

# Children (Care, Care Experience and Services Planning) (Scotland) Bill

[AS INTRODUCED]

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statements on legislative competence (SP Bill 74-LC).**

# Children (Care, Care Experience and Services Planning) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for and about the provision of services and support for or in relation to children and other persons with care experience; to make provision for a register of foster carers; to make provision about children's hearings; to make provision in relation to the planning of children's services; and for connected purposes.

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## PART 1

### CHILDREN'S CARE SYSTEM

#### CHAPTER 1

##### SUPPORT ETC. FOR PERSONS IN OR WITH EXPERIENCE OF CHILDREN'S CARE SYSTEM

##### *Aftercare*

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#### **1 Aftercare etc. for persons looked after before age 16**

(1) The Children (Scotland) Act 1995 is amended as follows.

(2) In section 29 (aftercare), for subsection (2) substitute—

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“(2) A person within the area of a local authority who falls within subsection (2ZA) may make an application to the authority requesting that the authority provide the person with advice, guidance or assistance.

(2ZA) A person falls within this subsection if—

(a) the person is—

- (i) at least nineteen, but less than twenty-six, years of age, and
- (ii) otherwise a person such as is described in subsection (1), or

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(b) the person—

- (i) is at least sixteen, but less than twenty-six, years of age,
- (ii) was looked after by a local authority at any point before the person's sixteenth birthday,

(iii) was not so looked after on the person's sixteenth birthday or at any subsequent time, and

(iv) is not of a description of person specified by order under subsection (1)(b).”.

(3) In section 30 (financial assistance towards expenses of education or training)—

(a) for subsection (2) substitute—

“(2) A person is a relevant person for the purposes of subsection (1) if—

(a) the person is aged sixteen or over but under twenty-six, and

(b) the person—

(i) is not looked after by a local authority, but

(ii) has, at any point in the person's life, been so looked after.”,

(b) subsection (2A) is repealed.

## **2 Aftercare for persons looked after in Northern Ireland**

(1) The Children (Scotland) Act 1995 is amended as follows.

(2) In section 29 (aftercare), for subsection (7) substitute—

“(7) In subsection (1) (but not in subsection (2ZA)(b)), the references to a person having been looked after by a local authority include reference to a person having been—

(a) looked after, by a local authority in England, within the meaning of section 22 of the Children Act 1989,

(b) looked after, by a local authority in Wales, within the meaning of section 74 of the Social Services and Well-being (Wales) Act 2014,

(c) looked after, by an authority in Northern Ireland, within the meaning of article 25 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755).”.

## *Corporate parenting*

### **3 Corporate parenting duties in relation to persons looked after before age 16**

(1) The Children and Young People (Scotland) Act 2014 is amended as follows.

(2) In section 57 (children and young people in relation to whom corporate parenting duties apply)—

(a) in subsection (1), for paragraph (b) substitute—

“(b) every child and young person under the age of 26 who—

(i) is not looked after by a local authority, but

(ii) has, at any point in the child or young person's life, been so looked after.”,

(b) subsection (2) is repealed.

(3) In section 99(2) (powers subject to affirmative procedure), the words “section 57(2)(b)” are repealed.

*Advocacy services for care-experienced persons*

**4 Advocacy services for care-experienced persons**

- (1) The Scottish Ministers must by regulations confer rights of access to care experience advocacy services.
- (2) “Care experience advocacy services” are independent services of support and representation provided for the purpose of assisting a care-experienced person—
- (a) to access services through which the person may be provided with care or assistance,
  - (b) to make the person’s views in relation to matters connected with the provision of care or assistance to the person known to persons making decisions in relation to such matters.
- (3) It is the duty of the Scottish Ministers to ensure that care experience advocacy services are available to the extent necessary for a right conferred by virtue of subsection (1) to be exercised by each person who has the right.
- (4) Regulations under subsection (1) may—
- (a) specify—
    - (i) circumstances in or in relation to which,
    - (ii) particular descriptions of care-experienced persons by whom,a right conferred by virtue of subsection (1) is (or is not) to be exercisable,
  - (b) modify subsection (2) by adding, varying or removing purposes for which services of support and representation may be provided,
  - (c) make further provision in relation to care experience advocacy services.
- (5) Provision made by virtue of subsection (4)(c) may, in particular, include provision—
- (a) specifying—
    - (i) standards that care experience advocacy services are to meet,
    - (ii) qualifications to be held by, and training of, persons providing care experience advocacy services,
  - (b) as to the establishment and maintenance, for purposes specified in the regulations, of a register of persons who provide care experience advocacy services,
  - (c) specifying circumstances in which, and the persons by whom, care-experienced persons are to be informed about the availability of care experience advocacy services.
- (6) The following persons are care-experienced for the purposes of this section—
- (a) a child who is or has at any time been—
    - (i) looked after,
    - (ii) subject to a kinship care order,
    - (iii) cared for or otherwise supported in such circumstances as may be specified,
  - (b) a person who was at any time when the person was a child—
    - (i) looked after,

- (ii) subject to a kinship care order,
  - (iii) cared for or otherwise supported in such circumstances as may be specified.
- (7) Before making regulations under this section, the Scottish Ministers must consult—
- (a) care-experienced persons,
  - (b) persons who may become care-experienced persons by virtue of the regulations to which the consultation relates,
  - (c) such—
    - (i) persons who represent the interests of care-experienced persons or persons mentioned in paragraph (b), and
    - (ii) other persons,
 as the Scottish Ministers consider appropriate.
- (8) In subsection (6), “specified” means specified in regulations made by the Scottish Ministers.

*Guidance in relation to care experience***5 Guidance in relation to care experience**

- (1) The Scottish Ministers must issue guidance for the purpose of promoting understanding, by public authorities and other persons exercising functions of a public nature, of—
- (a) care-experienced persons, and
  - (b) the experiences that such persons may have had before and since becoming care-experienced.
- (2) Guidance under subsection (1) may in particular promote best practice in—
- (a) identifying and communicating with persons who are or may be care-experienced, including in particular best practice in using language in a way that avoids stigmatising care experience,
  - (b) ensuring that the experiences and needs of persons who are or may be care-experienced are identified and taken account of in the planning and provision of public services, and
  - (c) facilitating access by persons who are or may be care-experienced to public services.
- (3) A public authority must—
- (a) have regard to guidance issued under subsection (1) when exercising the public authority's functions in relation to persons who are or may be care-experienced,
  - (b) where it exercises functions by entering into arrangements (contractual or otherwise) under which functions of a public nature will be exercised by a person other than a public authority, ensure that the arrangements require the person to have regard to guidance issued under subsection (1) when exercising those functions in relation to persons who are or may be care-experienced.
- (4) A public authority must take such steps as it considers appropriate to make persons in relation to whom the authority exercises functions aware of guidance issued under subsection (1).

(5) But a public authority exercising functions which relate to a particular description of care-experienced person specified in an enactment need comply with subsections (3) and (4) only to the extent that the public authority considers doing so is consistent with the proper exercise of those functions.

(6) The following persons are care-experienced for the purposes of this section—

(a) a child who is or has at any time been—

(i) looked after,

(ii) subject to a kinship care order,

(iii) cared for or otherwise supported in such circumstances as are specified in the guidance,

(b) a person who was at any time when the person was a child—

(i) looked after,

(ii) subject to a kinship care order,

(iii) cared for or otherwise supported in such circumstances as are specified in the guidance.

(7) In this section—

“function” means, in relation a public authority, a function that it is within the legislative competence of the Scottish Parliament to confer on the authority,

“public authority” means a person who is—

(a) a part of the Scottish Administration, or

(b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

## **6 Guidance under section 5: further provision**

(1) Before issuing guidance under section 5(1), the Scottish Ministers must consult—

(a) persons who are care-experienced persons for the purposes of section 5,

(b) persons who may become such persons by virtue of the guidance to which the consultation relates,

(c) such—

(i) persons who represent the interests of persons mentioned in paragraphs (a) and (b), and

(ii) other persons,

as the Scottish Ministers consider appropriate.

(2) The Scottish Ministers must—

(a) as soon as reasonably practicable after issuing guidance under section 5(1)—

(i) lay the guidance before the Scottish Parliament, and

(ii) publish the guidance in such manner as they consider appropriate, and

(b) take such steps as they consider appropriate to publicise the guidance.

- (3) Guidance issued under section 5(1) may include different guidance in relation to different persons or for different purposes.
- (4) The Scottish Ministers may revise guidance issued under section 5(1) (and references in section 5 and this section to guidance are to be construed accordingly).

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### *Interpretation*

## 7 **Interpretation**

In this Act—

“child” means a person aged under 18,

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“kinship care order” has the meaning given by section 72 of the Children and Young People (Scotland) Act 2014,

“looked after” is to be construed in accordance with sections 17(6) and 17A(2) of the Children (Scotland) Act 1995.

## **CHAPTER 2**

### PROVISION OF CHILDREN’S CARE SERVICES

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#### *Requirements on certain care providers*

## 8 **Children’s residential care services: profit limitation**

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

*“Regulations under section 78: profit limitation in children’s residential care services*

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### **78E Children’s residential care services**

- (1) The Scottish Ministers—

- (a) must exercise the power under section 78(2) to impose on types of person falling within subsection (3), in relation to such time period as is specified in the regulations, an initial information requirement, and

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- (b) may (subject to section 78F) exercise that power to impose on such types of person—

- (i) a profit limitation requirement, and

- (ii) a continuing information requirement.

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- (2) Despite subsection (1)(a), the power under section 78(2) is not to be exercised so as to impose an initial information requirement on a type of person falling within subsection (3) in relation to a period during which a profit limitation requirement applies in relation to that type of person.

- (3) A person falls within this subsection if the person—

- (a) provides—

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- (i) a care home service which is provided wholly or mainly to children, or



- (ii) a school care accommodation service, and
  - (b) is not a local authority.
- (4) An initial information requirement is a requirement to provide to the Scottish Ministers such financial and other information as is—
  - (a) required for the purpose mentioned in subsection (5), and
  - (b) of a type specified in the regulations.
- (5) The purpose is assessing the level of profit made by the types of person falling within subsection (3) from provision of the services mentioned in that subsection in order to inform consideration of—
  - (a) whether a profit limitation requirement should be imposed, and
  - (b) if such a requirement is to be imposed, how the requirement should be expressed.
- (6) A profit limitation requirement is a requirement that any profit made by a type of person falling within subsection (3) from provision of a service mentioned in that subsection must not exceed an amount specified in, or determined in accordance with, the regulations.
- (7) A continuing information requirement is a requirement to provide to the Scottish Ministers on an annual basis such financial and other information as is—
  - (a) required for the purposes mentioned in subsection (8), and
  - (b) of a type specified in the regulations.
- (8) The purposes are assessing—
  - (a) compliance with a profit limitation requirement,
  - (b) the level of profit made by types of person falling within subsection (3) from provision of the services mentioned in that subsection in order to inform consideration of—
    - (i) whether a profit limitation requirement should be modified, and
    - (ii) if such a requirement is to be modified, how the modified requirement should be expressed.
- (9) The initial information requirement and the continuing information requirement include power for the Scottish Ministers to require types of person falling within subsection (3) to provide to them such additional information in connection with information provided in compliance with those requirements as they consider necessary for the purposes mentioned in subsection (5) or, as the case may be, (8).
- (10) Without prejudice to the generality of section 78(2), regulations under that section imposing the requirements mentioned in subsection (1) may specify—
  - (a) how the level of profit made by types of person falling within subsection (3) from the provision of services mentioned in that subsection is to be determined,
  - (b) the form in which, and time period within which, information is to be provided to the Scottish Ministers for the purposes of the initial information requirement and the continuing information requirement.

