

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

After section 1

Miles Briggs

119 After section 1, insert—

<Neurodevelopmental assessment

- (1) The 2011 Act is amended as follows.
- (2) After section 31 insert—

“31A Neurodevelopmental assessment

- (1) This section applies where by virtue of this Act a children's hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.
- (2) The children’s hearing, pre-hearing panel or court must ensure that the child receives a neurodevelopmental assessment where the child has an existing diagnosis for—
 - (a) autism spectrum disorder,
 - (b) Attention Deficit Hyperactivity Disorder.”>

Miles Briggs

120 After section 1, insert—

<Autism assessment

- (1) The 2011 Act is amended as follows.
- (2) After section 31 insert—

“31A Autism assessment

- (1) This section applies where by virtue of this Act a children's hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.
- (2) Where the child has an existing diagnosis for Attention Deficit Hyperactivity Disorder, the children’s hearing, pre-hearing panel or court must ensure that the child receives an assessment for autism spectrum disorder.”>

Miles Briggs

121 After section 1, insert—

<ADHD assessment

- (1) The 2011 Act is amended as follows.
- (2) After section 31 insert—

“31A ADHD assessment

- (1) This section applies where by virtue of this Act a children's hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.

- (2) Where the child has an existing diagnosis for autism spectrum disorder, the children’s hearing, pre-hearing or court must ensure that the child receives an assessment for Attention Deficit Hyperactivity Disorder.”>

After section 6

Willie Rennie

122 After section 6, insert—

<Duty to establish an information sharing system

- (1) The Scottish Ministers must by regulations establish a system to provide information from the children’s hearings system to the person affected by the child’s offence or behaviour through a single point of contact, which may be a victim support organisation.
- (2) Regulations under subsection (1) must provide—
- (a) for a tiered approach to information-sharing under which—
 - (i) specified information must always provided to the person affected by the child’s offence or behaviour, unless that person indicates that they do not wish to receive the information,
 - (ii) a risk assessment is carried out in each case to determine what other information should be provided to the person affected by the child’s offence or behaviour, unless that person indicates that they do not wish to receive the information,
 - (iii) where a child is released from secure accommodation or transferred to an adult prison, the person affected by the child’s offence or behaviour should be notified, unless that person indicates that they do not wish to be notified.
 - (b) that information should be provided in a way that accords with trauma-informed practice,
 - (c) that information should be provided in an accessible format,
 - (d) for information-sharing arrangements to be put in place between relevant bodies including—
 - (i) Children’s Hearings Scotland
 - (ii) the Scottish Children’s Reporter Administration,
 - (iii) Police Scotland,
 - (iv) local authorities.
- (3) Information specified under subsection 2(a)(i) must include information on—
- (a) the joint reporting process,
 - (b) how the children’s hearings system works,
 - (c) where to access victim support,
 - (d) where there is a referral to a children’s hearing—
 - (i) the date of the children’s hearing,
 - (ii) the outcome of the children’s hearing, but only to the extent that the information is relevant to safety planning for the person affected by the child’s offence or behaviour,

- (e) where there is no referral to a children’s hearing, that this is the case.
- (4) Information that may be provided under subsection 2(a)(ii) may include information on—
 - (a) whether a compulsory supervision order has been made, varied, continued or terminated,
 - (b) the conditions of any compulsory supervision order relevant to the person affected by the child’s offence or behaviour,
 - (c) what constitutes non-compliance with a compulsory supervision order,
 - (d) what action will be taken in the event the child does not comply with a compulsory supervision order,
 - (e) where the child has not complied with a compulsory supervision order, any review of the conditions of the order.
- (5) Regulations under subsection (1) may provide that, where a person affected by the child’s offence or behaviour is also a child, information may be shared with a relevant person in relation to that child.
- (6) Regulations under subsection (1) are subject to the affirmative procedure.
- (7) In this section—
 - (a) “relevant person” has the meaning given by section 200 of the 2011 Act,
 - (b) “trauma-informed practice” means operating in a way that—
 - (i) recognises that a person may have experienced trauma,
 - (ii) understands the effects which trauma may have on the person, and
 - (iii) involves adapting processes and practices, based on that understanding of the effects of trauma, to seek to avoid, or minimise the risk of, exposing the person to—
 - (A) any recurrence of past trauma, or
 - (B) further trauma.>

Willie Rennie

123 After section 6, insert—

<Report on victims

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting period, prepare and publish a report on the experience of victims in cases where a child is referred to a children’s hearing on the ground that the child has committed an offence.
- (2) A report under subsection (1) must include the following information for each reporting period—
 - (a) the number of referrals,
 - (b) the number of referrals where a victim of the child’s offence was identified by an agency, by reference to each of the following characteristics—
 - (i) the type offence,
 - (ii) the age profile of the victim,
 - (c) the information and support given to victims by each agency,

- (d) where victims were not identified, information about the reasons why this was the case.
- (3) For the purposes of subsection (2) an “agency” includes—
 - (a) the Crown Office and Procurator Fiscal Service,
 - (b) Police Scotland,
 - (c) Children’s Hearings Scotland
 - (d) the Scottish Children’s Reporter Administration.
- (4) For the purposes of subsection (1), a reporting period is—
 - (a) the period of 6 months beginning with the day of Royal Assent,
 - (b) each subsequent period of one year.>

Section 12

Ruth Maguire

124 In section 12, page 8, line 23, at end insert—

- <(2A) Subject to subsection (4) and section 106B, no publication is to include information relating to a deceased person that is likely to lead to the identification of that person as having been—
 - (a) a person against or in respect of whom an offence is suspected to have been committed, and
 - (b) aged under 18 at the date of commission of the suspected offence.>

Ruth Maguire

125 In section 12, page 8, line 24, leave out <and (2)> and insert <to (2A)>

Ruth Maguire

126 In section 12, page 8, line 30, at end insert—

- <(3A) For the purposes of subsection (2A), information relating to a deceased person includes in particular—
 - (a) the deceased person’s name,
 - (b) the address at which the deceased person resided prior to the person's death,
 - (c) the identity of any school or other educational establishment that was attended by the deceased person prior to the person's death,
 - (d) any still or moving picture of the deceased person,
 - (e) any of the information set out in subsection (3) in relation to a family member of the deceased person.>

Ruth Maguire

127 In section 12, page 8, line 38, at end insert—

<“family member”, in relation to a deceased person, means—

- (a) the person's—
 - (i) spouse or civil partner,
 - (ii) child,
 - (iii) parent,
 - (iv) sibling,
 - (v) aunt or uncle,
 - (vi) nephew or niece,
 - (vii) cousin,
 - (viii) grandparent, and
- (b) the spouse or civil partner of any person listed in paragraph (a),>

Ruth Maguire

128 In section 12, page 8, line 40, at end insert—

<“parent” has the same meaning as in section 108,>

Ruth Maguire

129 In section 12, page 9, line 5, at end insert—

<“sibling”, in relation to a deceased person, means a person who had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

