 55,

(b) by a constable acting under section 56(1).

(2) Regulations under subsection (1) may in particular include provision—

(a) requiring—

(i) the consent of the person in charge of the residential establishment containing the secure accommodation in which the child is to be placed (the “head of unit”),

(ii) the agreement of the chief social work officer,

(b) specifying the criteria to be applied and the procedure to be followed—

(i) by the head of unit in deciding whether to give such consent,

(ii) by the chief social work officer in deciding whether to give such agreement,

(c) specifying the procedure for—

(i) the notification of decisions,

(ii) the giving of reasons for decisions,

(d) imposing requirements in connection with the protection of the welfare of a child being placed and kept in secure accommodation.

(3) Regulations under subsection (1) are subject to the affirmative procedure.”.

2 Compulsory supervision orders: directions authorising restriction of liberty

(1) The 2011 Act is amended as follows.

(2) In section 83 (meaning of “compulsory supervision order”)—

(a) in subsection (2), at the end of paragraph (b) insert “(but see subsection (2A)),”,

(b) after subsection (2) insert—

“(2A) A direction of the type mentioned in subsection (2)(b) does not include authorisation to deprive the child of their liberty.”.

3 Compulsory supervision orders: prohibitions

(1) The 2011 Act is amended as follows.

(2) In section 83 (meaning of “compulsory supervision order”)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) a prohibition on the child entering a specified place or description of place,

(cb) a prohibition on the child approaching, communicating with or attempting to approach or communicate with (whether directly or indirectly) a specified person or class of person,”

(b) in subsection (8)—

(i) in the opening words, for “subsection (2)” substitute “this section”,

(ii) before the definition of “medical” insert—

““communicating with” another person includes communicating with that person by the use of social media or by any other electronic means.”.

4 Compulsory supervision orders: movement restriction conditions

(1) The 2011 Act is amended as follows.

(2) In section 83 (meaning of “compulsory supervision order”)—

(a) in subsection (4)(a)—

(i) for “more” substitute “both”,

(ii) for “subsection (6)” substitute “subsection (4A)”,

(b) after subsection (4) insert—

“(4A) The conditions referred to in subsection (4)(a) are—

(a) that the child’s health, safety or development is at risk,

(b) that the child is likely to cause physical or psychological harm to another person.”.

(3) In section 150 (movement restriction conditions: regulations etc.), in subsection (2)—

(a) in paragraph (b), after “of” insert “monitoring a child’s movements or whereabouts (including whether a child is at, or is not at, a particular place) for the purpose of”,

(b) in paragraph (c), after “devices” insert “(including any apparatus to be linked to a device)”,

(c) after that paragraph insert—

“(ca) prescribe the circumstances or manner in which a specified device is, or is not, to be used (including how or when a device is to be worn, or otherwise used, by a child subject to a movement restriction condition),

(cb) prescribe the circumstances or manner in which information obtained through the monitoring of a child by means of such a device may, or may not, be gathered, retained, used or shared for the purpose of the monitoring.”.

5 Compulsory supervision orders: secure accommodation authorisations

(1) The 2011 Act is amended as follows.

- (2) In section 83 (meaning of “compulsory supervision order”)—
- (a) in subsection (6)—
- (i) in the opening words, after “conditions” insert “referred to in subsection (5)(b)”,
- (ii) for paragraph (a) substitute—
- “ (a) that—
- (i) the child has previously absconded and is likely to abscond again unless the child is kept in secure accommodation, and
- (ii) if the child were to abscond, it is likely that the child’s health, safety or development would be at risk,”
- (iii) at the end of paragraph (b) insert “unless the child is kept in secure accommodation,”
- (iv) in paragraph (c), for “injury to another person” substitute “physical or psychological harm to another person unless the child is kept in secure accommodation”
- (b) in subsection (8), after the definition of “medical” insert—
- ““psychological harm” includes fear, alarm and distress.”
- (3) In section 86 (meaning of “interim compulsory supervision order”), in subsection (4)—
- (a) for “(3) to (6)” substitute “(2A) to (8)”,
- (b) for “subsection (5)(a)” substitute “subsections (5)(a) and (7)”.
- (4) In section 87 (meaning of “medical examination order”)—
- (a) in subsection (4)—
- (i) for paragraph (a) substitute—
- “ (a) that—
- (i) the child has previously absconded and is likely to abscond again unless the child is kept in secure accommodation, and
- (ii) if the child were to abscond, it is likely that the child’s health, safety or development would be at risk,”
- (ii) at the end of paragraph (b) insert “unless the child is kept in secure accommodation,”
- (iii) in paragraph (c), for “injury to another person” substitute “physical or psychological harm to another person unless the child is kept in secure accommodation”
- (b) in subsection (5), after the definition of “medical” insert—
- ““psychological harm” includes fear, alarm and distress.”
- (5) In section 88 (meaning of “warrant to secure attendance”)—
- (a) in subsection (3)—
- (i) for paragraph (a) substitute—

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“(a) that—

(i) the child has previously absconded and is likely to abscond again unless the child is kept in secure accommodation, and

(ii) if the child were to abscond, it is likely that the child’s health, safety or development would be at risk,”

(ii) at the end of paragraph (b) insert “unless the child is kept in secure accommodation,”,

(iii) in paragraph (c), for “injury to another person” substitute “physical or psychological harm to another person unless the child is kept in secure accommodation”,

(b) in subsection (4), before the definition of “relevant period” insert—

““psychological harm” includes fear, alarm and distress.”.

6 Provision of information to person affected by child's offence or behaviour

(1) The 2011 Act is amended as follows.

(2) In section 179A (request for information by person affected by child's offence or behaviour)—

(a) in subsection (5)—

(i) at the beginning insert “Subject to subsections (5A) and (5B),”,

(ii) for “may” substitute “must, so far as reasonably practicable,”,

(b) after that subsection insert—

“(5A) The Principal Reporter may, where a person mentioned in subsection (4)(a) or (b) is a child, inform any relevant person in relation to the child, as well as, or instead of, the child, of the relevant person’s right to request information under subsection (3).

(5B) The Principal Reporter need not inform a person mentioned in subsection (4)(a), (b) or (c) of the person’s right to request information under subsection (3)—

(a) if the person has indicated (whether to the Principal Reporter or otherwise) that they do not wish to exercise that right,

(b) if satisfied that doing so would be detrimental to the best interests of—

(i) the child mentioned in subsection (1),

(ii) where the person mentioned in subsection (4)(a) or (b) is a child, that child, or

(iii) any other child, or

(c) if satisfied, having regard to the factors mentioned in section 179C(2), that it would be inappropriate in the circumstances of the case to do so.”.

(2A) In section 179B (information to which section 179A applies)—

(a) in subsection (1)—

(i) in paragraph (a)(i), for “subsection (2)(a)” substitute “subsection (2)”,

(ii) in paragraph (a)(ii), for “subsection (2)(b)” substitute “subsection (3)”,

(iii) in paragraph (b), for “subsection (2)(b)” substitute “subsection (3)”,

(b) for subsection (2) substitute—

“**(2)** The information referred to in subsection (1)(a)(i) is information as to—

(a) what determination the Principal Reporter made under section 66(2),
and

(b) any other action taken by the Principal Reporter (under section 68(5) or
otherwise).”

(c) after subsection (2) insert—

“**(3)** The information referred to in subsection (1)(a)(ii) and (b) is—

(a) information as to whether a compulsory supervision order has been made
in respect of the child or, as the case may be, whether a compulsory
supervision order which is already in force in respect of the child has
been terminated, varied or continued,

(b) where such an order has been made or, as the case may be, varied or
continued, information as to—

(i) whether a measure has been included in the order which prohibits
the child from approaching, communicating with, attempting to
approach or communicate with or otherwise contacting the person
who made the request or, where that person is a relevant person,
the child in relation to whom that person is a relevant person,

(ii) whether a secure accommodation authorisation has been included
in the order,

(c) information as to how the referral to the children’s hearing was otherwise
discharged.

(4) In this section, “communicating with” has the meaning given by section 83(8).”

(3) In section 179C (decision by Principal Reporter following request under section 179A)—

(a) in subsection (1)(a), for “the child mentioned in section 179A(1) (or any other
child),” substitute “—

(i) the child mentioned in section 179A(1),

(ii) where a person mention in section 179A(4)(a) or (b) is a child,
that child, or

(iii) any other child,”

(b) after subsection (3) insert—

“**(4)** But subsection (3) does not prohibit the Principal Reporter, when providing
information that a compulsory supervision order includes a measure mentioned
in section 179B(3)(b)(i), from providing information about the details of the
measure in so far as they relate to the person who made the request or, where
that person is a relevant person, the child in relation to whom that person is
a relevant person.”

6A Support for victims in the children’s hearings system

- (1) The 2011 Act is amended as follows.
- (2) After section 179C (decision by Principal Reporter following request for information under section 179A) insert—

“179D Support for persons affected by child’s offence or behaviour

(1) The Scottish Ministers must, by regulations, make provision for or in connection with the provision of support services to the persons mentioned in subsection (2).

(2) Those persons are—

- (a) persons against whom an offence mentioned in section 179A(1)(a)(i) or (b) appears to have been committed,
- (b) persons who appear to have been harmed by the action or behaviour of a child as mentioned in section 179A(1)(a)(ii),
- (c) where persons mentioned in paragraph (a) or (b) are children, relevant persons in relation to those children,
- (d) any other persons or classes of person the Scottish Ministers may specify in the regulations (subject to any conditions specified in the regulations).

(3) Regulations under subsection (1) may in particular include provision about—

- (a) the support to be provided by support services,
- (b) the persons by whom support services are to be provided, including for support services to be provided by persons under arrangements (contractual or otherwise) with the Scottish Ministers,
- (c) the training and qualifications of persons providing support services,
- (d) the provision of information to and by persons providing support services,
- (e) the payment of expenses, fees and allowances to persons providing support services (including who is to be responsible for making such payments).

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—

- (a) SCRA,
- (b) CHS,
- (c) persons who are providing support services to persons in relation to offences perpetrated against or in respect of those persons,
- (d) such other persons as the Scottish Ministers consider appropriate.

(5) Regulations under subsection (1) are subject to the negative procedure.

(6) In this section, “support services” has the meaning given in regulations under subsection (1).”.

6B Duty to establish an information sharing system

(1) The Scottish Ministers must by regulations establish a system to provide information from the children's hearings system to the person affected by the child's offence or behaviour through a single point of contact, which may be a victim support organisation.

