



Children (Care and Justice) (Scotland) Act 2024

2024 asp 5

PROSPECTIVE

PART 1 **S**

CHILDREN'S HEARINGS SYSTEM

1 Age of referral to children's hearing **S**

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 - (b) subsections (3) to (9) are repealed.

Commencement Information

- II** S. 1 not in force at Royal Assent, see [s. 38\(3\)](#)

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

- (1) The 2011 Act is amended as follows.
- (2) After section 7 insert—

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

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

Commencement Information

I2 S. 2 not in force at Royal Assent, see [s. 38\(3\)](#)

3 Child assessment and child protection measures: secure accommodation S

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

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- (2) In section 35 (child assessment orders), in subsection (3), at the end of paragraph (b) insert “(but see section 57A(2)),”.
- (3) In section 37 (child protection orders), in subsection (2), at the end of paragraph (b) insert “(but see section 57A(2)),”.
- (4) In section 55 (application to justice of the peace), in subsection (1), at the end of paragraph (b) insert “(but see section 57A(2)),”.
- (5) In section 56 (constable’s power to remove child to place of safety), in subsection (1), after “may” insert “, subject to section 57A(3),”.
- (6) In section 57 (sections 55 and 56: regulations), in subsection (1), after “safety” insert “(other than secure accommodation)”.
- (7) After section 57 insert—

“Emergency placement of child in secure accommodation

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

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

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(5) In subsection (4)(c), “psychological harm” includes fear, alarm and distress.

57B Emergency placement of child in secure accommodation: regulations

- (1) The Scottish Ministers may by regulations make further provision about the placing and keeping of a child in secure accommodation—
- (a) by virtue of—
 - (i) a child assessment order,
 - (ii) a child protection order,
 - (iii) an order made by a justice of the peace under section 55,
 - (b) by a constable acting under section 56(1).
- (2) Regulations under subsection (1) may in particular include provision—
- (a) requiring—
 - (i) the consent of the person in charge of the residential establishment containing the secure accommodation in which the child is to be placed (the “head of unit”),
 - (ii) the agreement of the chief social work officer,
 - (b) specifying the criteria to be applied and the procedure to be followed—
 - (i) by the head of unit in deciding whether to give such consent,
 - (ii) by the chief social work officer in deciding whether to give such agreement,
 - (c) specifying the procedure for—
 - (i) the notification of decisions,
 - (ii) the giving of reasons for decisions,
 - (d) imposing requirements in connection with the protection of the welfare of a child being placed and kept in secure accommodation.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.”.

Commencement Information

I3 S. 3 not in force at Royal Assent, see [s. 38\(3\)](#)

4 Compulsory supervision orders: directions authorising restriction of liberty **S**

- (1) The 2011 Act is amended as follows.
- (2) In section 83 (meaning of “compulsory supervision order”)—
- (a) in subsection (2), at the end of paragraph (b) insert “(but see subsection (2A))”,
 - (b) after subsection (2) insert—

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

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Commencement Information

I4 S. 4 not in force at Royal Assent, see [s. 38\(3\)](#)

5 Compulsory supervision orders: prohibitions **S**

- (1) The 2011 Act is amended as follows.
- (2) In section 83 (meaning of “compulsory supervision order”)—
 - (a) in subsection (2), after paragraph (c) insert—
 - “(ca) a prohibition on the child entering a specified place or description of place,
 - (cb) a prohibition on the child approaching, communicating with or attempting to approach or communicate with (whether directly or indirectly) a specified person or class of person,”
 - (b) in subsection (8)—
 - (i) in the opening words, for “subsection (2)” substitute “this section”,
 - (ii) before the definition of “medical” insert—

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

Commencement Information

I5 S. 5 not in force at Royal Assent, see [s. 38\(3\)](#)

6 Compulsory supervision orders: movement restriction conditions **S**

- (1) The 2011 Act is amended as follows.
- (2) In section 83 (meaning of “compulsory supervision order”)—
 - (a) in subsection (4)(a)—
 - (i) for “more” substitute “both”,
 - (ii) for “subsection (6)” substitute “subsection (4A)”,
 - (b) after subsection (4) insert—

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

 - (a) that the child’s health, safety or development is at risk,
 - (b) that the child is likely to cause physical or psychological harm to another person.”
- (3) In section 150 (movement restriction conditions: regulations etc.), in subsection (2)—
 - (a) in paragraph (b), after “of” insert “monitoring a child’s movements or whereabouts (including whether a child is at, or is not at, a particular place) for the purpose of”,
 - (b) in paragraph (c), after “devices” insert “(including any apparatus to be linked to a device)”,
 - (c) after that paragraph insert—

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- “(ca) prescribe the circumstances or manner in which a specified device is, or is not, to be used (including how or when a device is to be worn, or otherwise used, by a child subject to a movement restriction condition),
- (cb) prescribe the circumstances or manner in which information obtained through the monitoring of a child by means of such a device may, or may not, be gathered, retained, used or shared for the purpose of the monitoring.”.

Commencement Information

I6 S. 6 not in force at Royal Assent, see **s. 38(3)**

7 **Compulsory supervision orders: secure accommodation authorisations** **S**

- (1) The 2011 Act is amended as follows.
- (2) In section 83 (meaning of “compulsory supervision order”)—
 - (a) in subsection (6)—
 - (i) in the opening words, after “conditions” insert “referred to in subsection (5)(b)”,
 - (ii) for paragraph (a) substitute—
 - “(a) that—
 - (i) the child has previously absconded and is likely to abscond again unless the child is kept in secure accommodation, and
 - (ii) if the child were to abscond, it is likely that the child’s health, safety or development would be at risk”,
 - (iii) at the end of paragraph (b) insert “unless the child is kept in secure accommodation”,
 - (iv) in paragraph (c), for “injury to another person” substitute “physical or psychological harm to another person unless the child is kept in secure accommodation”,
 - (b) in subsection (8), after the definition of “medical” insert—
 - ““psychological harm” includes fear, alarm and distress.”.
- (3) In section 86 (meaning of “interim compulsory supervision order”), in subsection (4)—
 - (a) for “(3) to (6)” substitute “(2A) to (8)”,
 - (b) for “subsection (5)(a)” substitute “subsections (5)(a) and (7)”.
- (4) In section 87 (meaning of “medical examination order”)—
 - (a) in subsection (4)—
 - (i) for paragraph (a) substitute—
 - “(a) that—
 - (i) the child has previously absconded and is likely to abscond again unless the child is kept in secure accommodation, and

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- (ii) if the child were to abscond, it is likely that the child’s health, safety or development would be at risk,”
- (ii) at the end of paragraph (b) insert “unless the child is kept in secure accommodation,”
- (iii) in paragraph (c), for “injury to another person” substitute “physical or psychological harm to another person unless the child is kept in secure accommodation”
- (b) in subsection (5), after the definition of “medical” insert—
““psychological harm” includes fear, alarm and distress.”
- (5) In section 88 (meaning of “warrant to secure attendance”)—
 - (a) in subsection (3)—
 - (i) for paragraph (a) substitute—
“(a) that—
 - (i) the child has previously absconded and is likely to abscond again unless the child is kept in secure accommodation, and
 - (ii) if the child were to abscond, it is likely that the child’s health, safety or development would be at risk,”
 - (ii) at the end of paragraph (b) insert “unless the child is kept in secure accommodation,”
 - (iii) in paragraph (c), for “injury to another person” substitute “physical or psychological harm to another person unless the child is kept in secure accommodation”
 - (b) in subsection (4), before the definition of “relevant period” insert—
““psychological harm” includes fear, alarm and distress.”

