

Children (Care and Justice) (Scotland) Bill — Stage 2

After section 1

Natalie Don

1 After section 1, insert—

<Child assessment and child protection measures: secure accommodation

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

Roz McCall

2 After section 1, insert—

<Consideration of person affected by child's offence or behaviour

- (1) The 2011 Act is amended as follows.
- (2) In section 26 (decisions inconsistent with section 25), in subsection (1), before paragraph (a) insert—
 - “(za) the children’s hearing, pre-hearing panel or court considers that, for the purpose of protecting the person affected by the child’s offence or behaviour from harm (whether physical or not), it is necessary that the decision be made.”.>

Roz McCall

- 3 After section 1, insert—

<Referral of serious offences to Lord Advocate

- (1) The 2011 Act is amended as follows.
- (2) In section 66 (investigation and determination by Principal Reporter)—
 - (a) in subsection (2), at the beginning insert “Subject to subsection (2ZA),”
 - (b) after subsection (2), insert—
 - “(2ZA) Where a child aged 16 years or more is alleged to have committed an offence which is required by law to be prosecuted on indictment, the Principal Reporter must not make a determination under subsection (2) but must instead refer the matter to the Lord Advocate.”>

Section 3

Roz McCall

- 4 In section 3, page 2, line 11, after <place> insert <(including a place where the person affected by the child’s offence or behaviour lives, works or is educated)>

Roz McCall

- 5 In section 3, page 2, line 14, after second <person> insert <(including the person affected by the child’s offence or behaviour)>

After section 3

Roz McCall

- 6 After section 3, insert—

<Compulsory supervision orders: contact with person affected by the child’s offence or behaviour

 - (1) The 2011 Act is amended as follows.
 - (2) In section 83 (meaning of “compulsory supervision order”), after subsection (2) insert—
 - “(2A) When making a compulsory supervision order the children’s hearing or, as the case may be, the sheriff, must be satisfied that the measures included in the order are sufficient to prevent any contact (whether directly or indirectly) between the

child subject to the order and the person affected by the child's offence or behaviour.".>

Section 4

Natalie Don

- 7 In section 4, page 2, line 29, leave out <physical, mental or moral welfare> and insert <health, safety or development>

Section 5

Natalie Don

- 8 In section 5, page 3, line 19, leave out <physical, mental or moral welfare> and insert <health, safety or development>

Natalie Don

- 9 In section 5, page 3, line 37, leave out <physical, mental or moral welfare> and insert <health, safety or development>

Natalie Don

- 10 In section 5, page 4, line 14, leave out <physical, mental or moral welfare> and insert <health, safety or development>

After section 5

Roz McCall

- 11 After section 5, insert—

<Review of compulsory supervision order: transfer to young offenders institution

- (1) The 2011 Act is amended as follows.
- (2) In section 138 (powers of children's hearing on review), in subsection (3), after "Otherwise," insert "subject to section 138A".
- (3) After section 138 insert—

"138A Review of compulsory supervision order: transfer to young offenders institution

- (1) This section applies where a children's hearing is carrying out a review of a compulsory supervision order in relation to a child who—
 - (a) is aged 16 years or more,
 - (b) was referred to the children's hearing under section 69(2) on the basis of the ground mentioned in section 67(2)(j), and
 - (c) is currently in secure accommodation.

- (2) Where the children’s hearing considers it would be appropriate in all the circumstances for the child to be transferred from secure accommodation to a young offenders institution, it must refer the matter to the Scottish Ministers.
- (3) The Scottish Ministers may direct that the child be transferred to a young offenders institution.
- (4) The Scottish Ministers may by regulations make provision about the transfer to a young offenders institution of children to whom this section applies.
- (5) Regulations under subsection (4) are subject to the affirmative procedure.
- (6) In this section, “young offenders institution” has the meaning given by section 19 of the Prisons (Scotland) Act 1989.”>

Section 6

Roz McCall

12 In section 6, page 5, leave out lines 1 to 8 and insert—

- <(b) where the person mentioned in subsection 4(a) or (b) is a child, if satisfied that doing so would be detrimental to the best interests of the child.”>

