



Children (Care and Justice) (Scotland) Act 2024

2024 asp 5

PART 2

CRIMINAL JUSTICE AND PROCEDURE

PROSPECTIVE

Safeguards for children involved in criminal proceedings

15 Custody of children before commencement of proceedings

- (1) The Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) is amended as follows.
- (2) In section 22 (under 18s to be kept in place of safety prior to court), in subsection (1), 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 - (b) in subsection (4), the definition of “supervision order” is repealed.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 - (c) subsection (3) is repealed.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”,

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

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- (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 - (ii) paragraph (b) is repealed,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 - (c) subsections (3), (4) and (5) are repealed.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).”.
- (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 - (ii) paragraph (b) and “or” immediately preceding it are repealed,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)”,

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(g) subsection (10) is repealed.

Commencement Information

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

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

(1) The 1995 Act is amended as follows.

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

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

(3) After section 70A insert—

“Children

70B Solemn proceedings against children

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

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

- (a) members and officers of the court,
- (b) parties to the case before the court, their solicitors and counsel, jurors, witnesses and other persons directly concerned in that case,
- (c) *bona fide* representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings,
- (d) such other persons as the court may specially authorise to be present.

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

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

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

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(5) After that section insert—

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

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

Commencement Information

I2 S. 16 not in force at Royal Assent, see [s. 38\(3\)](#)

Status:

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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\(2\)\(b\)](#)