

# Children (Care and Justice) (Scotland) Bill

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## Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above the line must be concluded by the times indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

### Groupings of amendments

#### **Group 1: Rights and welfare of children**

40, 43, 45, 47, 63, 64, 65, 66, 67, 84

#### **Group 2: Meaning of “child”**

41, 50, 51, 52, 53, 59, 60, 61, 62, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 83, 90, 91, 92, 93, 94, 95, 96, 97

#### **Group 3: Children’s hearings system: ways of working and training**

42, 44, 46, 57

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**1 hour 10 minutes**

#### **Group 4: Compulsory supervision orders**

2

#### **Group 5: Children’s hearings system: victim information**

3, 4, 5, 6, 7

#### **Group 6: Children’s hearings system: victim support**

8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 48, 23, 24

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**2 hours 5 minutes**

**Group 7: Publishing and reporting restrictions**

25, 49, 26, 27, 38

**Group 8: Children's hearings system: victims' views**

58, 68

**Group 9: Legal aid**

54, 55, 56

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**3 hours 5 minutes**

**Group 10: Reporting requirements and information collection**

80, 81, 85, 86

**Group 11: Residential accommodation for children**

1, 29, 82

**Group 12: Minor and technical**

28, 30, 31, 32, 37

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**4 hours 10 minutes**

**Group 13: Cross-border placements**

33

**Group 14: Decisions to prosecute children: UNCRC compatibility issues**

34, 36, 39

**Group 15: Resources for implementation of Act**

35, 87, 88, 89

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**5 hours 10 minutes**

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## Amendments in debating order

### Group 1: Rights and welfare of children

#### **Martin Whitfield**

40 Before section 1, insert—

#### **<PART**

#### **PURPOSE OF THIS ACT**

#### **Purpose of this Act**

The purpose of the changes made by this Act is to promote the wellbeing and rights of children in the children’s hearings system and the criminal justice system.>

#### **Martin Whitfield**

43 After section 1, insert—

#### **<Welfare of the child**

- (1) The 2011 Act is amended as follows.
- (2) In section 25 (welfare of the child), in subsection (2), after “welfare” insert “and rights”.>

#### **Martin Whitfield**

45 After section 1, insert—

#### **<Views of the child: commencement of section 3 of the Children (Scotland) Act 2020**

The Scottish Ministers must make regulations under section 34 of the Children (Scotland) Act 2020 appointing a day for the coming into force of section 3 of that Act, which must be a day no later than 6 months after the day the Bill for this Act receives Royal Assent.>

#### **Martin Whitfield**

47 After section 5, insert—

#### **<Cases where a compulsory supervision order has not been made**

- (1) The 2011 Act is amended as follows.
- (2) After section 124 insert—

#### **“124A Cases where a compulsory supervision order has not been made**

- (1) This section applies where the children’s hearing is not satisfied that it is necessary for the protection, guidance, treatment or control of the child to make a compulsory supervision order.
- (2) The children’s hearing must consider, despite this determination—
  - (a) whether any of the conditions in subsection (3) applies, and
  - (b) if so, whether the child should be the subject of monitoring and review.
- (3) The conditions are that the child—
  - (a) has experienced trauma,
  - (b) has been subject to or witnessed domestic abuse,

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- (c) has been exposed to violence,
  - (d) has been a victim of crime, abuse or harm,
  - (e) has mental health issues,
  - (f) has a learning disability,
  - (g) is at risk due to the child’s history or particular vulnerability.
- (4) The children’s hearing must determine—
- (a) whether the child should be subject to monitoring and review, and
  - (b) if so, determine the frequency of that monitoring and review.
- (5) In making a decision under subsection (4), the Principal Reporter may obtain any report, from any person, which the children’s hearing considers necessary.”>

### **Martin Whitfield**

- 63 In section 14, page 28, line 11, after <proceedings),> insert—
- <( ) in subsection (6), after “welfare” insert “and rights”,  
( )>

### **Martin Whitfield**

- 64 In section 14, page 28, line 11, after <proceedings),> insert—
- <( ) in subsection (6), after second “child” insert “as the primary considerations”,  
( )>

### **Martin Whitfield**

- 65 In section 14, page 28, line 12, after <particular,> insert <(a)>

### **Martin Whitfield**

- 66 In section 14, page 28, line 15, after <steps> insert <,  
<(b) give the child an opportunity to express the child’s views in—
- (i) the manner that the child prefers, or
  - (ii) a manner that is suitable to the child if the child has not indicated a preference or it would not be reasonable in the circumstances to accommodate the child’s preference, and
- (c) have regard to any views expressed by the child, taking into account the child’s age and maturity>

### **Martin Whitfield**

- 67 In section 14, page 28, line 15, at end insert—
- <“(7A) But the court is not required to comply with subsection (7)(b) or (c) if the court is satisfied that the child is not capable of forming a view.  
(7B) The child is to be presumed to be capable of forming a view unless the contrary is shown.”>