130 In section 12, page 9, line 8, leave out <and (2)> and insert <to (2A)

Ruth Maguire

131 In section 12, page 9, line 13, after <relates,> leave out <or> and insert—

<(ca) if the person to whom the relevant information relates is deceased, a parent, sibling, child or spouse or civil partner of the deceased person, or>

Ruth Maguire

132 In section 12, page 9, line 21, at end insert—

<(aa) if the person to whom the relevant information relates is deceased, have regard to the wellbeing of any family member of the deceased,>

Ruth Maguire

133 In section 12, page 9, line 27, at end insert—

<(iia) if the person to whom the relevant information relates is deceased, a family member of the deceased person,>

Ruth Maguire

134 In section 12, page 9, line 32, at end insert—

<“family member”, in relation to a deceased person, means—

- (a) the person’s—
 - (i) spouse or civil partner,
 - (ii) child,
 - (iii) parent,
 - (iv) sibling,
 - (v) aunt or uncle,
 - (vi) nephew or niece,
 - (vii) cousin,
 - (viii) grandparent, and
- (b) the spouse or civil partner of any person listed in paragraph (a),>

Ruth Maguire

135 In section 12, page 10, line 2, leave out <or (2)> and insert <to (2A)>

Ruth Maguire

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

<“sibling”, in relation to a deceased person, means a person who had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

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

<106C Power to retrospectively require removal of report of suspected offences

- (1) A sheriff may by order require the taking of reasonable steps to withdraw from public availability any publication which—
 - (a) was published prior to—
 - (i) the date on which section 106A came into force, and
 - (ii) the commencement of proceedings in a court in respect of the offence to which the information mentioned in subsection (b) relates (but see sections 47F to 47H of the Criminal Procedure (Scotland) Act 1995 which allow for equivalent orders to be made in respect of proceedings involving children), and
 - (b) includes information mentioned in section 106A(1), (2) or (2A) in respect of a person, including a deceased person, who is identified in the order.

- (2) A person who is served with or otherwise made aware of the existence of an order made under subsection (1) may comply with the order by withdrawing from public availability only so much of the publication as contains the restricted information.
- (3) A person who is served with or otherwise made aware of the existence of an order made under subsection (1), and who fails to comply with the order, commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is a defence for any person charged with an offence under this section ("P") to prove that P reasonably believed that P had taken reasonable steps to ensure that the publication or (as the case may be) the restricted information was withdrawn from public availability.
- (5) A sheriff may make an order under subsection (1) on the application of—
 - (a) a constable,
 - (b) a prosecutor,
 - (c) the person to whom the relevant information relates, or
 - (d) if the person to whom the relevant information relates is deceased, a parent, sibling, child or spouse or civil partner of that person.
- (6) An application for an order under subsection (1) shall be made to the sheriff by way of a summary application.
- (7) An order made under subsection (1) may be varied or revoked by a sheriff, at any time, on the application of—
 - (a) the person to whom the restricted information relates,
 - (b) if the person to whom the restricted information relates is deceased, a parent, sibling, child or spouse or civil partner of that person,
 - (c) a person to whom the order applies, or
 - (d) a media representative.
- (8) A sheriff may vary or revoke an order further to an application made under subsection (7) in respect of particular restricted information, particular publications or particular persons, or generally.
- (9) In considering whether to make an order under subsection (1), or to vary or revoke an order under subsection (7), the sheriff must consider whether it is in the interests of justice, or otherwise in the public interest, to do so.
- (10) In determining whether it is in the interests of justice or otherwise in the public interest to make an order under subsection (1) or to vary or revoke an order under subsection (7), the sheriff must—
 - (a) have regard to the wellbeing of the person to whom the relevant information relates,
 - (b) if the person to whom the relevant information relates is deceased, have regard to the wellbeing of any family member of the deceased,
 - (c) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the sheriff,
 - (ii) the person to whom the relevant information relates,

- (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
 - (iv) if the person mentioned in sub-paragraph (ii) is deceased, a family member of the deceased person,
 - (v) the person or persons to whom the order applies or would apply,
 - (vi) a media representative,
 - (vii) any other person the sheriff considers to have an interest in the application.
- (11) In a case where there is a section of the public that is already aware of the identity of a person who—
- (a) is a person by whom an offence is or was suspected to have been committed,
 - (b) is or (as the case may be) was a person against or in respect of whom an offence is or was suspected to have been committed, or
 - (c) is or was suspected to have been a witness in relation to an offence,
- the sheriff must not consider this to be a factor in favour of refusing to make the order sought under subsection (1) or in favour of varying or revoking an order under subsection (7).

- (12) In this section—

“constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“family member”, in relation to a person (including a deceased person), means—

- (a) the person’s—
 - (i) spouse or civil partner,
 - (ii) child,
 - (iii) parent,
 - (iv) sibling,
 - (v) aunt or uncle,
 - (vi) nephew or niece,
 - (vii) cousin,
 - (viii) grandparent, and

- (b) the spouse or civil partner of any person listed in paragraph (a),

“media representative” means—

- (a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or
- (b) a representative of a newspaper or news agency,

“parent” has the same meaning as in section 108,

“prosecutor” means the Lord Advocate, Crown Counsel or the procurator fiscal,

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public,

“relevant information” means the information to which an application relates,

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“restricted information” means the information in respect of which an order is made under subsection (1),

“sibling”, in relation to a person (including a deceased person), means a person who has or had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

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

<106D Power to reinstate restriction on report of suspected offences

- (1) This section applies where—
 - (a) a restriction imposed by section 106A has been dispensed with under section 106B, and
 - (b) section 106A(4) would not otherwise apply to the restriction.
- (2) A sheriff may by order reinstate the restriction in whole or in part.
- (3) An order under subsection (2)—
 - (a) may not be made in respect of a restriction that applied by virtue of section 106A(2)(b),
 - (b) may be made at any time.
- (4) An order under subsection (2) may reinstate the restriction, in whole or in part, such that no publication may include the information mentioned in section 106A(1), (2) or (as the case may be) (2A)—
 - (a) until the occurrence of a particular event or particular circumstances,
 - (b) in respect of restricted information relating to a living person—
 - (i) until the person to whom the restricted information relates reaches a particular age,
 - (ii) during the lifetime of the person to whom the restricted information relates,
 - (c) in respect of restricted information relating to a deceased person, until—
 - (i) the death of any specified family member of the deceased person to whom the restricted information relates,
 - (ii) the date on which any specified family member of the deceased person reaches a specified age, or
 - (d) for the duration of any other period the sheriff deems appropriate in all the circumstances.