(11) Before imposing (or modifying) a requirement mentioned in subsection (1), the Scottish Ministers must consult—

- (a) local authorities,
- (b) persons who appear to the Scottish Ministers to represent the interests of persons falling within subsection (3),
- (c) such other persons as the Scottish Ministers consider appropriate.

**78F Conditions for imposing or modifying profit limitation requirement**

(1) The Scottish Ministers may impose (or modify) a profit limitation requirement only—

(a) if satisfied that it is necessary to do so, having regard to the public interest in securing that persons falling within section 78E(3) are providing care on terms which represent value for money, and

(b) after having regard—

(i) where a profit limitation requirement is being imposed for the first time, to the information provided by persons falling within section 78E(3) in compliance with an initial information requirement,

(ii) otherwise, to the information provided by persons falling within section 78E(3) in compliance with a continuing information requirement in the period since the profit limitation requirement was first imposed or, as the case may be, last modified.

(2) Before imposing (or modifying) a profit limitation requirement, the Scottish Ministers must also have regard to—

- (a) the wellbeing of children being looked after by local authorities,
- (b) the interests of local authorities, and
- (c) the interests of persons falling within section 78E(3) (including the opportunity to make a profit).

(3) In this section, “looked after” is to be construed in accordance with section 17 of the Children (Scotland) Act 1995.

**78G Enforcement of information and profit limitation requirements**

Regulations under section 78(2) may—

(a) require a person falling within section 78E(3) to pay a monetary penalty if the person has failed to comply with a requirement mentioned in section 78E(1),

(b) make further provision in relation to the monetary penalties mentioned in paragraph (a), including provision as to—

- (i) procedures to be followed before such penalties are imposed,
- (ii) the level of such penalties,
- (iii) the person to whom such penalties are to be paid,

(iv) appeals against the imposition of a requirement to pay such a penalty,

(c) include provision as to the Scottish Ministers informing SCSWIS when a person falling within section 78E(3) has failed to comply with a requirement mentioned in section 78E(1).”.

## **9 Fostering services to be charities**

(1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

(2) In section 59 (registration of care services), for subsection (3) substitute—

“(3) A person who provides—

(a) an adoption service must be a voluntary organisation,

(b) a fostering service must be a charity.”.

(3) In section 105 (interpretation)—

(a) in subsection (1)—

(i) at the appropriate place in alphabetical order insert—

““charity” means a non-natural person—

(a) registered in the Scottish Charity Register,

(b) which—

(i) is registered as a charity in England and Wales in accordance with section 30 of the Charities Act 2011, or

(ii) by virtue of subsection (2) of that section, is not required to register as a charity under that section, or

(c) which—

(i) is registered as a charity in Northern Ireland in accordance with section 16 of the Charities Act (Northern Ireland) 2008, or

(ii) by virtue of subsection (2A) of that section, is not required to register as a charity under that section,”

(ii) in the definition of “voluntary organisation”—

(A) the words from “means” to the end become paragraph (a),

(B) after that paragraph, insert—

“(b) includes, in particular, a charity,”

(b) after subsection (3) insert—

“(4) The Scottish Ministers may by regulations modify the definition of “charity” in subsection (1) so as to specify further descriptions of person who are a charity for the purposes of this Part.”.

(4) In section 104 (orders and regulations: procedure), in subsection (2), after “82B(1)” insert “, 105(4)”.

*Register of foster carers*

**10 Register of foster carers**

- (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) After section 30, insert—

*“Register of foster carers*

**30A Register of foster carers**

- (1) The Scottish Ministers may make arrangements for the establishment and maintenance of a register of foster carers for the purposes of facilitating—
  - (a) (either or both)—
    - (i) the approval (or otherwise) of persons as foster carers by fostering services,
    - (ii) the placing of children with foster carers by fostering services,
  - (b) foster care generally (including improvements in foster care).
- (2) The register is to include, in relation to each person who has been approved as a foster carer by a fostering service—
  - (a) the person's name and address,
  - (b) whether—
    - (i) the person is approved as a foster carer, or
    - (ii) the person's approval as a foster carer has been terminated,
  - (c) where the person is approved as a foster carer, what foster care the person is providing,
  - (d) where the person's approval as a foster carer has been terminated, the reasons for that termination,
  - (e) such other information in relation to the person's current or previous approval as a foster carer as may be specified (for example, whether the person's approval relates to any child or to a particular category of children and the number of children the person is permitted to have in the person's care at any one time),
  - (f) such other information about—
    - (i) the person, and
    - (ii) other members of the person's household,as may be specified.
- (3) The register may also include such information as is specified about persons who have been considered by a fostering service for approval as a foster carer but not so approved.
- (4) The information mentioned in subsections (2) and (3) is to be provided to the relevant person by the fostering service which approved or, as the case may be, did not approve the person to whom the information relates as a foster carer.

- (5) In this section, “specified” means specified in regulations made by the Scottish Ministers.

**30B Register of foster carers: further provision**

- (1) The Scottish Ministers may by regulations make further provision in relation to—

- (a) the arrangements to be made under section 30A(1),
- (b) the register of foster carers.

- (2) Provision made under subsection (1) may, in particular, include provision—

- (a) as to circumstances in which information in relation to a person who has been approved (or not approved) as a foster carer by a fostering service is not to be included in the register (and in relation to which section 30A(4) accordingly does not apply),
- (b) as to when and how information mentioned in section 30A(2) and (3) is to be provided by a fostering service to the relevant person,
- (c) as to when information in relation to a person is to be removed from the register,
- (d) as to the form in which information included in the register is to be kept,
- (e) creating offences in relation to—
  - (i) failures by fostering services to provide information as required by section 30A(4),
  - (ii) the provision of late or incorrect information,
- (f) modifying Part 5 of the Public Services Reform (Scotland) Act 2010 so as to—
  - (i) provide for offences created by virtue of paragraph (e) to be relevant offences, or
  - (ii) otherwise make provision as to how the matters mentioned in paragraph (e)(i) and (ii) are to be treated,for the purposes of that Part,
- (g) as to the payment of fees in connection with—
  - (i) the inclusion of information in the register,
  - (ii) the disclosure of information from the register,
  - (iii) other matters relating to the register.

**30C Disclosure of information**

- (1) The register of foster carers is not to be open to public inspection or search.

- (2) The Scottish Ministers, by regulations—

- (a) must authorise the disclosure of information derived from the register by the relevant person to a fostering service for a purpose mentioned in section 30A(1)(a),

(b) may authorise the disclosure of information derived from the register by the relevant person to other persons for the purpose mentioned in section 30A(1)(b), for example, for use—

(i) for statistical or research purposes,

(ii) in identifying training, development and other support needs of foster carers,

(c) may authorise the disclosure of information derived from the register by a fostering service to other persons for purposes specified in the regulations.

(3) Authority to disclose information by virtue of regulations made under subsection (2) is subject to any further provision made in the regulations as to such disclosure, including provision—

(a) setting out conditions on which information may be disclosed (for example, a condition that information for use as mentioned in subsection (2)(b)(i) or (ii) must be anonymised),

(b) specifying steps to be taken by a fostering service in relation to information disclosed to it.

(4) It is an offence to disclose any information derived from the register other than in accordance with regulations made under subsection (2).

(5) Subsection (4) does not apply to a disclosure of information by or with the authority of the Scottish Ministers.

(6) A person who is guilty of an offence under this section is liable on summary conviction to—

(a) imprisonment for a term not exceeding 3 months,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

### **30D Establishment and maintenance of register by person other than Scottish Ministers**

(1) Arrangements made by the Scottish Ministers under section 30A(1) may in particular—

(a) authorise an organisation to perform the Scottish Ministers' functions in relation to the register (other than functions of making subordinate legislation),

(b) provide for the Scottish Ministers to make payments to an organisation authorised under paragraph (a).

(2) The Scottish Ministers must publish arrangements under section 30A(1) in so far as they authorise an organisation as mentioned in subsection (1)(a).

(3) An organisation authorised in pursuance of subsection (1) must perform functions delegated to it in accordance with any directions (general or specific) given to it by the Scottish Ministers.

**30E Pilot scheme**

- (1) The Scottish Ministers may, by regulations, provide for the carrying out of a pilot scheme in relation to the register of foster carers.
- (2) Regulations under subsection (1) must provide that arrangements made under section 30A(1) are, for a period specified in the regulations, to apply—
- (a) only—
- (i) in relation to such fostering services as are specified in the regulations (for example, fostering services operating in a particular area), or
- (ii) in relation to such matters as are specified in the regulations (for example, the identification of persons who are able to provide respite foster care), or
- (b) in relation to such fostering services as are specified in the regulations, in relation to such matters as are specified in the regulations.
- (3) As soon as reasonably practicable after making regulations under subsection (1), the Scottish Ministers must lay before the Scottish Parliament a statement describing—
- (a) the pilot scheme, and
- (b) how they intend to evaluate the pilot scheme.
- (4) As soon as reasonably practicable after the expiry of the period mentioned in subsection (2), the Scottish Ministers must lay before the Scottish Parliament—
- (a) an evaluation of the pilot scheme, and
- (b) a statement describing what action they intend to take in connection with section 30A(1) as a result of the pilot scheme.

**30F Register of foster carers: procedure for regulations**

Regulations under sections 30A(2)(e) and (f) and (3), 30B(1), 30C(2) and 30E(1) are subject to the affirmative procedure.

**30G Register of foster carers: interpretation**

In sections 30A to 30F—

“foster carer” means a person approved as suitable to be a foster carer in accordance with the Looked After Children (Scotland) Regulations 2009 (S.S.I. 2009/210) (and references to a person being approved or not approved as a foster carer, or to a person’s approval being terminated, are to be construed accordingly),

“fostering service” means a service which is provided by—

- (a) a local authority under paragraph (a) of section 26(1) of the Children (Scotland) Act 1995 (fostering of children looked after by a local authority), or

(b) a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the performance of functions assigned to a local authority—

(i) under that paragraph, or

(ii) by virtue of section 5(2) to (4) of the Social Work (Scotland) Act 1968 (regulations relating to performance of functions assigned to a local authority under that Act),

“register of foster carers” means the register established and maintained under section 30A(1),

“relevant person” means—

(a) where the Scottish Ministers have authorised an organisation to perform the Scottish Ministers’ functions in relation to the register under section 30D, that person,

(b) otherwise, the Scottish Ministers.”.