(2) Regulations under subsection (1) must provide—

(a) for a tiered approach to information-sharing under which—

(i) specified information must always be provided to the person affected by the child's offence or behaviour, unless that person indicates that they do not wish to receive the information,

(ii) a risk assessment is carried out in each case to determine what other information should be provided to the person affected by the child's offence or behaviour, unless that person indicates that they do not wish to receive the information,

(iii) where a child is released from secure accommodation or transferred to an adult prison, the person affected by the child's offence or behaviour should be notified, unless that person indicates that they do not wish to be notified,

(b) that information should be provided in a way that accords with trauma-informed practice,

(c) that information should be provided in an accessible format,

(d) for information-sharing arrangements to be put in place between relevant bodies including—

(i) Children's Hearings Scotland,

(ii) the Scottish Children's Reporter Administration,

(iii) Police Scotland,

(iv) local authorities.

(3) Information specified under subsection (2)(a)(i) must include information on—

(a) the joint reporting process,

(b) how the children's hearings system works,

(c) where to access victim support,

(d) where there is a referral to a children's hearing—

(i) the date of the children's hearing,

(ii) the outcome of the children's hearing, but only to the extent that the information is relevant to safety planning for the person affected by the child's offence or behaviour,

(e) where there is no referral to a children's hearing, that this is the case.

(4) Information that may be provided under subsection (2)(a)(ii) may include information on—

(a) whether a compulsory supervision order has been made, varied, continued or terminated,

(b) the conditions of any compulsory supervision order relevant to the person affected by the child's offence or behaviour,

- (c) what constitutes non-compliance with a compulsory supervision order,
- (d) what action will be taken in the event the child does not comply with a compulsory supervision order,
- (e) where the child has not complied with a compulsory supervision order, any review of the conditions of the order.

(5) Regulations under subsection (1) may provide that, where a person affected by the child’s offence or behaviour is also a child, information may be shared with a relevant person in relation to that child.

(6) Regulations under subsection (1) are subject to the affirmative procedure.

(7) In this section—

- (a) “relevant person” has the meaning given by section 200 of the 2011 Act,
- (b) “trauma-informed practice” means operating in a way that—
 - (i) recognises that a person may have experienced trauma,
 - (ii) understands the effects which trauma may have on the person, and
 - (iii) involves adapting processes and practices, based on that understanding of the effects of trauma, to seek to avoid, or minimise the risk of, exposing the person to—
 - (A) any recurrence of past trauma, or
 - (B) further trauma.

6C Publishing restrictions

(1) The 2011 Act is amended as follows.

(2) In section 182 (publishing restrictions), in subsection (2), for “on summary conviction to a fine not exceeding level 4 on the standard scale.” substitute “—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).”.

7 Supervision or guidance post-18

(1) The 2011 Act is amended as follows.

(2) In section 138 (powers of children’s hearing on review)—

- (a) in subsection (6), after paragraph (a)—
 - (i) “and” is repealed,
 - (ii) insert—

“(aa) consider whether such supervision or guidance will be needed by the child after attaining the age of 18 years, and”,

(b) after subsection (7) insert—

- “(7A) Where the children’s hearing states that supervision or guidance will be needed by a person after attaining the age of 18 years, the duty in subsection (7)—
- (a) continues to apply despite the person having attained that age,
 - (b) ceases to apply when the person attains the age of 19 years.”.

5

PART 2

CRIMINAL JUSTICE AND PROCEDURE

Involvement of children in criminal proceedings: general

8 Meaning of “child”

- (1) The Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) is amended as follows.
- 10 (2) In section 307 (interpretation), in subsection (1), for the definition of “child” substitute—
““child” has the meaning given by section 199 of the Children’s Hearings (Scotland) Act 2011.”.

9 Offences against children to which special provisions apply

- (1) The 1995 Act is amended as follows.
- 15 (2) In schedule 1 (offences against children under the age of 17 years to which special provisions apply)—
 - (a) in each of paragraphs 1D, 2A, 2B, 2C, 3, 4 and 4A, “under the age of 17 years” is repealed,
 - (b) in the heading, “under the age of 17 years” is repealed.
- 20 (3) In section 46 (presumption and determination of age of child)—
 - (a) in subsection (5), paragraph (b) and “or” immediately preceding it are repealed,
 - (b) in subsection (6), for “17” substitute “18”,
 - (c) subsection (7) is repealed.

Prosecution of children

10 Prosecution of children over age of criminal responsibility

- (1) The 1995 Act is amended as follows.
- (2) In section 42 (prosecution of children), in subsection (1), “but under 16 years” is repealed.

Safeguards for children involved in criminal proceedings

11 Custody of children before commencement of proceedings

- 30 (1) The Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) is amended as follows.
- (2) In section 22 (under 18s to be kept in place of safety prior to court), in subsection (1), for paragraph (b) substitute—
“(b) a constable believes the person is under 18 years of age.”.

- (3) In section 23 (notice to parent that under 18 to be brought before court)—
- (a) in subsection (1), for “16 years of age or over and subject to a supervision order or under 16” substitute “under 18”,
 - (b) in subsection (4), the definition of “supervision order” is repealed.
- 5 (4) In section 24 (notice to local authority that under 18 to be brought before court)—
- (a) in subsection (1), in paragraph (a), for “either subsection (2) or (3)” substitute “subsection (2)”,
 - (b) for subsection (2) substitute—
“(2) This subsection applies to a person who is under 18 years of age.”,
 - 10 (c) subsection (3) is repealed.
- (5) In section 33 (consent to interview without solicitor)—
- (a) in subsection (1), for “Subsections (2) and (3) apply” substitute “Subsection (2) applies”,
 - (b) in subsection (2)—
15 (i) in paragraph (a), for “16” substitute “18”,
(ii) paragraph (b) is repealed,
(iii) in paragraph (c), for “16” substitute “18”,
 - (c) subsections (3), (4) and (5) are repealed.
- (6) In section 38 (right to have intimation sent to other person), in subsection (7)—
- 20 (a) the words from “to ascertain” to the end become paragraph (a),
 - (b) after that paragraph insert “, or
(b) for a local authority to give advice by virtue of section 41(9).”.
- (7) In section 41 (social work involvement in relation to under 18s)—
- (a) in subsection (1)—
25 (i) in paragraph (a), for “the person may be subject to a supervision order” substitute “person to be under 18 years of age”,
(ii) paragraph (b) and “or” immediately preceding it are repealed,
 - (b) after that subsection insert—
30 “(1A) Intimation of the following facts must also be sent to a local authority—
(a) where the person in custody declines to exercise the right to have intimation sent under section 38, that fact,
(b) where the person in custody requests under section 39(3)(b) that the person to whom intimation is to be sent under section 38 is not asked to attend at the place where the person in custody is being held, that fact,
35 (c) where the person in custody requests under section 39(6)(b) that no further attempt to send intimation under section 38 is made, that fact,

(d) where the person to whom intimation is sent under section 38—

(i) does not access the person in custody by virtue of the person in custody not wishing that person to have access by virtue of section 40(2), or

(ii) is refused access to the person in custody or has such access restricted by virtue of section 40(4),

that fact.”,

(c) in subsection (2)—

(i) in the opening words, after “subsection (1)” insert “or (1A)”,

(ii) paragraph (a) is repealed,

(iii) in paragraph (b)—

(A) sub-paragraph (i) and “and” following it are repealed,

(B) in sub-paragraph (ii), “(having regard to the effect of subsection (4)(a))” is repealed,

(d) in subsection (4), paragraph (a) and “and” following it are repealed,

(e) subsections (7) and (8) are repealed,

(f) in subsection (9), for “The local authority” substitute “A local authority sent intimation under subsection (1) or (1A)”,

(g) subsection (10) is repealed.

12 Restriction on report of suspected offences involving children

(1) The 2016 Act is amended as follows.

(2) After section 106 insert—

“CHAPTER 2A

REPORT OF SUSPECTED OFFENCES INVOLVING CHILDREN

106A Restriction on report of suspected offences

(1) Subject to subsection (4) and section 106B, no publication is to include information relating to a person if—

(a) that information is likely to lead to the identification of the person as being a person by whom an offence is suspected to have been committed, and

(b) the person was aged under 18 at the date of commission of the suspected offence.

(2) Subject to subsections (3A) and (4) and section 106BA, no publication is to include information relating to a person if—

(a) that information is likely to lead to the identification of the person as being a person—

(i) against or in respect of whom an offence is suspected to have been committed, or

- (ii) who is suspected to have been a witness in relation to an offence,
and
- (b) the person was aged under 18 at the date of commission of the suspected offence.
- 5 (3) For the purposes of subsections (1) and (2), information relating to a person includes in particular—
- (a) the person’s name,
- (b) the person’s address,
- 10 (c) the identity of any school or other educational establishment attended by the person,
- (ca) the identity of any place at which the person works,
- (d) any still or moving picture of the person.
- 15 (3A) The restriction imposed by subsection (2) does not prevent a person to whom the information relates from publishing information which is likely to lead to their own identification as being a person—
- (a) against or in respect of whom an offence is suspected to have been committed, or
- (b) who is suspected to have been a witness in relation to an offence.
- 20 (4) The restrictions imposed by subsections (1) and (2) cease to apply once there are proceedings in a court in respect of the offence (but see section 47 of the Criminal Procedure (Scotland) Act 1995 which places restrictions on the report of proceedings involving children).
- 25 (6) In this section and in sections 106B to 106BB—
- “offence” includes any offence, regardless of whether it is committed, or suspected to have been committed, before or after this section comes into force,
- “publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed or accessible to the public at large or any section of the public (whether on registration, payment, subscription or otherwise),
- 30 “relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990.

106B Power to dispense with restriction: suspects

- 35 (1) A sheriff may by order dispense with the restriction imposed by section 106A(1) in relation to a person if the sheriff is satisfied that it is in the interests of justice to do so.
- (2) A sheriff may make an order under subsection (1) on the application of—
- (a) a constable,
- (b) a prosecutor,
- 40 (c) the person to whom the relevant information relates, or
- (d) a media representative.

(3) Where such an application is made in writing (rather than orally) it must be made in such form as may be prescribed by act of adjournal (or as nearly as may be in such form).

(4) Before deciding whether to make an order under subsection (1), the sheriff must—

(za) where the person to whom the relevant information relates is aged under 18, regard the best interests of the person as a primary consideration,

(a) where the person to whom the relevant information relates is aged 18 or over, have regard to the wellbeing of the person,

(b) give the following persons an opportunity to make representations—

(i) the person who applied to the sheriff for the order,

(ii) the person to whom the relevant information relates,

(iv) any other person the sheriff considers to have an interest in the application.

(5) In this section—

“constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“media representative” means—

(a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or

(b) a representative of a newspaper or news agency,

“prosecutor” means the Lord Advocate, Crown Counsel or the procurator fiscal,

“relevant information” means the information the publication of which is restricted under section 106A(1).