- (5) A sheriff may make an order under subsection (2) on the application of—
 - (a) the person to whom the relevant information relates, or
 - (b) if the person to whom the relevant information relates is deceased, a parent, sibling, child or spouse or civil partner of that person.
- (6) An application for an order under subsection (2) shall be made to the sheriff by way of a summary application.
- (7) An order made under subsection (2) may be varied or revoked, at any time, on the application of—
 - (a) the person to whom the restricted information relates,
 - (b) if the person to whom the restricted information relates is deceased, a parent, sibling, child or spouse or civil partner of that person, or
 - (c) a media representative.
- (8) A sheriff may vary or revoke an order further to an application made under subsection (7) in respect of particular restricted information, particular publications or particular persons, or generally.
- (9) In considering whether to make an order under subsection (2), or to vary or revoke an order under subsection (7), the sheriff must consider whether it is in the interests of justice, or otherwise in the public interest, to do so.
- (10) In determining whether it is in the interests of justice or otherwise in the public interest to make an order under subsection (2) or to vary or revoke an order under subsection (7), the sheriff must—
 - (a) have regard to the wellbeing of the person to whom the relevant information relates,
 - (b) if the person to whom the relevant information relates is deceased, have regard to the wellbeing of any family member of the deceased,
 - (c) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the sheriff,
 - (ii) the person to whom the relevant information relates,
 - (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
 - (iv) if the person mentioned in sub-paragraph (ii) is deceased, a family member of the deceased person,
 - (v) the person or persons to whom the order applies or would apply,
 - (vi) a media representative,
 - (vii) any other person the sheriff considers to have an interest in the application.
- (11) In a case where there is a section of the public that is already aware of the identity of a person who—
 - (a) is or (as the case may be) was a person by whom an offence is or was suspected to have been committed, or

- (b) is or (as the case may be) was a person against or in respect of whom an offence is or was suspected to have been committed,

the sheriff must not consider this to be a factor in favour of refusing to make the order sought under subsection (2) or in favour of varying or revoking an order under subsection (7).

(12) In this section—

“family member”, in relation to a deceased person, means—

(a) the person’s—

- (i) spouse or civil partner,
- (ii) child,
- (iii) parent,
- (iv) sibling,
- (v) aunt or uncle,
- (vi) nephew or niece,
- (vii) cousin,
- (viii) grandparent, and

(b) the spouse or civil partner of any person listed in paragraph (a),

“media representative” means—

- (a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or
- (b) a representative of a newspaper or news agency,

“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,

“relevant information” means the information to which an application relates,

“restricted information” means the information that is the subject of a restriction by virtue of an order made under subsection (2),

“sibling”, in relation to a deceased person, means a person who had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Section 13

Ruth Maguire

139 In section 13, page 10, line 23, at end insert—

<(1AA) Subject to subsection (3), no publication is to include information relating to a deceased person to whom any proceedings in a court relate if—

- (a) that information is likely to lead to the identification of the deceased person as having been a person against or in respect of whom a relevant offence is alleged to have been committed, and

- (b) the person was aged under 18 at the alleged date of commission of the relevant offence.>

Ruth Maguire

140 In section 13, page 10, line 30, at end insert—

<(1BA) For the purposes of subsection (1AA), information relating to a deceased person includes in particular—

- (a) the deceased person's name,
- (b) any address at which the deceased person resided, whether at the time of the alleged offence or any other time,
- (c) the identity of any school or other educational establishment that was attended by the deceased person prior to the person's death,
- (d) any still or moving picture of the deceased person,
- (e) any of the information set out in subsection (1B) in relation to a family member of the deceased person.>

Ruth Maguire

141 In section 13, page 10, line 37, after <subsection (3)> insert <and section 47BA>

Ruth Maguire

142 In section 13, page 10, line 39, at end insert—

<(1E) Subject to section 47BA, subsection (1AA) applies until the date of completion of the proceedings.>

Ruth Maguire

143 In section 13, page 11, leave out lines 28 to 30 and insert—

<(a) either—

- (i) a court decides not to make an order under section 47BA(1) to extend the period during which the restriction imposed by subsection (1) is to apply, or
- (ii) a court decides not to make an order under section 47BA(1) to extend the period during which a restriction imposed by subsection (1A) or (as the case may be) subsection (1AA) is to apply, and>

Ruth Maguire

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

Ruth Maguire

145 In section 13, page 12, line 1, at end insert—

<“family member”, in relation to a deceased person, means—

(a) the person’s—

- (i) spouse or civil partner,
- (ii) child,
- (iii) parent,
- (iv) sibling,
- (v) aunt or uncle,
- (vi) nephew or niece,
- (vii) cousin,
- (viii) grandparent, and

(b) the spouse or civil partner of any person listed in paragraph (a),

“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,>

Ruth Maguire

146 In section 13, page 12, line 8, at end insert—

<“sibling”, in relation to a deceased person, means a person who had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

147 In section 13, page 13, line 5, at end insert <: persons accused of a relevant offence>

Ruth Maguire

148 In section 13, page 13, line 26, at end insert —

<47BA Power to extend period of restriction on report of proceedings: persons in respect of whom a relevant offence is alleged to have been committed

- (1) Subject to subsection (2), in any proceedings to which section 47(1A) or (1AA) applies, the court may make an order extending the period during which the restriction imposed by the relevant subsection is to apply unless the court considers that it would be contrary to the public interest to do so.
- (2) An order under subsection (1) may not be made in respect of a restriction applying by virtue of section 47A(1A)(a)(ii).
- (3) An order under subsection (1) may extend the restriction so that no publication may include the information mentioned in section 47(1A) or (as the case may be) 47(1AA)—
 - (a) until the occurrence of a particular event or particular circumstances,

- (b) in respect of a restriction applying by virtue of section 47(1A)—
 - (i) until the person to whom the information relates reaches a particular age,
 - (ii) during the lifetime of the person to whom the information relates,
 - (c) in respect of a restriction applying by virtue of section 47(1AA), until—
 - (i) the death of any specified family member of the deceased person to whom the information relates,
 - (ii) the date on which any specified family member of the deceased person reaches a specified age, or
 - (d) for the duration of any other period the court deems appropriate in all the circumstances.
- (4) The court may make an order under subsection (1)—
- (a) of its own accord,
 - (b) on the application of the prosecutor,
 - (c) in respect of a restriction applying by virtue of section 47(1A), on the application of the person to whom the information relates, or
 - (d) in respect of a restriction applying by virtue of section 47(1AA), on the application of a parent, sibling, child or spouse or civil partner of the deceased person to whom the information relates.
- (5) An order made by a court under subsection (1) may be varied or revoked by the court, at any time, on the application of—
- (a) the person to whom the information relates,
 - (b) if the person to whom the information relates is deceased, a parent, sibling, child or spouse or civil partner of that person, or
 - (c) a media representative.
- (6) In this section—
- “family member”, in relation to a deceased person, means—
- (a) the person’s—
 - (i) spouse or civil partner,
 - (ii) child,
 - (iii) parent,
 - (iv) sibling,
 - (v) aunt or uncle,
 - (vi) nephew or niece,
 - (vii) cousin,
 - (viii) grandparent, and
 - (b) the spouse or civil partner of any person listed in paragraph (a),