Natalie Don

13 In section 6, page 5, line 8, at end insert—

<() 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)”,
- (iii) in paragraph (b), for “subsection (2)(b)” substitute “subsection (3)”,

(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,
 - (c) information as to how the referral to the children’s hearing was otherwise discharged.
- (4) In this section, “communicating with” has the meaning given by section 83(8).”>

Roz McCall

- 14 In section 6, page 5, leave out lines 9 to 15 and insert—
- <() In section 179C (decision by Principal Reporter following request under section 179A)—
- (a) for subsection (1) substitute—
 - “(1) The Principal Reporter must comply with a request made under section 179A(3) except where—
 - (a) the person mentioned in section 179A(4)(a) or (b) is a child, and
 - (b) the Principal Reporter is satisfied that complying with the request would be detrimental to the best interests of that child.”
 - (b) subsection (2) is repealed.>

Natalie Don

- 15 In section 6, page 5, line 15, at end insert—
- <() 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.”>

After section 6

Natalie Don

- 16 After section 6, insert—
- <Publishing restrictions**
- (1) The 2011 Act is amended as follows.
 - (2) In section 182 (publishing restrictions), in subsection (2), for “on summary conviction to a fine not exceeding level 4 on the standard scale.” substitute “—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).”>

Natalie Don

17 After section 6 insert—

<Support for victims in the children’s hearings system

- (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) may in particular include provision about—
 - (a) the support to be provided by support services,
 - (b) the persons by whom support services are to be provided, including for support services to be provided by persons under arrangements (contractual or otherwise) with the Scottish Ministers,
 - (c) the training and qualifications of persons providing support services,
 - (d) the provision of information to and by persons providing support services,
 - (e) the payment of expenses, fees and allowances to persons providing support services (including who is to be responsible for making such payments).
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult—
 - (a) SCRA,
 - (b) CHS,
 - (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.
- (5) Regulations under subsection (1) are subject to the negative procedure.
- (6) In this section, “support services” has the meaning given in regulations under subsection (1).”.>

After section 10

Roz McCall

18 After section 10, insert—

<Prosecution of children: risk to victim

- (1) The 1995 Act is amended as follows.
- (2) In section 42 (prosecution of children) after subsection (1) insert—

“(1A) Where the Lord Advocate is considering referring a child to the Principal Reporter instead of instructing the child to be prosecuted under subsection (1), the Lord Advocate must first assess the risk of physical or psychological harm to the victim of the offence if the child is not prosecuted.

(1B) Where the risk under subsection (1A) is assessed to be high, the Lord Advocate must not refer the child to the Principal Reporter instead of instructing the child to be prosecuted under subsection (1).”>

Roz McCall

19 After section 10, insert—

<Prosecution of children: serious offences

- (1) The 1995 Act is amended as follows.
- (2) In section 42 (prosecution of children), after subsection (1) insert—

“(1A) Where the Lord Advocate is considering referring a child to the Principal Reporter instead of instructing the child to be prosecuted under subsection (1), the Lord Advocate may only do so if—

- (a) the child is aged under 16 years, and
- (b) the child is not alleged to have committed an offence which is required by law to be prosecuted on indictment.”>

Section 12

Natalie Don

20 In section 12, page 8, line 17, leave out <subsection> and insert <subsections (3A) and>

Natalie Don

21 In section 12, page 8, line 17, leave out <106B> and insert <106BA>

Natalie Don

22 In section 12, page 8, line 18, leave out from <aged> to end of line 23 and insert <if—

- () that information is likely to lead to the identification of the person as being a person—
 - (i) against or in respect of whom an offence is suspected to have been committed, or

- (ii) who is suspected to have been a witness in relation to an offence, and
- () the person was aged under 18 at the date of commission of the suspected offence.>

Natalie Don

- 23 In section 12, page 8, line 29, at end insert—
<() the identity of any place at which the person works,>

Natalie Don

- 24 In section 12, page 8, line 30, at end insert—
<(3A) The restriction imposed by subsection (2) does not prevent a person to whom the information relates from publishing information which is likely to lead to their own identification as being a person—
(a) against or in respect of whom an offence is suspected to have been committed, or
(b) who is suspected to have been a witness in relation to an offence.>

