

Children (Care and Justice) (Scotland) Act 2024

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The [Children \(Care and Justice\) \(Scotland\) Act](#) received royal assent on 4 June. This two-part information sheet does not cover every section of the Act but contains a summary of some of the most relevant sections for practice (for more details please see the explanatory notes accompanying the Act). This will be followed by information more focused on the practical implications of each part of the Act in due course.

Part 1 Children's Hearings System:

- Amends section 199 of the Children's Hearings (Scotland) Act 2011, which defines "child" for the purposes of that Act. A **child will now be defined as anyone under 18**, meaning all children can be referred to the Principal Reporter, if appropriate, where there are concerns for the child's care or welfare, including the child's involvement in offending behaviour (section 1).
- The children's hearing(s), in carrying out their functions, must do so in a way that has regard to the **effects of trauma** on the child, and the National Convener must have regard to the need to provide training in this area (section 2).
- Where a child is to be taken to and kept in a **place of safety** under certain child assessment/protection measures, the child could be placed in **secure accommodation** under any of these orders or by the police if the secure accommodation criteria (see below) are also met. Scottish Ministers can make provision by regulations about such placements (section 3).
- **Changes to the measures** that can be included as part of a **Compulsory Supervision Order** (CSO) through preventing the deprivation of a child's liberty unless a secure accommodation authorisation (SAA) is included (section 4); prohibiting a child from entering certain places or types of places, or communication with certain persons or classes of people (section 5); and decoupling and updating the conditions for a movement restriction condition (MRC) and SAA.
- The **new MRC criteria** will be that (a) that the child's health, safety or development is at risk, or (b) that the child is likely to cause physical or psychological harm to another person. The children's hearing or, as the case may be, the sheriff will still need to be satisfied that it is necessary to include an MRC in the order (section 6).
- The **new SAA criteria** will be that: (a) (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; (b) that the child is likely to engage in self-harming conduct, unless the child is kept in secure accommodation; or (c) that the child is likely to cause physical or psychological harm to another person unless the child is kept in secure accommodation. It will remain necessary for other options to have been considered, including an MRC. These changes will also apply to an interim CSO, medical examination order and warrant to secure attendance (section 7).

- A requirement for the Principal Reporter to **inform a person harmed** (including their relevant person if they are a child) of their right to request information, with certain exceptions, and enhances the information that the Principal Reporter can share with them. This can include information on the decision made about a referral, measures that are included as part of an order, and the variation or termination of an order. There is also a particular focus on information necessary to assist safety planning (section 8).
- Places a duty on Scottish Ministers to provide a **single point of contact** to provide information and support for **people who have been harmed** where the child's case is dealt with via the hearings system. This new national service will be defined in regulations and is subject to statutory consultation requirements (Section 9; 10).
- On terminating a child's CSO, the hearing is required to consider whether the child has a continuing need for **supervision or guidance after they turn 18**. Where the children's hearing makes a statement to the effect that the child does, the relevant local authority has a duty to provide this, subject to the child accepting it. However, the relevant local authority does not need to provide supervision and guidance after the child turns 19 (section 11).

Part 2 Criminal justice and procedure:

- **Updates the definition of a child to those aged under 18** in respect of criminal proceedings through amending section 307(1) of the 1995 Criminal Proceedings (Scotland) Act, offences against children to which special provisions apply ("schedule 1 offences") and the prosecution of children, requiring the Lord Advocates authorisation to prosecute children aged between 12 and 18 (sections 12; 13; 14).
- **Enhanced safeguards for children in police custody** are extended to all those aged under 18, removing the distinctions between children subject to CSOs and those who are not. These include requiring considerations of an alternative places of safety to police custody if a child is to be kept in legal custody pending a court appearance, the inability of a child to consent to interview without a solicitor being present, and increased points of local authority notification and opportunities for visiting the child (section 15).
- Safeguarding the **welfare and safety of children in criminal proceedings**, including requiring the court to consider steps that can support a child's participation in proceedings. In solemn proceedings in respect of an offence alleged to have been committed by a child and in summary and solemn proceedings where cases involve an adult co-accused, the court can consider where and when proceedings should be conducted, for example in another court room or at a different day to other cases, and whether the court should be "closed" (section 16).
- **Maximising the ability of the courts to remit** almost all cases of children who have pled or been found guilty of an offence to the Children's Hearings System for advice or disposal. This includes where a child has been made subject to sexual offence notification requirements, disqualified from driving, or had penalty points imposed, or could be made subject to a non-harassment order. The requirement to remit will vary if the child is dealt with via summary

procedures, solemn procedures in the sheriff court or the High Court and circumstances of the case (section 17).