106BA Power to dispense with restriction: child victims and witnesses

(1) A sheriff may by order dispense with the restriction imposed by section 106A(2) where—

(a) the information to which the restriction would apply is information relating to a child, and

(b) the sheriff considers that the conditions set out in subsection (4)(a) and (b) are satisfied.

(2) A sheriff may make an order under subsection (1) on the application of a person other than the child who wishes to publish information relating to the child.

(3) Before deciding whether to make an order under subsection (1), the sheriff must—

(a) regard the best interests of the child to whom the information relates as a primary consideration,

(b) give the following persons an opportunity to make representations—

- (i) the person who made the application,
 - (ii) the child to whom the information relates,
 - (iii) any other person the sheriff considers to have an interest in the application.
- 5 (4) The conditions referred to in subsection (1)(b) are that—
- (a) the child to whom the information relates—
 - (i) understands the nature of an order under subsection (1),
 - (ii) appreciates what the effect of making such an order would be, and
 - (iii) gives consent to the publication of the information, and
 - 10 (b) there is no good reason why an order under subsection (1) should not be made.
- (5) The child to whom the order under subsection (1) relates may withdraw consent by giving, before the information is published, written notice to the person who obtained the order.
- 15 (6) Where a child gives notice under subsection (5), the restriction imposed by section 106A(2) is, from the time the notice is received, no longer dispensed with.
- (7) The decision of the sheriff under this section is final.
- (8) In this section—
- 20 “child” means a person who is aged under 18 at the date on which the application is made,
“consent” means free agreement.

106BB Offence and defences

- 25 (1) A person who publishes relevant information in contravention of section 106A commits an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- 30 (2) A person charged with an offence under this section has a defence if it is established that the conditions mentioned in subsection (3) were met.
- (3) Those conditions are that—
- (a) the person to whom the relevant information relates—
 - 35 (i) had given written consent to the publication of information in relation to an offence mentioned in section 106A(2),
 - (ii) was aged 18 or over when that consent was given, and
 - (iii) had not, before the information was published, given written notice of the withdrawal of that consent, and

(b) the information published relates to the offence to which that consent relates.

(4) A person charged with an offence under this section has a defence if it is established that—

(a) the information published was in the public domain (having already been published by the person, being a person aged 18 or over, to whom the information relates or otherwise), and

(b) where the information was in the public domain as a result of it being published by a person other than the person to whom it relates, there was no reason for the person charged to believe that the conditions mentioned in subsection (3) were not met in relation to that prior publication.

(5) A person charged with an offence under this section has a defence if it is established that they were not aware, and neither suspected nor had reason to suspect, that the publication included relevant information.

(6) For the purposes of subsections (2), (4) and (5), a matter is established if—

(a) evidence adduced is enough to raise an issue as to whether that is the case, and

(b) the prosecution does not prove beyond reasonable doubt that it is not the case.

(7) For the purposes of subsections (2), (3)(a)(ii) and (4)(a), that a person was aged 18 or over is established only if the person charged with the offence took reasonable steps to establish the person's age.

(8) For the purposes of subsection (3)(a), consent which purports to be specific to a particular publication may be taken to be consent to publication generally.

(9) In this section—

“consent” means free agreement,

“relevant information” means information the publication of which is restricted under section 106A(1) or (2).

106BC Individual culpability where organisation commits offence under section 106BB

(1) This section applies where—

(a) an offence under section 106BB is committed by a relevant organisation, and

(b) the commission of the offence—

(i) involves consent or connivance, or

(ii) is attributable to neglect,

on the part of a responsible individual.

(2) The responsible individual (as well as the relevant organisation) commits the offence.

(3) For the purposes of this section—

- (a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),
- (b) “responsible individual” means, in relation to a relevant organisation—
- (i) an individual falling within the corresponding entry in the second column of that table, or
- (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.
- (4) The table is as follows—

Relevant organisation	Responsible individual
a company as mentioned in section 1 of the Companies Act 2006	a director, manager, secretary or other similar officer a member, where the company’s affairs are managed by its members
a limited liability partnership	a member
a partnership other than a limited liability partnership	a partner
any other body or association	an individual who is concerned in the management or control of the body’s or association’s affairs

106BD Crown application: offence under section 106BB

- (1) Nothing in section 106BB makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.”.

13 Restriction on report of proceedings involving children

- (1) The 1995 Act is amended as follows.
- (2) In section 47 (restriction on report of proceedings involving children)—
- (a) for subsection (1) substitute—
- “(1) Subject to subsection (3) and section 47ZA, no publication is to include information relating to a person who is concerned in any proceedings in a court if—
- (a) that information is likely to lead to the identification of the person as being a person accused of a relevant offence, and
- (b) the person was aged under 18 at the alleged date of commission of the relevant offence.

(1A) Subject to subsection (3) and section 47ZB, no publication is to include information relating to a person who is concerned in any proceedings in a court if—

(a) that information is likely to lead to the identification of the person as being—

(i) a person against or in respect of whom a relevant offence is alleged to have been committed, or

(ii) a witness in relation to a relevant offence, and

(b) the person was aged under 18 at the alleged date of commission of the relevant offence.

(1B) For the purposes of subsections (1) and (1A), information relating to a person includes in particular—

(a) the person's name,

(b) the person's address,

(c) the identity of any school or other educational establishment attended by the person,

(ca) the identity of any place at which the person works,

(d) any still or moving picture of the person.

(1BA) The restriction imposed by subsection (1) does not prevent a person to whom the information relates from publishing, after the completion of the proceedings, information which is likely to lead to their own identification as being a person accused of a relevant offence.

(1BB) The restriction imposed by subsection (1A) does not prevent a person to whom the information relates from publishing, during or after the completion of the proceedings information which is likely to lead to their own identification as being—

(a) a person against or in respect of whom a relevant offence is alleged to have been committed, or

(b) a witness in relation to a relevant offence.

(1C) Subject to subsections (1BA) and (3) and section 47A, subsection (1) applies—

(a) where the person is acquitted or the proceedings are abandoned or deserted simpliciter, during the lifetime of the person,

(b) otherwise until the later of—

(i) the date on which the person reaches the age of 18,

(ii) the date of completion of the proceedings.

(1D) Subject to subsections (1BB) and (3), subsection (1A) applies until the later of—

(a) the date on which the person reaches the age of 18,

(b) the date of completion of the proceedings.”,

(b) subsection (2) is repealed,

(ca) for subsection (3) substitute—

“(3) On the disposal of the proceedings, the court may, if satisfied that it is in the public interest to do so, direct that the restriction imposed by subsection (1) or (as the case may be) (1A) is to be dispensed with to such extent as the court specifies.”,

5 (d) after subsection (3) insert—

“(3A) A court must not direct that the restriction imposed by subsection (1) be dispensed with unless the court has obtained and taken into account a report from an officer of a local authority regarding the person’s circumstances.”,

(e) subsections (4) and (5) are repealed,

10 (f) after subsection (5) insert—

“(5A) Where a court directs that the restriction imposed by subsection (1) or (as the case may be) (1A) be dispensed with, that direction does not take effect until—

(a) after the expiry of the period of 7 days beginning with the day on which the court directs that the restriction be dispensed with, and

15 (b) if an appeal is brought under section 47A(2) or (4), until after the disposal of the appeal (provided the direction is upheld).

(5B) Subsection (5C) applies if—

(a) a court decides not to make an order under section 47B(1) to extend the period during which the restriction imposed by subsection (1) or (as the case may be) (1A) is to apply, and

20 (b) that restriction would otherwise cease to apply before the expiry of the period of 7 days beginning with the day of the decision not to make an order.

(5C) The restriction imposed by subsection (1) or (as the case may be) (1A) does not cease to apply until—

25 (a) after the expiry of the period of 7 days mentioned in subsection (5B)(b), and

(b) if an appeal is brought under section 47C(1), until after the disposal of the appeal (provided the decision is upheld).”,

30 (g) after subsection (6) insert—

“(7) In this section and in sections 47A to 47E—

35 “publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed or accessible to the public at large or any section of the public (whether on registration, payment, subscription or otherwise),

“relevant offence” means an alleged offence to which the proceedings relate,

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990.”.

40 (3) After section 47 insert—

“47ZA Power to dispense with restriction: accused persons

- 5
- (1) A sheriff may, after the completion of proceedings to which section 47(1) applies, by order dispense with the restriction imposed by section 47(1) where—
- (a) the information to which the restriction would apply is information relating to a child, and
- (b) the sheriff considers that the conditions set out in subsection (5)(a) and (b) are satisfied.
- 10
- (2) A sheriff may make an order under subsection (1) on the application of a person other than the child who wishes to publish information relating to the child.
- (3) Before deciding whether to make an order under subsection (1), the sheriff must—
- 15
- (a) regard the best interests of the child to whom the information relates as a primary consideration,
- (b) give the following persons an opportunity to make representations—
- (i) the person who made the application,
- (ii) the child to whom the information relates,
- (iii) any other person the sheriff considers to have an interest in the application.
- 20
- (4) The conditions referred to in subsection (1)(b) are that—
- (a) the child to whom the information relates—
- (i) understands the nature of an order under subsection (1),
- (ii) appreciates what the effect of making such an order would be, and
- (iii) gives consent to the publication of the information, and
- 25
- (b) there is no good reason why an order under subsection (1) should not be made.
- (5) The child to whom the order under subsection (1) relates may withdraw consent by giving, before the information is published, written notice to the person who obtained the order.
- 30
- (6) Where a child gives notice under subsection (5), the restriction imposed by section 47(1) is, from the time the notice is received, no longer dispensed with.
- (7) The decision of the sheriff under this section is final.
- (8) In this section and in section 47ZB—
- 35
- “child” means a person who is aged under 18 at the date on which the application is made,
- “consent” means free agreement.

47ZB Power to dispense with restriction: child victims and witnesses

- (1) The court may, during or after completion of proceedings to which section 47(1A) applies, by order dispense with the restriction imposed by section 47(1A) where—
- 5 (a) the information to which the restriction would apply is information relating to a child, and
- (b) the court considers that the conditions set out in subsection (4)(a) and (b) are satisfied.
- (2) The court may make an order under subsection (1) on the application of a person other than the child who wishes to publish information relating to the child.
- 10 (3) Before deciding whether to make an order under subsection (1), the court must—
- (a) regard the best interests of the child to whom the information relates as a primary consideration,
- 15 (b) give the following persons an opportunity to make representations—
- (i) the person who made the application,
- (ii) the child to whom the information relates,
- (iii) any other person the court considers to have an interest in the application.
- 20 (4) The conditions referred to in subsection (1)(b) are that—
- (a) the child to whom the information relates—
- (i) understands the nature of an order under subsection (1),
- (ii) appreciates what the effect of making such an order would be, and
- 25 (iii) gives consent to the publication of the information, and
- (b) there is no good reason why an order under subsection (1) should not be made.
- (5) The child to whom the order under subsection (1) relates may withdraw consent by giving, before the information is published, written notice to the person who obtained the order.
- 30 (6) Where a child gives notice under subsection (5), the restriction imposed by section 47(1A) is, from the time the notice is received, no longer dispensed with.
- (7) The decision of the court under this section is final.
- 35 (8) In this section the “court” means—
- (a) where the application is made during proceedings, the court dealing with the proceedings,
- (b) where the application is made after completion of proceedings, the sheriff.