Natalie Don

- 25 In section 12, page 8, leave out lines 35 to 37

Natalie Don

- 26 In section 12, page 8, line 38, after <section> insert <and in sections 106B to 106BB>

Natalie Don

- 27 In section 12, page 8, line 39, after <is> insert <committed, or>

Natalie Don

- 28 In section 12, page 9, line 2, after <addressed> insert <or accessible>

Natalie Don

- 29 In section 12, page 9, line 3, after <public> insert <(whether on registration, payment, subscription or otherwise)>

Natalie Don

- 30 In section 12, page 9, line 6, at end insert <: suspects>

Natalie Don

- 31 In section 12, page 9, line 7, leave out <, to the extent specified in the order,>

Natalie Don

- 32 In section 12, page 9, line 8, leave out <restrictions> and insert <restriction>

Natalie Don

- 33 In section 12, page 9, line 8, leave out <and (2)>

Natalie Don

- 34 In section 12, page 9, line 19, at end insert—
<() where the person to whom the relevant information relates is aged under 18, regard the best interests of the person as a primary consideration,>

Natalie Don

- 35 In section 12, page 9, line 20, at beginning insert <where the person to whom the relevant information relates is aged 18 or over,>

Natalie Don

- 36 In section 12, page 9, line 20, leave out <to whom the relevant information relates>

Natalie Don

- 37 In section 12, page 9, line 22, leave out <consider whether any of the following persons should be given the> and insert <give the following persons an>

Natalie Don

- 38 In section 12, page 9, leave out lines 26 and 27

Natalie Don

- 39 In section 12, page 9, leave out line 37

Natalie Don

- 40 In section 12, page 10, line 2, leave out <or (2)>

Natalie Don

- 41 In section 12, page 10, leave out lines 3 and 4

Natalie Don

- 42 In section 12, page 10, line 4, at end insert—

<106BA Power to dispense with restriction: child victims and witnesses

- (1) A sheriff may by order dispense with the restriction imposed by section 106A(2) where—
- (a) the information to which the restriction would apply is information relating to a child, and
 - (b) the sheriff considers that the conditions set out in subsection (4)(a) and (b) are satisfied.

- (2) A sheriff may make an order under subsection (1) on the application of a person other than the child who wishes to publish information relating to the child.
- (3) Before deciding whether to make an order under subsection (1), the sheriff must—
 - (a) regard the best interests of the child to whom the information relates as a primary consideration,
 - (b) give the following persons an opportunity to make representations—
 - (i) the person who made the application,
 - (ii) the child to whom the information relates,
 - (iii) any other person the sheriff considers to have an interest in the application.
- (4) The conditions referred to in subsection (1)(b) are that—
 - (a) the child to whom the information relates—
 - (i) understands the nature of an order under subsection (1),
 - (ii) appreciates what the effect of making such an order would be, and
 - (iii) gives consent to the publication of the information, and
 - (b) there is no good reason why an order under subsection (1) should not be made.
- (5) The child to whom the order under subsection (1) relates may withdraw consent by giving, before the information is published, written notice to the person who obtained the order.
- (6) Where a child gives notice under subsection (5), the restriction imposed by section 106A(2) is, from the time the notice is received, no longer dispensed with.
- (7) The decision of the sheriff under this section is final.
- (8) In this section—

“child” means a person who is aged under 18 at the date on which the application is made,

“consent” means free agreement.>

Natalie Don

43 In section 12, page 10, line 4, at end insert—

<106BB Offence and defences

- (1) A person who publishes relevant information in contravention of section 106A commits an offence and is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (2) A person charged with an offence under this section has a defence if it is established that the conditions mentioned in subsection (3) were met.