### CHAPTER 3

#### CHILDREN’S HEARINGS

*Composition etc. of Children’s Panel, children’s hearings and pre-hearing panels*

#### **11 Single member children’s hearings and pre-hearing panels**

(1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) In section 4 (the Children’s Panel)—

(a) after subsection (1) insert—

“(1A) Persons appointed under subsection (1)—

(a) must include—

(i) ordinary members, and

(ii) chairing members, and

(b) may include specialist members of such types as the National Convener considers appropriate.”,

(b) in subsection (2)—

(i) for paragraph (a) substitute—

“(a) such number of—

(i) ordinary members,

(ii) chairing members, and

(iii) where the National Convener has decided to appoint specialist members of a particular type, that type of member,

as the National Convener considers appropriate is appointed, and”,

(ii) in paragraph (b), for “persons” substitute “both ordinary members and chairing members”.



(3) In section 5 (children's hearing)—

- (a) the words from “three members” to “enactment” become paragraph (a),
- (b) after that paragraph insert “, or
- (b) one member of the Children's Panel selected in accordance with section 6A for the purpose of carrying out functions which are—
- (i) conferred on a children's hearing by virtue of this Act or any other enactment, and
- (ii) permitted by this Act or any other enactment to be carried out by one member of the Children's Panel.”.

(4) After section 5, insert—

**“5A Pre-hearing panel**

(1) A pre-hearing panel consists of—

- (a) three members of the Children's Panel selected in accordance with section 6 for the purpose of carrying out functions conferred on a pre-hearing panel by virtue of this Act, rules made under section 177 or any other enactment,
- (b) one member of the Children's Panel selected in accordance with section 6A for the purpose of carrying out functions which are—
- (i) conferred on a pre-hearing panel by virtue of this Act, rules made under section 177 or any other enactment, and
- (ii) permitted by rules made under section 177 or any other enactment to be carried out by one member of the Children's Panel.

(2) A member of the Children's Panel selected for a pre-hearing panel may (but need not) be a member of the children's hearing to which the pre-hearing panel relates.”.

(5) In section 6 (selection of members of children's hearing)—

(a) in subsection (1)—

- (i) the words from “a children's hearing” to “enactment” become paragraph (a),
- (ii) after that paragraph insert “, and
- (b) the functions to be carried out by the children's hearing either—
- (i) consist of or include functions which are not permitted to be carried out by one member of the Children's Panel, or
- (ii) consist of functions which are so permitted but which the National Convener has decided should be carried out by three members of the Children's Panel.”,

(b) in subsection (3), before paragraph (a), insert—

“(aa) includes at least one chairing member.”,

(c) for subsection (4) substitute—

“(4) Where the children’s hearing includes more than one chairing member, the children’s hearing is to be chaired by—

(a) where the National Convener selects one of the chairing members to chair the hearing, that member, or

(b) where the National Convener does not select a member to chair the hearing, the chairing member agreed by the hearing.

(4A) Otherwise, the chairing member included in the children’s hearing is to chair the hearing.

(4B) Where a children’s hearing consisting of one member has previously considered any matter relating to the referral in relation to which a children’s hearing is being selected under this section, the National Convener must have regard to the desirability of the members of the children’s hearing including the member of that previous children’s hearing.”,

(d) for subsection (5) substitute—

“(5) In this section—

“children’s hearing” includes (except in subsection (4B)) a pre-hearing panel,

“permitted”, in relation to a function to be carried out by a children’s hearing or a pre-hearing panel, means permitted by this Act, rules made under section 177 or, as the case may be, any other enactment.”.

(6) The section title of section 6 becomes “Selection of members of children’s hearing: three member hearing”.

(7) After section 6, insert—

**“6A Selection of members of children’s hearing: one member hearing**

(1) This section applies where—

(a) a children’s hearing requires to be arranged by virtue of, or for the purposes of, this Act or any other enactment,

(b) the functions to be carried out by the hearing consist solely of functions which are permitted to be carried out by one member of the Children’s Panel, and

(c) the National Convener decides that the functions should be carried out by one such member.

(2) The member of the children’s hearing is to be—

(a) selected by the National Convener, and

(b) a chairing member.

(3) The National Convener must ensure that, so far as practicable, the member of the children’s hearing lives or works in the area of the local authority which is the relevant local authority for the child to whom the hearing relates.

(4) In this section—

“children’s hearing” includes a pre-hearing panel,

“permitted” has the same meaning as in section 6.”.

(8) In section 79 (pre-hearing panels)—

(a) in subsection (2)(a), for the words from “three members” to “(a “pre-hearing panel”)” substitute “a pre-hearing panel”,

(b) subsection (6) is repealed.

(9) Before section 90, insert—

**“89A Membership of grounds hearings**

(1) A children’s hearing—

(a) arranged under section 69B, 69C or 69F for the purpose of deciding whether a compulsory supervision order should be made in respect of the child must consist of three members of the Children’s Panel,

(b) arranged under section 69C for the purpose of considering the statement of grounds may consist of—

(i) three members of the Children’s Panel, or

(ii) one member of the Children’s Panel,

(c) arranged under section 89C(8)(a) or 95(2) may consist of—

(i) three members of the Children’s Panel, or

(ii) one member of the Children’s Panel.

(2) In this Act, “grounds hearing” means a children’s hearing arranged by virtue of a provision mentioned in subsection (1).”.

(10) In section 91 (grounds accepted: powers of grounds hearing)—

(a) in subsection (1), for “to make a decision on whether to make a compulsory supervision order” substitute “for a decision on whether to make a compulsory supervision order to be made”,

(b) after subsection (1) insert—

“(1A) Subsection (1B) applies where the grounds hearing consists of one member of the Children’s Panel.

(1B) The grounds hearing must require the Principal Reporter to arrange a children’s hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of the child.

(1C) Subsections (2) and (3) apply where the grounds hearing consists of three members of the Children’s Panel.”.

(11) In section 92 (powers of grounds hearing on deferral), in subsection (1)—

(a) after “where” insert “—

“(a) under section 91(1B), the grounds hearing requires the Principal Reporter to arrange a children’s hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of the child, or”,

(b) the words from “under section 91(2)” to the end become paragraph (b).

(12) In section 93 (grounds not accepted: application to sheriff or discharge), in subsection (1), for “to make a decision on whether to make a compulsory supervision order”

substitute “for a decision on whether to make a compulsory supervision order to be made”.

- (13) In section 96 (children's hearing to consider need for further interim compulsory supervision order), after subsection (2) insert—

“(2A) The children's hearing may consist of—

- (a) three members of the Children's Panel, or
- (b) one member of the Children's Panel.”.

- (14) In section 119 (children's hearing following deferral or proceedings under Part 10), in subsection (1), for “section 91(2),” substitute “section 91(1B) or (2),”.

- (15) In section 177 (children's hearings: procedural rules)—

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

“(aa) specifying whether a matter that may be determined by a pre-hearing panel (whether by virtue of paragraph (a) or otherwise) may be determined by a pre-hearing panel consisting of one member of the Children's Panel,”.

- (b) in subsection (4), after “subsection (2)(a)” insert “, (aa)”.

- (16) In section 202 (interpretation)—

- (a) in subsection (1)—

- (i) in the definition of “grounds hearing” for “section 90” substitute “section 89A(2),”
- (ii) in the definition of “pre-hearing panel” for “section 79(2)(a)” substitute “section 5A(1),”

- (c) in subsection (2), after “are” insert “, where the children's hearing consists of three members of the Children's Panel,”.

- (d) in subsection (2A), after “are” insert “, where the pre-hearing panel consists of three members of the Children's Panel,”.

- (17) In schedule 2 (the Children's Panel), in paragraph 1—

- (a) in sub-paragraph (1)—

- (i) for “members” substitute “ordinary members, chairing members and (where the National Convener considers it appropriate) particular types of specialist members”.
- (ii) for “as a member” substitute “as any type of member”.

- (b) for sub-paragraph (2) substitute—

“(2) It is for the National Convener—

- (a) to determine any qualifications and experience that a person must have in order to be appointed as—
  - (i) an ordinary member,
  - (ii) a chairing member, or
  - (iii) a specialist member of a particular type, and

- (b) to appoint persons as ordinary members, chairing members and (where the National Convener considers it appropriate) particular types of specialist members from those recruited under sub-paragraph (1).”,
- (c) in sub-paragraph (5), for “a panel member” substitute “an ordinary member, a chairing member or, as the case may be, a specialist member”.

## **12 Remuneration of Children’s Panel members**

- (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.
- (2) In schedule 2 (the Children’s Panel), in paragraph 4—
  - (a) in sub-paragraph (1), for the words from “the allowances” to the end substitute “—
    - (a) the allowances to be paid to—
      - (i) panel members,
      - (ii) potential panel members,
    - (b) remuneration to be paid to panel members.”,
  - (b) in sub-paragraph (3)—
    - (i) the words from “to panel members” to “sub-paragraph (1)” become sub-sub-paragraph (a),
    - (ii) in that sub-sub-paragraph, for “sub-paragraph (1)” substitute “sub-paragraph (1)(a)”,
    - (iii) after that sub-sub-paragraph insert “, and
    - (b) to panel members remuneration determined under sub-paragraph (1)(b).”.

### *Child’s attendance at children’s hearings and hearings before sheriff*

## **13 Child’s attendance at children’s hearings and hearings before sheriff**

- (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.
- (2) In section 73 (child’s duty to attend hearing)—
  - (a) in subsection (2), for the words from “unless” to the end substitute “if required to do so by the children’s hearing.”,
  - (b) for subsection (3) substitute—
    - “(3) A children’s hearing may require a child to attend all or part of the children’s hearing only if satisfied that the child’s attendance at the hearing, or that part of the hearing, is necessary—
      - (a) for a fair hearing, or
      - (b) to assist the children’s hearing in making any decision relating to the child.