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**Ruth Maguire**

84 After section 27, insert—

### <PART

#### REVIEW OF RIGHTS OF CHILDREN

##### **Review of rights of children involved in children’s hearings or criminal proceedings**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each review period—
  - (a) undertake a review of the protection of the rights of children who are involved in children’s hearings or criminal proceedings as—
    - (i) a child by whom an offence has been, or is alleged to have been, committed,
    - (ii) a child who has, or appears to have, acted in the way mentioned in section 179A(1)(a)(ii) of the 2011 Act,
    - (iii) a child against or in respect of whom an offence has been, or is alleged to have been, committed,
    - (iv) a child who has been, or appears to have been, harmed by the action or behaviour of a child as mentioned in section 179A(1)(a)(ii) of the 2011 Act,
  - (b) prepare a report on that review.
- (2) The report must, in particular, set out what steps (if any) the Scottish Ministers intend to take as a result of the findings of the review.
- (3) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—
  - (a) publish the report, and
  - (b) lay the report before the Scottish Parliament.
- (4) For the purposes of this section, “review period” means—
  - (a) the period of 3 years beginning with the day of Royal Assent,
  - (b) each subsequent period of 3 years.>

### **Group 2: Meaning of “child”**

**Russell Findlay**

41 Leave out section 1

**Russell Findlay**

50 In section 7, page 10, line 28, leave out, <18> and insert <16>

**Russell Findlay**

51 In section 7, page 10, line 35, leave out <18> and insert <16>

**Russell Findlay**

52 In section 7, page 11, line 2, leave out <18> and insert <16>

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**Russell Findlay**

53 In section 7, page 11, line 4, leave out <19> and insert <17>

**Russell Findlay**

59 Leave out section 8

**Russell Findlay**

60 Leave out section 9

**Russell Findlay**

61 Leave out section 10

**Russell Findlay**

62 Leave out section 11

**Russell Findlay**

69 In section 16, page 32, line 2, leave out <children> and insert <persons>

**Russell Findlay**

70 In section 16, page 32, line 5, leave out <children> and insert <persons>

**Russell Findlay**

71 In section 17, page 32, line 22, leave out <18> and insert <16>

**Russell Findlay**

72 In section 17, page 33, leave out line 2

**Russell Findlay**

73 In section 17, page 33, line 5, leave out subsection (4)

**Russell Findlay**

74 In section 17, page 33, line 12, leave out <child> and insert <person under 18 years of age>

**Russell Findlay**

75 In section 17, page 33, line 16, leave out <a child> and insert <the person>

**Russell Findlay**

76 In section 17, page 33, line 17, leave out <a child> and insert <the person>

**Russell Findlay**

77 In section 17, page 33, line 20, leave out <children> and insert <persons>

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### **Russell Findlay**

78 In section 17, page 33, line 22, leave out <children> and insert <persons>

### **Russell Findlay**

79 In section 17, page 33, line 34, leave out <18> and insert <16>

### **Russell Findlay**

83 In section 26, page 45, line 24, leave out subsection (3)

### **Russell Findlay**

90 In the schedule, page 47, line 15, leave out paragraphs 1 to 4

### **Russell Findlay**

91 In the schedule, page 48, line 17, leave out paragraph 5A

### **Russell Findlay**

92 In the schedule, page 48, leave out lines 33 to 34

### **Russell Findlay**

93 In the long title, page 1, line 1, leave out from <to bring> to <and> in line 2

### **Russell Findlay**

94 In the long title, page 1, line 4, leave out <18> and insert <16>

### **Russell Findlay**

95 In the long title, page 1, line 5, leave out from <treating> to <and>

### **Russell Findlay**

96 In the long title, page 1, line 6, leave out <that system> and insert <the criminal justice system>

### **Russell Findlay**

97 In the long title, page 1, line 14, leave out from <to change> to <orders;> in line 15

## **Group 3: Children's hearings system: ways of working and training**

### **Pam Duncan-Glancy**

42 After section 1, insert—

**<Children's hearing: duty to have due regard to effects of trauma on child**

(1) The 2011 Act is amended as follows.

(2) After section 7 insert—

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### “7A Children’s hearing: duty to have due regard to effects of trauma on child

- (1) This section applies where a children’s hearing is held for the purpose of carrying out functions conferred on a children’s hearing by virtue of this Act or any other enactment.
  - (2) The children’s hearing must, in carrying out its functions, have due regard to the need to treat the child to whom the hearing relates in a way that—
    - (a) takes account of the effects of trauma which the child may have experienced, and
    - (b) seeks to avoid, or minimise the risk of, exposing the child to—
      - (i) any recurrence of past trauma, or
      - (ii) further trauma.
  - (3) The National Convener must, so far as practicable, ensure that the children’s hearing, in carrying out its functions, has due regard to that need.
  - (4) In this section—
    - (a) “children’s hearing” includes a pre-hearing panel,
    - (b) in subsection (2), in so far as it applies to a pre-hearing panel, the reference to the child to whom the hearing relates is to be read as a reference to the child in relation to whom a children’s hearing is to be held.”.
- (3) In section 177 (children’s hearings: procedural rules), in subsection (2), after paragraph (h) insert—
- “(ha) treating the child to whom a children’s hearing relates in a way that—
- (i) takes account of the effects of trauma which the child may have experienced, and
  - (ii) seeks to avoid, or minimise the risk of, exposing the child to any recurrence of past trauma or to further trauma.”.
- (4) In schedule 2 (the Children’s Panel), in paragraph 3(3), after “may” insert “—
- (a) treat the child to whom a children’s hearing relates in a way that—
    - (i) takes account of the effects of trauma which the child may have experienced, and
    - (ii) seeks to avoid, or minimise the risk of, exposing the child to any recurrence of past trauma or to further trauma, and
  - (b)”.>