Commencement Information

I7 S. 7 not in force at Royal Assent, see [s. 38\(3\)](#)

8 Provision of information to person affected by child's offence or behaviour **S**

- (1) The 2011 Act is amended as follows.
- (2) In section 179A (request for information by person affected by child's offence or behaviour)—
 - (a) in subsection (5)—
 - (i) at the beginning insert “Subject to subsections (5A) and (5B),”
 - (ii) for “may” substitute “must, so far as reasonably practicable,”
 - (b) after that subsection insert—
“(5A) The Principal Reporter may, where a person mentioned in subsection (4)(a) or (b) is a child, inform any relevant person in relation to the child, as well as, or instead of, the child, of the relevant person’s right to request information under subsection (3).

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- (5B) The Principal Reporter need not inform a person mentioned in subsection (4)(a), (b) or (c) of the person’s right to request information under subsection (3)—
- (a) if the person has indicated (whether to the Principal Reporter or otherwise) that they do not wish to exercise that right,
 - (b) if satisfied that doing so would be detrimental to the best interests of—
 - (i) the child mentioned in subsection (1),
 - (ii) where the person mentioned in subsection (4)(a) or (b) is a child, that child, or
 - (iii) any other child, or
 - (c) if satisfied, having regard to the factors mentioned in section 179C(2), that it would be inappropriate in the circumstances of the case to do so.”.
- (3) In section 179B (information to which section 179A applies)—
- (a) in subsection (1)—
 - (i) in paragraph (a)(i), for “subsection (2)(a)” substitute “subsection (2)”,
 - (ii) in paragraph (a)(ii), for “subsection (2)(b)” substitute “subsection (3) and the further information mentioned in subsection (4)”,
 - (iii) in paragraph (b), for “subsection (2)(b)” substitute “subsection (3) and the further information mentioned in subsection (4)”,
 - (b) for subsection (2) substitute—

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

 - (a) what determination the Principal Reporter made under section 66(2), and
 - (b) any other action taken by the Principal Reporter (under section 68(5) or otherwise).”.
 - (c) after subsection (2) insert—

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

 - (a) information as to whether a compulsory supervision order has been made in respect of the child or, as the case may be, whether a compulsory supervision order which is already in force in respect of the child has been terminated, varied or continued,
 - (b) where such an order has been made or, as the case may be, varied or continued, information as to—
 - (i) whether a measure has been included in the order which prohibits the child from approaching, communicating with, attempting to approach or communicate with or otherwise contacting the person who made the request or, where that person is a relevant person, the child in relation to whom that person is a relevant person,
 - (ii) whether a secure accommodation authorisation has been included in the order,

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- (c) information as to how the referral to the children’s hearing was otherwise discharged,
 - (d) other information necessary to assist safety planning by or in relation to the person who made the request or, where the person is a relevant person, the child in relation to whom that person is a relevant person.
- (4) The further information referred to in subsection (1)(a)(ii) and (b) is—
- (a) where a compulsory supervision order has been made in respect of the child, or such an order which is already in force in respect of the child has been varied or continued—
 - (i) information as to whether the order is subsequently varied or continued to include, vary or remove a measure such as is mentioned in subsection (3)(b)(i) or (ii),
 - (ii) information as to whether the order is subsequently terminated,
 - (b) where other changes relating to the child’s case occur, information necessary to assist safety planning by or in relation to the person who made the request or, where the person is a relevant person, the child in relation to whom that person is a relevant person.
- (5) In this section, “communicating with” has the meaning given by section 83(8).
- (6) In this section and in section 179C, references to a compulsory supervision order include references to an interim compulsory supervision order.”.
- (4) In section 179C (decision by Principal Reporter following request under section 179A)
- (a) in subsection (1)(a), for “the child mentioned in section 179A(1) (or any other child),” substitute “—
 - “(i) the child mentioned in section 179A(1),
 - (ii) where a person mentioned in section 179A(4)(a) or (b) is a child, that child, or
 - (iii) any other child,”
 - (b) after subsection (3) insert—
 - “(4) But subsection (3) does not prohibit the Principal Reporter, when providing information that a compulsory supervision order includes a measure mentioned in section 179B(3)(b)(i), from providing information about the details of the measure in so far as they relate to the person who made the request or, where that person is a relevant person, the child in relation to whom that person is a relevant person.”.

Commencement Information

18 S. 8 not in force at Royal Assent, see [s. 38\(3\)](#)

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9 Support for victims in the children’s hearings system **S**

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

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

- (1) The Scottish Ministers must, by regulations, make provision for or in connection with the provision of support services to the persons mentioned in subsection (2).
- (2) Those persons are—
 - (a) persons against whom an offence mentioned in section 179A(1)(a)(i) or (b) appears to have been committed,
 - (b) persons who appear to have been harmed by the action or behaviour of a child as mentioned in section 179A(1)(a)(ii),
 - (c) where persons mentioned in paragraph (a) or (b) are children, relevant persons in relation to those children,
 - (d) any other persons or classes of person the Scottish Ministers may specify in the regulations (subject to any conditions specified in the regulations).
- (3) Regulations under subsection (1) must, for the purposes of the provision of support services to persons mentioned in subsection (2), establish or specify a person as a single point of contact for those persons.
- (4) Regulations under subsection (1) may in particular include provision about—
 - (a) the support services that may be provided,
 - (b) the training and qualifications of the person providing support services,
 - (c) the provision of information (including relevant information) to and by the person providing support services, including that information is to be provided in a way that is accessible to the person receiving it,
 - (d) the sharing of information with the person providing support services by other persons, including the National Convener, the Principal Reporter, CHS, SCRA, the chief constable of the Police Service of Scotland and local authorities,
 - (e) the payment of expenses, fees and allowances to the person providing support services (including who is to be responsible for making such payments).
- (5) Regulations under subsection (1) may also modify sections 179A to 179C to provide for—
 - (a) information mentioned in section 179B(1) to be provided to persons mentioned in subsection (2) without the need for those persons to make a request under section 179A(3) (including the circumstances in which such persons may opt out of receiving such information),
 - (b) such information to be given by the Principal Reporter to the person providing support services (either at the same time as, or instead of, to persons mentioned in subsection (2)),

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- (c) the circumstances in which such information is to be provided to persons mentioned in subsection (2) by the person providing support services rather than by the Principal Reporter.
- (6) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—
 - (a) the Principal Reporter,
 - (b) the National Convener,
 - (c) persons who are providing support services to persons in relation to offences perpetrated against or in respect of those persons,
 - (d) such other persons as the Scottish Ministers consider appropriate.
- (7) Regulations under subsection (1) are subject to the affirmative procedure.
- (8) In this section—
 - “relevant information” includes—
 - (a) information about—
 - (i) the children’s hearings system (including about the interaction of that system with the criminal justice system),
 - (ii) the action that can be taken by a children’s hearing (including about the measures that can be included in a compulsory supervision order),
 - (iii) the process for reviewing actions taken by a children’s hearing (including the process for reviewing and enforcing compulsory supervision orders), and
 - (b) where regulations under subsection (1) make provision mentioned in subsection (5)(b) or (c), information requested under section 179A(3),
 - “support services” (other than in subsection (6)(c)) includes the provision of relevant information to persons mentioned in subsection (2) and otherwise has the meaning given in regulations under subsection (1).”.