- (3A) In deciding whether to require a child to attend all or part of a children's hearing, the children's hearing must have regard, in particular, to whether—
- (a) the child's attendance at the hearing, or that part of the hearing, would place the child's health, safety or development at risk, and
  - 5 (b) taking account of the child's age and maturity, the child would be capable of understanding what happens at the hearing or that part of the hearing.”,
  - (c) subsection (4) is repealed.
- (3) The section title of section 73 becomes “Child's duty to attend children's hearing where required”.
- 10 (4) In section 78 (rights of certain persons to attend children's hearing), in subsection (1)(a), for “excused from attending” substitute “required to attend”.
- (5) In section 79 (referral of certain matters for pre-hearing determination)—
- (a) in subsection (3)(a), for “excused from attending” substitute “required to attend”,
  - 15 (b) in subsection (4), for the words from “excuse the child” to the end substitute “require the child to attend all or part of a children's hearing only if satisfied (having regard to the matters mentioned in section 73(3A)) as mentioned in section 73(3).”.
- (6) In section 92 (powers of grounds hearing on deferral), after subsection (1) insert—
- 20 “(1A) Subject to section 73(3), the children's hearing may require the child to attend the children's hearing mentioned in subsection (1)(a) or, as the case may be, (b).”.
- (7) In section 93 (grounds not accepted: application to sheriff or discharge) in subsection (4), for paragraphs (a) and (b) substitute—
- “ (a) explain the purpose of the application—
- 25 (i) where the child is in attendance at the hearing, to the child, and
  - (ii) (subject to sections 74 and 75) each relevant person in relation to the child.
- (b) where the child is in attendance at the hearing, inform the child that the
- 30 (i) has a right to attend the hearing before the sheriff, and
  - (ii) may be required to do so.”.
- (8) In section 95 (child fails to attend grounds hearing)—
- (a) for subsection (1) substitute—
  - “ (1) Subsection (2) applies where—
  - 35 (a) a child is required to attend a grounds hearing, and
  - (b) the child does not attend as required.”,
  - (b) in subsection (2)—
  - (i) the words “require the Principal Reporter to arrange another grounds hearing” become paragraph (a),

(ii) after that paragraph insert “, and

(b) subject to section 73(3), require the child to attend that hearing.”.

(9) The section title of section 95 becomes “Child’s attendance at grounds hearing”.

(10) In section 103 (child’s duty to attend hearing unless excused)—

(a) in subsection (2), for “unless the child is excused from doing so” substitute “if required to do so by the sheriff”,

(b) for subsection (3) substitute—

“(3) The sheriff may require the child to attend all or part of the hearing of the application only if satisfied that the child’s attendance at the hearing, or part of the hearing, is necessary—

(a) for a fair hearing, or

(b) to assist the sheriff in making any decision relating to the child.

(3A) In deciding whether to require a child to attend all or part of a hearing, the sheriff must have regard, in particular, to whether—

(a) the child’s attendance at the hearing, or that part of the hearing, would place the child’s health, safety or development at risk, and

(b) taking account of the child’s age and maturity, the child would be capable of understanding what happens at the hearing or that part of the hearing.”,

(c) in subsection (4), for “excused from doing so” substitute “not required to do so”,

(d) in subsection (5), for “not excused” to “does not attend” substitute “required to attend the hearing under subsection (3) and does not do so”,

(e) in subsection (6)(b)—

(i) after “the sheriff” insert—

“(i) requires the child to attend the hearing on that day under subsection (3), and”,

(ii) the words from “is satisfied” to the end become sub-paragraph (ii).

(11) The section title of section 103 becomes “Child’s duty to attend hearing where required”.

(12) In section 112 (child’s duty to attend review hearing unless excused)—

(a) in subsection (2), for “unless” to the end substitute “if required to do so by the sheriff under section 103(3)”,

(b) in subsection (3), for “the child is excused” substitute “the child is not required to do so”,

(c) for subsection (4) substitute—

“(4) The sheriff may grant a warrant to secure attendance where the sheriff—

(a) requires the child to attend the hearing under subsection (2), and

(b) is satisfied that there is reason to believe that the child would not otherwise attend the hearing.”.

(13) The section title of section 112 becomes “Child’s duty to attend review hearing where required”.

- (14) In section 119 (children’s hearing following deferral or proceedings under Part 10), in subsection (4), paragraph (a) is repealed.
- (15) In section 120 (powers of children’s hearing on deferral under section 119), after subsection (1) insert—
- “(1A) Subject to section 73(3), the children’s hearing may require the child to attend the subsequent children’s hearing.”.
- (16) In section 121 (confirmation that child given opportunity to express views before hearing), in subsection (1)—
- (a) the words from “a children’s hearing” to the end become paragraph (a),
- (b) after that paragraph insert “, and
- (b) the child is in attendance at the children’s hearing.”.
- (17) In section 122 (children’s advocacy services), in subsection (1)—
- (a) the words from “a children’s hearing” to the end become paragraph (a),
- (b) after that paragraph insert “, and
- (b) the child is in attendance at the children’s hearing.”.
- (18) In section 124 (requirement to establish child’s age), in subsection (2), for “ask the person in respect of whom the hearing has been arranged” substitute “, if the person in respect of whom the hearing has been arranged is in attendance at the hearing, ask the person”.
- (19) In section 138 (powers of children’s hearing on review)—
- (a) in subsection (8)(a)—
- (i) the words “child or” are repealed,
- (ii) the word “73(2),” is repealed,
- (b) in subsection (9), the words “the child or” are repealed.
- (20) In section 139 (powers of children’s hearing on deferral under section 138), after subsection (1) insert—
- “(1A) Subject to section 73(3), the children’s hearing may require the child to attend the subsequent children’s hearing.”.

### *Grounds hearings*

#### **14 Role of Principal Reporter and grounds hearing**

- (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.
- (2) Immediately before section 68 insert the italic heading “Action following determination under section 66”.
- (3) In section 69 (determination under section 66: referral to children’s hearing)—
- (a) in subsection (1)—
- (i) the words from “having made” to the end become paragraph (a),
- (ii) after that paragraph insert “, and



(b) section 69F does not apply.”,

(b) after subsection (1) insert—

“(1A) The Principal Reporter must prepare the statement of grounds.”,

(c) subsection (2) is repealed (but see sections 69A to 69E of the 2011 Act, as inserted by subsection (5)),

(d) subsection (3) is repealed (but see section 69F of the 2011 Act, as inserted by subsection (5)),

(e) after subsection (5) insert—

“(6) In this Act—

(a) “statement of grounds”, in relation to a child, means a statement setting out—

(i) which of the section 67 grounds the Principal Reporter believes applies in relation to the child, and

(ii) the facts on which that belief is based,

(b) “supporting facts”, in relation to a section 67 ground, means facts set out in relation to the ground by virtue of paragraph (a)(ii).”.

(4) The section title of section 69 becomes “Determination under section 66: statement of grounds”.

(5) After section 69, insert—

**“69A Referral to children’s hearing or application to sheriff**

(1) This section applies where the Principal Reporter prepares a statement of grounds in relation to a child under section 69(1A).

(2) The Principal Reporter must—

(a) arrange a children’s hearing under section 69B or 69C, or

(b) make an application to the sheriff under section 69D or 69E.

(3) Before doing so, the Principal Reporter must—

(a) offer the child and each relevant person in relation to the child an opportunity to discuss with the Principal Reporter—

(i) the statement of grounds,

(ii) the child’s participation in the children’s hearing arranged under section 69B or 69C or, as the case may be, the hearing of the application under section 69D or 69E before the sheriff (including the matters mentioned in subsection (6)), and

(iii) such other matters in relation to the children’s hearing or, as the case may be, the hearing before the sheriff as the Principal Reporter considers appropriate, and

(b) endeavour to ensure that the discussions mentioned in paragraph (a) take place.

- (4) Discussion of the statement of grounds, as mentioned in subsection (3)(a)(i), is (if such a discussion takes place) to include—
- (a) the Principal Reporter explaining—
    - (i) each section 67 ground specified in the statement of grounds, and
    - (ii) the supporting facts in relation to the ground, and
  - (b) the Principal Reporter asking whether each person with whom the Principal Reporter is having the discussion accepts—
    - (i) that the ground applies in relation to the child, and
    - (ii) in relation to each ground that the person accepts applies in relation to the child, whether the person accepts each of the supporting facts.
- (5) The explanations and questions mentioned in subsection (4) may be put to the child and each relevant person in relation to the child in such terms as the Principal Reporter considers appropriate.
- (6) The matters mentioned in subsection (3)(a)(ii) are—
- (a) whether the child will attend the children's hearing or, as the case may be, the hearing of the application,
  - (b) the most appropriate means for the child's views to be communicated to the children's hearing or sheriff,
  - (c) whether the child intends to use children's advocacy services.
- (7) Where the Principal Reporter becomes aware (whether by virtue of the discussions mentioned in subsection (3) taking place or otherwise) that the child intends to use children's advocacy services, the Principal Reporter must inform the person providing those services to the child of when and where the children's hearing or, as the case may be, the hearing before the sheriff is to take place.
- (8) The Principal Reporter need not comply with subsections (3) and (4) to the extent that the Principal Reporter considers that—
- (a) it would be inappropriate or ineffectual to do so (taking account, for example, of the child's age and maturity), or
  - (b) the Principal Reporter already has sufficient information, based on previous engagement (or attempts to engage) with the child and relevant persons in relation to the child, to—
    - (i) decide which of sections 69B to 69E applies, and
    - (ii) prepare a report under section 69G.

## **69B Arrangement of children's hearing: all grounds likely to be accepted**

- (1) This section applies where the Principal Reporter—
- (a) has prepared a statement of grounds in relation to a child under section 69(1A), and

(b) considers that—

- (i) each relevant person in relation to the child would be capable of understanding an explanation of each section 67 ground specified in the statement of grounds given in compliance with section 90(4), and
- (ii) it is likely that, at a children's hearing arranged under this section, the persons mentioned in subsection (3) would accept the matters mentioned in subsection (4).

(2) The Principal Reporter must arrange a children's hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of the child.

(3) The persons are—

- (a) where the Principal Reporter considers that the child would not be capable of understanding an explanation of each section 67 ground specified in the statement of grounds given in compliance with section 90(3), each relevant person in relation to the child,
- (b) otherwise—
  - (i) the child, and
  - (ii) each relevant person in relation to the child.

(4) The matters are—

- (a) each section 67 ground specified in the statement of grounds, and
- (b) the supporting facts in relation to each ground.

**69C Arrangement of children's hearing: possibility of some or all grounds being accepted**

(1) This section applies where—

- (a) the Principal Reporter has prepared a statement of grounds in relation to a child under section 69(1A), and
- (b) either subsection (2) or (3) applies.

(2) This subsection applies where the Principal Reporter—

- (a) considers that each relevant person in relation to the child would be capable of understanding an explanation of each section 67 ground specified in the statement of grounds given in compliance with section 90(4), and
- (b) either—
  - (i) considers that it is possible that, at a children's hearing arranged under this section, the persons mentioned in subsection (5) would accept the matters mentioned in subsection (6), or
  - (ii) is unable to form a view as to the likelihood of the persons mentioned in subsection (5) accepting, at a children's hearing arranged under this section, the matters mentioned in subsection (6).

(3) This subsection applies where the Principal Reporter is unable to form a view as to whether a relevant person in relation to the child would or would not be capable of understanding an explanation of each section 67 ground specified in the statement of grounds given in compliance with section 90(4).

(4) The Principal Reporter must arrange a children's hearing for one of the following purposes—

(a) deciding whether a compulsory supervision order should be made in respect of the child,

(b) considering the statement of grounds.