### **Martin Whitfield**

44 After section 1, insert—

#### **<Non-discrimination**

- (1) The 2011 Act is amended as follows.
- (2) After section 26, insert—



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### **“26A Non-discrimination**

- (1) This section applies where by virtue of this Act a children’s hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.
- (2) The children’s hearing, pre-hearing panel or court must not discriminate against the child on grounds of—
  - (a) the protected characteristics of—
    - (i) age,
    - (ii) disability,
    - (iii) gender reassignment,
    - (iv) race,
    - (v) religion or belief,
    - (vi) sex,
    - (vii) sexual orientation,within the meaning of the Equality Act 2010,
  - (b) socio-economic status.
- (3) This section is without prejudice to any other enactment prohibiting discrimination.”.>

### **Martin Whitfield**

46 After section 1, insert—

#### **<Multi-agency approach**

- (1) The 2011 Act is amended as follows.
- (2) After section 31 insert—

### **“31A Children’s hearing: multi-agency approach**

A children’s hearing must ensure that it takes a multi-agency approach to supporting the child to whom the children’s hearing relates.”.>

### **Pam Duncan-Glancy**

57 After section 7, insert—

#### **<The Children’s Panel: training**

- (1) The 2011 Act is amended as follows.
- (2) In schedule 2 (the Children’s Panel)—
  - (a) in paragraph 3(3)—
    - (i) the words from “how panel members” to the end become paragraph (a),
    - (ii) after that paragraph insert “,
      - “(b) child development,
      - (c) children’s rights,
      - (d) domestic abuse,”

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- (e) trauma-informed practice.”,
- (b) after paragraph 3(4) insert—
  - “(5) For the purposes of sub-paragraph (3)(e), “trauma-informed practice” is a means of operating that—
    - (a) recognises that a person may have experienced trauma,
    - (b) understands the effects which trauma may have on the person, and
    - (c) 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—
      - (i) any recurrence of past trauma, or
      - (ii) further trauma.”.>

### **Group 4: Compulsory supervision orders**

#### **Roz McCall**

- 2 After section 5, insert—

#### **<Compulsory supervision orders: breach**

- (1) The 2011 Act is amended as follows.
- (2) After section 171 insert—

### **“PART 16A**

#### **BREACH OF COMPULSORY SUPERVISION ORDERS**

#### **171A Breach of compulsory supervision orders**

- (1) A child subject to a compulsory supervision order who knowingly and without reasonable excuse fails to comply with a measure mentioned in subsection (2) commits an offence.
- (2) The measures are—
  - (a) a movement restriction condition, within the meaning of section 84,
  - (b) a prohibition mentioned in section 83(2)(ca),
  - (c) a prohibition mentioned in section 83(2)(cb).
- (3) The child is liable on summary conviction to a fine not exceeding level 3 on the standard scale, to detention in secure accommodation for a period not exceeding 60 days, or to both.”.>

### **Group 5: Children’s hearings system: victim information**

#### **Willie Rennie**

- 3 In section 6, page 7, line 1, after <(3)> insert <and the further information mentioned in subsection (3A)>

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### Willie Rennie

- 4 In section 6, page 7, line 2, after <(3)> insert <and the further information mentioned in subsection (3A)>

### Willie Rennie

- 5 In section 6, page 7, line 25, at end insert—
- <(d) other information necessary to assist safety planning by or in relation to the person who made the request or, where the person is a relevant person, the child in relation to whom that person is a relevant person.>

### Willie Rennie

- 6 In section 6, page 7, line 25, at end insert—
- <(3A) The further information referred to in subsection (1)(a)(ii) and (b) is—
- (a) where a compulsory supervision order has been made in respect of the child, or such an order which is already in force in respect of the child has been varied or continued—
- (i) information as to whether the order is subsequently varied or continued to include, vary or remove a measure such as is mentioned in subsection (3)(b)(i) or (ii),
- (ii) information as to whether the order is subsequently terminated,
- (b) where other changes relating to the child's case occur, information necessary to assist safety planning by or in relation to the person who made the request or, where the person is a relevant person, the child in relation to whom that person is a relevant person.>

### Willie Rennie

- 7 In section 6, page 7, line 26, at end insert—
- <(5) In this section and in section 179C, references to a compulsory supervision order include references to an interim compulsory supervision order.>

## **Group 6: Children's hearings system: victim support**

### Willie Rennie

- 8 In section 6A, page 8, line 17, at end insert—
- <(2A) Regulations under subsection (1) must, for the purposes of the provision of support services to persons mentioned in subsection (2), establish or specify a person as a single point of contact for those persons.>

### Willie Rennie

- 9 In section 6A, page 8, line 19, leave out <to be provided by support services> and insert <services that may be provided>