47A Appeal against direction of court to dispense with restriction

- (1) Subsection (2) applies if a court directs, in accordance with section 47(3), that the restriction imposed by section 47(1) be dispensed with.
- (2) An appeal may be brought to the appropriate appeal court, within the period of 7 days beginning with the day on which the court directs that the restriction be dispensed with, by—
- (a) a person, accused of a relevant offence, to whom the dispensed with restriction relates, or
 - (b) the prosecutor.
- (3) Subsection (4) applies if a court directs, in accordance with section 47(3), that the restriction imposed by section 47(1A) be dispensed with.
- (4) An appeal may be brought to the appropriate appeal court, within the period of 7 days beginning with the day on which the court directs that the restriction be dispensed with, by—
- (a) a person, against or in respect of whom a relevant offence is alleged to have been committed, to whom the dispensed with restriction relates,
 - (b) a witness in relation to a relevant offence, or
 - (c) the prosecutor.
- (5) In disposing of an appeal under subsection (2) or (4), the appropriate appeal court may—
- (a) affirm the direction of the court of first instance,
 - (b) quash the direction of the court of first instance and either—
 - (i) substitute for it the appropriate appeal court’s own decision, or
 - (ii) remit the question back to the court of first instance with such instructions as the appropriate appeal court thinks appropriate.
- (6) In this section, “appropriate appeal court” means—
- (a) in the case of an appeal against a decision of the High Court or a judge of the High Court, that Court,
 - (b) in the case of an appeal against a decision of a sheriff (whether in solemn or summary proceedings), the Sheriff Appeal Court.

47B Power to extend period of restriction on report of proceedings

- (1) In any proceedings to which section 47(1) or (as the case may be) (1A) applies, the court may make an order extending the period during which the restriction imposed by that subsection is to apply unless the court considers that it would be contrary to the public interest to do so.
- (2) An order under subsection (1) may extend the restriction so that no publication may include the information mentioned in section 47(1) or (1A)—
- (a) until the occurrence of a particular event or particular circumstances,
 - (b) until the person to whom the information relates reaches a particular age, or

(c) during the lifetime of the person to whom the information relates.

(3) The court may make an order under subsection (1) of its own accord or on the application of—

(a) the prosecutor,

(b) in the case of information mentioned in section 47(1), a person accused of a relevant offence to whom the information relates, or

(c) in the case of information mentioned in section 47(1A), a person to whom the information relates.

(4) An order made by a court under subsection (1) may be varied or revoked by the court, at any time, on the application of—

(a) the person to whom the information relates, or

(b) a media representative.

(5) In this section, “media representative” means—

(a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or

(b) a representative of a newspaper or news agency.

47C Appeal against decision not to extend period of restriction

(1) Where the court decides not to make an order under section 47B(1), an appeal may be brought to the appropriate appeal court, within the period of 7 days beginning with the day of the decision not to make an order, by—

(a) the person to whom the information relates, or

(b) the prosecutor.

(2) In disposing of an appeal under subsection (1), the appropriate appeal court may—

(a) affirm the decision of the court of first instance,

(b) quash the decision of the court of first instance and either—

(i) substitute for it the appropriate appeal court’s own decision, or

(ii) remit the question to the court of first instance with such instructions as the appropriate appeal court considers appropriate.

(3) In this section, “the appropriate appeal court” has the same meaning as in section 47A (appeal against direction of court to dispense with restriction).

47D Decisions as to public interest for purposes of sections 47 and 47B

(1) This section applies where—

(a) for the purposes of section 47(3), it falls to a court to determine whether it is in the public interest to dispense with the restriction imposed by section 47(1) or (as the case may be) (1A), or

(b) for the purposes of section 47B, it falls to a court to determine whether it would be contrary to the public interest to make an order extending

the period during which the restriction imposed by section 47(1) or (as the case may be) (1A) is to apply.

5 (2) In determining whether it is in the public interest to dispense with the restriction imposed by section 47(1) or (as the case may be) whether it would be contrary to the public interest to extend the period of that restriction, the court—

(a) must have regard, in particular, to—

10 (i) the age and maturity of the person accused of the relevant offence at the date of commission of the offence,

(ii) the effect that dispensing with, or (as the case may be) extending the period of, the restriction may have on that person's wellbeing,

(iii) the effect that dispensing with, or (as the case may be) extending the period of, the restriction may have on that person's rehabilitation or reintegration,

15 (iv) whether dispensing with the restriction may constitute additional and disproportionate punishment,

(v) whether publication of the information may result in a risk of harm to any other person, and

(b) must, if the person accused of the relevant offence is aged under 18 at the date of determining what is in the public interest—

20 (i) regard the best interests of the person as a primary consideration, and

(ii) have no regard to the length of time until the person will reach the age of 18.

25 (3) In determining whether it is in the public interest to dispense with the restriction imposed by section 47(1A) or (as the case may be) whether it would be contrary to the public interest to extend the period of that restriction, the court—

(a) must have regard, in particular, to—

30 (i) the age and maturity of the person to whom the information relates at the time of determining whether to dispense with or (as the case may be) extend the period of the restriction,

(ii) the effect that dispensing with, or extending the period of, the restriction may have on that person's wellbeing,

(iii) the views of that person so far as they are reasonably ascertainable,

35 (iv) whether publication of the information may result in a risk of harm to any other person, and

(b) must, if the person to whom the information relates is aged under 18 at the date of determining what is in the public interest—

40 (i) regard the best interests of the person as a primary consideration, and

(ii) have no regard to the length of time until the person will reach the age of 18.

(4) In a case where there is a section of the public that is already aware of the identity of a person who—

- (a) is accused of a relevant offence,
- (b) is a person against or in respect of whom a relevant offence is alleged to have been committed, or
- (c) is a witness in relation to a relevant offence,

the court must not consider this to be a factor in favour of dispensing with the restriction imposed by section 47(1) or (as the case may be) a factor against extending the period of the restriction imposed by subsection (1A).

47E Offence and defences

(1) A person who publishes relevant information in contravention of section 47 commits an offence and is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(2) A person charged with an offence under this section has a defence if it is established that the conditions mentioned in subsection (3) were met.

(3) Those conditions are that—

- (a) the person to whom the relevant information relates—
 - (i) had given written consent to the publication of information in relation to an offence mentioned in section 47(1) or (as the case may be) (1A),
 - (ii) was aged 18 or over when that consent was given, and
 - (iii) had not, before the information was published, given written notice of the withdrawal of that consent, and
- (b) the information published relates to the offence to which that consent relates.

(4) A person charged with an offence under this section has a defence if it is established that—

- (a) the information published was in the public domain (having already been published by the person, being a person aged 18 or over, to whom the information relates or otherwise), and
- (b) where the information was in the public domain as a result of it being published by a person other than the person to whom it relates, there was no reason for the person charged to believe that the conditions mentioned in subsection (3) were not met in relation to that prior publication.

(5) A person charged with an offence under this section has a defence if it is established that they were not aware, and neither suspected nor had reason to suspect, that the publication included relevant information.

- (6) For the purposes of subsections (2), (4) and (5), a matter is established if—
- (a) evidence adduced is enough to raise an issue as to whether that is the case, and
 - (b) the prosecution does not prove beyond reasonable doubt that it is not the case.

(7) For the purposes of subsections (2), (3)(a)(ii) and (4)(a), that a person was aged 18 or over is established only if the person charged with the offence took reasonable steps to establish the person’s age.

(8) For the purposes of subsection (3)(a), consent which purports to be specific to a particular publication may be taken to be consent to publication generally.

(9) In this section—

“consent” means free agreement,

“relevant information” means information the publication of which is restricted under section 47(1) or (1A).

47F Individual culpability where organisation commits offence under section 47E

(1) This section applies where—

(a) an offence under section 47E is committed by a relevant organisation, and

(b) the commission of the offence—

(i) involves consent or connivance, or

(ii) is attributable to neglect,

on the part of a responsible individual.

(2) The responsible individual (as well as the relevant organisation) commits the offence.

(3) For the purposes of this section—

(a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),

(b) “responsible individual” means, in relation to a relevant organisation—

(i) an individual falling within the corresponding entry in the second column of that table, or

(ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.

(4) The table is as follows—

Relevant organisation

Responsible individual

a company as mentioned in section 1 of the Companies Act 2006

a director, manager, secretary or other similar officer

a member, where the company's affairs are managed by its members

a limited liability partnership a member

a partnership other than a limited liability partnership a partner

any other body or association an individual who is concerned in the management or control of the body's or association's affairs".

14 Steps to safeguard welfare and safety of children in criminal proceedings

(1) The 1995 Act is amended as follows.

(2) In section 50 (children and certain proceedings), after subsection (6) insert—

“(7) In complying with subsection (6) the court must, in particular, consider what steps might be taken to facilitate the participation of the child in the proceedings while safeguarding the child's welfare and, where reasonably practicable, take those steps.”.

(3) After section 70A insert—

“Children

70B Solemn proceedings against children

(1) Where solemn proceedings are brought in respect of an offence alleged to have been committed by a child, the court may sit either in a different building or room from that in which it usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings.

(2) Where solemn proceedings are brought in respect of an offence alleged to have been committed by a child, the court may direct that no person is to be present at any sitting for the purposes of such proceedings except—

(a) members and officers of the court,

(b) parties to the case before the court, their solicitors and counsel, jurors, witnesses and other persons directly concerned in that case,

(c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,

(d) such other persons as the court may specially authorise to be present.

(3) A court sitting for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if it thinks fit, proceed with the hearing and determination of the charge or application even though it is discovered that the person in question is not a child.

(4) Where solemn proceedings are brought in respect of an offence alleged to have been committed by a child who is charged jointly with a person who is not a child, the court must, in considering whether to take the steps mentioned in subsection (1) or to make a direction as mentioned in subsection (2), have

regard to the rights of the person with whom the child is jointly charged to effectively participate in the proceedings.”.

(4) In section 142 (summary proceedings against children), in subsection (5), at the end insert “: but see section 142A”.

(5) After that section insert—

“142A Summary proceedings where child accused along with an adult

(1) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child who is charged jointly with a person who is not a child, the sheriff may sit either in a different building or room from that in which the sheriff usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings.