(5) The persons are—

(a) where the Principal Reporter considers that the child would not be capable of understanding an explanation of each section 67 ground specified in the statement of grounds given in compliance with section 90(3), each relevant person in relation to the child,

(b) otherwise—

(i) the child, and

(ii) each relevant person in relation to the child.

(6) The matters are—

(a) one or more of the section 67 grounds specified in the statement of grounds, and

(b) one or more of the supporting facts in relation to each ground which may be accepted.

#### **69D Application to sheriff: grounds unlikely to be accepted**

(1) This section applies where the Principal Reporter—

(a) has prepared a statement of grounds in relation to a child under section 69(1A), and

(b) considers that—

(i) each relevant person in relation to the child would be capable of understanding an explanation of each section 67 ground specified in the statement of grounds given in compliance with section 90(4), and

(ii) it is unlikely that, at a children's hearing arranged under section 69B or 69C, the persons mentioned in subsection (3) would accept the matters mentioned in subsection (4).

(2) The Principal Reporter must make an application to the sheriff for a determination as to whether any of the section 67 grounds specified in the statement of grounds are established.

(3) The persons are—

(a) where the Principal Reporter considers that the child would not be capable of understanding an explanation of each section 67 ground

specified in the statement of grounds given in compliance with section 90(3), each relevant person in relation to the child,

(b) otherwise—

(i) the child, and

(ii) each relevant person in relation to the child.

(4) The matters are—

(a) one or more of the section 67 grounds specified in the statement of grounds, and

(b) one or more of the supporting facts in relation to each ground.

**69E Application to sheriff: relevant person unable to understand grounds**

(1) This section applies where the Principal Reporter—

(a) has prepared a statement of grounds in relation to a child under section 69(1A), and

(b) considers that a relevant person in relation to the child would not be capable of understanding an explanation of each section 67 ground specified in the statement of grounds given in compliance with section 90(4).

(2) The Principal Reporter must make an application to the sheriff for a determination as to whether any of the section 67 grounds specified in the statement of grounds are established.

**69F Determination under section 66: referral to children's hearing where child in place of safety**

(1) This section applies where—

(a) having made a determination under section 66(2) in relation to a child, the Principal Reporter considers that it is necessary for a compulsory supervision order to be made in respect of the child,

(b) the determination is made following the Principal Reporter receiving information under section 53 of the Criminal Justice (Scotland) Act 2016, and

(c) at the time the determination is made, the child is being kept in a place of safety under section 65(2)(b).

(2) The Principal Reporter must—

(a) prepare the statement of grounds, and

(b) arrange a children's hearing for the purpose of deciding whether a compulsory supervision order should be made in respect of the child.

(3) A children's hearing arranged under subsection (2) must be arranged to take place no later than the third day after the Principal Reporter receives the information mentioned in subsection (1)(b).

- (4) The Principal Reporter may direct—
- (a) that the child be released from the place of safety, or
  - (b) that the child continue to be kept in a place of safety until the children’s hearing.
- 5 (5) Subsections (4) and (5) of section 69 apply for the purposes of this section as they apply for the purposes of that section.

*Report by Principal Reporter*

**69G Report by Principal Reporter**

- (1) This section applies where the Principal Reporter is required—
- 10 (a) under section 69B, 69C or 69F to arrange a children’s hearing in relation to a child, or
  - (b) under section 69D or 69E to make an application to the sheriff in relation to a child.
- (2) The Principal Reporter must prepare a report setting out—
- 15 (a) except where a children’s hearing is arranged under section 69F—
    - (i) any discussions that the Principal Reporter has had with the child or relevant persons in relation to the child before or in the course of deciding which of sections 69B to 69E applies, and
    - 20 (ii) the Principal Reporter’s reasons for considering that the section under which the Principal Reporter is proceeding applies,
  - (b) whether, so far as the Principal Reporter is aware, the child intends to attend the children’s hearing or, as the case may be, the hearing before the sheriff,
  - (c) where the child does not intend to attend, whether—
    - 25 (i) the Principal Reporter has explained each section 67 ground specified in the statement of grounds and the supporting facts in relation to each ground to the child,
    - (ii) in the Principal Reporter’s opinion, the child understood any such explanations, and
    - 30 (iii) in the Principal Reporter’s opinion, the child accepts each ground and the supporting facts in relation to the ground,
  - (d) any views or preferences of the child of which the Principal Reporter is aware in relation to—
    - 35 (i) the child’s participation in the children’s hearing or, as the case may be, the hearing before the sheriff,
    - (ii) any other matter relating to the children’s hearing or, as the case may be, the hearing before the sheriff, and
  - (e) such other information as the Principal Reporter considers appropriate.”.
- (6) Immediately before section 70 insert the italic heading “Referral to children’s hearing other than following determination under section 66”.
- 40

(7) After section 71, insert—

*“Application to sheriff: referral to children’s hearing for making of interim order*

**71A Application to sheriff: referral to children’s hearing for making of interim compulsory supervision order**

(1) This section applies where—

- (a) the Principal Reporter has made an application in relation to a child to the sheriff under section 69D(2) or 69E(2),
- (b) the application has not yet been heard, and
- (c) the Principal Reporter considers that the nature of the child’s circumstances is such that for the protection, support, guidance, treatment or control of the child it may be necessary as a matter of urgency that an interim compulsory supervision order be made in relation to the child.

(2) The Principal Reporter must arrange a children’s hearing for the purpose of deciding whether to make an interim compulsory supervision order in relation to the child.

*Application of Part where compulsory supervision order in force*

**71B Application of Part where compulsory supervision order in force**

(1) This Part has effect in relation to a child mentioned in subsection (2) with the modifications set out in subsections (3) and (4).

(2) The child is a child in relation to whom a compulsory supervision order is in force.

(3) References (however expressed) to a compulsory supervision order being made (or not made) are to be read as references to the compulsory supervision order which is in force being reviewed (or not reviewed).

(4) References to an interim compulsory supervision order are to be read as references to an interim variation of the compulsory supervision order.”.

(8) Section 72 (child in place of safety: Principal Reporter’s powers) is repealed (but see section 69F as inserted by subsection (5)).

(9) In section 79 (referral of certain matters for pre-hearing determination), in subsection (1), for “section 69(2)” substitute “section 69B, 69C or 69F”.

(10) In section 86 (meaning of “interim compulsory supervision order”), in subsection (3)(b), for “section 93(2)(a) or 94(2)(a)” substitute “section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)”.

(11) Section 89 (statement of grounds) (and the italic heading immediately before it) are repealed (but see section 69 as amended by subsection (3)).

(12) For section 90 (grounds to be put to child and relevant person) substitute—

**“89B Child’s understanding of grounds**

(1) This section applies where a grounds hearing is held in relation to a child.

(2) The grounds hearing must consider whether, taking account of the child’s age and maturity, the child would be capable of understanding an explanation of

each section 67 ground specified in the statement of grounds given in accordance with section 90(3).

- (3) This subsection applies where the grounds hearing is satisfied, in relation to a ground—

(a) (whether or not the child is in attendance at the hearing) that the child would not be capable of understanding an explanation of the ground given in accordance with section 90(3), or

(b) where the child is not in attendance at the hearing, that the child has not understood an explanation of the ground given by the Principal Reporter.

- (4) Where subsection (3) applies, the grounds hearing may, if it considers it appropriate, proceed on the basis that the question of whether the ground is accepted (or not accepted) is to be determined with reference only to the views of each relevant person in relation to the child.

- (5) Where subsection (3) does not apply, the grounds hearing must, in relation to the ground, proceed in relation to the child in accordance with—

(a) where the child is not in attendance at the hearing, section 89C,

(b) where the child is in attendance at the hearing, section 90.

#### **89C Child's acceptance (or otherwise) of grounds where not in attendance**

- (1) The grounds hearing must, in relation to each ground in relation to which it is required by section 89B(5)(a) to proceed in accordance with this section, consider whether the ground is accepted by the child.

- (2) This subsection applies where, in relation to a ground, the grounds hearing is satisfied that the child accepts that the ground applies in relation to the child.

- (3) Where the child does not accept all of the supporting facts in relation to a ground, the grounds hearing is to be satisfied as mentioned in subsection (2) only if satisfied that the child accepts sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child.

- (4) Where subsection (2)—

(a) applies by virtue of subsection (3), the ground is to be taken for the purposes of this Act to be provisionally accepted by the child,

(b) otherwise applies, the ground is to be taken for the purposes of this Act to be accepted by the child.

- (5) This subsection applies where, in relation to a ground, the grounds hearing is satisfied that the child does not accept—

(a) that the ground applies in relation to the child, or

(b) sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child.

- (6) Where subsection (5) applies, the ground is to be taken for the purposes of this Act to be not accepted by the child.

- (7) This subsection applies where the grounds hearing is, for any reason, not satisfied as mentioned in either subsection (2) or subsection (5).



- (8) Where subsection (7) applies, the grounds hearing must—
  - (a) require the Principal Reporter to arrange another grounds hearing, and
  - (b) subject to section 73(3), require the child to attend that hearing.

**90 Grounds to be put to child where in attendance and relevant person**

- (1) This section applies—
  - (a) in relation to a child, where the grounds hearing is—
    - (i) in relation to a ground, required by section 89B(5)(b) to proceed in accordance with this section, or
    - (ii) arranged by virtue of section 89C(8)(a),
  - (b) in relation to each relevant person in relation to the child, in the case of every grounds hearing.
- (2) The grounds hearing may, before complying with subsections (3) and (4), discuss with the child and each relevant person in relation to the child—
  - (a) the statement of grounds, and
  - (b) the Principal Reporter's report under section 69G.
- (3) The chairing member must—
  - (a) explain to the child—
    - (i) each relevant ground, and
    - (ii) the supporting facts in relation to each relevant ground, and
  - (b) ask the child—
    - (i) whether the child accepts that each relevant ground applies in relation to the child, and
    - (ii) in relation to each relevant ground that the child accepts applies in relation to the child, whether the child accepts each of the supporting facts.
- (4) The chairing member must—
  - (a) explain to each relevant person in relation to the child—
    - (i) each section 67 ground specified in the statement of grounds, and
    - (ii) the supporting facts in relation to each ground, and
  - (b) ask the person—
    - (i) whether the person accepts that each ground applies in relation to the child, and
    - (ii) in relation to each ground that the person accepts applies in relation to the child, whether the person accepts each of the supporting facts.
- (5) The grounds hearing need not, in relation to a ground, comply with subsection (4) in relation to a relevant person where the grounds hearing is satisfied that

the person would not be capable of understanding an explanation of the ground given in compliance with that subsection.