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### **Willie Rennie**

- 10 In section 6A, page 8, leave out lines 20 to 22

### **Willie Rennie**

- 11 In section 6A, page 8, line 23, leave out <persons> and insert <the person>

### **Willie Rennie**

- 12 In section 6A, page 8, line 24, after <information> insert <(including relevant information)>

### **Willie Rennie**

- 13 In section 6A, page 8, line 24, leave out <persons> and insert <the person>

### **Willie Rennie**

- 14 In section 6A, page 8, line 24, after <services,> insert <including that information is to be provided in a way that is accessible to the person receiving it,>

### **Willie Rennie**

- 15 In section 6A, page 8, line 24, at end insert—

<(da) the sharing of information with the person providing support services by other persons, including the National Convener, the Principal Reporter, CHS, SCRA, the chief constable of the Police Service of Scotland and local authorities,>

### **Willie Rennie**

- 16 In section 6A, page 8, line 25, leave out <persons> and insert <the person>

### **Willie Rennie**

- 17 In section 6A, page 8, line 27, at end insert—

<(3A) Regulations under subsection (1) may also modify sections 179A to 179C to provide for—

- (a) information mentioned in section 179B(1) to be provided to persons mentioned in subsection (2) without the need for those persons to make a request under section 179A(3) (including the circumstances in which such persons may opt out of receiving such information),
- (b) such information to be given by the Principal Reporter to the person providing support services (either at the same time as, or instead of, to persons mentioned in subsection (2)),
- (c) the circumstances in which such information is to be provided to persons mentioned in subsection (2) by the person providing support services rather than by the Principal Reporter.>

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### Willie Rennie

- 18 In section 6A, page 8, line 28, leave out <making regulations under subsection (1),> and insert <laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament,>

### Natalie Don

- 19 In section 6A, page 8, line 30, leave out <SCRA> and insert <the Principal Reporter>

### Natalie Don

- 20 In section 6A, page 8, line 31, leave out <CHS> and insert <the National Convener>

### Willie Rennie

- 21 In section 6A, page 8, line 35, leave out <negative> and insert <affirmative>

### Willie Rennie

- 22 In section 6A, page 8, leave out lines 36 and 37 and insert—

<(6) In this section—

“relevant information” includes—

(a) information about—

- (i) the children’s hearings system (including about the interaction of that system with the criminal justice system),
- (ii) the action that can be taken by a children’s hearing (including about the measures that can be included in a compulsory supervision order),
- (iii) the process for reviewing actions taken by a children’s hearing (including the process for reviewing and enforcing compulsory supervision orders), and

(b) where regulations under subsection (1) make provision mentioned in subsection (3A) (b) or (c), information requested under section 179A(3),

“support services” (other than in subsection (4)(c)) includes the provision of relevant information to persons mentioned in subsection (2) and otherwise has the meaning given in regulations under subsection (1).>

### Ruth Maguire

- 48 After section 6A, insert—

#### <Support for victims in the children’s hearings system: review and report

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each review period—
  - (a) review the operation of support services provided, by virtue of regulations under section 179D(1) of the 2011 Act, to persons mentioned in section 179D(2) of that Act, and
  - (b) prepare a report on the provision of such support services to those persons.

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- (2) The review must in particular—
  - (a) assess the effectiveness of support services by reference to, among other things, the number of, and feedback from, persons to whom those services are provided,
  - (b) identify the steps (if any) that the Scottish Ministers consider should be taken as a result of that assessment.
- (3) In carrying out the review, the Scottish Ministers must consult—
  - (a) the National Convener of Children’s Hearings Scotland,
  - (b) the Principal Reporter,
  - (c) the single point of contact established or specified by virtue of section 179D(2A) of the 2011 Act,
  - (d) each local authority,
  - (e) persons who are providing support services to persons in relation to offences perpetrated against or in respect of those persons,
  - (f) such other persons as the Scottish Ministers consider appropriate.
- (4) The report prepared under subsection (1)(b) must be—
  - (a) laid before the Scottish Parliament, and
  - (b) published in such manner as the Scottish Ministers consider appropriate.
- (5) In this section—

“review period” means the period of 2 years beginning with the day on which regulations under section 179D(1) of the 2011 Act first come into force and each subsequent period of 2 years,

“support services” has the same meaning as in section 179D(6) of the 2011 Act.>

### **Willie Rennie**

**23** Leave out section 6B

### **Roz McCall**

**24** After section 6B, insert—

#### **<Review of rights of victims in children’s hearings system**

- (1) The Scottish Ministers must, no later than 3 months after the day of Royal Assent, prepare and publish a report on a review of the rights of victims in the children’s hearings system.
- (2) The report under subsection (1) must set out the steps the Scottish Ministers will take to ensure that the rights of victims in the children’s hearings system are protected.
- (3) The rights mentioned in subsection (2) must include the right of the victim, in relation to proceedings under the 2011 Act, to—
  - (a) be treated in a respectful and non-discriminatory manner,
  - (b) obtain appropriate and relevant information,
  - (c) have information provided in a way that can be understood by the victim,
  - (d) effectively participate in the proceedings where appropriate,
  - (e) receive appropriate support during and after the proceedings,