“media representative” means—

- (a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or
- (b) a representative of a newspaper or news agency,

“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,

“sibling”, in relation to a deceased person, means a person who had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

149 In section 13, page 13, line 31, leave out <or> and insert—

<() where the person to whom the information relates is deceased, a parent, sibling, child or spouse or civil partner of that person, or>

Ruth Maguire

150 In section 13, page 14, line 2, at end insert—

<“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,

“sibling”, in relation to a deceased person, means a person who had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

151 In section 13, page 15, line 13, at end insert—

<47E Decisions as to public interest for purposes of section 47BA

- (1) This section applies where, for the purposes of section 47BA, it falls to a court to determine whether it would be contrary to the public interest to make an order extending the period during which a restriction imposed by virtue of section 47(1A) or (1AA) is to apply.
- (2) In determining whether it is in the public interest to extend a restriction applying by virtue of section 47(1A), the court—
 - (a) must have regard, in particular, to—
 - (i) the age and maturity of the person against or in respect of whom a relevant offence was committed, or was alleged to have been committed, at the date of commission or alleged commission of the offence,
 - (ii) the age and maturity of the person to whom the information relates at the time of determining whether it is in the public interest to extend the restriction,

- (iii) the effect that extending or (as the case may be) not extending the period of the restriction may have on that person's wellbeing,
 - (iv) the views of that person so far as they are reasonably ascertainable,
 - (v) whether publication of the information may result in a risk of harm to any other person, and
 - (b) must, if the person in respect of whom the relevant restriction applies is aged under 18 at the date of determining what is in the public interest—
 - (i) treat the factor mentioned at paragraph (a)(iii) (effect on wellbeing) as a primary consideration, and
 - (ii) have no regard to the length of time until the person will reach the age of 18.
- (3) In determining whether it is in the public interest to extend a restriction applying by virtue of section 47(1AA), the court—
 - (a) must have regard, in particular, to—
 - (i) the effect that extending or (as the case may be) not extending the period of the restriction may have on the wellbeing of any family member of the deceased person in question, including by virtue of the age of the deceased person at the date of commission or alleged commission of the relevant offence,
 - (ii) the age and maturity of any family member of the deceased at the time of determining whether it is in the public interest to extend the restriction,
 - (iii) the views of such family member so far as they are reasonably ascertainable,
 - (iv) whether publication of the information may result in a risk of harm to any other person, and
 - (b) must, if any family member of the deceased person is aged under 18 at the date of determining what is in the public interest, treat as a primary consideration the factor mentioned at paragraph (a)(i) (effect on wellbeing) as it applies to that family member.
- (4) In a case where there is a section of the public that is already aware of the identity of a person, including a deceased person, who is or (as the case may be) was a person against or in respect of whom a relevant offence is alleged to have been committed, the court must not consider this to be a factor in favour of refusing to extend the restriction imposed by section 47(1A) or (as the case may be) (1AA).
- (5) In this section—
 - “family member”, in relation to a deceased person, means—
 - (a) the person's—
 - (i) spouse or civil partner,
 - (ii) child,
 - (iii) parent,
 - (iv) sibling,
 - (v) aunt or uncle,

- (vi) nephew or niece,
- (vii) cousin,
- (viii) grandparent, and

(b) the spouse or civil partner of any person listed in paragraph (a),

“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,

“relevant offence” means an alleged offence to which the proceedings relate,

“sibling”, in relation to a deceased person, means a person who had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

152 In section 13, page 15, line 13, at end insert—

<47F Power to retrospectively require removal of report of proceedings: person accused of a relevant offence

- (1) In any proceedings to which section 47(1) applies, the court may make an order requiring the taking of reasonable steps to withdraw from public availability any publication which—
 - (a) was published prior to the date on which section 13 of the Children (Care and Justice) (Scotland) Act 2024 came into force, and
 - (b) includes the information mentioned in section 47(1) in relation to a person who is identified in the order.
- (2) A person who is served with or otherwise made aware of the existence of an order made under subsection (1) may comply with the order by withdrawing from public availability only so much of the publication as contains the restricted information.
- (3) A person who is served with or otherwise made aware of the existence of an order made under subsection (1), and who fails to comply with the order, commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is a defence for any person charged with an offence under this section ("P") to prove that P reasonably believed that P had taken reasonable steps to ensure that the publication or (as the case may be) the restricted information was withdrawn from public availability.
- (5) The court may make an order under subsection (1)—
 - (a) of its own accord,
 - (b) on the application of the prosecutor, or
 - (c) on the application of the person to whom the information relates.
- (6) An order made by a court under subsection (1) may be varied or revoked by the court, at any time, on the application of—
 - (a) the person to whom the information relates,
 - (b) a person to whom the order applies, or

- (c) a media representative.
- (7) The court may vary or revoke an order further to an application made under subsection (6) in respect of particular restricted information, particular publications or particular persons, or generally.
- (8) In considering whether to make an order under subsection (1), or to vary or revoke an order under subsection (6), the court must consider whether it is in the public interest, to do so.
- (9) In determining whether it is in the public interest to make an order under subsection (1), or to vary or revoke an order under subsection (6), the court must—
 - (a) have regard, in particular, to—
 - (i) the age and maturity of the person to whom the information relates at the date of commission of the offence,
 - (ii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person’s wellbeing,
 - (iii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person’s rehabilitation or reintegration,
 - (iv) whether not making or (as the case may be) varying or revoking the order may constitute additional and disproportionate punishment,
 - (v) whether the publication or continued public availability of the relevant information may result in a risk of harm to any other person,
 - (b) if the person to whom the information relates is aged under 18 at the date of determining what is in the public interest—
 - (i) treat the factor mentioned at paragraph (a)(ii) (effect on wellbeing) as a primary consideration, and
 - (ii) have no regard to the length of time until the person will reach the age of 18,
 - (c) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the court,
 - (ii) the person to whom the information relates,
 - (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
 - (iv) the person or persons to whom the order applies or would apply,
 - (v) a media representative,
 - (vi) any other person the court considers to have an interest in the application.
- (10) In a case where there is a section of the public that is already aware of the identity of a person who is accused of a relevant offence, the court must not consider this to be a factor in favour of refusing to make the order sought under subsection (1) or in favour of varying or revoking an order under subsection (6).

(11) In this section—

“media representative” means—

- (a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or
- (b) a representative of a newspaper or news agency,

“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public,

“relevant offence” means an alleged offence to which the proceedings relate,

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“restricted information” means the information in respect of which an order is made under subsection (1).