- (6) The explanations and questions mentioned in subsections (3) and (4) may be put to the child and each relevant person in relation to the child in such terms as the grounds hearing considers appropriate in relation to the child or, as the case may be, the relevant person.
- (7) This subsection applies where, after complying with subsection (3), the grounds hearing is satisfied that the child has not understood an explanation of a relevant ground given in compliance with that subsection.
- (8) Where subsection (7) applies, the grounds hearing may, if it considers it appropriate, proceed on the basis that the question of whether the ground is accepted (or not accepted) is to be determined with reference only to the views of each relevant person in relation to the child.
- (9) In this section, “relevant ground” means a section 67 ground specified in the statement of grounds other than a ground—
  - (a) in relation to which the grounds hearing is satisfied as mentioned in section 89B(3), or
  - (b) which is to be taken for the purposes of this Act, by virtue of—
    - (i) section 89C(4)(a), to be provisionally accepted by the child,
    - (ii) section 89C(4)(b), to be accepted by the child,
    - (iii) section 89C(6), to be not accepted by the child.

#### **90A Acceptance of grounds: supporting facts**

- (1) This subsection applies where—
  - (a) a ground is to be taken for the purposes of this Act to be provisionally accepted by a child under section 89C(4)(a), and
  - (b) following the giving of an explanation in compliance with section 90(4), each relevant person in relation to the child accepts all of the supporting facts in relation to the ground.
- (2) Where subsection (1) applies, the ground is to be taken for the purposes of this Act to have been accepted only if the grounds hearing considers it appropriate to proceed in relation to the ground on the basis of only those supporting facts that are accepted by the child.
- (3) This subsection applies where—
  - (a) a ground is to be taken to be provisionally accepted by a child under section 89C(4)(a), and
  - (b) following the giving of an explanation in compliance with section 90(4), a relevant person in relation to the child does not accept all of the supporting facts in relation to the ground.

- (4) Where subsection (3) applies, the ground is to be taken for the purposes of this Act to have been accepted only if—
- (a) the grounds hearing is satisfied that the supporting facts accepted by the relevant person are sufficient to support the conclusion that the ground applies in relation to the child, and
  - (b) the grounds hearing considers that it is appropriate to proceed in relation to the ground on the basis of only those supporting facts that are accepted by the child and each relevant person in relation to the child.
- (5) This subsection applies where, following the giving of explanations of a ground in compliance with section 90(3) and (4)—
- (a) in a case where section 90(7) does not apply, a person does not accept all of the supporting facts in relation to the ground,
  - (b) in a case where section 90(7) applies, a relevant person in relation to the child does not accept all of the supporting facts in relation to the ground.
- (6) Where subsection (5) applies, the ground is to be taken for the purposes of this Act to have been accepted only if—
- (a) in the case mentioned in subsection (5)(a), the grounds hearing—
    - (i) is satisfied that the supporting facts accepted by the person are sufficient to support the conclusion that the ground applies in relation to the child, and
    - (ii) considers that it is appropriate to proceed in relation to the ground on the basis of only those supporting facts that are accepted by the child and each relevant person in relation to the child,
  - (b) in the case mentioned in subsection (5)(b), the grounds hearing—
    - (i) is satisfied that the supporting facts accepted by the relevant person in relation to the child are sufficient to support the conclusion that the ground applies in relation to the child, and
    - (ii) considers that it is appropriate to proceed in relation to the ground on the basis of only those supporting facts that are accepted by each relevant person in relation to the child.
- (7) The grounds hearing must amend the statement of grounds to delete any supporting facts which are not accepted, where the ground is to be taken to be accepted for the purposes of this Act by virtue of—
- (a) subsection (2), by the child,
  - (b) subsection (4), by the child and each relevant person in relation to the child,
  - (c) subsection (6)—
    - (i) in the case mentioned in paragraph (a) of that subsection, by the child and each relevant person in relation to the child,
    - (ii) in the case mentioned in paragraph (b) of that subsection, by each relevant person in relation to the child.”.

(13) In section 91 (grounds accepted: powers of grounds hearing), for subsection (4) substitute—

“(4) In subsection (1), “accepted” means—

- (a) taken to be accepted for the purposes of this Act by virtue of section 90A,
- (b) where the grounds hearing is proceeding as permitted by section 89B(4) or 90(8), accepted (subject to sections 74 and 75) by each relevant person in relation to the child, or
- (c) otherwise, accepted (or taken to be accepted for the purposes of this Act by virtue of section 89C(4)(a)) by the child and each relevant person in relation to the child.”.

(14) In section 93 (grounds not accepted: application to sheriff or discharge)—

- (a) in subsection (2), the words from “by the child” to “to the child” are repealed,
- (b) for subsection (7) substitute—

“(7) In this section, “accepted” means—

- (a) taken to be accepted for the purposes of this Act by virtue of section 90A,
- (b) where the grounds hearing is proceeding as permitted by section 89B(4) or 90(8), accepted (subject to sections 74 and 75) by each relevant person in relation to the child, or
- (c) otherwise, accepted (or taken to be accepted for the purposes of this Act by virtue of section 89C(4)(a)) by the child and each relevant person in relation to the child.”.

(15) In section 94 (child or relevant person unable to understand grounds)—

- (a) for subsection (1) substitute—

“(1) Subsection (2) applies—

- (a) where, in relation to a ground, the grounds hearing—
  - (i) is satisfied as mentioned in section 89B(3) or 90(7), and
  - (ii) has decided not to proceed as permitted by section 89B(4) or, as the case may be, 90(8),
- (b) where the grounds hearing is satisfied that a relevant person in relation to the child—
  - (i) would not be capable of understanding an explanation given in compliance with section 90(4) in relation to a ground, or
  - (ii) has not understood the explanation given in compliance with section 90(4) in relation to a ground.”.

- (b) subsection (3) is repealed (but see sections 89B and 90(5) as inserted by subsection (12)).

(16) After section 94, insert—

**“94A Application to sheriff following decision to proceed on basis of relevant persons’ views**

- (1) This section applies where the grounds hearing decides, in relation to a ground, to proceed as permitted by section 89B(4) or 90(8).
- (2) On the request of a person mentioned in subsection (3), the grounds hearing must direct the Principal Reporter to make an application to the sheriff to determine whether the ground is established.
- (3) The persons are—
- (a) the child,
  - (b) a relevant person in relation to the child,
  - (c) if a safeguarder has been appointed, the safeguarder.
- (4) A request under subsection (2) may be made only up to the point at which consideration by the grounds hearings of the acceptance (or otherwise) of the section 67 grounds specified the statement of grounds is concluded.
- (5) If the grounds hearing gives a direction under subsection (2), the chairing member must—
- (a) in so far as is reasonably practicable comply with the requirement in paragraph (a) of section 93(4), and
  - (b) comply with the requirement in paragraph (b) of that section.
- (6) If the grounds hearing gives a direction under subsection (2), section 93(5) applies.”.
- (17) In section 95 (child fails to attend grounds hearing), in subsection (3), after “under” insert “section 89C(8)(a) or”.
- (18) After section 95, insert—

*“Children’s hearing to consider need for interim order*

**95A Children’s hearing to consider need for making of interim compulsory supervision order**

- (1) This section applies where a children’s hearing in relation to a child is arranged by virtue of section 71A.
- (2) The children’s hearing may consist of—
- (a) three members of the Children’s Panel, or
  - (b) one member of the Children’s Panel.
- (3) If the children’s hearing considers that the nature of the child’s circumstances is such that for the protection, support, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the children’s hearing may make an interim compulsory supervision order in relation to the child.
- (4) An interim compulsory supervision order made under subsection (3) may not include a measure of the kind mentioned in section 83(2)(f)(i).”.

(19) In section 100 (sheriff's power to make interim compulsory supervision order), in subsection (1), for "section 93(2)(a) or 94(2)(a)" substitute "section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)".

(20) In section 101 (hearing of application) for "section 93(2)(a) or 94(2)(a)" substitute "section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)".

(21) In section 103 (child's duty to attend hearing unless excused), in subsection (1), for "section 93(2)(a) or 94(2)(a)" substitute "section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)".

(22) In section 104 (child and relevant person: representation at hearing), in subsection (1), for "section 93(2)(a) or 94(2)(a)" substitute "section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)".

(23) In section 105 (application by virtue of section 93: ground accepted before determination)—

(a) in subsection (1)(b), for the words from "by the child" to the end substitute "—

(i) where the grounds hearing proceeded, in relation to the ground, as permitted by section 89B(4) or 90(8), by each relevant person in relation to the child who is present at the hearing before the sheriff,

(ii) otherwise, by the child and each relevant person in relation to the child who is present at the hearing before the sheriff."

(b) in subsection (2), for "section 90(1B)" substitute "section 90A".

(24) In section 106 (application by virtue of section 94: ground accepted by relevant person before determination)—

(a) in subsection (1), for "section 90(1)(a)" substitute "section 90(3)",

(b) in subsection (2), for "section 90(1B)" substitute "section 90A".

(25) In section 107 (withdrawal of application: termination of orders etc. by Principal Reporter), in subsection (1)(a), for "section 93(2)(a) or 94(2)(a)" substitute "section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)".

(26) In section 108 (determination: ground established)—

(a) in subsection (1), for "section 93(2)(a) or 94(2)(a)" substitute "section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)",

(b) for subsection (4) substitute—

"(4) In subsection (4)(b), "accepted" means—

(a) taken to be accepted for the purposes of this Act by virtue of section 90A,

(b) where the grounds hearings proceeded, in relation to a ground, as permitted by section 89B(4) or 90(8), accepted (subject to sections 74 and 75) by each relevant person in relation to the child, or

(c) otherwise, accepted (or taken to be accepted for the purposes of this Act by virtue of section 89C(4)(a)) by the child and each relevant person in relation to the child."

- (27) In section 109 (determination: power to make interim compulsory supervision order etc.)—
- (a) in subsection (2), for “section 93(2)(a) or 94(2)(a)” substitute “section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)”,
  - (b) in subsection (5), for “section 93(2)(a) or 94(2)(a)” substitute “section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)”.
- (28) In section 140 (interim variation of compulsory supervision order), in subsection (4)(b), for “section 93(2)(a) or 94(2)(a)” substitute “section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2)”.
- (29) In section 202(1) (interpretation)—
- (a) in the definition of “statement of grounds” for “section 89(3)” substitute “section 69(6)(a)”,
  - (b) in the definition of “supporting facts” for “section 90(1D)” substitute “section 69(6)(b)”.