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- (f) be protected from further victimisation, intimidation and retaliation during and after the proceedings,
  - (g) receive compensation for loss or expenses incurred due to the victim being involved in the proceedings,
  - (h) make a complaint about the victim's treatment.
- (4) The Scottish Ministers must lay the report under subsection (1) before the Scottish Parliament.
- (5) For the purposes of this section, "victim" means—
- (a) a person against whom an offence appears to have been committed by a child who is the subject of proceedings under the 2011 Act,
  - (b) a person who appears to have been harmed by the action or behaviour of a child who is the subject of proceedings under the 2011 Act.>

### **Group 7: Publishing and reporting restrictions**

#### **Natalie Don**

25 Leave out section 6C

#### **Martin Whitfield**

49 After section 6C, insert—

#### **<Request by children's hearing to dispense with publishing restrictions**

- (1) The 2011 Act is amended as follows.
- (2) In section 182 (publishing restrictions), after subsection (4) insert—
  - “(4A) The chairing member of a children's hearing may request that the Scottish Ministers exercise their power under subsection (4) where the chairing member considers it would be in the interests of justice to do so.”>

#### **Natalie Don**

26 Leave out section 12

#### **Natalie Don**

27 Leave out section 13

#### **Natalie Don**

38 In the long title, page 1, line 6, leave out from <the extension> to <phase,> in line 7

### **Group 8: Children's hearings system: victims' views**

#### **Martin Whitfield**

58 After section 7, insert—

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### <Children's hearings: procedural rules

- (1) The 2011 Act is amended as follows.
- (2) In section 177 (children's hearings: procedural rules)—
  - (a) in subsection (2) after paragraph (h) insert—

“(ha) obtaining the views of the person affected by the offence or behaviour of the child to whom a children's hearing relates.”.>

### **Russell Findlay**

**68** In section 15, page 30, line 38, at end insert—

<(1EA) Where the court remits a case as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a), the Principal Reporter must give any person against whom a prescribed offence has been perpetrated an opportunity to make a personal statement.

(1EB) For the purposes of subsection (1EA)—

- (a) a “personal statement” means a statement as to the way in which, and degree to which, that offence has affected and, as the case may be, continues to affect, that person,
- (b) “prescribed offence” means an offence prescribed under section 14(2) of the Criminal Justice (Scotland) Act 2003.>

### **Group 9: Legal aid**

#### **Pam Duncan-Glancy**

**54** After section 7, insert—

#### **<Legal aid and advice**

- (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 28B (children's legal aid), after subsection (3)(d) insert—

“(da) proceedings before a children's hearing arranged on the basis that—

  - (i) the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence), and
  - (ii) the offence that the child has committed is one that a constable is required under guidance issued by the Lord Advocate to jointly report to the Principal Reporter and the Crown Office and Procurator Fiscal Service.”.
  - (3) In section 28C (circumstances where children's legal aid automatically available)—
    - (a) after subsection (1)(d) insert—

“(da) a children's hearing is arranged in relation to a child on the basis that—

      - (i) the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence), and



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(ii) the offence that the child has committed is one that a constable is required under guidance issued by the Lord Advocate to jointly report to the Principal Reporter and the Crown Office and Procurator Fiscal Service,”

(b) in subsection (2), in paragraph (b), for “or (d)” substitute “, (d) or (da)”,

(c) after subsection (3) insert—

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

### **Pam Duncan-Glancy**

55 After section 7, insert—

#### **<Legal aid and advice**

(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) In section 28B (children’s legal aid), after subsection (3)(d) insert—

“(da) proceedings before a children’s hearing arranged on the basis that the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence),”.

(3) In section 28C (circumstances where children’s legal aid automatically available)—

(a) after subsection (1)(d) insert—

“(da) a children’s hearing is arranged in relation to a child on the basis that the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence),”.

(b) in subsection (2), in paragraph (b), for “or (d)” substitute “, (d) or (da)”.>

### **Pam Duncan-Glancy**

56 After section 7, insert—

#### **<Legal aid and advice**

(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) In section 28C (circumstances where children’s legal aid automatically available), after subsection (3) insert—

“(4) Regulations under subsection (3) must, in particular, provide for children’s legal aid to be automatically available for proceedings before a children’s hearing arranged on the basis that the ground mentioned in section 67(2)(j) of the 2011 Act applies (the child has committed an offence).”.>

## **Group 10: Reporting requirements and information collection**

### **Martin Whitfield**

80 After section 21, insert—

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*<Reporting duty: restorative justice for children*

### **Reporting duty: restorative justice for children**

- (1) Within one year of Royal Assent, the Scottish Ministers must carry out a review of current initiatives, including guidance, to support the referral to restorative justice services of children who have, or are alleged to have, committed an offence.
- (2) The Scottish Ministers must, as soon as reasonably practicable after completing the review under subsection (1)—
  - (a) prepare and publish a report on that review,
  - (b) lay the report before the Scottish Parliament.
- (3) The report under subsection (2) must set out the steps (if any) that the Scottish Ministers plan to take in consequence of the review.
- (4) In this section, “restorative justice services” has the same meaning as in section 5 of the Victims and Witnesses (Scotland) Act 2014.>