Commencement Information

19 S. 9 not in force at Royal Assent, see [s. 38\(3\)](#)

10 Support for victims in the children’s hearings system: review and report **S**

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

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- (a) assess the effectiveness of support services by reference to, among other things, the number of, and feedback from, persons to whom those services are provided,
 - (b) identify the steps (if any) that the Scottish Ministers consider should be taken as a result of that assessment.
- (3) In carrying out the review, the Scottish Ministers must consult—
- (a) the National Convener of Children’s Hearings Scotland,
 - (b) the Principal Reporter,
 - (c) the single point of contact established or specified by virtue of section 179D(3) of the 2011 Act,
 - (d) each local authority,
 - (e) persons who are providing support services to persons in relation to offences perpetrated against or in respect of those persons,
 - (f) such other persons as the Scottish Ministers consider appropriate.
- (4) The report prepared under [subsection \(1\)\(b\)](#) must be—
- (a) laid before the Scottish Parliament, and
 - (b) published in such manner as the Scottish Ministers consider appropriate.
- (5) In this section—
- “review period” means the period of 2 years beginning with the day on which regulations under section 179D(1) of the 2011 Act first come into force and each subsequent period of 2 years,
- “support services” has the same meaning as in section 179D(8) of the 2011 Act.

Commencement Information

110 S. 10 not in force at Royal Assent, see [s. 38\(3\)](#)

11 Supervision or guidance post-18 **S**

- (1) The 2011 Act is amended as follows.
- (2) In section 138 (powers of children’s hearing on review)—
- (a) in subsection (6), after paragraph (a)—
 - (i) “and” is repealed,
 - (ii) insert—
 - “(aa) consider whether such supervision or guidance will be needed by the child after attaining the age of 18 years, and”,
 - (b) after subsection (7) insert—
 - “(7A) Where the children’s hearing states that supervision or guidance will be needed by a person after attaining the age of 18 years, the duty in subsection (7)—
 - (a) continues to apply despite the person having attained that age,
 - (b) ceases to apply when the person attains the age of 19 years.”.

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Commencement Information

I11 S. 11 not in force at Royal Assent, see [s. 38\(3\)](#)

PROSPECTIVE

PART 2 **S**

CRIMINAL JUSTICE AND PROCEDURE

Involvement of children in criminal proceedings: general

12 Meaning of “child” **S**

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

Commencement Information

I12 S. 12 not in force at Royal Assent, see [s. 38\(3\)](#)

13 Offences against children to which special provisions apply **S**

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

Commencement Information

I13 S. 13 not in force at Royal Assent, see [s. 38\(3\)](#)

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Prosecution of children

14 Prosecution of children over age of criminal responsibility **S**

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

Commencement Information

I14 S. 14 not in force at Royal Assent, see [s. 38\(3\)](#)

Safeguards for children involved in criminal proceedings

15 Custody of children before commencement of proceedings **S**

- (1) The Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) is amended as follows.
- (2) In section 22 (under 18s to be kept in place of safety prior to court), in subsection (1), for paragraph (b) substitute—
 - “(b) a constable believes the person is under 18 years of age.”.
- (3) In section 23 (notice to parent that under 18 to be brought before court)—
 - (a) in subsection (1), for “16 years of age or over and subject to a supervision order or under 16” substitute “under 18”,
 - (b) in subsection (4), the definition of “supervision order” is repealed.
- (4) In section 24 (notice to local authority that under 18 to be brought before court)—
 - (a) in subsection (1), in paragraph (a), for “either subsection (2) or (3)” substitute “subsection (2)”,
 - (b) for subsection (2) substitute—
 - “(2) This subsection applies to a person who is under 18 years of age.”,
 - (c) subsection (3) is repealed.
- (5) In section 33 (consent to interview without solicitor)—
 - (a) in subsection (1), for “Subsections (2) and (3) apply” substitute “Subsection (2) applies”,
 - (b) in subsection (2)—
 - (i) in paragraph (a), for “16” substitute “18”,
 - (ii) paragraph (b) is repealed,
 - (iii) in paragraph (c), for “16” substitute “18”,
 - (c) subsections (3), (4) and (5) are repealed.
- (6) In section 38 (right to have intimation sent to other person), in subsection (7)—
 - (a) the words from “to ascertain” to the end become paragraph (a),
 - (b) after that paragraph insert “, or
 - (b) for a local authority to give advice by virtue of section 41(9).”.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Children (Care and Justice) (Scotland) Act 2024 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (7) In section 41 (social work involvement in relation to under 18s)—
- (a) in subsection (1)—
 - (i) in paragraph (a), for “the person may be subject to a supervision order” substitute “person to be under 18 years of age”,
 - (ii) paragraph (b) and “or” immediately preceding it are repealed,
 - (b) after that subsection insert—

“(1A) Intimation of the following facts must also be sent to a local authority—

 - (a) where the person in custody declines to exercise the right to have intimation sent under section 38, that fact,
 - (b) where the person in custody requests under section 39(3) (b) that the person to whom intimation is to be sent under section 38 is not asked to attend at the place where the person in custody is being held, that fact,
 - (c) where the person in custody requests under section 39(6)(b) that no further attempt to send intimation under section 38 is made, that fact,
 - (d) where the person to whom intimation is sent under section 38—
 - (i) does not access the person in custody by virtue of the person in custody not wishing that person to have access by virtue of section 40(2), or
 - (ii) is refused access to the person in custody or has such access restricted by virtue of section 40(4),that fact.”,
 - (c) in subsection (2)—
 - (i) in the opening words, after “subsection (1)” insert “or (1A)”,
 - (ii) paragraph (a) is repealed,
 - (iii) in paragraph (b)—
 - (A) sub-paragraph (i) and “and” following it are repealed,
 - (B) in sub-paragraph (ii), “(having regard to the effect of subsection (4)(a))” is repealed,
 - (d) in subsection (4), paragraph (a) and “and” following it are repealed,
 - (e) subsections (7) and (8) are repealed,
 - (f) in subsection (9), for “The local authority” substitute “A local authority sent intimation under subsection (1) or (1A)”,
 - (g) subsection (10) is repealed.