- (3) Those conditions are that—
 - (a) the person to whom the relevant information relates—
 - (i) had given written consent to the publication of information in relation to an offence mentioned in section 106A(2),
 - (ii) was aged 18 or over when that consent was given, and
 - (iii) had not, before the information was published, given written notice of the withdrawal of that consent, and
 - (b) the information published relates to the offence to which that consent relates.
- (4) A person charged with an offence under this section has a defence if it is established that—
 - (a) the information published was in the public domain (having already been published by the person, being a person aged 18 or over, to whom the information relates or otherwise), and
 - (b) where the information was in the public domain as a result of it being published by a person other than the person to whom it relates, there was no reason for the person charged to believe that the conditions mentioned in subsection (3) were not met in relation to that prior publication.
- (5) A person charged with an offence under this section has a defence if it is established that they were not aware, and neither suspected nor had reason to suspect, that the publication included relevant information.
- (6) For the purposes of subsections (2), (4) and (5), a matter is established if—
 - (a) evidence adduced is enough to raise an issue as to whether that is the case, and
 - (b) the prosecution does not prove beyond reasonable doubt that it is not the case.
- (7) For the purposes of subsections (2), (3)(a)(ii) and (4)(a), that a person was aged 18 or over is established only if the person charged with the offence took reasonable steps to establish the person's age.
- (8) For the purposes of subsection (3)(a), consent which purports to be specific to a particular publication may be taken to be consent to publication generally.
- (9) In this section—

“consent” means free agreement,

“relevant information” means information the publication of which is restricted under section 106A(1) or (2).

106BC Individual culpability where organisation commits offence under section 106BB

- (1) This section applies where—
 - (a) an offence under section 106BB is committed by a relevant organisation, and
 - (b) the commission of the offence—
 - (i) involves consent or connivance, or
 - (ii) is attributable to neglect,on the part of a responsible individual.

- (2) The responsible individual (as well as the relevant organisation) commits the offence.
- (3) For the purposes of this section—
 - (a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),
 - (b) “responsible individual” means, in relation to a relevant organisation—
 - (i) an individual falling within the corresponding entry in the second column of that table, or
 - (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.
- (4) The table is as follows—

Relevant organisation	Responsible individual
a company as mentioned in section 1 of the Companies Act 2006	a director, manager, secretary or other similar officer a member, where the company’s affairs are managed by its members
a limited liability partnership	a member
a partnership other than a limited liability partnership	a partner
any other body or association	an individual who is concerned in the management or control of the body’s or association’s affairs

106BD Crown application: offence under section 106BB

- (1) Nothing in section 106BB makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.>

Section 13

Natalie Don

44 In section 13, page 10, line 9, after <subsection (3)> insert <and section 47ZA>

Natalie Don

45 In section 13, page 10, line 15, after <subsection (3)> insert <and section 47ZB>

Natalie Don

- 46 In section 13, page 10, line 22, leave out <date of commencement of the proceedings> and insert <alleged date of commission of the relevant offence>

Natalie Don

- 47 In section 13, page 10, line 29, at end insert—
<() the identity of any place at which the person works,>

Natalie Don

- 48 In section 13, page 10, line 30, at end insert—
<(1BA) The restriction imposed by subsection (1) does not prevent a person to whom the information relates from publishing, after the completion of the proceedings, information which is likely to lead to their own identification as being a person accused of a relevant offence.
(1BB) The restriction imposed by subsection (1A) does not prevent a person to whom the information relates from publishing, during or after the completion of the proceedings information which is likely to lead to their own identification as being—
(a) a person against or in respect of whom a relevant offence is alleged to have been committed, or
(b) a witness in relation to a relevant offence.>

Natalie Don

- 49 In section 13, page 10, line 31, leave out first <subsection> and insert <subsections (1BA) and>

Natalie Don

- 50 In section 13, page 10, line 37, leave out first <subsection> and insert <subsections (1BB) and>

Natalie Don

- 51 In section 13, page 11, leave out lines 2 to 14 and insert—
<() for subsection (3) substitute—
“(3) On the disposal of the proceedings, the court may, if satisfied that it is in the public interest to do so, direct that the restriction imposed by subsection (1) or (as the case may be) (1A) is to be dispensed with to such extent as the court specifies.”>

Natalie Don

- 52 In section 13, page 11, line 19, leave out <subsection (4) is> and insert <subsections (4) and (5) are>

Natalie Don

- 53 In section 13, page 11, line 26, after <appeal> insert <(provided the direction is upheld)>

