



Children (Care and Justice) (Scotland) Act 2024

2024 asp 5

PROSPECTIVE

PART 2

CRIMINAL JUSTICE AND PROCEDURE

Involvement of children in criminal proceedings: general

12 Meaning of “child”

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

Commencement Information

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

13 Offences against children to which special provisions apply

- (1) The 1995 Act is amended as follows.
- (2) In schedule 1 (offences against children under the age of 17 years to which special provisions apply)—
 - (a) in each of paragraphs 1D, 2A, 2B, 2C, 3, 4 and 4A, “under the age of 17 years” is repealed,
 - (b) in the heading, “under the age of 17 years” is repealed.

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

Changes to legislation: *Children (Care and Justice) (Scotland) Act 2024, Part 2 is up to date with all changes known to be in force on or before 18 June 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*

- (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- (a) in subsection (5), paragraph (b) and “or” immediately preceding it are repealed,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 - (c) subsection (7) is repealed.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

I2 S. 13 not in force at Royal Assent, see [s. 38\(3\)](#)

Prosecution of children

14 Prosecution of children over age of criminal responsibility

- (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- (2) In section 42 (prosecution of children), in subsection (1), “but under 16 years” is repealed.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

I3 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

- (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”,

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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

I4 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”.

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

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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

I5 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

- (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—

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

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

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- (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 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

16 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

- (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,

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

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

(7) Regulations under subsection (6) may, in particular, make provision about the 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

I7 S. 18 not in force at Royal Assent, see [s. 38\(3\)](#)

19 Detention of children on conviction

- (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”,

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- (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—
““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—

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- “(8) The Scottish Ministers may by regulations make provision about the detention in secure accommodation of children to whom subsection (7) applies.
- (9) Regulations under subsection (8) may, in particular, make provision about the circumstances in which such children may remain in secure accommodation despite attaining the age of 18 years (provided that no person may remain in such accommodation after attaining the age of 19 years).
- (10) Regulations under subsection (8) are subject to the affirmative procedure.
- (11) In this section, “secure accommodation” has the meaning given by section 202(1) of the Children’s Hearings (Scotland) Act 2011.”.

Commencement Information

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

Mental health disposals for convicted children

20 Hospital directions

- (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

19 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”

- (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”.

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

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Commencement Information

I10 S. 21 not in force at Royal Assent, see [s. 38\(3\)](#)

22 Abolition of remand centres

- (1) The 1989 Act is amended as follows.
- (2) In section 19 (remand centres and young offenders institutions)—
 - (a) in subsection (1), paragraph (a) and “and” immediately following it are repealed,
 - (b) subsection (2) is repealed,
 - (c) in subsection (4)—
 - (i) “remand centres,” is repealed,
 - (ii) “centres or” is repealed,
 - (d) in subsection (6), “remand centres,” is repealed,
 - (e) in the section title, for “Remand centres and young” substitute “Young”.

Commencement Information

I11 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

- (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

I12 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

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

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

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

- (1) This section applies where a child is detained in secure accommodation by virtue of section 51(1)(a), 205(2), 208(1) or, as the case may be, 216(7) of the Criminal Procedure (Scotland) Act 1995.
 - (2) The relevant local authority in relation to the child has the same duties towards the child as it would have by virtue of sections 17, 29, 30 and 31 if the child were looked after by that local authority.
 - (3) In subsection (2), the “relevant local authority”, in relation to a child, has the same meaning as in section 201 of the Children’s Hearings (Scotland) Act 2011.”
- (3) The Children and Young People (Scotland) Act 2014 is amended as follows.
- (4) In section 97 (interpretation), in subsection (2), for “section 17(6)” substitute “sections 17(6) and 17A(2)”.

Commencement Information

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

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

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