

# Children (Care and Justice) (Scotland) Bill

[AS INTRODUCED]

---

---

## CONTENTS

Section

### PART 1

#### CHILDREN'S HEARINGS SYSTEM

- 1 Age of referral to children's hearing
- 2 Compulsory supervision orders: directions authorising restriction of liberty
- 3 Compulsory supervision orders: prohibitions
- 4 Compulsory supervision orders: movement restriction conditions
- 5 Compulsory supervision orders: secure accommodation authorisations
- 6 Provision of information to person affected by child's offence or behaviour
- 7 Supervision or guidance post-18

### PART 2

#### CRIMINAL JUSTICE AND PROCEDURE

##### *Involvement of children in criminal proceedings: general*

- 8 Meaning of "child"
- 9 Offences against children to which special provisions apply

##### *Prosecution of children*

- 10 Prosecution of children over age of criminal responsibility

##### *Safeguards for children involved in criminal proceedings*

- 11 Custody of children before commencement of proceedings
- 12 Restriction on report of suspected offences involving children
- 13 Restriction on report of proceedings involving children
- 14 Steps to safeguard welfare and safety of children in criminal proceedings

##### *Remit to children's hearing from criminal courts*

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

##### *Remand, committal and detention of children*

- 16 Remand and committal of children before trial or sentence
- 17 Detention of children on conviction

##### *Places where children can no longer be detained*

- 18 Meanings of "young offenders institution" and "young offender"

19 Abolition of remand centres

*Local authority duties in relation to detained children*

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

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

**PART 3**

RESIDENTIAL AND SECURE CARE

22 Meaning of “secure accommodation”

23 Secure accommodation services

24 Regulation of care services providing residential accommodation to children

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

**PART 4**

ANTISOCIAL BEHAVIOUR ORDERS, NAMED PERSON AND CHILD’S PLAN

26 Antisocial behaviour orders relating to children

27 Named person and child’s plan

**PART 5**

FINAL PROVISIONS

28 Ancillary provision

29 Interpretation

30 Modification of enactments

31 Commencement

32 Short title

---

Schedule—Minor and consequential modifications

Part 1—Offences against children to which special provisions apply

Part 2—Remit to children’s hearing from criminal courts

Part 3—Criminal procedure: miscellaneous modifications

Part 4—Abolition of remand centres

Part 5—Secure accommodation

Part 6—Named person and child’s plan

**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:  
Explanatory Notes (SP Bill 22-EN), a Financial Memorandum (SP Bill 22-FM), a Policy  
Memorandum (SP Bill 22-PM), a Delegated Powers Memorandum (SP Bill 22-DPM) and  
statements on legislative competence (SP Bill 22-LC).**

# Children (Care and Justice) (Scotland) Bill

## [AS INTRODUCED]

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  
treating under 18s as children for the purposes of the criminal justice system and about how  
10 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  
15 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.

### 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.

#### **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 physical, mental or moral welfare 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),

5                    (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**

10            (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)”,

15            (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

20            (ii) if the child were to abscond, it is likely that the child’s physical, mental or moral welfare 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”.

25            (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)”,

30            (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—

35            (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 physical, mental or moral welfare 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—

“(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 physical, mental or moral welfare 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.”.

- 5
- 10 (3) In section 179C (decision by Principal Reporter following request under section 179A), 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 mentioned in section 179A(4)(a) or (b) is a child, that child, or
  - (iii) any other child.”.
- 15

## 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)—

20 (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—

25 “(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.”.

## 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.
- (2) In section 307 (interpretation), in subsection (1), for the definition of “child” substitute—
- 35 ““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.
- (2) In schedule 1 (offences against children under the age of 17 years to which special provisions apply)—
- 5 (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.
- (3) In section 46 (presumption and determination of age of child)—
- (a) in subsection (5), paragraph (b) and “or” immediately preceding it are repealed,
- 10 (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.
- 15 (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**

- (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),
- 20 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”,
- 25 (b) in subsection (4), the definition of “supervision order” is repealed.
- (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—
- 30 “(2) This subsection applies to a person who is under 18 years of age.”,
- (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”,
- 35 (b) in subsection (2)—
- (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)—
- 5 (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)—
- 10 (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—
- “(1A) Intimation of the following facts must also be sent to a local authority—
- 15 (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,
- 20 (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
- 25 (ii) is refused access to the person in custody or has such access restricted by virtue of section 40(4),
- that fact.”,
- 30 (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,
- 35 (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 subsection (4) and section 106B, no publication is to include information relating to a person aged under 18 that is likely to lead to the identification of that person as being—
  - (a) a person against or in respect of whom an offence is suspected to have been committed, or
  - (b) a person who is suspected to have been a witness in relation to an offence.
- (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,
  - (c) the identity of any school or other educational establishment attended by the person,
  - (d) any still or moving picture of the person.
- (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).
- (5) A person who publishes matter in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) In this section—
  - “offence” includes any offence, regardless of whether it is 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 to the public at large or any section of the public,