Natalie Don

- 54 In section 13, page 11, line 29, after <subsection (1)> insert <or (as the case may be) (1A)>

Natalie Don

- 55 In section 13, page 11, line 34, after <subsection (1)> insert <or (as the case may be) (1A)>

Natalie Don

- 56 In section 13, page 11, line 38, after <appeal> insert <(provided the decision is upheld)>

Natalie Don

- 57 In section 13, page 12, line 1, after <section> insert <and in sections 47A to 47E>

Natalie Don

- 58 In section 13, page 12, line 3, after <addressed> insert <or accessible>

Natalie Don

- 59 In section 13, page 12, line 4, after <public> insert <(whether on registration, payment, subscription or otherwise)>

Natalie Don

- 60 In section 13, page 12, line 9, at end insert—

<47ZA Power to dispense with restriction: accused persons

- (1) A sheriff may, after the completion of proceedings to which section 47(1) applies, by order dispense with the restriction imposed by section 47(1) where—
 - (a) the information to which the restriction would apply is information relating to a child, and
 - (b) the sheriff considers that the conditions set out in subsection (5)(a) and (b) are satisfied.
- (2) A sheriff may make an order under subsection (1) on the application of a person other than the child who wishes to publish information relating to the child.
- (3) Before deciding whether to make an order under subsection (1), the sheriff must—
 - (a) regard the best interests of the child to whom the information relates as a primary consideration,
 - (b) give the following persons an opportunity to make representations—
 - (i) the person who made the application,
 - (ii) the child to whom the information relates,
 - (iii) any other person the sheriff considers to have an interest in the application.

- (4) The conditions referred to in subsection (1)(b) are that—
 - (a) the child to whom the information relates—
 - (i) understands the nature of an order under subsection (1),
 - (ii) appreciates what the effect of making such an order would be, and
 - (iii) gives consent to the publication of the information, and
 - (b) there is no good reason why an order under subsection (1) should not be made.
- (5) The child to whom the order under subsection (1) relates may withdraw consent by giving, before the information is published, written notice to the person who obtained the order.
- (6) Where a child gives notice under subsection (5), the restriction imposed by section 47(1) is, from the time the notice is received, no longer dispensed with.
- (7) The decision of the sheriff under this section is final.
- (8) In this section and in section 47ZB—
 - “child” means a person who is aged under 18 at the date on which the application is made,
 - “consent” means free agreement.

47ZB Power to dispense with restriction: child victims and witnesses

- (1) The court may, during or after completion of proceedings to which section 47(1A) applies, by order dispense with the restriction imposed by section 47(1A) where—
 - (a) the information to which the restriction would apply is information relating to a child, and
 - (b) the court considers that the conditions set out in subsection (4)(a) and (b) are satisfied.
- (2) The court may make an order under subsection (1) on the application of a person other than the child who wishes to publish information relating to the child.
- (3) Before deciding whether to make an order under subsection (1), the court must—
 - (a) regard the best interests of the child to whom the information relates as a primary consideration,
 - (b) give the following persons an opportunity to make representations—
 - (i) the person who made the application,
 - (ii) the child to whom the information relates,
 - (iii) any other person the court considers to have an interest in the application.
- (4) The conditions referred to in subsection (1)(b) are that—
 - (a) the child to whom the information relates—
 - (i) understands the nature of an order under subsection (1),
 - (ii) appreciates what the effect of making such an order would be, and
 - (iii) gives consent to the publication of the information, and
 - (b) there is no good reason why an order under subsection (1) should not be made.