Commencement Information

I15 S. 15 not in force at Royal Assent, see [s. 38\(3\)](#)

16 Steps to safeguard welfare and safety of children in criminal proceedings **S**

- (1) The 1995 Act is amended as follows.
- (2) In section 50 (children and certain proceedings), after subsection (6) insert—

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Children (Care and Justice) (Scotland) Act 2024 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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

(3) After section 70A insert—

“*Children*

70B Solemn proceedings against children

- (1) Where solemn proceedings are brought in respect of an offence alleged to have been committed by a child, the court may sit either in a different building or room from that in which it usually sits or on different days from those on which other courts in the building are engaged in criminal proceedings.
 - (2) Where solemn proceedings are brought in respect of an offence alleged to have been committed by a child, the court may direct that no person is to be present at any sitting for the purposes of such proceedings except—
 - (a) members and officers of the court,
 - (b) parties to the case before the court, their solicitors and counsel, jurors, witnesses and other persons directly concerned in that case,
 - (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,
 - (d) such other persons as the court may specially authorise to be present.
 - (3) A court sitting for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if it thinks fit, proceed with the hearing and determination of the charge or application even though it is discovered that the person in question is not a child.
 - (4) Where solemn proceedings are brought in respect of an offence alleged to have been committed by a child who is charged jointly with a person who is not a child, the court must, in considering whether to take the steps mentioned in [subsection \(1\)](#) or to make a direction as mentioned in [subsection \(2\)](#), have regard to the rights of the person with whom the child is jointly charged to effectively participate in the proceedings.”.
- (4) In section 142 (summary proceedings against children), in subsection (5), at the end insert “: but see section 142A”.
- (5) After that section insert—

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

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

Status: This version of this Act contains provisions that are prospective.

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- (2) Where summary proceedings are brought in respect of an offence alleged to have been committed by a child who is charged jointly with a person who is not a child, the sheriff may direct that no person is to be present at any sitting for the purposes of such proceedings except—
 - (a) members and officers of the court,
 - (b) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case,
 - (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,
 - (d) such other persons as the sheriff may specially authorise to be present.
- (3) A sheriff sitting summarily for the purpose of hearing a charge against, or an application relating to, a person who is believed to be a child may, if the sheriff thinks fit, proceed with the hearing and determination of the charge or application even though it is discovered that the person in question is not a child.
- (4) Subsections (3) and (4) of section 142 apply to summary proceedings to which this section applies as they apply to such proceedings to which section 142 applies.
- (5) The sheriff must, in considering whether to take the steps mentioned in [subsection \(1\)](#) or to make a direction as mentioned in [subsection \(2\)](#), have regard to the rights of the person with whom the child is jointly charged to effectively participate in the proceedings.”

Commencement Information

I16 S. 16 not in force at Royal Assent, see [s. 38\(3\)](#)

Remit to children's hearing from criminal courts

17 Referral or remit to Principal Reporter of children guilty of offences **S**

- (1) The 1995 Act is amended as follows.
- (2) In section 49 (reference or remit to children's hearing)—
 - (a) for subsections (1) to (3) substitute—
 - “(1) Where a child is charged summarily with an offence and pleads guilty to, or is found guilty of, the offence, the court—
 - (a) must—
 - (i) request the Principal Reporter to arrange a children's hearing for the purposes of obtaining their advice as to the treatment of the child, or
 - (ii) remit the case to the Principal Reporter to arrange for the disposal of the case by a children's hearing,
 - (b) may, where [subsection \(1C\)](#) applies, dispose of the case itself.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Children (Care and Justice) (Scotland) Act 2024 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (1A) Where a child pleads guilty to, or is found guilty of, an offence in solemn proceedings in the sheriff court, the court may—
- (a) request the Principal Reporter to arrange a children’s hearing for the purposes of obtaining their advice as to the treatment of the child,
 - (b) remit the case to the Principal Reporter to arrange for the disposal of the case by a children’s hearing, or
 - (c) subject to [subsection \(1B\)](#), dispose of the case itself.
- (1B) Before disposing of the case itself, the court must, unless it determines that it is not in the interests of justice to do so, or where [subsection \(1C\)](#) applies, request advice as mentioned in [subsection \(1A\)\(a\)](#).
- (1C) The court need not request advice as mentioned in [subsection \(1\)\(a\)\(i\)](#) or, as the case may be, [\(1B\)](#) or remit the case to the Principal Reporter as mentioned in [subsection \(1\)\(a\)\(ii\)](#) where—
- (a) the child is within 6 months of attaining the age of 18 years, and
 - (b) the court considers that it would not be practicable in the circumstances to do so.
- (1D) Where a child pleads guilty to, or is found guilty of, an offence in solemn proceedings in the High Court, the court may—
- (a) request the Principal Reporter to arrange a children’s hearing for the purposes of obtaining their advice as to the treatment of the child,
 - (b) remit the case to the Principal Reporter to arrange for the disposal of the case by a children’s hearing, or
 - (c) dispose of the case itself.
- (1E) Where the court requests advice as mentioned in [subsection \(1\)\(a\)\(i\)](#), [\(1A\)\(a\)](#) or, as the case may be, [\(1D\)\(a\)](#), it may, after consideration of the advice received from the children’s hearing—
- (a) remit the case to the Principal Reporter to arrange for the disposal of the case by a children’s hearing, or
 - (b) dispose of the case itself.
- (1F) Where section 51A of the Firearms Act 1968 or section 29 of the Violent Crime Reduction Act 2006 applies, the court may not remit a case as mentioned in [subsection \(1\)\(a\)\(ii\)](#), [\(1A\)\(b\)](#), [\(1D\)\(b\)](#) or, as the case may be, [\(1E\)\(a\)](#) but must dispose of the case itself.”
- (b) in subsection (4)—
- (i) after “Subject” insert “to subsections [\(4A\)](#), [\(4B\)](#) and [\(4C\)](#) and”,
 - (ii) for “subsection (1)(a) above or (7)(b) below,” substitute “[subsection \(1\)\(a\)\(ii\)](#), [\(1A\)\(b\)](#), [\(1D\)\(b\)](#) or [\(1E\)\(a\)](#),”
- (c) after subsection (4) insert—
- “(4A) Where the offence to which the child pleads guilty, or of which the child is found guilty, is an offence to which section 26, 34, 35 or 44 of the Road Traffic Offenders Act 1988 applies, that section continues

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to apply despite the case being remitted for disposal by a children’s hearing as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a).

(4B) Where the offence to which the child pleads guilty, or of which the child is found guilty, is an offence listed in schedule 3 of the Sexual Offences Act 2003, section 80 of that Act continues to apply, despite the case being remitted for disposal by a children’s hearing as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a), to the extent that its application does not depend on a determination by the court that—

- (a) there was a significant sexual aspect to the child’s behaviour in committing the offence,
- (b) it is appropriate for the child to be regarded, for the purposes of Part 2 of that Act, to be a person who has committed the offence, or
- (c) it is appropriate that Part 2 of that Act should apply in relation to the child.