(2) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child who is charged jointly with a person who is not a child, the sheriff may direct that no person is to be present at any sitting for the purposes of such proceedings except—

(a) members and officers of the court,

(b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case,

(c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,

(d) such other persons as the sheriff may specially authorise to be present.

(3) A sheriff sitting summarily for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if the sheriff thinks fit, proceed with the hearing and determination of the charge or application even though it is discovered that the person in question is not a child.

(4) Subsections (3) and (4) of section 142 apply to summary proceedings to which this section applies as they apply to such proceedings to which section 142 applies.

(5) The sheriff must, in considering whether to take the steps mentioned in subsection (1) or to make a direction as mentioned in subsection (2), have regard to the rights of the person with whom the child is jointly charged to effectively participate in the proceedings.”.

Remit to children’s hearing from criminal courts

15 Referral or remit to Principal Reporter of children guilty of offences

(1) The 1995 Act is amended as follows.

(2) In section 49 (reference or remit to children’s hearing)—

(a) for subsections (1) to (3) substitute—

- “(1) Where a child is charged summarily with an offence and pleads guilty to, or is found guilty of, the offence, the court—
- (a) must—
 - (i) request the Principal Reporter to arrange a children’s hearing for the purposes of obtaining their advice as to the treatment of the child, or
 - (ii) remit the case to the Principal Reporter to arrange for the disposal of the case by a children’s hearing,
 - (b) may, where subsection (1C) applies, dispose of the case itself.
- (1A) Where a child pleads guilty to, or is found guilty of, an offence in solemn proceedings in the sheriff court, the court may—
- (a) request the Principal Reporter to arrange a children’s hearing for the purposes of obtaining their advice as to the treatment of the child,
 - (b) remit the case to the Principal Reporter to arrange for the disposal of the case by a children’s hearing, or
 - (c) subject to subsection (1B), dispose of the case itself.
- (1B) Before disposing of the case itself, the court must, unless it determines that it is not in the interests of justice to do so, or where subsection (1C) applies, request advice as mentioned in subsection (1A)(a).
- (1C) The court need not request advice as mentioned in subsection (1)(a)(i) or, as the case may be, (1B) or remit the case to the Principal Reporter as mentioned in subsection (1)(a)(ii) where—
- (a) the child is within 6 months of attaining the age of 18 years, and
 - (b) the court considers that it would not be practicable in the circumstances to do so.
- (1D) Where a child pleads guilty to, or is found guilty of, an offence in solemn proceedings in the High Court, the court may—
- (a) request the Principal Reporter to arrange a children’s hearing for the purposes of obtaining their advice as to the treatment of the child,
 - (b) remit the case to the Principal Reporter to arrange for the disposal of the case by a children’s hearing, or
 - (c) dispose of the case itself.
- (1E) Where the court requests advice as mentioned in subsection (1)(a)(i), (1A)(a) or, as the case may be, (1D)(a), it may, after consideration of the advice received from the children’s hearing—
- (a) remit the case to the Principal Reporter to arrange for the disposal of the case by a children’s hearing, or
 - (b) dispose of the case itself.
- (1F) Where section 51A of the Firearms Act 1968 or section 29 of the Violent Crime Reduction Act 2006 applies, the court may not remit a case as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a) but must dispose of the case itself.”

- (b) in subsection (4)—
- (i) after “Subject” insert “to subsections (4A), (4B) and (4C) and”,
 - (ii) for “subsection (1)(a) above or (7)(b) below,” substitute “subsection (1)(a)(ii), (1A)(b), (1D)(b) or (1E)(a),”.
- 5 (c) after subsection (4) insert—
- 10 “(4A) Where the offence to which the child pleads guilty, or of which the child is found guilty, is an offence to which section 26, 34, 35 or 44 of the Road Traffic Offenders Act 1988 applies, that section continues to apply despite the case being remitted for disposal by a children’s hearing as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a).
- 15 (4B) Where the offence to which the child pleads guilty, or of which the child is found guilty, is an offence listed in schedule 3 of the Sexual Offences Act 2003, section 80 of that Act continues to apply, despite the case being remitted for disposal by a children’s hearing as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a), to the extent that its application does not depend on a determination by the court that—
- 20 (a) there was a significant sexual aspect to the child’s behaviour in committing the offence,
 - (b) it is appropriate for the child to be regarded, for the purposes of Part 2 of that Act, to be a person who has committed the offence, or
 - (c) it is appropriate that Part 2 of that Act should apply in relation to the child.
- 25 (4C) Where the offence to which the child pleads guilty, or of which the child is found guilty, is an offence in relation to which the court would be entitled, under section 234A, or obliged, under section 234AZA, to make a non-harassment order, those sections continue to apply despite the case being remitted for disposal by a children’s hearing as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a).”.
- (d) subsections (6) and (7) are repealed.

30 *Remand, committal and detention of children*

16 Remand and committal of children before trial or sentence

- (1) The 1995 Act is amended as follows.
- (2) In section 51 (remand and committal of children and young persons)—
 - 35 (a) in subsection (1)—
 - (i) in paragraph (a), for “16” substitute “18”,
 - (ii) paragraph (aa) is repealed,
 - (b) in paragraph (b), for “16” to the end substitute “18 years, the court may commit the person to a young offenders institution,”,
 - (c) in subsection (4A), for “paragraphs (a) or (aa)” substitute “paragraph (a)”,
 - 40 (d) subsection (5) is repealed,
 - (e) after that subsection insert—

“(6) The Scottish Ministers may by regulations make provision about the detention in secure accommodation of children who have been committed to a local authority under subsection (1)(a).

(7) Regulations under subsection (6) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).

(8) Regulations under subsection (6) are subject to the affirmative procedure.”.

17 Detention of children on conviction

(1) The 1995 Act is amended as follows.

(2) In section 44 (detention of children)—

(a) in subsection (1)—

(i) for “residential accommodation provided under Part 2 of the Children (Scotland) Act 1995 by the appropriate local authority” substitute “a residential establishment”,

(ii) for “the local authority” substitute “the appropriate local authority”,

(b) in subsection (5), “made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament” is repealed,

(c) after that subsection insert—

“(5A) Regulations under subsection (5) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).

(5B) Regulations under subsection (5) are subject to the affirmative procedure.”.

(d) in subsection (6), for “residential accommodation” substitute “a residential establishment”,

(e) in subsection (8)—

(i) for “accommodation provided by the authority which released him” substitute “establishment from which the child was released”,

(ii) for second “accommodation” substitute “establishment”,

(iii) for “accommodation provided by that” substitute “establishment chosen by the appropriate local”,

(f) in subsection (9)—

(i) for “residential accommodation provided” substitute “a residential establishment chosen”,

(ii) in each of paragraphs (a) and (b), for “residential accommodation” substitute “a residential establishment”,

(g) in subsection (11), for the definition of “secure accommodation” substitute—

““residential establishment” and “secure accommodation” have the meanings given by section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.

- (3) In section 205 (punishment for murder), in subsection (2)—
- (a) for “under the age of 18 years” substitute “a child”,
 - (b) after “place” insert “(in any part of the United Kingdom)”,
 - (c) after “may” insert “, subject to section 208A,”.
- 5 (4) In section 207 (detention of young offenders), in subsection (2), for “16” substitute “18”.
- (5) In section 208 (detention of children convicted on indictment), in subsection (1)—
- (a) after “place” insert “(in any part of the United Kingdom)”,
 - (b) after second “may” insert “, subject to section 208A,”.

- 10 (6) After section 208 insert—

“208A Detention of children under sections 205(2) and 208(1)

- (1) This section applies where a child is sentenced—
- (a) to be detained without limit of time under section 205(2), or
 - (b) to be detained under section 208(1).
- 15 (2) The Scottish Ministers may not direct under section 205(2) or, as the case may be, 208(1) that a child be detained in a prison or a young offenders institution.
- (3) The Scottish Ministers may direct that a child be detained in secure accommodation.
- (4) The Scottish Ministers may by regulations make provision about the detention in secure accommodation of children to whom this section applies.
- 20 (5) Regulations under subsection (4) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).
- 25 (6) Regulations under subsection (4) are subject to the affirmative procedure.
- (7) In this section, “secure accommodation” has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.
- (7) In section 216 (fines: restriction on imprisonment for default), after subsection (7) insert—
- 30 “(8) The Scottish Ministers may by regulations make provision about the detention in secure accommodation of children to whom subsection (7) applies.
- (9) Regulations under subsection (8) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).
- 35 (10) Regulations under subsection (8) are subject to the affirmative procedure.
- (11) In this section, “secure accommodation” has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.

Mental health disposals for convicted children

17A Hospital directions

- (1) The 1995 Act is amended as follows.
- (2) In section 59A (hospital directions)—
- 5 (a) in subsection (1), “, not being a child,” is repealed,
- (b) in subsection (10), after the definition of “medical treatment” insert—
- ““sentence of imprisonment” includes any sentence of detention,”.

Places where children can no longer be detained

18 Meanings of “young offenders institution” and “young offender”

- 10 (1) The Prisons (Scotland) Act 1989 (“the 1989 Act”) is amended as follows.
- (2) In section 19 (remand centres and young offenders institutions), in subsection (1)(b), for second “offenders” to the end substitute “persons not less than 18 but under 21 years of age—
- (i) sentenced to detention in a young offenders institution, or
- 15 (ii) remanded or committed in custody for trial or sentence, may be kept.”.
- (3) The Prisons and Young Offenders Institutions (Scotland) Rules 2011 (S.S.I. 2011/331) are amended as follows.
- (4) In rule 2(1) (interpretation), in paragraph (a) of the definition of “young offender”, for “16” substitute “18”.
- 20

19 Abolition of remand centres

- (1) The 1989 Act is amended as follows.
- (2) In section 19 (remand centres and young offenders institutions)—
- 25 (a) in subsection (1), paragraph (a) and “and” immediately following it are repealed,
- (b) subsection (2) is repealed,
- (c) in subsection (4)—
- (i) “remand centres,” is repealed,
- (ii) “centres or” is repealed,
- (d) in subsection (6), “remand centres,” is repealed,
- 30 (e) in the section title, for “Remand centres and young” substitute “Young”.

Local authority duties in relation to detained children

20 Duty of local authority to provide residential establishments for detained children

- (1) The Social Work (Scotland) Act 1968 is amended as follows.

- (2) In section 59 (provision of residential and other establishments by local authorities), in subsection (1)—
- (a) for second “under” substitute “conferred under or by virtue of”,
 - (b) after “1995 (c.36)” insert “, the Criminal Procedure (Scotland) Act 1995”.