- **Ending the use of Young Offenders' Institutions (YOIs) or prisons for children** who have been remanded or sentenced. No child under 18 will remand/sentenced to a YOI. Instead, where a child is to be deprived of their liberty, this will be in secure accommodation or secure hospital, with the required legislative routes to do so applying for all under 18s, and requiring local authorities to ensure residential establishments are available to do so. Alongside are associated definitional changes, including to that of YOIs and "young offender", and the ability to make regulations so a young person who has been sentenced or remanded in secure accommodation can remain there until they reach the age of 19, in certain circumstances (sections 18; 19; 21; 22; 23).
- **Allowing [hospital directions](#) to be made for children aged 12 to 17** who have been convicted on indictment, sentenced to detention, and assessed as having a mental disorder, that requires treatment to keep the child or others safe. This would apply at the point of sentencing meaning the child can transfer directly to a hospital setting rather than being detained in secure accommodation then subsequently moved by virtue of a Transfer for Treatment Direction (section 20).
- Where a child is **detained in secure accommodation** having been remanded or sentenced, they will be **treated as a child "looked after"** by the local authority, with the associated rights including access to aftercare (section 24).
- **Part 3 Secure Transportation** - places a duty on Scottish Ministers to publish **standards** applicable to a "secure transportation service" in relation to children and young people (aged under 19) who are to be taken to, placed, or kept in secure accommodation. This must be done within one year of the provisions being commenced and has statutory consultation requirements. Providers of these services must meet the applicable standards and those commissioning must ensure this happens. Local authorities will be required to report on how the service was monitored and on the extent to which the service met those standards every 3 years, with Scottish Ministers required to publish a consolidated report (section 25).

Part 4 Residential and secure care:

- **Amends the definition of "secure accommodation"** in Scotland to clarify this is accommodation provided for the purposes of depriving children of their liberty, but where care, education and support must also be provided, taking account the effects of trauma which the child may have experienced. The service must be approved by the Scottish Ministers, who can make regulations for such approval and in doing so will need to be satisfied that a child who has caused harm will not be placed in the same residential establishment as another child they have harmed or offended against (sections 26, 27).
- Regarding the **regulation of residential care services**, Ministers can produce standards and outcomes applicable to residential care services including secure accommodation, who are providing placements for children placed cross-border. Should such a service be applying for registration with the Care Inspectorate, they must provide any required information about cross-border placements and confirm that notice of the application has been given to the local authority and health board where the service is to be provided. Scottish Ministers can also by regulation impose specific requirements on such services (Section 28).

- Extends the power of the Scottish Ministers **to regulate cross-border placements** which are underpinned by a non-Scottish court order which appears to correspond to a CSO, and which are legally authorised in that jurisdiction by statute or court order. Ministers can impose conditions in respect of these placements, including requiring the sharing of information, provision of support and reviews, provide a mechanism for monitoring adherence to these and to set out consequences of breaching them (section 29; 30).

Part 5 Antisocial Behaviour Orders, Named Person and Child's plans:

- Amends the **Antisocial Behaviour etc. (Scotland) Act 2004** so that, except for parenting orders under section 13 in that Act, **"child"** will mean a person under 18 (section 31). This will mean before a Sheriff can consider an ASBO or interim ASBO application against a child or varying or revoking an ASBO, a Children's Hearing will be held to give advice on the application.

Part 8 Final Provisions:

- These are **standard final provisions**, most of which will come into force on the day after Royal Assent and allow for ancillary provisions to be made via regulations at a later date. **Part 6 on UNCRC compatibility issues in criminal proceedings** will come into force on the 16 July 2024. Under Part 7, as soon as reasonably practicable, a year after Royal Assent and annually thereafter Scottish Ministers must **review and report** to the Scottish Parliament on the operation of the Act, including whether sufficient resources are in place for effective implementation. The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint (section 38). The Scottish Government is currently considering a commencement plan. The provisions that will **end the use of YOIs are anticipated to commence in 2024**, in order the Keep the Promise.

If you have any questions then please contact cycj@strath.ac.uk or call 0141 444 8622