*Relevant persons*

**15 Powers to exclude persons from children’s hearing**

- (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.
- (2) In section 76 (power to exclude relevant person from children’s hearing)—
- (a) for subsection (1) substitute—

“(1) This section applies where by virtue of this Act a children’s hearing is, or is to be, arranged in relation to a child.”,
  - (b) in subsection (2)—
    - (i) for “The” substitute “A”,
    - (ii) at the end insert “if the children’s hearing is satisfied that the presence at the hearing of a relevant person in relation to the child—
      - (a) is preventing, or is likely to prevent, the hearing from obtaining the views of the child, or
      - (b) is causing, or is likely to cause, significant distress to the child.”,
  - (c) after subsection (3) insert—

“(4) In this section “children’s hearing” includes a pre-hearing panel.”.
- (3) In section 77 (power to exclude relevant person’s representative from children’s hearing)—
- (a) for subsection (1), substitute—

“(1) This section applies where by virtue of this Act a children’s hearing is, or is to be, arranged in relation to a child.”,
  - (b) in subsection (2)—
    - (i) for “The” substitute “A”,

(ii) at the end insert “if the children’s hearing is satisfied that the presence at the hearing of a representative of a relevant person in relation to the child—

(a) is preventing, or is likely to prevent, the hearing from obtaining the view of the child, or

(b) is causing, or is likely to cause, significant distress to the child.”,

(c) after subsection (3), insert—

“(4) In this section “children’s hearing” includes a pre-hearing panel.”.

(4) In section 79 (referral of certain matters for pre-hearing determination), in subsection (3), after paragraph (b) insert—

“(ba) whether a person should be excluded from all or part of a children’s hearing as mentioned in section 76(2)(a) or (b) or 77(2)(a) or (b).”.

## **16 Removal of relevant person status**

(1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) After section 128, insert—

*“Application for relevant person to cease to be such a person*

### **128A Application for relevant person to cease being such a person**

(1) This section applies—

(a) where—

(i) a child (other than a child in relation to whom a compulsory supervision order has effect) has been referred to a children’s hearing or an application has been made to the sheriff in relation to such a child under section 69D or 69E,

(ii) no decision has been made as to whether a compulsory supervision order should be made in relation to the child, and

(iii) the referral has not been discharged, or

(b) where a compulsory supervision order has effect in relation to a child.

(2) The Principal Reporter—

(a) must refer the matter mentioned in subsection (3) for consideration by a children’s hearing on the request of a person mentioned in subsection (4),

(b) may refer that matter for consideration by a children’s hearing on the Principal Reporter’s own initiative.

(3) The matter is whether a relevant person in relation to the child (other than a person who has been deemed to be such a person by virtue of section 81(3), 160(4)(b) or 164(6)) should cease to be such a person.

(4) The persons are—

(a) the child,



- (b) a relevant person in relation to the child (other than the relevant person in relation to the child mentioned in subsection (3)),
- (c) a safeguarder appointed in relation to the child by virtue of section 30.
- (5) Subsection (6) applies where a children's hearing is satisfied (following the consideration required by a referral under subsection (2) or on the children's hearing's own initiative)—
- (a) that a relevant person in relation to the child continuing to be such a person is likely to—
- (i) cause serious harm to the child, and
- (ii) infringe the child's rights under Article 8 of the European Convention on Human Rights, and
- (b) that the relevant person in relation to the child ceasing to be such a person is the only way to avoid or sufficiently minimise such harm and infringement.
- (6) The children's hearing must direct the Principal Reporter to make an application to the sheriff to determine whether the relevant person in relation to the child should cease to be such a person.
- (7) For the purposes of subsection (1), a compulsory supervision order in relation to a child has effect until—
- (a) terminated, or
- (b) if not terminated, expiry of the relevant period.
- (8) In this section and section 128B—
- “European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950,
- “relevant period” has the meaning given by section 83(7).

**128B Hearing and determination of application for relevant person to cease being such a person**

- (1) This section applies where an application is made to the sheriff by virtue of section 128A.
- (2) The application must be heard and disposed of not later than 3 days after the day on which the application is lodged.
- (3) Sections 103 and 104 apply in relation to the application as they apply in relation to an application to the sheriff under section 69D(2), 69E(2), 93(2)(a), 94(2)(a) or 94A(2).
- (4) Subsection (5) applies where the sheriff is satisfied—
- (a) that the relevant person in relation to the child to whom the application relates continuing to be such a person is likely to—
- (i) cause serious harm to the child, and

- (ii) infringe the child's rights under Article 8 of the European Convention on Human Rights, and
  - (b) that the relevant person in relation to the child ceasing to be such a person is the only way to avoid or sufficiently minimise such harm and infringement.
- (5) The sheriff—
  - (a) must determine the application by making an order that the relevant person in relation to the child to whom the application relates is not, for the purposes mentioned in subsection (8), such a person for the period—
    - (i) beginning with the making of the order, and
    - (ii) ending as mentioned in subsection (9), and
  - (b) may specify steps that are to be taken by any subsequent children's hearing held in relation to the child for the purpose mentioned in subsection (6) (for example, steps in relation to the notification of appropriate information in relation to the hearing or its outcome).
- (6) The purpose is minimising the infringement of the rights of the person who has ceased to be a relevant person in relation to the child under Article 8 of the European Convention on Human Rights caused by the person ceasing to be such a person.
- (7) In any other case, the sheriff—
  - (a) must dismiss the application, and
  - (b) may specify steps that are to be taken by any subsequent children's hearing held in relation to the child to avoid or minimise any harm or infringement of the type mentioned in subsection (4)(a).
- (8) The purposes are the purposes of Parts 7 to 14, 15 (other than sections 164A and 164B), 17 and 18 in so far as they relate to—
  - (a) any children's hearing held in connection with the referral mentioned in section 128A(1)(a),
  - (b) the compulsory supervision order mentioned in section 128A(1)(b),
  - (c) any compulsory supervision order, interim compulsory supervision order, medical examination order or warrant to secure attendance made by—
    - (i) a hearing mentioned in paragraph (a) or (d),
    - (ii) the sheriff in any court proceedings falling within paragraph (f),
  - (d) any children's hearing held for the purposes of reviewing a compulsory supervision order falling within paragraph (b) or (c),
  - (e) any pre-hearing panel held in connection with a children's hearing mentioned in paragraph (a) or (d),
  - (f) any court proceedings held in connection with a hearing mentioned in paragraph (a) or (d),
  - (g) any court proceedings held in connection with an order or warrant falling within paragraph (b) or (c),

(h) the implementation of an order or warrant falling within paragraph (b) or (c).

(9) The period mentioned in subsection (5)(a) ends with—

(a) where the application to the sheriff was made by virtue of section 128A(1)(a)—

(i) the referral mentioned in that section being discharged, or

(ii) a compulsory supervision order made as a result of that referral ceasing to have effect by virtue of—

(A) being terminated, or

(B) expiry of the relevant period.

(b) where the application to the sheriff was made by virtue of section 128A(1)(b), the compulsory supervision order mentioned in that section ceasing to have effect by virtue of—

(i) being terminated, or

(ii) expiry of the relevant period.”.

(3) After section 164, insert—

**“164A Appeal to Sheriff Appeal Court: determination of application for relevant person to cease being such a person**

(1) A person mentioned in subsection (2) may appeal to the Sheriff Appeal Court against a determination of the sheriff under section 128B of an application under section 128A to determine whether a relevant person in relation to a child should cease to be such a person.

(2) The persons are—

(a) the person to whom the application under section 128A related,

(b) the child,

(c) a relevant person in relation to the child,

(d) a safeguarder appointed in relation to the child by virtue of section 30,

(e) two or more of the persons mentioned in paragraphs (a) to (c) acting jointly,

(f) the Principal Reporter.

(3) An appeal under this section must be—

(a) made before the expiry of the period of 7 days beginning with the day on which the determination is made,

(b) heard and disposed of before the expiry of the period of 3 days beginning with the day on which the appeal is made.

(4) If satisfied that the determination to which the appeal relates is justified, the Sheriff Appeal Court—

(a) must confirm the determination, and

(b) may—

- (i) where the application under section 128A was determined as mentioned in section 128B(5)(a), specify steps that are to be taken by any subsequent children's hearing held in relation to the child for the purpose mentioned in section 128B(6),
- (ii) where the application was dismissed, specify steps that are to be taken by any subsequent children's hearing held in relation to the child to avoid or minimise any harm or infringement of the type mentioned in section 128B(4)(a).

(5) If not satisfied, the Sheriff Appeal Court—

- (a) must quash the determination, and
- (b) where—

(i) the determination was to dismiss the application under section 128A—

- (A) must make an order that the person to whom the application related is not, for the purposes mentioned in section 128B(8), a relevant person in relation to the child for the period mentioned in subsection (6), and
- (B) may specify steps that are to be taken by any subsequent children's hearing held in relation to the child for the purpose mentioned in section 128B(6),

(ii) where the application was determined as mentioned in section 128B(5)(a), may specify steps that are to be taken by any subsequent children's hearing held in relation to the child to avoid or minimise any harm or infringement of the type mentioned in section 128B(4)(a).

(6) The period is the period—

- (a) beginning with the making of the order, and
- (b) ending as mentioned in section 128B(9)(a) or, as the case may be, (b).

(7) Steps specified under subsection (4)(b) may be in addition to or in place of steps specified by the sheriff under section 128B(5)(b) or, as the case may be, (7)(b).

(8) The Sheriff Appeal Court's decision in an appeal under section 164A(1) may not be appealed against under section 113 of the Courts Reform (Scotland) Act 2014.

**164B Appeal to Court of Session: appeal against determination of application for relevant person to cease being such a person**

(1) A person mentioned in section 164A(2) may appeal to the Court of Session against a Sheriff Appeal Court's decision in an appeal under section 164A(1) only—

- (a) with the permission of the Sheriff Appeal Court, or

- (b) if that Court has refused permission, with the permission of the Court of Session.
- (2) The Sheriff Appeal Court or the Court of Session may grant permission under subsection (1) only if the Court considers that—
- 5           (a) the appeal would raise an important point of principle or practice, or
- (b) there is some other compelling reason for the Court of Session to hear the appeal.
- (3) An appeal under this section must be made before the expiry of the period of 28 days beginning with the day on which the decision appealed against is made.
- 10           (4) An appeal under this section may be made—
- (a) on a point of law, or
- (b) in respect of any procedural irregularity.
- (5) A decision in an appeal under subsection (1) by the Court of Session is final.”.

15

*Other changes*

**17       Tests for referral to Principal Reporter and making of compulsory supervision order or interim compulsory supervision order**

- (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.
- (2) In section 60 (local authority’s duty to provide information to Principal Reporter), in subsection (2)(b), for “might be” substitute “is likely to be”.
- 20           (3) In section 61 (constable’s duty to provide information to Principal Reporter), in subsection (1)(b), for “might be” substitute “is likely to be”.
- (4) In section 64 (provision of information by other persons), in subsection (1)(b), for “might be” substitute “is likely to be”.
- 25           (5) In section 66 (investigation and determination by Principal Reporter), in subsection (1)(b), for “that a child might be” substitute “likely that a child is”.
- (6) In each of the provisions listed in subsection (7), after “protection,” insert “support,”.
- (7) The provisions are—
- section 60(2)(a),
- 30           section 61(1)(a),
- section 64(1)(a),
- section 66(1)(b),
- section 91(3)(a),
- section 92(2),
- 35           section 93(5),
- section 95(4),
- section 96(3),

section 98(4),  
 section 99(4),  
 section 100(2),  
 section 109(3),  
 5 section 109(5),  
 section 115(3),  
 section 117(3),  
 section 119(3)(a),  
 section 120(3),  
 10 section 120(5),  
 section 138(4),  
 section 139(3).