5 **21 Children detained in secure accommodation to be treated as “looked after” children**

- (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) After section 17 insert—

“17A Detained children to be treated as looked after children

- 10 (1) This section applies where a child is detained in secure accommodation by virtue of section 51(1)(a), 205(2), 208(1) or, as the case may be, 216(7) of the Criminal Procedure (Scotland) Act 1995.
- (2) The relevant local authority in relation to the child has the same duties towards the child as it would have by virtue of sections 17, 29, 30 and 31 if the child were looked after by that local authority.
- 15 (3) In subsection (2), the “relevant local authority”, in relation to a child, has the same meaning as in section 201 of the Children’s Hearings (Scotland) Act 2011.”.
- (3) The Children and Young People (Scotland) Act 2014 is amended as follows.
- 20 (4) In section 97 (interpretation), in subsection (2), for “section 17(6)” substitute “sections 17(6) and 17A(2)”.

PART 2A

SECURE TRANSPORTATION

21A Standards for provision of secure transportation

- (1) The Children and Young People (Scotland) Act 2014 is amended as follows.
- 25 (2) After section 90 insert—

“PART 16A

SECURE TRANSPORTATION

90A Secure transportation: duty of Scottish Ministers to prepare and publish standards

- 30 (1) The Scottish Ministers must prepare and publish standards applicable to any service (a “secure transportation service”) which consists of or includes providing secure transportation—
- (a) for persons—
 - 35 (i) who have not attained the age of 19 years, and
 - (ii) in relation to whom the taking to or the placing, keeping or detention in secure accommodation is authorised or required under or by virtue of a relevant enactment, and

(b) for the purpose of transporting those persons to or from secure accommodation.

(2) The standards—

(a) must include the minimum standards to be met by a provider of a secure transportation service which may, in particular, relate to—

(i) the manner in which, and the extent to which, the service provider is to have regard to the rights of the persons mentioned in subsection (1)(a) who require to be transported to or from secure accommodation,

(ii) the establishment of measures and procedures to prevent or minimise a risk of a serious incident occurring,

(iii) the establishment of measures and procedures to deal with, and prevent the recurrence of, a serious incident,

(iv) the circumstances in which restraint or control of persons mentioned in subsection (1)(a) who require to be transported to or from secure accommodation may or may not be appropriate,

(v) the provision of training and support to staff to ensure the safe transportation of the persons mentioned in subsection (1)(a) to or from secure accommodation,

(b) may include such further provision in connection with the provision of a secure transportation service as the Scottish Ministers consider appropriate.

(3) The Scottish Ministers may make different provision for different kinds of secure transportation service.

(4) The Scottish Ministers—

(a) must publish the first standards under subsection (1) no later than one year after the day on which section 21A of the Children (Care and Justice) (Scotland) Act 2024 comes into force,

(b) must keep the standards published under subsection (1) under review,

(c) may, under subsection (1), publish revised standards whenever they consider it appropriate to do so, and

(d) must lay a copy of the first published standards, and any published revised standards, before the Scottish Parliament.

(5) Before publishing the standards or any revised standards under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.

(6) In this section—

“relevant enactment” means the following enactments—

(a) the Children (Scotland) Act 1995,

(b) the Criminal Procedure (Scotland) Act 1995,

(c) the Adoption and Children (Scotland) Act 2007,

(d) the Children’s Hearings (Scotland) Act 2011,

“secure accommodation” has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011,

“secure transportation” means transportation which provides such additional security and support measures as are required to prevent or minimise a risk—

- (a) to the health, safety or welfare of a person mentioned in subsection (1)(a) who is being transported to or from secure accommodation,
- (b) which that person may pose to the safety of any other person.

“serious incident” includes an incident involving a person mentioned in subsection (1)(a)—

- (a) absconding or attempting to abscond,
 - (b) suffering harm (including self-harm) or ill-health (whether physical or mental),
 - (c) causing harm to another person, or
 - (d) causing (whether directly or indirectly) damage to property,
- whilst being transported to or from secure accommodation.

(7) The Scottish Ministers may by regulations modify the definition of “relevant enactment” in subsection (6) by—

- (a) adding an enactment,
- (b) removing an enactment for the time being listed in it,
- (c) varying a reference to an enactment for the time being listed in it.

90B Secure transportation: duty of providers to meet standards

(1) The provider of a secure transportation service must meet the applicable standards.

(2) The persons mentioned in subsection (3) must, when making arrangements with another person for the provision of a secure transportation service, ensure that the service meets the applicable standards.

(3) The persons are—

- (a) a local authority,
- (b) the Scottish Ministers.

(4) The Scottish Ministers may by regulations modify subsection (3) by—

- (a) adding a person or description of persons,
- (b) removing a person or description of persons for the time being listed in it,
- (c) varying a description of a person for the time being listed in it.

(5) In this section and in section 90C—

“applicable standards” means the standards, or (as the case may be) any revised standards, published under section 90A(1) which apply to the secure transportation service being provided,

“secure transportation service” has the meaning given by section 90A(1).

90C Secure transportation: reports

- (1) Subsection (2) applies where a relevant person has, during the reporting period—
- 5 (a) provided a secure transportation service,
- (b) made arrangements with another person for the provision of a secure transportation service.
- (2) The relevant person must, as soon as reasonably practicable (and in any event no later than 3 months) after the end of the reporting period—
- 10 (a) prepare a report on—
- (i) how the relevant person monitored the secure transportation service provided or arranged by the relevant person to ensure that the service met the applicable standards during the reporting period,
- 15 (ii) the extent to which the service met the applicable standards during the reporting period,
- (b) publish the report, and
- (c) send a copy of the report to the Scottish Ministers.
- (3) Reports prepared under subsection (2) are to be published in such manner as the relevant person considers appropriate (and, in particular, reports may be published together with, or as part of, any other report or document).
- 20 (4) The Scottish Ministers must, as soon as reasonably practicable (and in any event no later than 6 months) after the end of the reporting period —
- (a) prepare a report (“the consolidated report”) on—
- 25 (i) how the relevant persons to whom subsection (1) applies have ensured that the secure transportation services provided or arranged by those relevant persons have met the applicable standards during the reporting period,
- (ii) the extent to which those services met the applicable standards during the reporting period,
- 30 (b) publish the consolidated report in such manner as the Scottish Ministers consider appropriate, and
- (c) lay a copy of the consolidated report before the Scottish Parliament.
- (5) Where the Scottish Ministers have provided or made arrangements for the provision of a secure transportation service during the reporting period, the consolidated report must include a report on—
- 35 (a) how the Scottish Ministers monitored the service to ensure it met the applicable standards during the reporting period,
- (b) the extent to which the service met the applicable standards during the reporting period.
- 40 (6) The consolidated report may include such other information as the Scottish Ministers consider appropriate.

(7) The Scottish Ministers may by regulations prescribe information that reports prepared under subsection (2) must contain.

(8) In this section—

“relevant person” means a local authority,

“reporting period” means—

(a) the period of 3 years beginning with the day on which section 21A of the Children (Care and Justice) (Scotland) Act 2024 comes into force, and

(b) each subsequent period of 3 years until a date specified in regulations made by the Scottish Ministers.

(9) The Scottish Ministers may by regulations modify the definition of “relevant person” in subsection (8) by—

(a) adding a person or description of persons,

(b) removing a person or description of persons for the time being mentioned in it,

(c) varying a description of a person for the time being mentioned in it.”.

(3) In section 99 (subordinate legislation)—

(a) in subsection (1), after “order” insert “or regulations”,

(b) in subsection (2)—

(i) after “order” insert “or (as the case may be) regulations”,

(ii) after “section 71(5)(b)” insert—

“section 90A(7)

section 90B(4)

section 90C(9)”,

(c) in subsection (4), after “order” insert “or regulations”.

PART 3

RESIDENTIAL AND SECURE CARE

22 Meaning of “secure accommodation”

(1) The 2011 Act is amended as follows.

(2) In section 202 (interpretation), in subsection (1)—

(a) in the definition of “secure accommodation”—

(i) in the opening words, “accommodation provided for the purpose of restricting the liberty of children which” is repealed,

(ii) for paragraph (a) substitute—

“(a) in relation to Scotland, accommodation provided for the purpose of depriving children of their liberty which is provided—

(i) in a residential establishment,

- (ii) by a secure accommodation service,”
- (iii) in paragraph (b), for “in England,” substitute “in relation to England, accommodation provided for the purpose of restricting the liberty of children which”,
- (iv) in paragraph (c), for “in Wales,” substitute “in relation to Wales, accommodation provided for the purpose of restricting the liberty of children which”,
- (b) after the definition of “secure accommodation authorisation” insert—
 - ““secure accommodation service” means a service—
 - (a) which is approved by the Scottish Ministers—
 - (i) under paragraph 6(c) of schedule 12 of the Public Services Reform (Scotland) Act 2010, and
 - (ii) in accordance with regulations made under section 78A of that Act, and
 - (b) in respect of which a person is registered under Part 5 of that Act.”.

23 Secure accommodation services

- (1) The Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) is amended as follows.
- (2) After section 78 insert—

“78A Regulations: approval of secure accommodation services

- (1) Regulations may make provision about the approval of secure accommodation services by the Scottish Ministers under paragraph 6(c) of schedule 12.
- (2) Regulations under subsection (1) may, in particular, make provision about—
 - (a) the making of applications for such approval, including—
 - (i) the categories of applicant who cannot competently make an application,
 - (ii) the form and content of applications,
 - (iii) the information to be provided in connection with applications,
 - (iv) the modification of applications,
 - (b) the procedure to be followed by the Scottish Ministers when making decisions on applications, including—
 - (i) the criteria to be applied,
 - (ii) the matters to be taken into account or disregarded,
 - (iii) the notification of decisions,
 - (iv) the giving of reasons for decisions,
 - (c) the duration of approvals,
 - (d) the attaching of conditions to approvals,
 - (e) the variation of any conditions attached to approvals,

- (f) the review of approvals,
- (g) the renewal of approvals,
- (h) the withdrawal of approvals,
- (i) appeals against decisions to—
 - (i) attach conditions to approvals,
 - (ii) vary conditions attached to approvals,
 - (iii) refuse or withdraw approvals.”.

(3) In section 104 (orders and regulations: procedure), in subsection (2), for “or 78” substitute “, 78 or 78A”.

(4) In schedule 12 (care services: definitions), for paragraph 6 substitute—

“6 A “secure accommodation service” is a service which—

- (a) provides accommodation in a residential establishment for the purpose of depriving children of their liberty,
- (b) also provides, in such an establishment, appropriate care, education and support—
 - (i) for the purposes of safeguarding and promoting the welfare of the children who are accommodated there, and
 - (ii) that takes account of the effects of trauma which the children may have experienced,
- (c) is approved by the Scottish Ministers, in accordance with regulations made under section 78A, for those purposes.