(4C) Where the offence to which the child pleads guilty, or of which the child is found guilty, is an offence in relation to which the court would be entitled, under section 234A, or obliged, under section 234AZA, to make a non-harassment order, those sections continue to apply despite the case being remitted for disposal by a children’s hearing as mentioned in subsection (1)(a)(ii), (1A)(b), (1D)(b) or, as the case may be, (1E)(a).”,

- (d) subsections (6) and (7) are repealed.

Commencement Information

I17 S. 17 not in force at Royal Assent, see s. 38(3)

Remand, committal and detention of children

18 Remand and committal of children before trial or sentence **S**

(1) The 1995 Act is amended as follows.

(2) In section 51 (remand and committal of children and young persons)—

- (a) in subsection (1)—
 - (i) in paragraph (a), for “16” substitute “18”,
 - (ii) paragraph (aa) is repealed,
- (b) in paragraph (b), for “16” to the end substitute “18 years, the court may commit the person to a young offenders institution”,
- (c) in subsection (4A), for “paragraphs (a) or (aa)” substitute “paragraph (a)”,
- (d) subsection (5) is repealed,
- (e) after that subsection insert—

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

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Children (Care and Justice) (Scotland) Act 2024 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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

Commencement Information

I18 S. 18 not in force at Royal Assent, see [s. 38\(3\)](#)

19 Detention of children on conviction **S**

- (1) The 1995 Act is amended as follows.
- (2) In section 44 (detention of children)—
 - (a) in subsection (1)—
 - (i) for “residential accommodation provided under Part 2 of the Children (Scotland) Act 1995 by the appropriate local authority” substitute “a residential establishment”,
 - (ii) for “the local authority” substitute “the appropriate local authority”,
 - (b) in subsection (5), “made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament” is repealed,
 - (c) after that subsection insert—
 - “(5A) Regulations under subsection (5) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).
 - (5B) Regulations under subsection (5) are subject to the affirmative procedure.”,
 - (d) in subsection (6), for “residential accommodation” substitute “a residential establishment”,
 - (e) in subsection (8)—
 - (i) for “accommodation provided by the authority which released him” substitute “establishment from which the child was released”,
 - (ii) for second “accommodation” substitute “establishment”,
 - (iii) for “accommodation provided by that” substitute “establishment chosen by the appropriate local”,
 - (f) in subsection (9)—
 - (i) for “residential accommodation provided” substitute “a residential establishment chosen”,
 - (ii) in each of paragraphs (a) and (b), for “residential accommodation” substitute “a residential establishment”,
 - (g) in subsection (11), for the definition of “secure accommodation” substitute—

Status: This version of this Act contains provisions that are prospective.

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

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

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

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

Status: This version of this Act contains provisions that are prospective.

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

Commencement Information

I19 S. 19 not in force at Royal Assent, see [s. 38\(3\)](#)

Mental health disposals for convicted children

20 Hospital directions **S**

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

“sentence of imprisonment” includes any sentence of detention.”.

Commencement Information

I20 S. 20 not in force at Royal Assent, see [s. 38\(3\)](#)

Places where children can no longer be detained

21 Meanings of “young offenders institution” and “young offender” **S**

- (1) The Prisons (Scotland) Act 1989 (“the 1989 Act”) is amended as follows.
- (2) In section 19 (remand centres and young offenders institutions), in subsection (1)(b), for second “offenders” to the end substitute “persons not less than 18 but under 21 years of age—
 - “(i) sentenced to detention in a young offenders institution, or
 - (ii) remanded or committed in custody for trial or sentence,

may be kept.”.
- (3) The Prisons and Young Offenders Institutions (Scotland) Rules 2011 ([S.S.I. 2011/331](#)) are amended as follows.
- (4) In rule 2(1) (interpretation), in paragraph (a) of the definition of “young offender”, for “16” substitute “18”.

Commencement Information

I21 S. 21 not in force at Royal Assent, see [s. 38\(3\)](#)

22 Abolition of remand centres **S**

- (1) The 1989 Act is amended as follows.

Status: This version of this Act contains provisions that are prospective.

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

Commencement Information

I22 S. 22 not in force at Royal Assent, see s. 38(3)

Local authority duties in relation to detained children

23 **Duty of local authority to provide residential establishments for detained children** **S**

- (1) The Social Work (Scotland) Act 1968 is amended as follows.
- (2) In section 59 (provision of residential and other establishments by local authorities), in subsection (1)—
- (a) for second “under” substitute “conferred under or by virtue of”,
 - (b) after “1995 (c.36)” insert “, the Criminal Procedure (Scotland) Act 1995”.

Commencement Information

I23 S. 23 not in force at Royal Assent, see s. 38(3)

24 **Children detained in secure accommodation to be treated as “looked after” children** **S**

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

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

- (1) This section applies where a child is detained in secure accommodation by virtue of section 51(1)(a), 205(2), 208(1) or, as the case may be, 216(7) of the Criminal Procedure (Scotland) Act 1995.
- (2) The relevant local authority in relation to the child has the same duties towards the child as it would have by virtue of sections 17, 29, 30 and 31 if the child were looked after by that local authority.

Status: This version of this Act contains provisions that are prospective.

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(3) In subsection (2), the “relevant local authority”, in relation to a child, has the same meaning as in section 201 of the Children’s Hearings (Scotland) Act 2011.”.

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

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

Commencement Information

I24 S. 24 not in force at Royal Assent, see [s. 38\(3\)](#)

PROSPECTIVE

PART 3 **S**

SECURE TRANSPORTATION

25 Standards for provision of secure transportation **S**

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

(2) After section 90 insert—

“PART 16A **S**

SECURE TRANSPORTATION

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

(1) The Scottish Ministers must prepare and publish standards applicable to any service (a “secure transportation service”) which consists of or includes providing secure transportation—

(a) for persons—

(i) who have not attained the age of 19 years, and

(ii) in relation to whom the taking to or the placing, keeping or detention in secure accommodation is authorised or required under or by virtue of a relevant enactment, and

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

(2) The standards—

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

(i) the manner in which, and the extent to which, the service provider is to have regard to the rights of the persons

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- mentioned in subsection (1)(a) who require to be transported to or from secure accommodation,
- (ii) the establishment of measures and procedures to prevent or minimise a risk of a serious incident occurring,
 - (iii) the establishment of measures and procedures to deal with, and prevent the recurrence of, a serious incident,
 - (iv) the circumstances in which restraint or control of persons mentioned in subsection (1)(a) who require to be transported to or from secure accommodation may or may not be appropriate,
 - (v) the provision of training and support to staff to ensure the safe transportation of the persons mentioned in subsection (1)(a) to or from secure accommodation,
- (b) may include such further provision in connection with the provision of a secure transportation service as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers may make different provision for different kinds of secure transportation service.
- (4) The Scottish Ministers—
- (a) must publish the first standards under subsection (1) no later than one year after the day on which [section 25](#) of the Children (Care and Justice) (Scotland) Act 2024 comes into force,
 - (b) must keep the standards published under subsection (1) under review,
 - (c) may, under subsection (1), publish revised standards whenever they consider it appropriate to do so, and
 - (d) must lay a copy of the first published standards, and any published revised standards, before the Scottish Parliament.
- (5) Before publishing the standards or any revised standards under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (6) In this section—
- “relevant enactment” means the following enactments—
- (a) the Children (Scotland) Act 1995,
 - (b) the Criminal Procedure (Scotland) Act 1995,
 - (c) the Adoption and Children (Scotland) Act 2007,
 - (d) the Children’s Hearings (Scotland) Act 2011,
- “secure accommodation” has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011,
- “secure transportation” means transportation which provides such additional security and support measures as are required to prevent or minimise a risk—
- (a) to the health, safety or welfare of a person mentioned in subsection (1)(a) who is being transported to or from secure accommodation,
 - (b) which that person may pose to the safety of any other person,
- “serious incident” includes an incident involving a person mentioned in subsection (1)(a)—
- (a) absconding or attempting to abscond,