47G Power to retrospectively require removal of report of proceedings: persons against or in respect of whom a relevant offence is alleged to have been committed

- (1) Subject to subsection (2), in any proceedings to which section 47(1A) or (1AA) applies, the court may make an order requiring the taking of reasonable steps to withdraw from public availability any publication which—
 - (a) was published prior to the date on which section 13 of the Children (Care and Justice) (Scotland) Act 2024 came into force, and
 - (b) includes the information mentioned in section 47(1A) or (1AA) in relation to a person, including a deceased person, who is identified in the order.
- (2) An order under subsection (1) may not be made in respect of information of the type mentioned in section 47A(1A)(a)(ii).
- (3) A person who is served with or otherwise made aware of an order made under subsection (1) may comply with the order by withdrawing from public availability only so much of the publication as contains the restricted information.
- (4) A person who is served with or otherwise made aware of an order made under subsection (1), and who fails to comply with the order, commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) It is a defence for any person charged with an offence under this section ("P") to prove that P reasonably believed that P had taken reasonable steps to ensure that the publication or (as the case may be) the restricted information was withdrawn from public availability.
- (6) The court may make an order under subsection (1)—
 - (a) of its own accord,
 - (b) on the application of the prosecutor,
 - (c) on the application of the person to whom the information relates, or

- (d) if the person to whom the information relates is deceased, on the application of a parent, sibling, child or spouse or civil partner of that person.
- (7) An order made by a court under subsection (1) may be varied or revoked by the court, at any time, on the application of—
- (a) the person to whom the information relates,
 - (b) if the person to whom the information relates is deceased, a parent, sibling, child or spouse or civil partner of that person,
 - (c) a person to whom the order applies, or
 - (d) a media representative.
- (8) The court may vary or revoke an order further to an application made under subsection (7) in respect of particular restricted information, particular publications or particular persons, or generally.
- (9) In considering whether to make an order under subsection (1), or to vary or revoke an order under subsection (7), the court must consider whether it is in the public interest to do so.
- (10) In determining whether it is in the public interest to make an order under subsection (1), or to vary or revoke an order under subsection (7), the court must—
- (a) have regard, in particular, to—
 - (i) the age and maturity of the person to whom the information relates at the date of commission or alleged commission of the offence,
 - (ii) the age and maturity of the person to whom the information relates at the time of determining whether it is in the public interest to extend the restriction,
 - (iii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person's wellbeing,
 - (iv) the views of that person so far as they are reasonably ascertainable,
 - (v) whether publication of the information may result in a risk of harm to any other person,
 - (b) if the person to whom the information relates is aged under 18 at the date of determining what is in the public interest—
 - (i) treat the factor mentioned at paragraph (a)(iii) (effect on wellbeing) as a primary consideration, and
 - (ii) have no regard to the length of time until the person will reach the age of 18, and
 - (c) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the court,
 - (ii) the person to whom the information relates,
 - (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
 - (iv) the person or persons to whom the order applies or would apply,
 - (v) a media representative,

- (vi) any other person the court considers to have an interest in the application.
- (11) In determining whether it is in the public interest to make an order under subsection (1), or to vary or revoke an order under subsection (7), in respect of information relating to a person who is deceased, the court must—
- (a) have regard, in particular, to—
 - (i) the effect that making, not making or (as the case may be) varying or revoking the order may have on the wellbeing of any family member of the deceased person in question, including by virtue of the age of the deceased person at the date of commission or alleged commission of the relevant offence,
 - (ii) the age and maturity of any family member of the deceased at the time of determining whether it is in the public interest to make, vary or revoke the order,
 - (iii) the views of such family member so far as they are reasonably ascertainable,
 - (iv) whether publication of the information may result in a risk of harm to any other person,
 - (b) if any family member of the deceased person is aged under 18 at the date of determining what is in the public interest, treat as a primary consideration the factor mentioned at paragraph (a)(i) (effect on wellbeing) as it applies to that family member, and
 - (c) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the court,
 - (ii) a family member of the deceased person to whom the information relates,
 - (iii) the person or persons to whom the order applies or would apply,
 - (iv) a media representative,
 - (v) any other person the court considers to have an interest in the application.
- (12) In a case where there is a section of the public that is already aware of the identity of a person, including a deceased person, who is or (as the case may be) was a person against or in respect of whom a relevant offence is or was alleged to have been committed, the court must not consider this to be a factor in favour of refusing to make the order sought under subsection (1) or in favour of varying or revoking an order under subsection (7).
- (13) In this section—
- “family member”, in relation to a deceased person, means—
- (a) the person’s—
 - (i) spouse or civil partner,
 - (ii) child,
 - (iii) parent
 - (iv) sibling,
 - (v) aunt or uncle,

- (vi) nephew or niece,
- (vii) cousin,
- (viii) grandparent, and

(b) the spouse or civil partner of any person listed in paragraph (a),

“media representative” means—

- (a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or
- (b) a representative of a newspaper or news agency,

“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public,

“relevant offence” means an alleged offence to which the proceedings relate,

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“restricted information” means the information in respect of which an order is made under subsection (1),

“sibling” in relation to a person (including a deceased person), means a person who has or had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

153 In section 13, page 15, line 13, at end insert—

<47H Power to retrospectively require removal of reporting of concluded court proceedings

- (1) A sheriff may make an order requiring the taking of reasonable steps to withdraw from public availability any publication which—
 - (a) includes information relating to a person identified in the order who was concerned in any concluded proceedings in a court, if—
 - (i) that information is likely to lead to the identification of the person as having been a person accused of a relevant offence, and
 - (ii) the person was aged under 18 at the alleged date of commission of the relevant offence,
 - (b) includes information relating to a person identified in the order who was concerned in any concluded proceedings in a court if—
 - (i) that information is likely to lead to the identification of the person as being a person against or in respect of whom a relevant offence was alleged to have been committed, and
 - (ii) the person was aged under 18 at the date of commencement of the proceedings,

- (c) includes information relating to a deceased person identified in the order to whom any concluded proceedings in a court related, if—
 - (i) that information is likely to lead to the identification of the deceased person as having been a person against or in respect of whom a relevant offence was alleged to have been committed, and
 - (ii) the deceased person was aged under 18 at the alleged date of commission of the relevant offence.
- (2) A person who is served with or otherwise made aware of an order made under subsection (1) may comply with the order by withdrawing from public availability only so much of the publication as contains the restricted information.
- (3) A person who is served with or otherwise made aware of an order made under subsection (1), and who fails to comply with the order, commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is a defence for any person charged with an offence under this section ("P") to prove that P reasonably believed that P had taken reasonable steps to ensure that the publication or (as the case may be) the restricted information was withdrawn from public availability.
- (5) An application for an order under subsection (1) shall be made to the sheriff by way of a summary application.
- (6) A sheriff may make an order under subsection (1) on the application of—
 - (a) the person to whom the relevant information relates, or
 - (b) if the person to whom the relevant information relates is deceased, a parent, sibling, child or spouse or civil partner of that person.
- (7) An order under subsection (1) may require that restricted information need only be withdrawn from public availability—
 - (a) until the occurrence of a particular event or particular circumstances,
 - (b) in respect of restricted information of the type mentioned in subsection (1)(a) or (b)—
 - (i) until the person to whom the information relates reaches a particular age,
 - (ii) during the lifetime of the person to whom the information relates,
 - (c) in respect of restricted information of the type mentioned in subsection (1)(c), until—
 - (i) the death of any specified family member of the deceased person to whom the information relates,
 - (ii) the date on which any specified family member of the deceased person reaches a specified age, or
 - (d) for the duration of any other period the sheriff deems appropriate in all the circumstances.
- (8) An order made under subsection (1) may be varied or revoked by a sheriff, at any time, on the application of—
 - (a) the person to whom the restricted information relates,