6A In paragraph 6(a), “residential establishment” means an establishment (whether managed by a local authority, a voluntary organisation or any other person) which provides residential accommodation for children for the purposes of the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, the Criminal Procedure (Scotland) Act 1995 or the Children’s Hearings (Scotland) Act 2011.

6B In paragraph 6(b), “appropriate care, education and support” means the kind of care, education and support required to meet the health, educational and other needs of the children.”.

(5) The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (S.S.I. 2011/210) are amended as follows.

(6) In regulation 10 (fitness of premises), paragraph (3) is revoked.

24 Regulation of care services providing residential accommodation to children

(1) The 2010 Act is amended as follows.

(2) In section 50 (standards and outcomes)—

(a) after subsection (1) insert—

“(1A) The Scottish Ministers may also prepare and publish specific standards and outcomes applicable to the care services mentioned in subsection (1B) in so

far as they consist of, or include, providing residential accommodation to children in accordance with arrangements made for cross-border placements.

(1B) Those care services are—

- (a) care home services which are provided wholly or mainly to children,
- (b) school care accommodation services,
- (c) secure accommodation services.”

(b) in subsection (2), after “subsection (1)” insert “or (1A)”,

(c) in subsection (3), after “subsection (1)” insert “or (1A)”,

(d) in subsection (4), for “subsection (1)” substitute “subsections (1) and (1A)”,

(e) in subsection (5), for “subsection (1)” substitute “subsections (1) and (1A)”,

(f) at the end of subsection (7) insert “or (1A).”.

(3) After section 59 insert—

“59A Further provision in relation to registration of certain care services

(1) This section applies to an application made under section 59(1) for registration of any of the following care services—

- (a) a care home service which is to be provided wholly or mainly to children,
- (b) a school care accommodation service,
- (c) a secure accommodation service.

(2) In addition to giving the information mentioned in section 59(2), the application must—

- (a) give such information as may be prescribed about matters relating to cross-border placements,
- (b) confirm that notice of the application has been given in the prescribed form to the persons mentioned in subsection (3), who are responsible for preparing a children’s services plan in accordance with Part 3 of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”).

(3) Those persons are—

- (a) the local authority for each area in which the service is to be provided, and
- (b) the relevant health board (as defined by section 7(1) of the 2014 Act) for each such area.

(4) If an application does not include the confirmation required by subsection (2)(b), SCSWIS may not consider the application until such confirmation is given.”.

(4) In section 78 (regulations: care services), after subsection (2) insert—

“(2A) Regulations under subsection (2) may, in particular, impose specific requirements on any of the care services mentioned in subsection (2B) in so far as they consist of, or include, providing residential accommodation to children in accordance with arrangements made for cross-border placements.

(2B) Those care services are—

- (a) care home services which are provided wholly or mainly to children,
- (b) school care accommodation services,
- (c) secure accommodation services.”.

5 (5) In section 105 (interpretation of Part 5), in subsection (1)—

(a) in paragraph (c) of the definition of “child”, after “purposes of” insert “sections 50(1A) and (1B), 59A and 78(2A) and (2B) and”,

(b) after the definition of “condition notice” insert—

10 ““cross-border placement” means the placement of a child in residential accommodation in Scotland where—

(a) the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and

15 (b) the placement is authorised by an order made by a court in England and Wales or, as the case may be, in Northern Ireland or by virtue of any enactment;”.

25 Cross-border placements: effect of orders made outwith Scotland

(1) The 2011 Act is amended as follows.

(2) In section 190 (effect of orders made outwith Scotland)—

(aa) in subsection (1), for “as if it were such an order” substitute “in Scotland”,

20 (ab) for subsection (2) substitute—

“(2) Regulations under subsection (1) may in particular—

(a) provide that a non-Scottish order is to have such effect only—

(i) in specified circumstances,

(ii) for specified purposes,

25 (iii) subject to specified conditions,

(b) provide that a non-Scottish order is—

(i) to have effect as if it were a compulsory supervision order, or

(ii) to have such other effect as may be specified,

(c) include provision—

30 (i) requiring specified persons to provide or share specified information,

(ii) requiring specified persons to provide, or make arrangements for the provision of, any services which are needed to support a child who is the subject of a non-Scottish order,

35 (iii) requiring specified persons to meet the costs incurred in relation to, or as a consequence of, giving effect to a non-Scottish order in Scotland,

- (iv) in connection with the safeguarding and promotion of the welfare of a child who is the subject of a non-Scottish order,
- (d) make provision for or in connection with—
 - (i) the monitoring of whether any condition specified by virtue of paragraph (a)(iii) is being met in relation to a non-Scottish order,
 - (ii) the consequences of such a specified condition not being met,
 - (iii) the monitoring of whether any requirement imposed is being complied with in relation to a non-Scottish order (where compliance with the requirement is not a condition specified by virtue of paragraph (a)(iii)),
 - (iv) the consequences of failing to comply with such a requirement.

(2A) Regulations under subsection (1)—

- (a) may modify any enactment in its application by virtue of the regulations to a non-Scottish order, including—
 - (i) the Social Work (Scotland) Act 1968,
 - (ii) the Children (Scotland) Act 1995,
 - (iii) this Act,
- (b) are subject to the affirmative procedure.”.

25A Regulation of cross-border placements

- (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) After section 33 insert—

“33A Regulation of cross-border placements

- (1) The Scottish Ministers may by regulations make provision in relation to cross-border placements.
- (2) Regulations under subsection (1) may in particular include provision—
 - (a) requiring specified persons to provide or share specified information,
 - (b) requiring specified persons to provide, or make arrangements for the provision of, any services which are needed to support a child who is the subject of a cross-border placement,
 - (c) requiring specified persons to meet the costs incurred in relation to, or as a consequence of, a cross-border placement,
 - (d) requiring a cross-border placement to be kept under review,
 - (e) in connection with the safeguarding and promotion of the welfare of a child who is the subject of a cross-border placement.
- (3) Regulations under subsection (1)—
 - (a) may modify any enactment in its application by virtue of the regulations to a cross-border placement, including—
 - (i) the Social Work (Scotland) Act 1968,
 - (ii) this Act,

(b) may make any incidental, supplementary, consequential, transitional, transitory or saving provision that the Scottish Ministers consider appropriate for the purposes of, in connection with or for giving full effect to the regulations,

5 (c) are subject to the affirmative procedure.

(4) In this section, “cross-border placement” means the placement of a child in a residential establishment in Scotland where—

(a) the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and

10 (b) the placement is authorised under the law in England and Wales or, as the case may be, in Northern Ireland by virtue of—

(i) an order made by a court in England and Wales or in Northern Ireland,

15 (ii) any provision made by or under an Act of Parliament, an Act of Senedd Cymru, or Northern Ireland legislation (as defined by section 98(1) of the Northern Ireland Act 1998), whenever passed or made.”.

PART 4

ANTISOCIAL BEHAVIOUR ORDERS, NAMED PERSON AND CHILD’S PLAN

20 **26 Antisocial behaviour orders relating to children**

(1) The Antisocial Behaviour etc. (Scotland) Act 2004 is amended as follows.

(2) In section 13 (sheriff’s power to make parenting order), in subsection (3), in the definition of “parent”, for “has the meaning” substitute “and “child” have the meanings”.

(3) In section 18 (interpretation of Part 2), for the definition of “child” substitute—

25 ““child” (other than in section 13) means a person who is under the age of 18 years;”.

27 Named person and child’s plan

In the Children and Young People (Scotland) Act 2014, the following provisions are repealed—

30 (a) Part 4 and schedule 2, and

(b) Part 5 and schedule 3.

PART 5

FINAL PROVISIONS

28 Ancillary provision

35 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

- (2) Regulations under subsection (1) may modify any enactment (including this Act).
- (3) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
- 5 (b) otherwise, are subject to the negative procedure.

29 Interpretation

In this Act—

“1989 Act” means the Prisons (Scotland) Act 1989,

“1995 Act” means the Criminal Procedure (Scotland) Act 1995,

10 “2010 Act” means the Public Services Reform (Scotland) Act 2010,

“2011 Act” means the Children’s Hearings (Scotland) Act 2011,

“2016 Act” means the Criminal Justice (Scotland) Act 2016.

30 Modification of enactments

The schedule makes further modifications of enactments in consequence of this Act.

31 Commencement

- (1) This section and sections 28, 29 and 32 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
- 15 (a) include transitional, transitory or saving provision,
- 20 (b) make different provision for different purposes.

32 Short title

The short title of this Act is the Children (Care and Justice) (Scotland) Act 2023.

SCHEDULE
Introduced by section 30

MINOR AND CONSEQUENTIAL MODIFICATIONS

PART A1

5 CHILDREN’S HEARINGS SYSTEM

Children’s Hearings (Scotland) Act 2011

A1(1) The 2011 Act is amended as follows.

(2) In section 73 (child’s duty to attend children’s hearing), in subsection (3)(b), for “physical, mental or moral welfare” substitute “health, safety or development”.

10 (3) In section 103 (child’s duty to attend hearing unless excused), in subsection (3)(b), for “physical, mental or moral welfare” substitute “health, safety or development”.

PART 1

OFFENCES AGAINST CHILDREN TO WHICH SPECIAL PROVISIONS APPLY

Criminal Procedure (Scotland) Act 1995

15 1 (1) The 1995 Act is amended as follows.

(2) In section 48 (power to refer certain children to the reporter), in subsection (2)(c), for “17” substitute “18”.

(3) In section 50 (children and certain proceedings), in subsection (5)—

(a) for “person under the age of 17 years” substitute “child”,

20 (b) for second “person” substitute “child”.

Children’s Hearings (Scotland) Act 2011

2 (1) The 2011 Act is amended as follows.

(2) In section 67 (meaning of “section 67 ground”), in subsection (6), in the definition of “schedule 1 offence”, “under 17 years of age” is repealed.

25 *National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004*

3 In the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (S.S.I. 2004/115), in regulation 5(2)(h), “under the age of 17 years” is revoked.

Adoptions with a Foreign Element (Scotland) Regulations 2009

30 4 In the Adoptions with a Foreign Element (Scotland) Regulations 2009 (S.S.I. 2009/182), in paragraph 2 of schedule 1, “under the age of 17 years” is revoked.