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- (b) suffering harm (including self-harm) or ill-health (whether physical or mental),
 - (c) causing harm to another person, or
 - (d) causing (whether directly or indirectly) damage to property, whilst being transported to or from secure accommodation.
- (7) The Scottish Ministers may by regulations modify the definition of “relevant enactment” in subsection (6) by—
- (a) adding an enactment,
 - (b) removing an enactment for the time being listed in it,
 - (c) varying a reference to an enactment for the time being listed in it.

90B Secure transportation: duty of providers to meet standards

- (1) The provider of a secure transportation service must meet the applicable standards.
- (2) The persons mentioned in subsection (3) must, when making arrangements with another person for the provision of a secure transportation service, ensure that the service meets the applicable standards.
- (3) The persons are—
- (a) a local authority,
 - (b) the Scottish Ministers.
- (4) The Scottish Ministers may by regulations modify subsection (3) by—
- (a) adding a person or description of persons,
 - (b) removing a person or description of persons for the time being listed in it,
 - (c) varying a description of a person for the time being listed in it.
- (5) In this section and in [section 90C](#)—
- “applicable standards” means the standards, or (as the case may be) any revised standards, published under section 90A(1) which apply to the secure transportation service being provided,
- “secure transportation service” has the meaning given by section 90A(1).

90C Secure transportation: reports

- (1) [Subsection \(2\)](#) applies where a relevant person has, during the reporting period—
- (a) provided a secure transportation service,
 - (b) made arrangements with another person for the provision of a secure transportation service.
- (2) The relevant person must, as soon as reasonably practicable (and in any event no later than 3 months) after the end of the reporting period—
- (a) prepare a report on—
 - (i) how the relevant person monitored the secure transportation service provided or arranged by the relevant person to ensure

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- that the service met the applicable standards during the reporting period,
- (ii) the extent to which the service met the applicable standards during the reporting period,
- (b) publish the report, and
- (c) send a copy of the report to the Scottish Ministers.
- (3) Reports prepared under [subsection \(2\)](#) are to be published in such manner as the relevant person considers appropriate (and, in particular, reports may be published together with, or as part of, any other report or document).
- (4) The Scottish Ministers must, as soon as reasonably practicable (and in any event no later than 6 months) after the end of the reporting period—
- (a) prepare a report (“the consolidated report”) on—
- (i) how the relevant persons to whom [subsection \(1\)](#) applies have ensured that the secure transportation services provided or arranged by those relevant persons have met the applicable standards during the reporting period,
- (ii) the extent to which those services met the applicable standards during the reporting period,
- (b) publish the consolidated report in such manner as the Scottish Ministers consider appropriate, and
- (c) lay a copy of the consolidated report before the Scottish Parliament.
- (5) Where the Scottish Ministers have provided or made arrangements for the provision of a secure transportation service during the reporting period, the consolidated report must include a report on—
- (a) how the Scottish Ministers monitored the service to ensure it met the applicable standards during the reporting period,
- (b) the extent to which the service met the applicable standards during the reporting period.
- (6) The consolidated report may include such other information as the Scottish Ministers consider appropriate.
- (7) The Scottish Ministers may by regulations prescribe information that reports prepared under [subsection \(2\)](#) must contain.
- (8) In this section—
- “relevant person” means a local authority,
- “reporting period” means—
- (a) the period of 3 years beginning with the day on which [section 25](#) of the Children (Care and Justice) (Scotland) Act 2024 comes into force, and
- (b) each subsequent period of 3 years until a date specified in regulations made by the Scottish Ministers.
- (9) The Scottish Ministers may by regulations modify the definition of “relevant person” in [subsection \(8\)](#) by—
- (a) adding a person or description of persons,
- (b) removing a person or description of persons for the time being mentioned in it,

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

(3) In section 99 (subordinate legislation)—

- (a) in subsection (1), after “order” insert “or regulations”,
- (b) in subsection (2)—
 - (i) after “order” insert “or (as the case may be) regulations”,
 - (ii) after “section 71(5)(b)” insert—
 - “section 90A(7)
 - section 90B(4)
 - section 90C(9)”,
- (c) in subsection (4), after “order” insert “or regulations”.

Commencement Information

I25 S. 25 not in force at Royal Assent, see [s. 38\(3\)](#)

PROSPECTIVE

PART 4 **S**

RESIDENTIAL AND SECURE CARE

26 Meaning of “secure accommodation” **S**

- (1) The 2011 Act is amended as follows.
- (2) In section 202 (interpretation), in subsection (1)—
 - (a) in the definition of “secure accommodation”—
 - (i) in the opening words, “accommodation provided for the purpose of restricting the liberty of children which” is repealed,
 - (ii) for paragraph (a) substitute—
 - “(a) in relation to Scotland, accommodation provided for the purpose of depriving children of their liberty which is provided—
 - (i) in a residential establishment,
 - (ii) by a secure accommodation service,”
 - (iii) in paragraph (b), for “in England,” substitute “in relation to England, accommodation provided for the purpose of restricting the liberty of children which”,
 - (iv) in paragraph (c), for “in Wales,” substitute “in relation to Wales, accommodation provided for the purpose of restricting the liberty of children which”,
 - (b) after the definition of “secure accommodation authorisation” insert—
 - ““secure accommodation service” means a service—
 - (a) which is approved by the Scottish Ministers—

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- (i) under paragraph 6(c) of schedule 12 of the Public Services Reform (Scotland) Act 2010, and
 - (ii) in accordance with regulations made under section 78A of that Act, and
- (b) in respect of which a person is registered under Part 5 of that Act,”.