**18 Information about referral, availability of children's advocacy services etc.**

(1) The Children's Hearings (Scotland) Act 2011 is amended as follows.

15 (2) In section 60 (local authority's duty to provide information to Principal Reporter), after subsection (3) insert—

“(4) Where the local authority informs a child that the local authority has given the Principal Reporter information about the child under subsection (3), the local authority must also provide the child with information about—

- 20 (a) what will happen in relation to the referral to the Principal Reporter,  
 (b) the children's hearing process, and  
 (c) the availability of children's advocacy services.”.

(3) In section 61 (constable's duty to provide information to Principal Reporter), after subsection (3) insert—

25 “(4) Subsection (5) applies where—

(a) a constable—

(i) gives the Principal Reporter information in relation to a child under subsection (2), or

(ii) makes a report to the Principal Reporter under subsection (3), and

30 (b) the constable informs the child about the giving of the information or, as the case may be, the making of the report.

(5) The constable must also provide the child with information about—

- (a) what will happen in relation to the referral to the Principal Reporter,  
 (b) the children's hearing process, and  
 35 (c) the availability of children's advocacy services.”.

(4) In section 64 (provision of information by other person), after subsection (2) insert—

- “<sup>5</sup>(3) Where a health board informs a child that the health board has given the Principal Reporter information about the child under subsection (2), the health board must also provide the child with information about—
- (a) what will happen in relation to the referral to the Principal Reporter,
- (b) the children’s hearing process, and
- (c) the availability of children’s advocacy services.”.
- (5) In section 66 (investigation and determination by Principal Reporter), after subsection (6) insert—
- “<sup>10</sup>(7) Where the Principal Reporter informs a child that the Principal Reporter is required by section 66(2) to make a determination in relation to the child, the Principal Reporter must also provide the child with information about—
- (a) what will happen in relation to the referral to the Principal Reporter,
- (b) the children’s hearing process, and
- (c) the availability of children’s advocacy services.”.
- <sup>15</sup>(6) In section 202(1) (interpretation), at the appropriate place in alphabetical order, insert—
- ““children’s advocacy services” has the meaning given by section 122(7).”.

**19 Period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect**

- (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.
- <sup>20</sup>(2) In section 86 (meaning of “interim compulsory supervision order”), in subsection (3)—
- (a) in paragraph (d), for “has not been extended under section 98 or 99,” substitute “is made under section 92(2), 93(5), 95(4), 95A(3), 100(2), 109(3), 115(3), 117(3) or 120(3),”;
- (b) after paragraph (d) insert—
- <sup>25</sup>“(da) where the order is made under section 96(3), 109(5) or 120(5), the expiry of the period of 44 days beginning of the day on which the order is made,”;
- (c) in paragraph (e)—
- (i) for “the order” substitute “an order made under section 96(3) or 100(2),”;
- <sup>30</sup>(ii) for “22” substitute “44”.
- (3) In section 140 (interim variation of compulsory supervision order), in subsection (3)—
- (a) in paragraph (d), at the beginning insert “where the order is varied under section 92(2), 93(5), 95(4), 95A(3), 100(2), 109(3), 115(3), 117(3) or 139(3),”;
- (b) after paragraph (d) insert “,
- <sup>35</sup>(e) where the order is varied under section 96(3) or 109(5), the expiry of the period of 44 days beginning with the day on which the order is varied.”.

## **20 Making of further interim compulsory supervision orders**

- (1) The Children's Hearings (Scotland) Act 2011 is amended as follows.
- (2) In section 96 (children's hearing to consider need for further interim compulsory supervision order)—
  - (a) in subsection (1)—
    - (i) for "This section applies" substitute "Subsections (2) and (3) apply",
    - (ii) in paragraph (a), after "a child" insert "(the original order)",
  - (b) after subsection (3) insert—

“(3A) Subsections (1) to (3) apply in relation to a further interim compulsory supervision order made under subsection (3) as they apply in relation to the original order.”,
  - (c) in subsection (4)—
    - (i) for "The" substitute "But the",
    - (ii) for "same interim compulsory supervision order made under section 93(5)" substitute "original order".
- (3) In section 98 (application for extension or variation of interim compulsory supervision order)—
  - (a) in subsection (1), in paragraph (b)—
    - (i) at the beginning insert "the current order is",
    - (ii) for sub-paragraph (i), substitute—

“(i) the second order made under section 96(3) in relation to the original order made in relation to the child, or”,
    - (iii) in sub-paragraph (ii), the words "the current order is" are repealed,
  - (b) after subsection (4) insert—

“(5) In this section, "the original order" has the same meaning as in section 96.”.

## **21 Principal Reporter's power to initiate review of compulsory supervision order**

- (1) The Children's Hearings (Scotland) Act 2011 is amended as follows.
- (2) After section 133, insert—

### **“133A Principal Reporter's power to initiate review**

- (1) The Principal Reporter may initiate a review of a compulsory supervision order in relation to a child if—
  - (a) following the children's hearing which most recently made a decision in relation to the order (whether that was a decision to make, vary or continue it), the Principal Reporter becomes aware of relevant information,
  - (b) as a consequence, the Principal Reporter considers that the compulsory supervision order ought to be terminated or varied, and



(c) at the time the Principal Reporter reaches that view, the Principal Reporter is not otherwise required by section 137(2) to arrange a children’s hearing in relation to the child.

(2) In subsection (1)(a), “relevant information” means information which was not available to the children’s hearing mentioned in that subsection, other than information by virtue of which the Principal Reporter has, since that hearing, prepared a further statement of grounds in relation to the child.”.

## PART 2

### CHILDREN’S SERVICES PLANNING

#### **22 Children’s services planning**

(1) The Children and Young People (Scotland) Act 2014 is modified as follows.

(2) In section 7 (introductory provision for Part 3 (children’s services planning))—

(a) in subsection (1)—

(i) at the appropriate places in alphabetical order insert—

““lead children’s services planning bodies” means, in relation to the area of a local authority—

(a) where there is a relevant integration joint board—

(i) the local authority,

(ii) the relevant health board, and

(iii) the relevant integration joint board,

(b) where there is no relevant integration joint board—

(i) the local authority, and

(ii) the relevant health board,”

““relevant integration joint board” means—

(a) if the area of the local authority is the same as that of an integration joint board, that integration joint board,

(b) if the area of the local authority falls within the area of an integration joint board but is not the same as the integration joint board area, the integration joint board area within whose area the area of the local authority falls.”,

(ii) in the definition of “other service provider”, paragraph (f) is repealed,

(b) in subsection (2), after paragraph (b) insert—

“(ba) any relevant integration joint board,”,

(c) in subsection (4), after paragraph (b) insert—

“(ba) each integration joint board,”,

(d) in subsection (6), for “a local authority and the relevant health board” substitute “the lead children’s services planning bodies in relation to the area of a local authority”.

(3) In section 8 (requirement to prepare children’s services plan), in subsection (1)—

(a) for “A local authority and the relevant health board” substitute “The lead children’s services planning bodies in relation to the area of a local authority”,

(b) the words “of the local authority” are repealed.

(4) In section 10 (children’s services plan: process)—

(a) in subsection (1)—

(i) in the opening words, for “a local authority and the relevant health board” substitute “the lead children’s services planning bodies in relation to the area of a local authority”,

(ii) in paragraph (b)(ii), the words “of the local authority” are repealed,

(b) in subsection (2)—

(i) in paragraph (a), the words “of the local authority” are repealed,

(ii) in paragraph (b), after “the relevant health board,” insert “any relevant integration joint board,”,

(c) in subsection (6), for “local authority and the relevant health board” substitute “lead children’s services planning bodies in relation to the area”,

(d) in subsection (7)—

(i) in the opening words, for “local authority and the relevant health board” substitute “lead children’s services planning bodies in relation to the area”,

(ii) in paragraph (b), for “local authority and the relevant health board” substitute “bodies”.

(5) In section 11 (children’s services plan: review), in subsection (1)—

(a) in the opening words, for “A local authority and the relevant health board” substitute “The lead children’s services planning bodies in relation to the area of a local authority”,

(b) in paragraph (a), the words “of the local authority” are repealed.

(6) In section 12 (implementation of children’s services plan), in subsection (2), after paragraph (b) insert—

“(ba) any relevant integration joint board,”.

(7) In section 13 (reporting on children’s services plan), in subsection (1)—

(a) in the opening words, for “a local authority and the relevant health board” substitute “the lead children’s services planning bodies in relation to the area of a local authority”,

(b) in paragraph (a), the words “of the local authority” are repealed.

(8) In section 14 (assistance in relation to children’s services planning), in subsection (1), for “a local authority and the relevant health board” substitute “the lead children’s services planning bodies in relation to the area of a local authority”.

- (9) In section 15 (guidance in relation to children’s services planning), in subsection (2), for paragraph (a) substitute—

“(a) the lead children’s services planning bodies in relation to a local authority area,”.

- (10) In section 16 (directions in relation to children’s services planning), in subsection (2), for paragraph (a) substitute—

“(a) the lead children’s services planning bodies in relation to a local authority area,”.

- (11) In section 17 (children’s services planning: default powers of Scottish Ministers)—

(a) in subsection (1), in the opening words, for “a local authority and the relevant health board” substitute “the lead children’s services planning bodies in relation to a local authority area”,

(b) in subsection (3)—

(i) after paragraph (b) insert—

“(ba) any relevant integration joint board,”,

(ii) in paragraph (c), for “or health board” substitute “, health board or integration joint board”,

(c) in subsection (5), in paragraph (a), for “local authority and relevant health board” substitute “lead children’s services planning bodies”.

- (12) In section 18 (interpretation of Part 3), at the appropriate place in alphabetical order insert—

““integration joint board” means an integration joint board established by order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,”.

## **PART 3**

### **FINAL PROVISIONS**

#### **23 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, or in connection with, or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

#### **24 Regulation-making powers**

- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes.
- (2) Regulations under section 4 are subject to the affirmative procedure.

(3) Regulations under section 23—

- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but
- (b) otherwise are subject to the negative procedure.

5      **25      Commencement**

- (1) The following provisions come into force on the day after Royal Assent: this section and sections 23, 24 and 26.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- 10      (3) Regulations under this section may include transitional, transitory or saving provision.

**26      Short title**

The short title of this Act is the Children (Care, Care Experience and Services Planning) (Scotland) Act 2026.



# **Children (Care, Care Experience and Services Planning) (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for and about the provision of services and support for or in relation to children and other persons with care experience; to make provision for a register of foster carers; to make provision about children's hearings; to make provision in relation to the planning of children's services; and for connected purposes.

Introduced by: John Swinney  
Supported by: Natalie Don-Innes  
On: 17 June 2025  
Bill type: Government Bill

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