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

### **106B Power to dispense with restriction**

(1) A sheriff may by order dispense, to the extent specified in the order, with the restrictions imposed by section 106A(1) and (2) 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,
- (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—

- (a) have regard to the wellbeing of the person to whom the relevant information relates,
- (b) consider whether any of the following persons should be given the opportunity to make representations—
  - (i) the person who applied to the sheriff for the order,
  - (ii) the person to whom the relevant information relates,
  - (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
  - (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,

“parent” has the same meaning as in section 108,

“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) or (2),

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

5 **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), 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), 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 date of commencement of the proceedings.

(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,

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

(1C) Subject to subsection (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 subsection (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,
- (c) in subsection (3)—
- (i) in the opening words, for “requirements of subsections (1) and (2)” substitute “restrictions imposed by subsections (1) and (1A)”,
- (ii) paragraph (a) is repealed,
- (iii) in paragraph (b)—
- (A) for “at any stage of the proceedings” substitute “on disposal of the proceedings”,
- (B) for “requirements (including the requirements as applied by a direction under paragraph (a) above)” substitute “restrictions”,
- (iv) in paragraph (c)—
- (A) for “Secretary of State” substitute “Scottish Ministers”,
- (B) for “dispenses” substitute “dispense”,
- (C) for “requirements” substitute “restrictions”,
- (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) subsection (4) is repealed,
- (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
- (b) if an appeal is brought under section 47A(2) or (4), until after the disposal of the appeal.
- (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) is to apply, and
- (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) does not cease to apply until—
- (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.”,
- (g) after subsection (6) insert—

“(7) In this section—

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public,

“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.”.

(3) After section 47 insert—

**“47A Appeal against direction of court to dispense with restriction**

(1) Subsection (2) applies if a court directs, in accordance with section 47(3)(b), 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 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 restrictions 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,

“proceedings” means the proceedings in relation to which the restrictions imposed by section 47(1) or (1A) have been dispensed with,

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

5           **47B    Power to extend period of restriction on report of proceedings**

(1) In any proceedings to which section 47(1) 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.

10           (2) An order under subsection (1) may extend the restriction so that no publication may include the information mentioned in section 47(1)—

(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

15           (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 the prosecutor or a person accused of an alleged offence to which the proceedings relate.

20           (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—

25           (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**

30           (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—

35           (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—

5 (a) for the purposes of section 47, it falls to a court or to the Scottish Ministers 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

10 (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) is to apply.

- (2) In determining what is in the public interest, the court or (as the case may be) the Scottish Ministers—

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

(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,

20 (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,

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

25 (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—

30 (i) treat the factor mentioned at paragraph (a)(ii) (effect on wellbeing) as a primary consideration, and

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

- (3) In determining whether it is in the public interest to dispense with the restriction imposed by section 47(1A), the court or (as the case may be) the Scottish Ministers must have regard, in particular, to—

35 (a) the age and maturity of the person to whom the information relates at the time of determining whether it is in the public interest to dispense with the restriction,

40 (b) the effect that dispensing with the restriction may have on that person’s wellbeing,

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



(d) whether publication of the information may result in a risk of harm to any other person.

(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) was a witness in relation to a relevant offence,

the court or (as the case may be) the Scottish Ministers 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) (1A).

(5) In this section, “relevant offence” means an alleged offence to which the proceedings relate.”.

#### 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) and (4B) 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—
- “(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 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 10 (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a).
- (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), 15 (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—
- (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 20
  - (c) it is appropriate that Part 2 of that Act should apply in relation to the child.”
- (d) subsections (6) and (7) are repealed.

*Remand, committal and detention of children*

25 **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)—
  - (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)”,
  - (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 40 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**

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

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

(a) in subsection (1)—

10 (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—

15 “(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.”,

20 (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”,

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

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

(f) in subsection (9)—

30 (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—

35 ““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,”.

(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,”.

(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).

(2) The Scottish Ministers may not direct under section 205(2) or, as the case may be, 208(1) that the child be detained in a prison or a young offenders institution.

(3) The Scottish Ministers may direct that the 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.

(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).

(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—

“(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).

(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.”.

*Places where children can no longer be detained*

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

(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
- (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”.

## **19 Abolition of remand centres**

- (1) The 1989 Act is amended as follows.
- (2) In section 19 (remand centres and young offenders institutions)—
- (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,
- (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”.

## **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**

- (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.

(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.