### **Martin Whitfield**

**81** After section 21, insert—

*<Reporting duty: children who have committed an offence*

### **Reporting duty: children who have committed an offence**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting period, prepare and publish a report setting out—
  - (a) the steps that have been taken—
    - (i) to support the use of alternatives to the detention of children who plead guilty to, or are found guilty of, an offence,
    - (ii) to support the rehabilitation and reintegration into the community of children who plead guilty to, or are found guilty of, an offence,
  - (b) the standards against which success of the steps taken is measured,
  - (c) the data and other information that will be collected to demonstrate success,
  - (d) the outcome of the steps taken.
- (2) For the purposes of subsection (1), a reporting period is—
  - (a) the period of one year beginning with the day of Royal Assent,
  - (b) each subsequent period of one year.
- (3) In this section, “rehabilitation” means the elimination or reduction of future offending.>

### **Martin Whitfield**

**85** After section 27, insert—

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## <PART

### REVIEW OF INFORMATION COLLECTION

#### **Scottish Ministers to review information collection**

- (1) Within six months of Royal Assent, the Scottish Ministers must carry out a review of the information that is required to be collected in order to monitor the operation and impact of this Act and the methodology for doing so.
- (2) The review must, in particular, consider the information to be collected on the characteristics of, and outcomes for, children—
  - (a) referred to a children’s hearing,
  - (b) who plead guilty to, or are found guilty of, an offence.
- (3) For the purposes of subsection (2), the characteristics are—
  - (a) age,
  - (b) disability,
  - (c) gender reassignment,
  - (d) race,
  - (e) religion or belief,
  - (f) sex,
  - (g) sexual orientation.
- (4) The Scottish Ministers must, as soon as reasonably practicable after completing the review, publish a report on that review.
- (5) The report must set out—
  - (a) the information to be collected to monitor the operation and impact of the Act, and
  - (b) the methodology for doing so.>

#### **Martin Whitfield**

86 After section 27, insert—

## <PART

### REPORTING REQUIREMENTS

#### **Report on outcomes for children**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting period, prepare and publish a report on the outcomes for children—
  - (a) referred to a children’s hearing,
  - (b) who plead guilty to, or are found guilty of, an offence.
- (2) A report under subsection (1) must, in particular, include information on—
  - (a) the characteristics of the children mentioned in subsection (1)(a) or (b),
  - (b) the provision of social work services to children mentioned in subsection (1)(a) or (b),

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- (c) the number of children referred to a children’s hearing on the ground that they have committed an offence who go on to commit further offences,
  - (d) the number of children who plead guilty to, or are found guilty of, an offence who go on to commit further offences,
  - (e) the outcomes for children subject to a compulsory supervision order with a movement restriction condition,
  - (f) the outcomes for children subject to a compulsory supervision order with a secure accommodation authorisation,
  - (g) the outcomes for children detained in secure accommodation after pleading guilty to, or being found guilty of, an offence.
- (3) For the purposes of subsection (2)(a), the characteristics are—
- (a) age,
  - (b) disability,
  - (c) gender reassignment,
  - (d) race,
  - (e) religion or belief,
  - (f) sex,
  - (g) sexual orientation.
- (4) For the purposes of subsection (1), a reporting period is—
- (a) the period of one year beginning with the day on which the report under section (*Scottish Ministers to review information collection*) is published,
  - (b) each subsequent period of one year.
- (5) In this section—
- “compulsory supervision order” has the meaning given by section 83 of the 2011 Act,
  - “movement restriction condition” has the meaning given by section 84 of the 2011 Act,
  - “secure accommodation” has the meaning given by section 202(1) of the 2011 Act,
  - “secure accommodation authorisation” has the meaning given by section 85 of the 2011 Act,
  - “social work services” has the meaning given by section 48 of the 2010 Act.>

### **Group 11: Residential accommodation for children**

#### **Sue Webber**

1 In section 23, page 41, line 7, at end insert—

- <(3) Regulations under subsection (1) must include provision requiring the Scottish Ministers, before approving a secure accommodation service, to be satisfied that the

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service will ensure that a child is not placed in the same residential establishment as another child where—

- (a) in proceedings under the Children’s Hearings (Scotland) Act 2011, it has been established that—
  - (i) the child has committed an offence against or in respect of the other child, or
  - (ii) the child has acted or behaved in a way that has had, or is likely to have had, a serious adverse effect on the health, safety or development of the other child, or
- (b) in criminal proceedings, the child has pled guilty to, or been found guilty of, having committed an offence against or in respect of the other child.>

### Roz McCall

29 After section 23, insert—

#### <Separation of children in residential accommodation

- (1) The 2010 Act is amended as follows.
- (2) In section 78 (regulations: care services), after subsection (2) insert—
  - “(2C) Regulations under subsection (2) must impose a requirement on any care service providing accommodation for children in a residential establishment to keep children who are in that establishment because of having committed an offence in separate accommodation from those children who are in the establishment for another reason.
  - (2D) For the purposes of subsection (2C), “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.”>

### Martin Whitfield

82 After section 23, insert—

#### <Provision of services to children in secure accommodation

A secure accommodation service must ensure that any child detained in its establishment is provided with the appropriate care, education and support as mentioned in paragraph 6(b) of schedule 12 (care services: definitions) of the 2010 Act, including—