- (b) if the person to whom the restricted information relates is deceased, a parent, sibling, child or spouse or civil partner of that person,
 - (c) a person to whom the order applies, or
 - (d) a media representative.
- (9) A sheriff may vary or revoke an order further to an application made under subsection (8) in respect of particular restricted information, particular publications or particular persons, or generally.
- (10) In considering whether to make an order under subsection (1), or to vary or revoke an order under subsection (8), the sheriff must consider whether it is in the public interest to do so.
- (11) In determining whether it is in the public interest to make an order under subsection (1), or to vary or revoke an order under subsection (8), in respect of information of the type mentioned in subsection (1)(a), the court must—
 - (a) have regard, in particular, to—
 - (i) the age and maturity of the person to whom the relevant information relates at the date of commission or alleged commission of the offence,
 - (ii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person’s wellbeing,
 - (iii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person’s rehabilitation or reintegration,
 - (iv) whether not making or (as the case may be) varying or revoking the order may constitute additional and disproportionate punishment,
 - (v) whether the publication or continued public availability of the relevant information may result in a risk of harm to any other person,
 - (b) if the person to whom the relevant information relates is aged under 18 at the date of determining what is in the public interest —
 - (i) treat the factor mentioned at paragraph (a)(ii) (effect on wellbeing) as a primary consideration, and
 - (ii) have no regard to the length of time until the person will reach the age of 18,
 - (c) if the person to whom the relevant information relates is deceased, have regard to the wellbeing of any family member of the deceased,
 - (d) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the sheriff,
 - (ii) the person to whom the relevant information relates,
 - (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
 - (iv) if the person mentioned in sub-paragraph (ii) is deceased, a family member of the deceased person,
 - (v) the person or persons to whom the order applies or would apply,

- (vi) a media representative,
 - (vii) any other person the sheriff considers to have an interest in the application.
- (12) In determining whether it is in the public interest to make an order under subsection (1), or to vary or revoke an order under subsection (8), in respect of information of the type mentioned in subsection (1)(b), the sheriff must—
- (a) have regard, in particular, to—
 - (i) the age and maturity of the person to whom the relevant information relates at the date of commission or alleged commission of the offence,
 - (ii) the age and maturity of the person to whom the relevant information relates at the time of determining whether it is in the public interest to make, vary or revoke the order,
 - (iii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person’s wellbeing,
 - (iv) the views of that person so far as they are reasonably ascertainable,
 - (v) whether the publication or continued public availability of the relevant information may result in a risk of harm to any other person,
 - (b) if the person to whom the relevant information relates is aged under 18 at the date of determining what is in the public interest—
 - (i) treat the factor mentioned at paragraph (a)(iii) (effect on wellbeing) as a primary consideration, and
 - (ii) have no regard to the length of time until the person will reach the age of 18, and
 - (c) if the person to whom the relevant information relates is deceased, have regard to the wellbeing of any family member of the deceased,
 - (d) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the sheriff,
 - (ii) the person to whom the relevant information relates,
 - (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
 - (iv) if the person mentioned in sub-paragraph (ii) is deceased, a family member of the deceased person,
 - (v) the person or persons to whom the order applies,
 - (vi) a media representative,
 - (vii) any other person the sheriff considers to have an interest in the application.

- (13) In determining whether it is in the public interest to make an order under subsection (1), or to vary or revoke an order under subsection (8), in respect of information of the type mentioned in subsection (1)(c), the sheriff must—
- (a) have regard, in particular, to—
 - (i) the effect that making, not making or (as the case may be) varying or revoking the order may have on the wellbeing of any family member of the deceased person in question, including by virtue of the age of the deceased person at the date of commission or alleged commission of the relevant offence,
 - (ii) the age and maturity of any family member of the deceased at the time of determining whether it is in the public interest to make, vary or revoke the order,
 - (iii) the views of such family member so far as they are reasonably ascertainable,
 - (iv) whether the publication or continued public availability of the relevant information may result in a risk of harm to any other person,
 - (b) if any family member of the deceased person is aged under 18 at the date of determining what is in the public interest, treat as a primary consideration the factor mentioned at paragraph (a)(i) (effect on wellbeing) as it applies to that family member, and
 - (c) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the sheriff,
 - (ii) a family member of the deceased person to whom the relevant information relates,
 - (iii) the person or persons to whom the order applies or would apply,
 - (iv) a media representative,
 - (v) any other person the sheriff considers to have an interest in the application.
- (14) In a case where there is a section of the public that is already aware of the identity of a person who—
- (a) committed, or was accused of committing, a relevant offence, or
 - (b) is or (as the case may be) was a person against or in respect of whom a relevant offence was, or was alleged to have been, committed,

the sheriff must not consider this to be a factor in favour of refusing to make the order sought under subsection (1) or in favour of varying or revoking an order under subsection (8).

- (15) In this section—

“family member”, in relation to a deceased person, means—

- (a) the person’s—
 - (i) spouse or civil partner,
 - (ii) child,

- (iii) parent,
- (iv) sibling,
- (v) aunt or uncle,
- (vi) nephew or niece,
- (vii) cousin,
- (viii) grandparent, and

(b) the spouse or civil partner of any person listed in paragraph (a),

“media representative” means—

- (a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or
- (b) a representative of a newspaper or news agency,

“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,

“publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public,

“relevant information” means the information to which an application relates,

“relevant offence” means an offence or alleged offence to which the proceedings related,

“relevant programme” means a programme included in a programme service, within the meaning of the Broadcasting Act 1990,

“restricted information” means the information in respect of which an order is made under subsection (1),

“sibling”, in relation to a person (including a deceased person), means a person who has or had at least one parent in common with that person,

“spouse” includes a person who lives with another person as if their spouse or civil partner.>

Ruth Maguire

154 In section 13, page 15, line 13, at end insert—

<47I Power to reinstate reporting restriction after the conclusion of court proceedings

- (1) This section applies where a restriction imposed by section 47(1), (1A) or (1AA), and including a restriction that was extended under section 47B or section 47BA, has expired or otherwise no longer applies by virtue of—
 - (a) section 47(1C) to (3),
 - (b) section 47B(2) or (4), or
 - (c) section 47BA(2) or (4).
- (2) At any time following the conclusion of the proceedings by virtue of which the restriction mentioned in subsection (1) applied, and regardless of the outcome of those proceedings, a sheriff may by order reinstate the restriction in whole or in part.