- (5) The child to whom the order under subsection (1) relates may withdraw consent by giving, before the information is published, written notice to the person who obtained the order.
- (6) Where a child gives notice under subsection (5), the restriction imposed by section 47(1A) is, from the time the notice is received, no longer dispensed with.
- (7) The decision of the court under this section is final.
- (8) In this section the “court” means—
 - (a) where the application is made during proceedings, the court dealing with the proceedings,
 - (b) where the application is made after completion of proceedings, the sheriff.>

Natalie Don

61 In section 13, page 12, line 11, leave out <47(3)(b)> and insert <47(3)>

Natalie Don

62 In section 13, page 12, line 19, after <directs> insert <, in accordance with section 47(3),>

Natalie Don

63 In section 13, page 12, line 22, leave out <restrictions> and insert <restriction>

Natalie Don

64 In section 13, page 13, leave out lines 1 to 4

Natalie Don

65 In section 13, page 13, line 6, after <47(1)> insert <or (as the case may be) (1A)>

Natalie Don

66 In section 13, page 13, line 11, after <47(1)> insert <or (1A)>

Natalie Don

67 In section 13, page 13, line 17, leave out <or a person accused of an alleged offence to which the proceedings relate.> and insert—

<() in the case of information mentioned in section 47(1), a person accused of a relevant offence to whom the information relates, or

() in the case of information mentioned in section 47(1A), a person to whom the information relates.>

Natalie Don

68 In section 13, page 14, line 5, leave out <47> and insert <47(3)>

Natalie Don

69 In section 13, page 14, line 5, leave out <or to the Scottish Ministers>

Natalie Don

- 70 In section 13, page 14, line 11, after <47(1)> insert <or (as the case may be) (1A)>

Natalie Don

- 71 In section 13, page 14, line 13, leave out <what is in the public interest> insert <whether it is in the public interest to dispense with the restriction imposed by section 47(1) or (as the case may be) whether it would be contrary to the public interest to extend the period of that restriction>

Natalie Don

- 72 In section 13, page 14, line 13, leave out <or (as the case may be) the Scottish Ministers>

Natalie Don

- 73 In section 13, page 14, line 29, leave out <treat the factor mentioned at paragraph (a)(ii) (effect on wellbeing)> and insert <regard the best interests of the person>

Natalie Don

- 74 In section 13, page 14, line 34, after <47(1A)> insert <or (as the case may be) whether it would be contrary to the public interest to extend the period of that restriction>

Natalie Don

- 75 In section 13, page 14, line 34, after <court> insert <—
(a) >

Natalie Don

- 76 In section 13, page 14, line 34, leave out <or (as the case may be) the Scottish Ministers>

Natalie Don

- 77 In section 13, page 14, line 37, leave out <it is in the public interest to dispense with> and insert <to dispense with or (as the case may be) extend the period of>

Natalie Don

- 78 In section 13, page 14, line 39, after <with> insert <, or extending the period of,>

Natalie Don

- 79 In section 13, page 15, line 2, at end insert <, and
<(b) must, if the person to whom the information relates is aged under 18 at the date of determining what is in the public interest—
(i) regard the best interests of the person as a primary consideration, and
(ii) have no regard to the length of time until the person will reach the age of 18.>

Natalie Don

- 80 In section 13, page 15, line 8, leave out <was> and insert <is>

Natalie Don

- 81 In section 13, page 15, line 9, leave out <or (as the case may be) the Scottish Ministers>

Natalie Don

- 82 In section 13, page 15, line 11, after <be> insert <a factor against extending the period of the restriction imposed by subsection>

Natalie Don

- 83 In section 13, page 15, leave out lines 12 and 13

Natalie Don

- 84 In section 13, page 15, line 13, at end insert—

<47E Offence and defences

- (1) A person who publishes relevant information in contravention of section 47 commits an offence and is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (2) A person charged with an offence under this section has a defence if it is established that the conditions mentioned in subsection (3) were met.
- (3) Those conditions are that—
 - (a) the person to whom the relevant information relates—
 - (i) had given written consent to the publication of information in relation to an offence mentioned in section 47(1) or (as the case may be) (1A),
 - (ii) was aged 18 or over when that consent was given, and
 - (iii) had not, before the information was published, given written notice of the withdrawal of that consent, and
 - (b) the information published relates to the offence to which that consent relates.
- (4) A person charged with an offence under this section has a defence if it is established that—
 - (a) the information published was in the public domain (having already been published by the person, being a person aged 18 or over, to whom the information relates or otherwise), and
 - (b) where the information was in the public domain as a result of it being published by a person other than the person to whom it relates, there was no reason for the person charged to believe that the conditions mentioned in subsection (3) were not met in relation to that prior publication.
- (5) A person charged with an offence under this section has a defence if it is established that they were not aware, and neither suspected nor had reason to suspect, that the publication included relevant information.