- (a) advocacy support services,
- (b) emotional and mental health support,
- (c) health care,
- (d) support to maintain contact with the child’s family,
- (e) transition and aftercare support.>

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### **Group 12: Minor and technical**

#### **Natalie Don**

- 28 In section 23, page 41, line 22, leave out from <means> to end of line 27 and insert <has the meaning given by section 105(1).>

#### **Natalie Don**

- 30 In section 24, page 43, line 9, leave out <residential accommodation> and insert <a residential establishment>

#### **Natalie Don**

- 31 In section 24, page 43, line 13, leave out from first <by> to end of line 15 and insert <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,
  - (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;”.>

#### **Natalie Don**

- 32 In section 24, page 43, line 15, at end insert—
- <( ) after the definition of “relative” insert—
- ““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;”.>

#### **Natalie Don**

- 37 In the schedule, page 47, line 11, at end insert—

### **<PART**

#### AGE OF CRIMINAL RESPONSIBILITY

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

- (1) The Age of Criminal Responsibility (Scotland) Act 2019 is amended as follows.
- (2) In section 39 (limitation on police questioning of certain children), in subsection (3), the definition of “child” is repealed.
- (3) In section 58 (limitation on taking prints and samples from children under 12), subsection (6)(b) is repealed.
- (4) In section 76 (interpretation of Part 4), the definition of “child” is repealed.
- (5) In section 80 (interpretation), in the definition of “child”, for “16 years of age (except where provided otherwise: see section 39(3))” substitute “18 years of age”.>

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### **Group 13: Cross-border placements**

**Michael Marra**

**33** After section 25A, insert—

#### **<Review of cross-border placements**

- (1) The Scottish Ministers must, no later than one year after the day of Royal Assent, undertake a review of cross-border placements.
- (2) A review under subsection (1) must, in particular, consider—
  - (a) the number of cross-border placements,
  - (b) the provision of services to children subject to cross-border placements.
- (3) The Scottish Ministers must, as soon as reasonably practicable after completing the review under subsection (1)—
  - (a) prepare and publish a report on that review,
  - (b) lay the report before the Scottish Parliament.
- (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
- (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,
  - (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,

“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 1995 Act or the 2011 Act.>

### **Group 14: Decisions to prosecute children: UNCRC compatibility issues**

**Natalie Don**

**34** After section 27, insert—

#### **<PART**

#### **UNCRC COMPATIBILITY ISSUES IN CRIMINAL PROCEEDINGS**

#### **UNCRC compatibility issues in relation to decisions to prosecute children**

- (1) The 1995 Act is amended as follows.
- (2) After section 288B insert—

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### **“288BZAUNCRC compatibility issue in relation to decision to prosecute child: restriction on judicial remedies**

- (1) This section applies where—
  - (a) by virtue of section 7(1)(b) of the UNCRC Incorporation Act, a UNCRC compatibility issue has arisen—
    - (i) in criminal proceedings brought against a person who is a child, or who was a child at the time the proceedings were brought,
    - (ii) otherwise than in connection with an appeal against conviction or an appeal against both conviction and sentence,
  - (b) in determining the UNCRC compatibility issue, a court finds that the prosecutor, by bringing criminal proceedings against the person, has acted in a way which is made unlawful by section 6(1) of the UNCRC Incorporation Act, and
  - (c) by reason only of the finding mentioned in subsection (1)(b), a court is considering—
    - (i) deserting the proceedings *pro loco et tempore* or *simpliciter*, or
    - (ii) dismissing the indictment or (as the case may be) the complaint or any part of it.
- (2) Despite section 8(1) of the UNCRC Incorporation Act, a court—
  - (a) may not—
    - (i) desert the proceedings *pro loco et tempore* or *simpliciter*, except on the motion of the prosecutor, or
    - (ii) dismiss the indictment or (as the case may be) the complaint or any part of it, but
  - (b) must instead—
    - (i) give the prosecutor an opportunity to reconsider the bringing of criminal proceedings against the person in a way which is compatible with the UNCRC requirements,
    - (ii) adjourn or continue the proceedings to another diet to allow such reconsideration, and
    - (iii) following any such reconsideration, decide whether the bringing of criminal proceedings against the person is compatible with the UNCRC requirements.
- (3) But a court is not required to act in accordance with subsection (2) if—
  - (a) it considers that there is no reasonable prospect of the bringing of criminal proceedings against the person being reconsidered in a way which is compatible with the UNCRC requirements,
  - (b) it considers that there are exceptional circumstances which justify not doing so, or
  - (c) it decides under subsection (2)(b)(iii) that the bringing of criminal proceedings against the person is incompatible with the UNCRC requirements.