Commencement Information

I26 S. 26 not in force at Royal Assent, see [s. 38\(3\)](#)

27 Secure accommodation services **S**

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

“78A Regulations: approval of secure accommodation services

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

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- (3) Regulations under subsection (1) must include provision requiring the Scottish Ministers, before approving a secure accommodation service, to be satisfied that the service will ensure that a child is not placed in the same residential establishment as another child where—
- (a) in proceedings under the Children’s Hearings (Scotland) Act 2011, it has been established that—
 - (i) the child has committed an offence against or in respect of the other child, or
 - (ii) the child has acted or behaved in a way that has had, or is likely to have had, a serious adverse effect on the health, safety or development of the other child, or
 - (b) in criminal proceedings, the child has pled guilty to, or been found guilty of, having committed an offence against or in respect of the other child.”.
- (3) In section 104 (orders and regulations: procedure), in subsection (2), for “or 78” substitute “, 78 or 78A”.
- (4) In schedule 12 (care services: definitions), for paragraph 6 substitute—
- “6 A “secure accommodation service” is a service which—
- (a) provides accommodation in a residential establishment for the purpose of depriving children of their liberty,
 - (b) also provides, in such an establishment, appropriate care, education and support—
 - (i) for the purposes of safeguarding and promoting the welfare of the children who are accommodated there, and
 - (ii) that takes account of the effects of trauma which the children may have experienced,
 - (c) is approved by the Scottish Ministers, in accordance with regulations made under section 78A, for those purposes.
- 6A In paragraph 6(a), “residential establishment” has the meaning given by section 105(1).
- 6B In paragraph 6(b), “appropriate care, education and support” means the kind of care, education and support required to meet the health, educational and other needs of the children.”.
- (5) The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (S.S.I. 2011/210) are amended as follows.
- (6) In regulation 10 (fitness of premises), paragraph (3) is revoked.

Commencement Information

I27 S. 27 not in force at Royal Assent, see s. 38(3)

28 Regulation of care services providing residential accommodation to children **S**

- (1) The 2010 Act is amended as follows.

Status: This version of this Act contains provisions that are prospective.

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

(a) after subsection (1) insert—

“(1A) The Scottish Ministers may also prepare and publish specific standards and outcomes applicable to the care services mentioned in subsection (1B) in so far as they consist of, or include, providing residential accommodation to children in accordance with arrangements made for cross-border placements.

(1B) Those care services are—

- (a) care home services which are provided wholly or mainly to children,
- (b) school care accommodation services,
- (c) secure accommodation services.”,
- (b) in subsection (2), after “subsection (1)” insert “or (1A)”,
- (c) in subsection (3), after “subsection (1)” insert “or (1A)”,
- (d) in subsection (4), for “subsection (1)” substitute “subsections (1) and (1A)”,
- (e) in subsection (5), for “subsection (1)” substitute “subsections (1) and (1A)”,
- (f) at the end of subsection (7) insert “or (1A).”.

(3) After section 59 insert—

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

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

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

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

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

(3) Those persons are—

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

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

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

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

(2B) Those care services are—

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

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

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

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

- (a) the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and
- (b) the placement is authorised under the law in England and Wales or, as the case may be, in Northern Ireland by virtue of—

- (i) an order made by a court in England and Wales or in Northern Ireland,
- (ii) any provision made by or under an Act of Parliament, an Act of Senedd Cymru, or Northern Ireland legislation (as defined by section 98(1) of the Northern Ireland Act 1998), whenever passed or made;”.

- (c) after the definition of “relative” insert—

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

Commencement Information

I28 S. 28 not in force at Royal Assent, see **s. 38(3)**

29 Cross-border placements: effect of orders made outwith Scotland S

(1) The 2011 Act is amended as follows.

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

- (a) in subsection (1), for “as if it were such an order” substitute “in Scotland”,
- (b) for subsection (2) substitute—

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

- (a) provide that a non-Scottish order is to have such effect only—
 - (i) in specified circumstances,
 - (ii) for specified purposes,

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- (iii) subject to specified conditions,
- (b) provide that a non-Scottish order is—
 - (i) to have effect as if it were a compulsory supervision order, or
 - (ii) to have such other effect as may be specified,
- (c) include provision—
 - (i) requiring specified persons to provide or share specified information,
 - (ii) requiring specified persons to provide, or make arrangements for the provision of, any services which are needed to support a child who is the subject of a non-Scottish order,
 - (iii) requiring specified persons to meet the costs incurred in relation to, or as a consequence of, giving effect to a non-Scottish order in Scotland,
 - (iv) in connection with the safeguarding and promotion of the welfare of a child who is the subject of a non-Scottish order,
- (d) make provision for or in connection with—
 - (i) the monitoring of whether any condition specified by virtue of paragraph (a)(iii) is being met in relation to a non-Scottish order,
 - (ii) the consequences of such a specified condition not being met,
 - (iii) the monitoring of whether any requirement imposed is being complied with in relation to a non-Scottish order (where compliance with the requirement is not a condition specified by virtue of paragraph (a)(iii)),
 - (iv) the consequences of failing to comply with such a requirement.

(2A) Regulations under subsection (1)—

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

Commencement Information

I29 S. 29 not in force at Royal Assent, see [s. 38\(3\)](#)

30 Regulation of cross-border placements **S**

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

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“33A Regulation of cross-border placements

- (1) The Scottish Ministers may by regulations make provision in relation to cross-border placements.
- (2) Regulations under subsection (1) may in particular include provision—
 - (a) requiring specified persons to provide or share specified information,
 - (b) requiring specified persons to provide, or make arrangements for the provision of, any services which are needed to support a child who is the subject of a cross-border placement,
 - (c) requiring specified persons to meet the costs incurred in relation to, or as a consequence of, a cross-border placement,
 - (d) requiring a cross-border placement to be kept under review,
 - (e) in connection with the safeguarding and promotion of the welfare of a child who is the subject of a cross-border placement.
- (3) Regulations under subsection (1)—
 - (a) may modify any enactment in its application by virtue of the regulations to a cross-border placement, including—
 - (i) the Social Work (Scotland) Act 1968,
 - (ii) this Act,
 - (b) may make any incidental, supplementary, consequential, transitional, transitory or saving provision that the Scottish Ministers consider appropriate for the purposes of, in connection with or for giving full effect to the regulations,
 - (c) are subject to the affirmative procedure.
- (4) In this section, “cross-border placement” means the placement of a child in a residential establishment in Scotland where—
 - (a) the child was, immediately before the placement, resident in England, Wales or Northern Ireland, and
 - (b) the placement is authorised under the law in England and Wales or, as the case may be, in Northern Ireland by virtue of—
 - (i) an order made by a court in England and Wales or in Northern Ireland,
 - (ii) any provision made by or under an Act of Parliament, an Act of Senedd Cymru, or Northern Ireland legislation (as defined by section 98(1) of the Northern Ireland Act 1998), whenever passed or made.”

Commencement Information

I30 S. 30 not in force at Royal Assent, see [s. 38\(3\)](#)

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PROSPECTIVE

PART 5 **S**

ANTISOCIAL BEHAVIOUR ORDERS, NAMED PERSON AND CHILD’S PLAN

31 **Antisocial behaviour orders relating to children **S****

- (1) The Antisocial Behaviour etc. (Scotland) Act 2004 is amended as follows.
- (2) In section 13 (sheriff’s power to make parenting order), in subsection (3), in the definition of “parent”, for “has the meaning” substitute “and “child” have the meanings”.
- (3) In section 18 (interpretation of Part 2), for the definition of “child” substitute—
““child” (other than in section 13) means a person who is under the age of 18 years,”.