- (6) For the purposes of subsections (2), (4) and (5), a matter is established if—
- (a) evidence adduced is enough to raise an issue as to whether that is the case, and
 - (b) the prosecution does not prove beyond reasonable doubt that it is not the case.
- (7) For the purposes of subsections (2), (3)(a)(ii) and (4)(a), that a person was aged 18 or over is established only if the person charged with the offence took reasonable steps to establish the person’s age.
- (8) For the purposes of subsection (3)(a), consent which purports to be specific to a particular publication may be taken to be consent to publication generally.
- (9) In this section—
- “consent” means free agreement,
 - “relevant information” means information the publication of which is restricted under section 47(1) or (1A).

47F Individual culpability where organisation commits offence under section 47E

- (1) This section applies where—
- (a) an offence under section 47E is committed by a relevant organisation, and
 - (b) the commission of the offence—
 - (i) involves consent or connivance, or
 - (ii) is attributable to neglect,
on the part of a responsible individual.
- (2) The responsible individual (as well as the relevant organisation) commits the offence.
- (3) For the purposes of this section—
- (a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),
 - (b) “responsible individual” means, in relation to a relevant organisation—
 - (i) an individual falling within the corresponding entry in the second column of that table, or
 - (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.
- (4) The table is as follows—

Relevant organisation	Responsible individual
a company as mentioned in section 1 of the Companies Act 2006	a director, manager, secretary or other similar officer a member, where the company’s affairs are managed by its members
a limited liability partnership	a member
a partnership other than a limited liability partnership	a partner

any other body or association

an individual who is concerned in the management or control of the body's or association's affairs>

Section 15

Roz McCall

- 85 In section 15, page 17, line 14, at beginning insert <if the child is under 16 years of age,>

Roz McCall

- 86 In section 15, page 17, line 30, at beginning insert <if the child is under 16 years of age,>

Roz McCall

- 87 In section 15, page 17, line 33, leave out from <, (1A)(a)> to <(1D)(a)>

Roz McCall

- 88 In section 15, page 17, line 38, at end insert—

<(1EA) Where the court requests advice as mentioned in subsection 1(A)(a) or, as the case may be, 1(D)(a), it may, after consideration of the advice received from the children's hearing—

- (a) if the child is under 16 years of age, 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.>

Natalie Don

- 89 In section 15, page 18, line 2, leave out <and (4B)> and insert <, (4B) and (4C)>

Natalie Don

- 90 In section 15, page 18, line 7, after <34> insert <, 35>

Natalie Don

- 91 In section 15, page 18, line 22, at end insert—

<(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).>

Section 16

Roz McCall

- 92 In section 16, page 18, line 29, after <(a)> insert—
<() at the beginning insert “subject to subsection (1A),”>

Roz McCall

- 93 In section 16, page 18, line 32, at end insert—
<() after subsection (1) insert—
“(1A) If the person has attained the age of 16 years and has been charged with or convicted of an offence on indictment, the court shall, instead of committing the person to a local authority under subsection (1)(a), commit the person to a young offenders institution.”>

Roz McCall

- 94 In section 16, page 18, line 38, at end insert—
<(6A) Regulations under subsection (6) may, in particular, make provision about the circumstances in which such children may be transferred to a young offenders institution after attaining the age of 16 years.>

Roz McCall

- 95 In section 16, page 18, leave out lines 39 to end of line 2 on page 19

Section 17

Roz McCall

- 96 In section 17, page 19, line 14, at end insert—
<(5A) Regulations under subsection (5) may, in particular, make provision about the circumstances in which such children may be transferred to a young offenders institution after attaining the age of 16 years.>

Roz McCall

- 97 In section 17, page 19, leave out lines 15 to 18

Roz McCall

- 98 In section 17, page 20, line 12, leave out <The Scottish Ministers may not> and insert <If the child is aged 16 years or more, the Scottish Ministers must direct>