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- (4) Subsection (5) applies where—
    - (a) the court adjourns or continues the proceedings in accordance with subsection (2)(b)(ii), or
    - (b) by virtue of subsection (3), the court decides to desert the proceedings *pro loco et tempore*.
  - (5) Before adjourning or continuing the proceedings or (as the case may be) deserting the proceedings *pro loco et tempore*, the court must give the prosecutor an opportunity—
    - (a) in solemn proceedings, to make an application under section 65(3) or (5) for an extension of any of the following periods which apply in respect of the proceedings—
      - (i) the periods of 11 months and 12 months mentioned in section 65(1), including those periods as extended under section 65(3), on appeal under section 65(8) or under section 74(4)(c),
      - (ii) the periods of 80 days, 110 days and 140 days mentioned in section 65(4), including those periods as extended under section 65(5) or on appeal under section 65(8),
    - (b) in summary proceedings in respect of which the period of 40 days mentioned in section 147(1) applies, to make an application under section 147(2) for an extension of that period, including that period as extended under section 147(2) or on appeal under section 147(3).
  - (6) For the purposes of subsection (1)(a)(i), the proceedings are taken to be brought—
    - (a) in solemn proceedings, on the date on which the indictment is served,
    - (b) in summary proceedings—
      - (i) in a case where a warrant to apprehend or cite the accused is granted, on the date on which the warrant is granted, or
      - (ii) in any other case, on the date on which the complaint is served.
  - (7) In this section—

“prosecutor” does not include a private prosecutor,

“the UNCRC requirements” has the meaning given in section 1(2) of the UNCRC Incorporation Act,

“UNCRC compatibility issue” means a question of the kind mentioned in section 288AB(1)(b),

“UNCRC Incorporation Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.”.
- (3) The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is amended as follows.
  - (4) In section 8 (judicial remedies), after subsection (5) insert—
    - (6) Section 288BZA of the Criminal Procedure (Scotland) Act 1995 modifies the court’s power under subsection (1) in relation to certain UNCRC compatibility issues in criminal proceedings.”.>

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### Natalie Don

36 In section 31, page 46, line 16, at end insert—

<( ) Section (*UNCRC compatibility issues in relation to decisions to prosecute children*) comes into force on whichever is the later of—

- (a) the day after Royal Assent,
- (b) 16 July 2024.>

### Natalie Don

39 In the long title, page 1, line 16, after <plans;> insert <to make provision about UNCRC compatibility issues in relation to decisions to prosecute children;>

## **Group 15: Resources for implementation of Act**

### Roz McCall

35 After section 27, insert—

#### <PART

#### REPORTING REQUIREMENTS

#### **Report on the operation of this Act**

- (1) The Scottish Ministers must, in respect of each reporting period, undertake a review of the operation of this Act.
- (2) A review under subsection (1) must include an assessment of whether sufficient resources were in place for the effective implementation of the Act during the reporting period.
- (3) The Scottish Ministers must, as soon as reasonably practicable after completing the review under subsection (1)—
  - (a) prepare a report on that review, and
  - (b) lay the report before the Scottish Parliament.
- (4) A report under subsection (3) must set out—
  - (a) information on the matters considered by the Scottish Ministers when making the assessment mentioned in subsection (2),
  - (b) the steps the Scottish Ministers will take in light of that assessment to ensure that sufficient resources are (or continue to be) in place for the effective implementation of the Act during the next reporting period.
- (5) The information mentioned in subsection (4)(a) must, in particular, include information for the reporting period on—
  - (a) the occupancy levels in secure accommodation,
  - (b) the number of children’s social workers employed by local authorities,
  - (c) the number of members of the Children’s Panel.

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(6) In this section—

“reporting period” means—

- (a) the period of one year beginning with the day of Royal Assent,
- (b) each subsequent period of one year,

“secure accommodation” has the meaning given in section 202(1) of the 2011 Act.>

**Pam Duncan-Glancy**

**87** After section 27, insert—

**<PART**

**REVIEW OF ACT**

**Review of Act**

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each review period—
  - (a) undertake a review of the operation of this Act, and
  - (b) prepare a report on that review.
- (2) The report must, in particular, set out—
  - (a) whether sufficient resources are in place for the effective implementation of the Act,
  - (b) what steps (if any) the Scottish Ministers intend to take as a result of the findings of the review.
- (3) The Scottish Ministers must, as soon as reasonably practicable after preparing the report—
  - (a) publish the report, and
  - (b) lay the report before the Scottish Parliament.
- (4) For the purposes of this section, “review period” means—
  - (a) the period of one year beginning with the day of Royal Assent,
  - (b) each subsequent period of one year.>

**Pam Duncan-Glancy**

**88** In section 31, page 46, line 18, at end insert—

<(2A) The Scottish Ministers may not lay before the Scottish Parliament regulations under subsection (2) until they—

- (a) undertake a review of whether there are sufficient resources in place for the effective implementation of this Act in—
  - (i) the children’s hearings system,
  - (ii) children’s social work,
  - (iii) secure accommodation,
- (b) prepare a report on that review, and
- (c) no later than 6 months after the day of Royal Assent, lay the report before the Scottish Parliament.

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(2B) The report prepared under subsection (2A)(b) must, in particular, set out what steps (if any) the Scottish Ministers intend to take as a result of the findings of the review.>

### **Pam Duncan-Glancy**

**89** In section 31, page 46, line 18, at end insert—

<(2A) The Scottish Ministers may not lay before the Scottish Parliament regulations under subsection (2) until the end of the period of one month beginning with the day on which they comply with subsection (2B).

(2B) The Scottish Ministers must lay before the Scottish Parliament a report setting out why they consider that there are a sufficient number of members of the Children's Panel for the other provisions of this Act to come into force.>

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