Commencement Information

I31 S. 31 not in force at Royal Assent, see [s. 38\(3\)](#)

32 **Named person and child’s plan **S****

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

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

Commencement Information

I32 S. 32 not in force at Royal Assent, see [s. 38\(3\)](#)

PART 6 **S**

UNCRC COMPATIBILITY ISSUES IN CRIMINAL PROCEEDINGS

33 **UNCRC compatibility issues in relation to decisions to prosecute children **S****

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

“288BZA UNCRC compatibility issue in relation to decision to prosecute child: restriction on judicial remedies

- (1) This section applies where—

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- (a) by virtue of section 7(1)(b) of the UNCRC Incorporation Act, a UNCRC compatibility issue has arisen—
 - (i) in criminal proceedings brought against a person who is a child, or who was a child at the time the proceedings were brought,
 - (ii) otherwise than in connection with an appeal against conviction or an appeal against both conviction and sentence,
 - (b) in determining the UNCRC compatibility issue, a court finds that the prosecutor, by bringing criminal proceedings against the person, has acted in a way which is made unlawful by section 6(1) of the UNCRC Incorporation Act, and
 - (c) by reason only of the finding mentioned in paragraph (b), a court is considering—
 - (i) deserting the proceedings *pro loco et tempore* or *simpliciter*, or
 - (ii) dismissing the indictment or (as the case may be) the complaint or any part of it.
- (2) Despite section 8(1) of the UNCRC Incorporation Act, a court—
- (a) may not—
 - (i) desert the proceedings *pro loco et tempore* or *simpliciter*, except on the motion of the prosecutor, or
 - (ii) dismiss the indictment or (as the case may be) the complaint or any part of it, but
 - (b) must instead—
 - (i) give the prosecutor an opportunity to reconsider the bringing of criminal proceedings against the person in a way which is compatible with the UNCRC requirements,
 - (ii) adjourn or continue the proceedings to another diet to allow such reconsideration, and
 - (iii) following any such reconsideration, decide whether the bringing of criminal proceedings against the person is compatible with the UNCRC requirements.
- (3) But a court is not required to act in accordance with subsection (2) if—
- (a) it considers that there is no reasonable prospect of the bringing of criminal proceedings against the person being reconsidered in a way which is compatible with the UNCRC requirements,
 - (b) it considers that there are exceptional circumstances which justify not doing so, or
 - (c) it decides under subsection (2)(b)(iii) that the bringing of criminal proceedings against the person is incompatible with the UNCRC requirements.
- (4) Subsection (5) applies where—
- (a) the court adjourns or continues the proceedings in accordance with subsection (2)(b)(ii), or
 - (b) by virtue of subsection (3), the court decides to desert the proceedings *pro loco et tempore*.

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- (5) Before adjourning or continuing the proceedings or (as the case may be) deserting the proceedings *pro loco et tempore*, the court must give the prosecutor an opportunity—
- (a) in solemn proceedings, to make an application under section 65(3) or (5) for an extension of any of the following periods which apply in respect of the proceedings—
 - (i) the periods of 11 months and 12 months mentioned in section 65(1), including those periods as extended under section 65(3), on appeal under section 65(8) or under section 74(4)(c),
 - (ii) the periods of 80 days, 110 days and 140 days mentioned in section 65(4), including those periods as extended under section 65(5) or on appeal under section 65(8),
 - (b) in summary proceedings in respect of which the period of 40 days mentioned in section 147(1) applies, to make an application under section 147(2) for an extension of that period, including that period as extended under section 147(2) or on appeal under section 147(3).
- (6) For the purposes of subsection (1)(a)(i), the proceedings are taken to be brought—
- (a) in solemn proceedings, on the date on which the indictment is served,
 - (b) in summary proceedings—
 - (i) in a case where a warrant to apprehend or cite the accused is granted, on the date on which the warrant is granted, or
 - (ii) in any other case, on the date on which the complaint is served.
- (7) In this section—
- “prosecutor” does not include a private prosecutor,
 - “the UNCRC requirements” has the meaning given in section 1(2) of the UNCRC Incorporation Act,
 - “UNCRC compatibility issue” means a question of the kind mentioned in section 288AB(1)(b),
 - “UNCRC Incorporation Act” means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.”.
- (3) The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is amended as follows.
- (4) In section 8 (judicial remedies), after subsection (5) insert—
- “(6) Section 288BZA of the Criminal Procedure (Scotland) Act 1995 modifies the court’s power under subsection (1) in relation to certain UNCRC compatibility issues in criminal proceedings.”.

Commencement Information

I33 S. 33 in force at 16.7.2024, see s. 38(2)

Status: This version of this Act contains provisions that are prospective.

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PROSPECTIVE

PART 7 **S**

REVIEW OF ACT

34 **Review of Act** **S**

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

Commencement Information

I34 S. 34 not in force at Royal Assent, see [s. 38\(3\)](#)

PART 8 **S**

FINAL PROVISIONS

35 **Ancillary provision** **S**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).
- (3) Regulations under subsection (1)—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
 - (b) otherwise, are subject to the negative procedure.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Children (Care and Justice) (Scotland) Act 2024 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I35 S. 35 in force at 5.6.2024, see [s. 38\(1\)](#)

36 Interpretation **S**

In this Act—

- “1989 Act” means the Prisons (Scotland) Act 1989,
- “1995 Act” means the Criminal Procedure (Scotland) Act 1995,
- “2010 Act” means the Public Services Reform (Scotland) Act 2010,
- “2011 Act” means the Children’s Hearings (Scotland) Act 2011,
- “2016 Act” means the Criminal Justice (Scotland) Act 2016.

Commencement Information

I36 S. 36 in force at 5.6.2024, see [s. 38\(1\)](#)

PROSPECTIVE

37 Modification of enactments **S**

The [schedule](#) makes further modifications of enactments in consequence of this Act.

Commencement Information

I37 S. 37 not in force at Royal Assent, see [s. 38\(3\)](#)

38 Commencement **S**

- (1) [This section](#) and [sections 35, 36](#) and [39](#) come into force on the day after Royal Assent.
- (2) [Section 33](#) comes into force on whichever is the later of—
 - (a) the day after Royal Assent,
 - (b) 16 July 2024.
- (3) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (4) Regulations under [subsection \(3\)](#) may—
 - (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

Commencement Information

I38 S. 38 in force at 5.6.2024, see [s. 38\(1\)](#)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Children (Care and Justice) (Scotland) Act 2024 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

39 Short title **S**

The short title of this Act is the Children (Care and Justice) (Scotland) Act 2024.

Commencement Information

I39 S. 39 in force at 5.6.2024, see [s. 38\(1\)](#)

Status:

This version of this Act contains provisions that are prospective.

Changes to legislation:

Children (Care and Justice) (Scotland) Act 2024 is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act power to modify conferred by 1995 c. 36, s. 33A (as inserted) by [2024 asp 5 s. 30\(2\)](#)
- Act power to modify conferred by 2010 asp 8, s. 190(2A) (as substituted) by [2024 asp 5 s. 29\(2\)\(b\)](#)