- (3) An order under subsection (2) may not be made in respect of a restriction that applied by virtue of section 47A(1A)(a)(ii).
- (4) An order under subsection (2) may reinstate the restriction, in whole or in part, such that no publication may include the restricted information—
 - (a) until the occurrence of a particular event or particular circumstances,
 - (b) in respect of restricted information relating to a living person—
 - (i) until the person to whom the information relates reaches a particular age,
 - (ii) during the lifetime of the person to whom the restricted information relates,
 - (c) in respect of restricted information relating to a deceased person, until—
 - (i) the death of any specified family member of the deceased person to whom the restricted information relates,
 - (ii) the date on which any specified family member of the deceased person reaches a specified age, or
 - (d) for the duration of any other period the sheriff deems appropriate in all the circumstances.
- (5) A sheriff may make an order under subsection (2) on the application of—
 - (a) the person to whom the relevant information relates, or
 - (b) if the person to whom the relevant information relates is deceased, a parent, sibling, child or spouse or civil partner of that person.
- (6) An application for an order under subsection (2) shall be made to the sheriff by way of a summary application.
- (7) An order made under subsection (2) may be varied or revoked, at any time, on the application of—
 - (a) the person to whom the restricted information relates,
 - (b) if the person to whom the restricted information relates is deceased, a parent, sibling, child or spouse or civil partner of that person, or
 - (c) a media representative.
- (8) A sheriff may vary or revoke an order further to an application made under subsection (7) in respect of particular restricted information, particular publications or particular persons, or generally.
- (9) In considering whether to make an order under subsection (2), or to vary or revoke an order under subsection (7), the sheriff must consider whether it is in the interests of justice, or otherwise in the public interest, to do so.
- (10) In determining whether it is in the interests of justice or otherwise in the public interest to make an order under subsection (2) or to vary or revoke an order under subsection (7), in respect of information of the type mentioned in section 47(1), the sheriff must—
 - (a) have regard, in particular, to—
 - (i) the age and maturity of the person to whom the relevant information relates at the date of commission of the offence,

- (ii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person's wellbeing,
 - (iii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person's rehabilitation or reintegration,
 - (iv) whether not making or (as the case may be) varying or revoking the order may constitute additional and disproportionate punishment,
 - (v) whether the publication of the relevant information may result in a risk of harm to any other person,
- (b) if the person to whom the relevant information relates is aged under 18 at the date of determining what is in the public interest—
- (i) treat the factor mentioned at paragraph (a)(ii) (effect on wellbeing) as a primary consideration, and
 - (ii) have no regard to the length of time until the person will reach the age of 18,
- (c) if the person to whom the relevant information relates is deceased, have regard to the wellbeing of any family member of the deceased,
- (d) consider whether any of the following persons should be given the opportunity to make representations—
- (i) the person who made the relevant application to the sheriff,
 - (ii) the person to whom the relevant information relates,
 - (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
 - (iv) if the person mentioned in sub-paragraph (ii) is deceased, a family member of the deceased person,
 - (v) a media representative,
 - (vi) any other person the sheriff considers to have an interest in the application.
- (11) In determining whether it is in the public interest to make an order under subsection (2), or to vary or revoke an order under subsection (7), in respect of relevant information of the type mentioned in section 47(1A), the sheriff must—
- (a) have regard, in particular, to—
- (i) the age and maturity of the person to whom the relevant information relates at the date of commission or alleged commission of the offence,
 - (ii) the age and maturity of the person to whom the relevant information relates at the time of determining whether it is in the public interest to make, vary or revoke the order,
 - (iii) the effect that making, not making or (as the case may be) varying or revoking the order may have on that person's wellbeing,
 - (iv) the views of that person so far as they are reasonably ascertainable,
 - (v) whether the publication of the relevant information may result in a risk of harm to any other person,

- (b) if the person to whom the relevant information relates is aged under 18 at the date of determining what is in the public interest—
 - (i) treat the factor mentioned at paragraph (a)(iii) (effect on wellbeing) as a primary consideration, and
 - (ii) have no regard to the length of time until the person will reach the age of 18,
 - (c) if the person to whom the relevant information relates is deceased, have regard to the wellbeing of any family member of the deceased,
 - (d) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the sheriff,
 - (ii) the person to whom the relevant information relates,
 - (iii) if the person mentioned in sub-paragraph (ii) is aged under 18, a parent of that person,
 - (iv) if the person mentioned in sub-paragraph (ii) is deceased, a family member of the deceased person,
 - (v) a media representative,
 - (vi) any other person the sheriff considers to have an interest in the application.
- (12) In determining whether it is in the public interest to make an order under subsection (2), or to vary or revoke an order under subsection (7), in respect of relevant information of the type mentioned in section 47(1AA), the sheriff must—
- (a) have regard, in particular, to—
 - (i) the effect that making, not making or (as the case may be) varying or revoking the order may have on the wellbeing of any family member of the deceased person in question, including by virtue of the age of the deceased person at the date of commission or alleged commission of the alleged offence to which the proceedings related,
 - (ii) the age and maturity of any family member of the deceased at the time of determining whether it is in the public interest to make, vary or revoke the order,
 - (iii) the views of such family member so far as they are reasonably ascertainable,
 - (iv) whether the publication of the relevant information may result in a risk of harm to any other person,
 - (b) if any family member of the deceased person is aged under 18 at the date of determining what is in the public interest, treat as a primary consideration the factor mentioned at paragraph (a)(i) (effect on wellbeing) as it applies to that family member, and
 - (c) consider whether any of the following persons should be given the opportunity to make representations—
 - (i) the person who made the relevant application to the sheriff,

- (ii) a family member of the deceased person to whom the relevant information relates,
 - (iii) a media representative,
 - (iv) any other person the sheriff considers to have an interest in the application.
- (13) In a case where there is a section of the public that is already aware of the identity of a person who—
- (a) was accused of a relevant offence, or
 - (b) is or (as the case may be) was a person against or in respect of whom a relevant offence was suspected to have been committed,

the sheriff must not consider this to be a factor in favour of refusing to make the order sought under subsection (2) or in favour of varying or revoking an order under subsection (7).