(4) In section 97 (interpretation), in subsection (2), for “section 17(6)” substitute “sections 17(6) and 17A(2)”.

### 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**

- 5 (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—
  - 10 (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,
  - 15 (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,
  - 20 (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,
  - 25 (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.”.
- 30 (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—

  - 35 (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 for the purposes of safeguarding and promoting the welfare of the children who are accommodated there,

(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) 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—

““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

(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)—

(a) in subsection (1), for “appears” to the end substitute “relates to the care, protection or supervision of a child to have effect in Scotland.”,

(b) in subsection (2)—

(i) in paragraph (a), after sub-paragraph (ii) insert—

“(iii) subject to specified conditions,”,

(ii) after paragraph (a) insert—

5 “(aa) may provide that a non-Scottish order is to—

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

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

(iii) in paragraph (b)—

10 (A) in the opening words, for “the following enactments in their” substitute “any enactment in its”,

(B) at the end of the opening words insert “, including”,

(C) after sub-paragraph (i) insert—

“(ia) the Children (Scotland) Act 1995,”,

15 (iv) after paragraph (b) insert—

“(ba) may include provision—

(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,

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

(iv) as to the effect of failing to comply with such requirements or any condition imposed by virtue of paragraph (a)(iii),”,

(c) in subsection (3), in the definition of “non-Scottish order”, after “Ireland” insert “, including an arrangement made by virtue of any enactment with the approval of such a court”.

## PART 4

### ANTISOCIAL BEHAVIOUR ORDERS, NAMED PERSON AND CHILD’S PLAN

#### 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”.

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

““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—

- (a) Part 4 and schedule 2, and
- (b) Part 5 and schedule 3.

**PART 5**

FINAL PROVISIONS

**28 Ancillary provision**

- (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),
  - (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,
- “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—
  - (a) include transitional, transitory or saving provision,
  - (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 1**

5 OFFENCES AGAINST CHILDREN TO WHICH SPECIAL PROVISIONS APPLY

*Criminal Procedure (Scotland) Act 1995*

- 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”.
- 10 (3) In section 50 (children and certain proceedings), in subsection (5)—
- (a) for “person under the age of 17 years” substitute “child”,
- (b) for second “person” substitute “child”.

*Children’s Hearings (Scotland) Act 2011*

- 2 (1) The 2011 Act is amended as follows.
- 15 (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.

*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.
- 20

*Adoptions with a Foreign Element (Scotland) Regulations 2009*

- 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**

25 REMIT TO CHILDREN’S HEARING FROM CRIMINAL COURTS

*Criminal Procedure (Scotland) Act 1995*

- 5 (1) The 1995 Act is amended as follows.
- (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)”.
- 30 (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)—
- (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

5 *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,
- (b) in subsection (2C)(a)—
- 10 style="padding-left: 4em;">(i) “in a young offenders institution” is repealed, and
- (ii) for “an institution” substitute “detention”.

*Criminal Procedure (Scotland) Act 1995*

- 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”.
- 20

*Antisocial Behaviour etc. (Scotland) Act 2004*

- 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)”.

25

### PART 4

#### ABOLITION OF REMAND CENTRES

*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.
- 30

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1980*

- 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*

- 5 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.
- 10 (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,
- 15 (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)—
- 20 (a) in subsection (1), “or remand centre” is repealed,
- (b) in subsection (2), “or remand centre” in each place is repealed.

*Prisoners and Criminal Proceedings (Scotland) Act 1993*

- 12 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.
- 25 (2) In section 7 (children detained in solemn proceedings), in subsection (2C)(b), “a remand centre or” is repealed.

*Criminal Law (Consolidation) (Scotland) Act 1995*

- 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.

30 *Criminal Procedure (Scotland) Act 1995*

- 14 (1) The 1995 Act is amended as follows.
- (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.
- (5) In section 307 (interpretation), in subsection (1), in the definition of “place of safety”, “, prison or remand centre,” is repealed.

5 *Prisoners’ Earnings Act 1996*

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

*Housing (Scotland) Act 2006*

- 10 16 (1) The Housing (Scotland) Act 2006 is amended as follows.
- (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*

- 15 17 (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), paragraph 31, in the definition of “prison”, for “, young offenders institution or remand centre” substitute “or young offenders institution”.
- 20 (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.
- 25 (2) In section 37 (interpretation), in subsection (1), in the definition of “penal institution”, paragraph (b) is repealed.

*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.
- 30 (2) In section 2 (mandatory inquiries), in subsection (7), in the definition of “penal institution”, paragraph (b) is repealed.

**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—

““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*

- 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*

- 5 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.

10 *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.
- 15

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

- 20 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 INTRODUCED]

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

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot)

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: [www.parliament.scot/documents](http://www.parliament.scot/documents)