Natalie Don

- 99 In section 17, page 20, line 13, leave out <the> and insert <a>

Roz McCall

- 100 In section 17, page 20, line 14, at the beginning insert <If the child is under 16 years of age,>

Natalie Don

- 101 In section 17, page 20, line 14, leave out <the> and insert <a>

Roz McCall

- 102 In section 17, page 20, line 17, at end insert—
<(4A) Regulations under subsection (4) may, in particular, make provision about the circumstances in which such children may be transferred to a young offenders institution after attaining the age of 16 years.>

Roz McCall

- 103 In section 17, page 20, leave out lines 18 to 21

Roz McCall

- 104 In section 17, page 20, leave out lines 29 to 32

After section 17

Natalie Don

- 105 After section 17, insert—
<Mental health disposals for convicted children

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,”.>

Section 18

Roz McCall

- 106 In section 18, page 21, line 2, leave out <18> and insert <16>

Roz McCall

- 107 In section 18, page 21, line 7, leave out subsections (3) and (4)

Section 23

Roz McCall

108 In section 23, page 23, line 29, at end insert—

<(2A) Regulations under subsection (1) must provide that, where a secure accommodation service provides accommodation for children who have committed an offence, the service may only be approved if the accommodation for those children is separated according to the child's sex.>

Roz McCall

109 In section 23, page 23, line 29, at end insert—

<(2A) Regulations under subsection (1) must provide that, where a secure accommodation service provides accommodation for children who have committed an offence, the service may only be approved if that accommodation is separate from any accommodation for children who have not committed an offence.>

Natalie Don

110 In section 23, page 23, line 37, after <support> insert <—

(i)>

Natalie Don

111 In section 23, page 23, line 38, at end insert <, and

(ii) that takes account of the effects of trauma which the children may have experienced,>

Section 25

Natalie Don

112 In section 25, page 25, line 40, leave out from beginning to line 28 on page 26 and insert—

<() in subsection (1), for “as if it were such an order” substitute “in Scotland”,

() 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,

(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.”.>

After section 25

Natalie Don

113 After section 25, insert—

<Regulation of cross-border placements

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

“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.”>

Schedule

Natalie Don

114 In the schedule, page 29, line 3, at end insert—

<PART

CHILDREN’S HEARINGS SYSTEM

Children’s Hearings (Scotland) Act 2011

- (1) The 2011 Act is amended as follows.
- (2) In section 73 (child’s duty to attend children’s hearing), in subsection (3)(b), for “physical, mental or moral welfare” substitute “health, safety or development”.
- (3) In section 103 (child’s duty to attend hearing unless excused), in subsection (3)(b), for “physical, mental or moral welfare” substitute “health, safety or development”.>

Natalie Don

115 In the schedule, page 30, line 4, at end insert—

<*Social Work (Scotland) Act 1968*

- 1 (1) The Social Work (Scotland) Act 1968 is amended as follows.
- (2) In section 27(1) (supervision and care of persons put on probation or released from prisons etc.), in paragraph (b)(vb), for “16” substitute “18”.>

Natalie Don

116 In the schedule, page 30, leave out lines 9 to 11 and insert—

<() for subsection (2C) substitute—

“(2C) In a case where subsection (2A) applies and the single term mentioned in that subsection is of four or more years, this Part applies to the person as if the single term were an equivalent sentence of detention or, as the case may be, imprisonment.”.>

Natalie Don

117 In the schedule, page 31, line 22, leave out paragraph 12

Natalie Don

118 In the schedule, page 32, line 30, at end insert—

<PART

LOCAL AUTHORITY DUTIES IN RELATION TO DETAINED CHILDREN

Social Work (Scotland) Act 1968

- (1) The Social Work (Scotland) Act 1968 is amended as follows.
- (2) In section 5 (powers of Scottish Ministers), in subsection (1B)(f), for “section 51” substitute “sections 44, 51 and 216”.

Public Services Reform (Scotland) Act 2010

- (1) The 2010 Act is amended as follows.
- (2) In schedule 13 (social work services functions: specified enactments), “Section 51 of the Criminal Procedure (Scotland) Act 1995 (c. 46)” is repealed.>