- (14) In this section—

“family member”, in relation to a deceased person, means—

- (a) the person’s—
 - (i) spouse or civil partner,
 - (ii) child,
 - (iii) parent,
 - (iv) sibling,
 - (v) aunt or uncle,
 - (vi) nephew or niece,
 - (vii) cousin,
 - (viii) grandparent, and
- (b) the spouse or civil partner of any person listed in paragraph (a),

“media representative” means—

- (a) a photographer, camera operator, researcher or producer for, or of, any relevant programme, or
- (b) a representative of a newspaper or news agency,

“parent” has the same meaning as in section 108 of the Criminal Justice (Scotland) Act 2016,

“relevant information” means the information to which an application relates,

“relevant offence” means an alleged offence to which the proceedings related,

“restricted information” means the information in respect of which an order is made under subsection (2),

“sibling”, in relation to a person (including a deceased person), means a person who has or had at least one parent in common with that person,

“spouse or civil partner” includes a person who lives with another person as if their spouse or civil partner.>

Section 23

Miles Briggs

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

- <(3) Regulations under subsection (1) must provide that a secure accommodation service may only be approved if it can demonstrate that all staff working with children will undertake training on—
 - (a) the use of restrictive practice, and
 - (b) de-escalation techniques.>

Miles Briggs

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

- <(3) Regulations under subsection (1) must provide that a secure accommodation service may only be approved if it can demonstrate that all staff working with children will undertake training on learning disabilities and complex needs.
- (4) For the purposes of subsection (3), complex needs includes where a child, in addition to having a learning disability—
 - (a) is autistic,
 - (b) has a mental health diagnosis,
 - (c) has a forensic need,
 - (d) is described as demonstrating challenging behaviour which is of such intensity, frequency or duration as to threaten the quality of life or physical safety of the child or any other person.>

After section 23

Miles Briggs

157 After section 23, insert—

<Use of restrictive practices in secure accommodation: guidance

- (1) The Scottish Ministers must prepare and publish guidance on the use of restrictive practices on children in secure accommodation.
- (2) Guidance under subsection (1) may include information on—
 - (a) the types of restrictive practices which may be used,
 - (b) the circumstances in which restrictive practices may be used,
 - (c) assessing the risks to the physical and mental wellbeing of the child of the use of restrictive practices,
 - (d) de-escalation techniques.>

Miles Briggs

158 After section 23, insert—

<Use of restrictive practices in secure accommodation: duty of local authorities to collect data

- (1) A local authority must collect data on the use of restrictive practices on children in secure accommodation.
- (2) Data under subsection (1) must include—
 - (a) the type of restrictive practice used,
 - (b) the reason for the use of the restrictive practice,
 - (c) where and when the restrictive practice was used,
 - (d) the length of time the restrictive practice was used,
 - (e) the known impact on the child of the use of the restrictive practice, including any injuries or risks to the physical or mental wellbeing of the child,
 - (f) the characteristics of the child, including—
 - (i) age,
 - (ii) gender,
 - (iii) sex,
 - (iv) disability,
 - (v) race,
 - (g) whether any relevant family member or carer was notified of the use of the restrictive practice,
 - (h) the outcome of any incident review, and
 - (i) the involvement of the child in any incident review.
- (3) A local authority must publish the data in a manner it considers appropriate.>

Miles Briggs

159 After section 23, insert—

<Assessment of needs of a child placed in secure accommodation

- (1) The Scottish Ministers must ensure that any child placed in secure accommodation—
 - (a) at the point they enter secure accommodation, is assessed for any learning disabilities and complex needs, and
 - (b) receives appropriate and timely support for any learning disabilities and complex needs identified in an assessment under paragraph (a).
- (2) The Scottish Ministers must, no later than one year after the date of Royal Assent, prepare and publish a report on the steps they have taken under subsection (1).
- (3) For the purposes of this section, complex needs includes where a child, in addition to having a learning disability—
 - (a) is autistic,
 - (b) has a mental health diagnosis,
 - (c) has a forensic need,

- (d) is described as demonstrating challenging behaviour which is of such intensity, frequency or duration as to threaten the quality of life or physical safety of the child or any other person.>

Miles Briggs

160 After section 23, insert—

<Report on children in secure accommodation with learning disabilities and complex needs

- (1) A local authority must as soon as reasonably practicable after the end of each reporting period, prepare and publish a report on the steps it has taken during the reporting period to reduce the use of, or length of time spent in, secure accommodation for children with learning difficulties and complex needs.
- (2) For the purposes of subsection (1), complex needs includes where a child, in addition to having a learning disability—
 - (a) is autistic,
 - (b) has a mental health diagnosis,
 - (c) has a forensic need,
 - (d) is described as demonstrating challenging behaviour which is of such intensity, frequency or duration as to threaten the quality of life or physical safety of the child or any other person.
- (3) For the purposes of subsection (1), a reporting period is—
 - (a) the period of one year beginning with the day of Royal Assent,
 - (b) each subsequent period of one year.>

Miles Briggs

161 After section 23, insert—

<Children in secure accommodation with learning disabilities and complex needs: duty of local authority to collect data

- (1) A local authority must collect data on the number of children in secure accommodation with learning disabilities and complex needs.
- (2) Data under subsection (1) must include—
 - (a) the learning disabilities and complex needs of the child,
 - (b) the age of the child, and
 - (c) the number of days the child spent in secure accommodation.
- (3) A local authority must publish the data in a manner it considers appropriate.
- (4) For the purposes of this section, complex needs includes where a child, in addition to having a learning disability—
 - (a) is autistic,
 - (b) has a mental health diagnosis,
 - (c) has a forensic need,

- (d) is described as demonstrating challenging behaviour which is of such intensity, frequency or duration as to threaten the quality of life or physical safety of the child or any other person.>

After section 25

Miles Briggs

162 After section 25, insert—

<Secure transportation services

Secure transportation services: duty of Scottish Ministers to produce standards

- (1) The Scottish Ministers must by regulations specify standards on the use of secure transportation services for children.
- (2) Regulations under subsection (1) must provide that—
 - (a) secure transportation services must only be used if, following a risk assessment, it is considered necessary to reduce the risk of—
 - (i) harm to the child being transported,
 - (ii) serious harm to any other person,
 - (b) where the child being transported 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 1995 Act, that handcuffs of any kind—
 - (i) must not be used, or
 - (ii) may only be used if there is a significant risk of serious harm to the child or another person,
 - (c) any use of restrictive practices during the secure transportation of the child must be reported to the relevant commissioning body.
- (3) Any person providing secure transportation services for children must comply with the standards specified in regulations under subsection (1).
- (4) Regulations under subsection (1) are subject to the affirmative procedure.>

Miles Briggs

163 After section 25, insert—

<Secure transportation services

Use of restrictive practices during secure transportation: duty of local authority to collect data

- (1) A local authority must collect data on the use of restrictive practices during the secure transportation of a child.
- (2) Data under subsection (1) must include—
 - (a) the type of restrictive practice used,
 - (b) the reason for the use of the restrictive practice,
 - (c) where and when the restrictive practice was used,

- (d) the length of time the restrictive practice was used,
 - (e) the known impact on the child of the use of the restrictive practice, including any injuries or risks to the physical or mental wellbeing of the child,
 - (f) the protected characteristics of the child, including—
 - (i) age,
 - (ii) gender,
 - (iii) sex,
 - (iv) disability,
 - (v) race,
 - (g) whether any relevant family member or carer was notified of the use of the restrictive practice,
 - (h) the outcome of any incident review, and
 - (i) the involvement of the child in any incident review.
- (3) A local authority must publish the data in a manner it considers appropriate.>