PART 2

REMIT TO CHILDREN’S HEARING FROM CRIMINAL COURTS

Criminal Procedure (Scotland) Act 1995

- 5 (1) The 1995 Act is amended as follows.
- 5 (2) In section 106 (right of appeal in solemn proceedings), in subsection (1)(da), for “49(1)(a)” substitute “49(1)(a)(ii), (1A)(b), (1D)(b) or (1E)(a)”.
- (3) In section 108 (Lord Advocate’s right of appeal against disposal), in subsection (1)(f), for “49(1)(a)” substitute “49(1)(a)(ii), (1A)(b), (1D)(b) or (1E)(a)”.
- (4) In section 175 (right of appeal in summary proceedings)—
- 10 (a) in subsection (1)(ca), for “49(1)(a) or (7)(b)” substitute “49(1)(a)(ii), (1A)(b), (1D)(b) or (1E)(a)”,
- (b) in subsection (4)(f), for “49(1)(a) or (7)(b)” substitute “49(1)(a)(ii), (1A)(b), (1D)(b) or (1E)(a)”.

PART 3

CRIMINAL PROCEDURE: MISCELLANEOUS MODIFICATIONS

Social Work (Scotland) Act 1968

- 15 5A(1) The Social Work (Scotland) Act 1968 is amended as follows.
- (2) In section 27(1) (supervision and care of persons put on probation or released from prisons etc.), in paragraph (b)(vb), for “16” substitute “18”.

20 *Prisoners and Criminal Proceedings (Scotland) Act 1993*

- 6 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.
- (2) In section 7 (children detained in solemn proceedings)—
- (a) in subsection (2A), “in a young offenders institution” is repealed,
- (c) for subsection (2C) substitute—
- 25 “(2C) In a case where subsection (2A) applies and the single term mentioned in that subsection is of four or more years, this Part applies to the person as if the single term were an equivalent sentence of detention or, as the case may be, imprisonment.”.

Criminal Procedure (Scotland) Act 1995

- 30 7 (1) The 1995 Act is amended as follows.
- (2) In section 205ZC (terrorism sentence with fixed licence period), in subsection (4), for “16” substitute “18”.
- (3) In section 245A (restriction of liberty orders), in subsection (11A), for “under 16 years of age” substitute “a child”.

- (4) In section 248D (extension of disqualification where sentence of imprisonment also imposed), in subsection (10), in the definition of “sentence of imprisonment”, for “residential accommodation” substitute “a residential establishment”.

Antisocial Behaviour etc. (Scotland) Act 2004

- 5 8 (1) The Antisocial Behaviour etc. (Scotland) Act 2004 is amended as follows.
- (2) In section 111 (restriction on reporting proceedings relating to parenting orders), in subsection (6), for “(1)(a)” substitute “(1A)(a)”.

PART 4

ABOLITION OF REMAND CENTRES

10 *Children and Young Persons (Scotland) Act 1937*

- 9 (1) The Children and Young Persons (Scotland) Act 1937 is amended as follows.
- (2) Section 62 (power of Secretary of State to send certain juvenile offenders to approved schools) is repealed.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1980

- 15 10 (1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 is amended as follows.
- (2) In schedule 1 (ineligibility for and disqualification and excusal from jury service), in Group B of Part 1, in paragraph (o), “, remand centres” and “, borstal institutions” are repealed.

Prisons (Scotland) Act 1989

- 20 11 (1) The 1989 Act is amended as follows.
- (2) In section 20 (temporary detention of persons liable to detention in young offenders institution or remand centre)—
- (a) “or remand centre” is repealed,
- (b) in the section title, “or remand centre” is repealed.
- 25 (3) In section 20A (transfer of young offenders to prison or remand centre)—
- (a) in subsection (2)—
- (i) “or remand centre” is repealed,
- (ii) the words from “, but” to the end are repealed,
- (b) in subsection (3), “or remand centre” is repealed,
- 30 (c) in the section title, “or remand centre” is repealed.
- (4) In section 37 (discontinuance of prison), in subsection (2), “remand centre or” is repealed.
- (5) In section 39 (rules for the management of prisons and other institutions), in subsection (1), “, remand centres” is repealed.

- (6) In section 40 (arrest of and rules for absent prisoners)—
- (a) in subsection (1), “or remand centre” is repealed,
 - (b) in subsection (2), “or remand centre” in each place is repealed.

Criminal Law (Consolidation) (Scotland) Act 1995

- 5 13 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- (2) In section 49C (offence of having offensive weapon etc. in prison), in subsection (7), paragraph (b) is repealed.

Criminal Procedure (Scotland) Act 1995

- 14 (1) The 1995 Act is amended as follows.
- 10 (2) In section 51 (remand and committal of children and young persons), subsection (2A) is repealed.
- (3) In section 144 (procedure at first diet), in subsection (6), “, remand centre” is repealed.
- (4) In section 285 (previous convictions: proof, general), in subsection (4), “or of a remand centre” is repealed.
- 15 (5) In section 307 (interpretation), in subsection (1), in the definition of “place of safety”, “, prison or remand centre,” is repealed.

Prisoners’ Earnings Act 1996

- 15 (1) The Prisoners’ Earnings Act 1996 is amended as follows.
- 20 (2) In section 4 (interpretation), in subsection (3), in the definition of “prisoner”, “or remand centre” is repealed.

Housing (Scotland) Act 2006

- 16 (1) The Housing (Scotland) Act 2006 is amended as follows.
- 25 (2) In section 126 (HMOs exempt from licensing requirement), in subsection (1), in paragraph (d), for “, a young offenders institution or a remand centre” substitute “or a young offenders institution”.

Protection of Vulnerable Groups (Scotland) Act 2007

- 17 (1) The Protection of Vulnerable Groups (Scotland) Act 2007 is amended as follows.
- 30 (2) In schedule 2 (as substituted by section 74(3) and schedule 3 of the Disclosure (Scotland) Act 2020), paragraph 31, in the definition of “prison”, for “, young offenders institution or remand centre” substitute “or young offenders institution”.
- (3) In schedule 3 (as substituted by section 74(4) and schedule 4 of the Disclosure (Scotland) Act 2020), in paragraph 24, in the definition of “prison”, for “, young offenders institution or remand centre” substitute “or young offenders institution”.

Community Justice (Scotland) Act 2016

- 18 (1) The Community Justice (Scotland) Act 2016 is amended as follows.
- (2) In section 37 (interpretation), in subsection (1), in the definition of “penal institution”, paragraph (b) is repealed.

5 *Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016*

- 19 (1) The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 is amended as follows.
- (2) In section 2 (mandatory inquiries), in subsection (7), in the definition of “penal institution”, paragraph (b) is repealed.

10

PART 4A

LOCAL AUTHORITY DUTIES IN RELATION TO DETAINED CHILDREN

Social Work (Scotland) Act 1968

- 19A(1) The Social Work (Scotland) Act 1968 is amended as follows.
- (2) In section 5 (powers of Scottish Ministers), in subsection (1B)(f), for “section 51” substitute “sections 44, 51 and 216”.

15

Public Services Reform (Scotland) Act 2010

- 19B(1) The 2010 Act is amended as follows.
- (2) In schedule 13 (social work services functions: specified enactments), “Section 51 of the Criminal Procedure (Scotland) Act 1995 (c. 46)” is repealed.

20

PART 5

SECURE ACCOMMODATION

Representation of the People Act 1983

- 20 (1) The Representation of the People Act 1983 is amended as follows.
- (2) In section 7B (notional residence: declarations of local connection), in subsection (2C)(b), for the definition of “secure accommodation” substitute—

25

““secure accommodation” has the meaning given by paragraph (a) of the definition of “secure accommodation” in section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.

Protection of Vulnerable Groups (Scotland) Act 2007

- 30 21 (1) The Protection of Vulnerable Groups (Scotland) Act 2007 is amended as follows.

(2) In schedule 2 (as substituted by section 74(3) and schedule 3 of the Disclosure (Scotland) Act 2020)—

(a) in each of the following paragraphs, “for children” is repealed—

(i) paragraph 3(1), in paragraph (c)(i) of the definition of “responsible person”,

(ii) paragraph 20, in the second place where it occurs,

(iii) paragraph 21,

(b) in paragraph 31, for the definition of “secure accommodation for children” substitute—

““secure accommodation” has the meaning given in paragraph (a) of the definition of “secure accommodation” in section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

22 (1) The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 is amended as follows.

(2) In section 2 (mandatory inquiries), in subsection (7), for the definition of “secure accommodation” substitute—

““secure accommodation” has the meaning given by paragraph (a) of the definition of “secure accommodation” in section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.

Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022

23 (1) The Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022 (S.S.I. 2022/225) are amended as follows.

(2) In each of the following paragraphs of regulation 13 (application and modifications of the Act), for “Children’s Hearings (Scotland) Act 2011 (Effect of Deprivation of Liberty Orders)” substitute “Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland)”—

(a) paragraph (3)(b),

(b) paragraph (4),

(c) paragraph (12)—

(i) sub-paragraph (a), in paragraph (a) of the definition of “implementation authority”,

(ii) sub-paragraph (c), in the definition of “receiving local authority”.

PART 6

NAMED PERSON AND CHILD’S PLAN

Human Trafficking and Exploitation (Scotland) Act 2015

24 (1) The Human Trafficking and Exploitation (Scotland) Act 2015 is amended as follows.

- (2) In section 12 (presumption of age), in subsection (3), paragraphs (d) and (e) are repealed.

Criminal Justice (Scotland) Act 2016

25 (1) The 2016 Act is amended as follows.

- (2) Sections 107 and 108 are repealed.

⁵ *Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Regulations 2014*

26 (1) The Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Regulations 2014 (S.S.I. 2014/344) are amended as follows.

- (2) In schedule 1 (functions prescribed for the purposes of section 1(6) of the Public Bodies (Joint Working) (Scotland) Act 2014), the entry relating to the Children and Young People (Scotland) Act 2014 (inserted by the Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Amendment Regulations 2016 (S.S.I. 2016/15)) is revoked.
- ¹⁰

Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Amendment Regulations

- ¹⁵ 27 The Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Amendment Regulations 2016 (S.S.I. 2016/15) are revoked.

Children (Care and Justice) (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision to bring all under 18s within the scope of the children's hearings system and about the measures that may be included in compulsory supervision orders, the provision of information to certain persons as to disposals made by the hearings system, and about supervision and guidance for children after age 18; to make provision treating under 18s as children for the purposes of the criminal justice system and about how children are treated in that system, including providing for the extension of restrictions on reporting proceedings involving children to the investigation and pre-trial phase, new safeguards for children in court, the circumstances in which courts must seek advice from a children's hearing or remit the case to a hearing for disposal, the court's power to impose driving disqualifications and penalty points despite so remitting, the operation of sexual offences notification requirements on such remittal, and the use of secure accommodation, and removing the option of young offenders institutions and remand centres, when detaining children; to make changes to provision on secure accommodation and the regulation of secure accommodation services, including those services which take children from other parts of the United Kingdom; to change the age at which a person is a child for the purposes of antisocial behaviour orders; to repeal provisions on the named person service and on child's plans; and for connected purposes.

Introduced by: Shirley-Anne Somerville
On: 13 December 2022
Bill type: Government Bill

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